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Presidential Documents

Title 3—

The President

Memorandum of July 26, 1994

Delegation of Responsibilities Under the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of State the functions vested in the President by the following provisions of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236) (the "Act"): sections 102(g), 161(c), 401(b), 407(a), 409, 431(b), 514(b), 523, 527(e) and (g), 528, 532(a), 574, 583(b)(1) and (b)(6), 733 and 735(d).

The functions under section 407(a) of the Act shall be exercised in coordination with the Secretary of Defense.

The functions under section 527(e) and (g) of the Act shall be exercised in consultation with the Secretary of the Treasury and the heads of other departments and agencies, as appropriate.

Any reference in this memorandum to any act, order, determination, or delegation of authority shall be deemed to be a reference to such act, order, determination, or delegation of authority as amended from time to time.

The functions delegated by this memorandum may be redelegated within the Department of State.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

[FR Doc. 94–19429
Filed 8–4–94; 3:35 pm]
Billing code 4710–10–M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91–155–15]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding a new area extending through Los Angeles and San Bernardino Counties, CA, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective August 2, 1994. Consideration will be given only to comments received on or before October 7, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–155–15. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations), and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding to or removing from the list of quarantined areas certain portions of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Santa Clara Counties, CA. Amendments affecting California were made effective on September 10, and November 12, 1992; and on January 19, July 16, August 3, September 15, October 8, November 22, and December 16, 1993; and on January 10, February 14, March 4, and July 7, 1994 (57 FR 42485–42486, Docket No. 91–155–2; 57 FR 54166–54169, Docket No. 91–155–3; 58 FR 6343–6346, Docket No. 91–155–4; 58 FR 39123–39124, Docket No. 91–155–5; 58 FR 42489–42491, Docket No. 91–155–6; 58 FR 49186–49190, Docket No. 91–155–7; 58 FR 53105–53109, Docket No. 91–155–8; 58 FR 63027–63031, Docket No. 91–155–9; and 58 FR 67627–67630, Docket No. 91–155–10; 59 FR 2281–2283, Docket No. 91–155–11; 59 FR 7895–7896, Docket No. 91–155–12; 59 FR 11177–11180, Docket No. 91–155–13; and 59 FR 35611–35612, Docket No. 91–155–14).

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that additional infestations of Medfly have been discovered in Los Angeles and San Bernardino Counties, CA.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78–3 by expanding the area that extends through Los Angeles, Orange, and San Bernardino Counties with the addition of an area of approximately 17-square miles in Los Angeles and San Bernardino Counties. The additional quarantined area is as follows:

That portion of Los Angeles and San Bernardino Counties bounded by a line drawn as follows: Beginning at the intersection of the Angeles National Forest Boundary and Mt. Baldy Road; then south from this intersection along an imaginary line to the intersection of 19th Street and Benson Avenue; then south along Benson Avenue to its intersection with State Highway 30; then west along State Highway 30 to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with the Glendora City limit; then north from the Glendora City limit to its intersection with the Angeles National Forest Boundary; then east along the Angeles National Forest Boundary to the point of beginning.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We

will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

This interim rule affects the interstate movement of regulated articles from a 17-square mile area which extends through both Los Angeles and San Bernardino Counties, CA. There are approximately 19 small entities that could be affected, including 4 fruit sellers, 4 nurseries, and 11 growers.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the sale of these articles would not be affected by this interim regulation.

In the new quarantined area in Los Angeles and San Bernardino Counties, the effect on those few small entities that do move regulated articles interstate from parts of the quarantined areas will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities should be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in subpart 301.78 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) under OMB control number 0579–0088.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c), the designation of the quarantined areas are amended by revising the entry for *Los Angeles, Orange, and San Bernardino Counties* to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

CALIFORNIA

Los Angeles, Orange, and San Bernardino Counties. That portion of the counties beginning at the intersection of the Angeles National Forest boundary and Sage Hill Road; then north from the intersection along an imaginary line to its intersection with Brown Mountain Road at Millard Campground; then west along Brown Mountain Road to its intersection with El Prieto Road; then southwest along El Prieto Road to its intersection with the Pasadena City limit; then north and west along the Pasadena City limit to its intersection with the La Canada Flintridge City limit; then west and south along the La Canada Flintridge City limit to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with La Crescenta Avenue; then south along La Crescenta Avenue to its intersection with Shirley Jean Street; then southwest from this intersection along an imaginary line to the end of Allen Avenue; then southwest along Allen Avenue to its intersection with Mountain Street; then northwest along Mountain Street to its intersection with Sunset Canyon Drive; then northwest along Sunset Canyon Drive to its intersection with Olive Avenue; then southwest along Olive Avenue to its intersection with Interstate Highway 5; then northwest along Interstate Highway 5 to its intersection with Sunland Boulevard; then northeast along Sunland Boulevard to its intersection with Interstate Highway 210; then northwest along Interstate Highway 210 to its intersection with Bledsoe Street; then northeast along Bledsoe Street to its intersection with Olive View Drive; then west along Olive View Drive to its intersection with Cobalt Street; then north along Cobalt Street to its intersection with the Los Angeles City limit; then west and south along the Los Angeles city limit to its intersection

with Limekiln Canyon Road; then south along Limekiln Canyon Road to its intersection with Sesnon Boulevard; then west along Sesnon Boulevard to its intersection with Winnetka Avenue; then south along Winnetka Avenue to its intersection with State Highway 118; then west along State Highway 118 to its intersection with State Highway 27 (Topanga Canyon Boulevard); then south along State Highway 27 to its intersection with Parthenia Street; then east along Parthenia Street to its intersection with Tampa Avenue; then south along Tampa Avenue to its intersection with U.S. Highway 101; then east along U.S. Highway 101 to its intersection with Interstate Highway 405; then southeast along Interstate Highway 405 to its intersection with Sunset Boulevard; then southwest along Sunset Boulevard to its intersection with Chautauqua Boulevard; then southwest on Chautauqua Boulevard to its intersection with State Highway 1; then southeast along State Highway 1 to its intersection with Ocean Avenue; then southeast along Ocean Avenue to its intersection with Barnard Way; then southeast along Barnard Way to its intersection with Neilson Way; then southeast along Neilson Way to its intersection with Pacific Avenue; then southeast along Pacific Avenue to its intersection with Via Marina; then southeast from this intersection along an imaginary line to the intersection of 62nd Avenue and Pacific Avenue; then southeast along Pacific Avenue to its intersection with Vista del Mar; then southeast along Vista del Mar to its intersection with North Highland Avenue; then southeast along North Highland Avenue to its intersection with Manhattan Beach Boulevard; then southwest along Manhattan Beach Boulevard to its intersection with the Manhattan Beach Pier; then southwest along Manhattan Beach Pier to its intersection with the Pacific Ocean coastline; then south and east along the Pacific Ocean coastline to its intersection with the San Pedro Breakwater; then east along the San Pedro Breakwater to the Los Angeles Harbor Light Station; then east from the Los Angeles Harbor Light Station along an imaginary line to the Los Angeles Harbor Entrance East Light; then northeast from the Los Angeles Harbor Entrance East Light along the Middle Breakwater to the Long Beach Harbor Light Station; then north from the Long Beach Harbor Light Station along an imaginary line to the intersection of Harbor Scenic Way and Harbor Scenic Drive; then northwest along Harbor Scenic Drive to its intersection with Queen's Way; then north along Queen's Way to its intersection with Ocean Boulevard; then east and southeast along Ocean Boulevard to its intersection with 72nd Place; then southeast from this intersection along an imaginary line to the intersection of 1st Street and Ocean Avenue; then southeast along Ocean Avenue to its intersection with Seal Beach Boulevard; then northeast along Seal Beach Boulevard to its intersection with State Highway 1; then southeast along State Highway 1 to its intersection with Main Street; then north along Main Street to its intersection with Adams Avenue; then east along Adams Avenue to its intersection with Fairview Road; then north along Fairview Road to its intersection with Interstate Highway 405; then east and southeast along Interstate Highway 405 to its intersection with Culver Drive; then northeast along Culver Drive to its intersection with Walnut Avenue; then northwest along Walnut Avenue to its intersection with Jamboree Road; then northeast along Jamboree Road to its intersection with Chapman Avenue; then north from this intersection along an imaginary line to the intersection of Serrano Avenue and Nohl Ranch Road; then northeast along Serrano Avenue to its intersection with Weir Canyon Road; then north from this intersection along an imaginary line to the northern intersection of the Yorba Linda City limit and the San Bernardino County line; then northeast from this intersection along an imaginary line to the intersection of State Highway 71 and State Highway 83 (Euclid Avenue); then north along State Highway 83 to its intersection with Eucalyptus Avenue; then east along Eucalyptus Avenue to its intersection with Walker Avenue; then north along Walker Avenue to its intersection with Riverside Drive; then east along Riverside Drive to its intersection with Vineyard Avenue; then north along Vineyard Avenue to its intersection with Mission Boulevard; then northwest along Mission Boulevard to its intersection with Grove Avenue; then north along Grove Avenue to its intersection with Holt Boulevard; then east along Holt Boulevard to its intersection with Vineyard Avenue; then north along Vineyard Avenue to its intersection with Carnelian Street; then north along Carnelian Street to its intersection with Hillside Road; then west along Hillside Road to its intersection with Sapphire Street; then north along Sapphire Street to its intersection with Almond Street; then north from this intersection along an imaginary line to its intersection with the Rancho Cucamonga City limit; then west along the Rancho Cucamonga City limit to its intersection with the San Bernardino National Forest Boundary; then west along the San Bernardino National Forest Boundary to its intersection with the Angeles National Forest Boundary; then west along the Angeles National Forest Boundary to the point of beginning.

Done in Washington, DC, this 2d day of August 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–19281 Filed 8–5–94; 8:45 am]

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Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 93–020F]

RIN 0583–AB72

Placement of Nutrition Labeling and Other Mandatory Labeling on Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations by defining the information panel on the labeling of meat and poultry products; allowing mandatory labeling information to be shown in the information panel, in addition to the principal display panel; allowing nutrition information to be shown on other than the principal display panel or the information panel of meat and poultry products; and allowing final labeling bearing nutrition information, which has been approved by FSIS in sketch form, to be generically approved. FSIS is taking this action to provide increased flexibility in the placement of nutrition information and other mandatory information on the labeling of meat and poultry products and streamline the nutrition labeling approval process.

EFFECTIVE DATE: August 8, 1994.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Background

FSIS published its final nutrition labeling regulations in the **Federal**

Register on January 6, 1993 (58 FR 632). Corrections and technical amendments to this final rule were published on August 18, 1993 (58 FR 43787), and September 10, 1993 (58 FR 47624), respectively. The technical amendments, which were issued as an interim final rule, were confirmed as final on March 16, 1994 (59 FR 12157). The nutrition labeling regulations specify a new format for nutrition information and the location of nutrition information on the label of packaged products. Nutrition information on a label of packaged meat or poultry products must appear on the label's principal display panel or on the information panel, except for gift packs where it may be displayed at a location other than on the product label, such as label inserts.

Recognizing label space constraints, FSIS included provisions in the nutrition labeling regulations that allow a modified nutrition label on products in packages that have a total surface area available to bear labeling of 40 or less square inches, so that the required nutrition information could be presented on any label panel. The flexibility provided by these provisions reflects FSIS' recognition that it is more important that the nutrition information be presented on the immediate package than in any particular place.

Following publication of its nutrition labeling regulations, FSIS received many comments from the meat and poultry industry requesting greater flexibility in the placement of nutrition information on the product label. The commenters stated that the type size and spacing requirements for the display of the nutrition information prevented its placement in compliance with current labeling regulations and policy. FSIS has concluded that increased flexibility in regard to the placement of nutrition information is necessary to ensure that mandatory information on labels is readable and not overcrowded. FSIS believes this flexibility can be achieved without hindering consumer use of labeling information. The Food and Drug Administration (FDA) reached similar conclusions based on its review of layouts to implement its nutrition labeling regulations, as well as its review of comments received after publication of its final rule. Based on its conclusion that greater flexibility in the placement of nutrition information is needed, FDA published a proposed rule in the **Federal Register** on August 18, 1993 (58 FR 44091), to permit such flexibility.

Under the nutrition labeling regulations, most meat and poultry product labels, with certain exceptions, must be revised and resubmitted for review and approval by FSIS. FSIS has acknowledged the extensive economic impact of the nutrition labeling requirements, as well as the need for substantive Agency resources to review all such revised labels. FSIS believes this burden would be reduced without loss of information to consumers by allowing the labeling to be generically approved (i.e., approved for use without additional authorization) once it has been approved by FSIS in sketch form.

Accordingly, FSIS is amending the Federal meat and poultry products inspection regulations by defining the information panel on the labeling of meat and poultry products; allowing mandatory labeling information to be shown in the information panel, in addition to the principal display panel; allowing nutrition information to be shown on other than the principal display panel or the information panel of meat and poultry products; and allowing final labeling bearing nutrition information, which has been approved by FSIS in sketch form, to be generically approved.

Proposed Rule

On March 16, 1994, FSIS published in the **Federal Register** a proposed rule (59 FR 12462) to amend the Federal meat and poultry products inspection regulations to provide increased flexibility in the placement of nutrition information and other mandatory information on the labeling of meat and poultry products and to streamline the nutrition label approval process. A summary of the proposed rule follows.

Information Panel

FSIS proposed to amend the Federal meat and poultry products inspection regulations to allow mandatory labeling information to be placed on the information panel and to define "information panel." This action would specify in the regulations the location of mandatory information which could not be accommodated on the principal display panel due to insufficient space. FSIS proposed to add a new paragraph (m) to 9 CFR 317.2 and a new paragraph (c) to 9 CFR 381.116 to define the information panel as the first usable surface to the right of the principal display panel or alternate principal display panel that can be readily seen by consumers. These new provisions would require that all information required to appear on the principal display panel or permitted to appear on the information panel shall appear on the same panel unless there is insufficient space. In determining whether sufficient space is available, FSIS proposed that any vignettes, designs, and other nonmandatory information would not be considered. If either panel could not accommodate all mandatory information, the information could be divided between the principal display panel and the information panel. However, FSIS proposed that information required by any single regulation, such as the ingredients statement, must appear complete on a single panel. All information on the information panel shall appear in one place without intervening material, such as vignettes. FSIS proposed to add the information panel as a location for the ingredients statement and the name and place of business of the manufacturer, packer, or distributor, except as otherwise specified in the regulations, by amending 9 CFR 317.2(f), 317.2(g)(2), 381.118, and 381.122 to this effect.

FSIS was aware that, in certain instances, such as when only a principal display panel is used on a package with no other surface area to place a label, it is not always possible for all mandatory information to fit and read in the same direction on the principal display panel. To alleviate this problem, FSIS proposed to delete the wording from 9 CFR 381.116(a) that requires all mandatory information on the principal display panel to read in the same general direction.

FSIS inadvertently proposed to include in 9 CFR 381.116(a) wording that requires all mandatory information on the principal display panel to be generally parallel to each other. Because the wording appears to contradict FSIS' stated intention to permit mandatory information allowed on the information panel to read in any direction, except as otherwise specified in this part, FSIS has removed the wording from 9 CFR 381.116(a) in the final rule.

Placement of Nutrition Information

FSIS proposed to allow the nutrition information to be placed on any panel that can be readily seen by consumers when a package has a total surface area available to bear labeling of greater than 40 square inches, but its principal display and information panels cannot accommodate all mandatory information. For example, if the first panel to the right of the principal display panel, such as the right side of a box, can accommodate all mandatory information other than the nutrition information, the nutrition information may be placed on any other panel, such as the left side or the top of the box. This action provides increased flexibility by allowing establishments to position the nutrition information to

reduce crowding of mandatory information. FSIS believes that providing this flexibility does not cause any loss of comprehensibility, understandability, or information for consumers.

Given the demand for labeling space made by nutrition information, FSIS proposed to exclude designs, vignettes, and other nonmandatory information on the principal display panel from the category of useable space in calculations of amount of available space for determining the panel on which nutrition information should appear. Displacement of these nonmandatory items could significantly affect the appearance of many packages with little gain in comprehensibility for consumers. FSIS believes that a different treatment of nonmandatory information on the principal display panel is appropriate in deciding where nutrition information is to be presented because the graphic requirements for nutrition information required by 9 CFR 317.309(e) and 381.409(e) result in a "Nutrition Facts" panel that is easy to locate regardless of its placement on the label.

These proposed actions required an accompanying modification to the nutrition labeling regulations pertaining to relative nutrient content claims. The specific provisions modified are provisions of FDA's final nutrition labeling regulations of January 6, 1993 (58 FR 2302) (as corrected at 58 FR 17341, April 2, 1993, and adopted by FSIS at 58 FR 43787, August 18, 1993), that FSIS cross-referenced in its codified language. To incorporate the modifications into its codified language, FSIS proposed to subdivide existing paragraphs and add new paragraphs.

In its final rule, FSIS cross-referenced 21 CFR 101.13(j)(2)(iv)(B), which requires that when a relative nutrient content claim is made, clear and concise quantitative information comparing the amount of the subject nutrient in the product per labeled serving with that in the reference food shall appear adjacent to the most prominent claim or on the information panel. FDA repeated this requirement in each regulation in 21 CFR part 101 pertaining to relative claims (i.e., claims about "more," "light," calories, sodium, and fat, fatty acids, and cholesterol) and FSIS cross-referenced most of these provisions. FSIS proposed to amend these provisions to require that the comparative quantitative information be placed adjacent to the most prominent claim or to the nutrition information. Likewise, FSIS proposed to modify the provision that pertains to the placement of the statement "not a sodium free food" on products that are not sodium free and yet whose label bears a claim of "unsalted." FSIS proposed to require that the statement be placed adjacent to the nutrition information.

Generically Approved Labeling

The nutrition labeling regulations require extensive revision of existing meat and poultry product labels. All labels modified to meet the nutrition labeling regulations must be submitted to FSIS for review and approval prior to use. The projected increase in the volume and complexity of labeling applications submitted to FSIS for approval from companies seeking to comply with the nutrition labeling regulations, compounded by the routine submittal of labels requiring approval, but exempt from nutrition labeling, is expected to place a tremendous burden on the current prior labeling approval system.

On November 23, 1993, FSIS published a proposed rule in the **Federal Register** (58 FR 62014) which proposes to change the prior labeling approval system, in part, by allowing final labeling, which was approved by FSIS in sketch form, to be used without further FSIS authorization. However, because the prior labeling approval proposal encompasses various labeling issues, a final rule will not be issued in a timely manner to alleviate the burden on the prior labeling approval system resulting from nutrition labeling applications. Therefore, FSIS proposed to allow final labeling bearing nutrition information to be generically approved.

Under this proposed system, official establishments are permitted to use final labeling bearing nutrition information, which has been approved by FSIS in sketch form, without additional authorization, provided the final labeling has been prepared without modifications or with modifications permitted in 9 CFR 317.5(b) and 381.134(b), and the final labeling is not false or misleading. Such labeling must be designed in accordance with 9 CFR part 317, subpart B, and 381, subpart Y. FSIS believes it is an unnecessary burden on industry to require the submission of final labeling when the sketch has been previously approved. Because the labeling would have been reviewed and approved by FSIS in the sketch form, the final action does not compromise the truthfulness and accuracy of the meat and poultry product labeling.

Discussion of Comments

FSIS received two comments in response to the March 16, 1994, proposed rule (59 FR 12462). Both comments were from trade associations and supported the proposed rule. One suggestion was made relating to a technical issue that was not addressed in the proposed rule.

One commenter requested that FSIS permit the inspection legend to appear anywhere on the information panel because it has readily recognizable, strong graphic character, as with the "Nutrition Facts" panel. The commenter suggested that this provision apply to all food packages, not just cylindrical containers. Regarding placement of the inspection legend on cylindrical or nearly cylindrical containers, the commenter noted that placement is restricted to the "20 percent panel" where the inspection legend may appear in lieu of showing it on the principal display panel in accordance with 9 CFR 317.2(d)(2)(ii) and 381.116(b)(2)(ii) for meat and poultry products, respectively. The commenter also stated that because the proposal would require all mandatory information appearing on the information panel to appear in one place without intervening material, any increase in flexibility of placement of mandatory information on cylindrical containers would be drastically reduced.

FSIS believes that the inspection legend must be shown on that part of a container's label which is most likely to be visible under customary conditions of display for retail sale. The Agency also believes that if it were to allow the inspection legend to appear on the information panel of all food packages, it might appear on the back side of a package where it is not likely to be visible under customary conditions of display. Such a placement of the inspection legend would not be acceptable to FSIS. In those situations where the information panel is used on cylindrical containers, the inspection legend may appear on the information panel, but must be within the "20 percent panel." FSIS considers the "20 percent panel" of cylindrical containers to be an extension of the principal display panel to its right or left, and an area of a container's label that would likely be visible to consumers. Because all of the mandatory information appearing on the information panel must appear together without intervening information, this will, in most cases, result in the inspection legend being placed within the "20 percent panel" to the right of the principal display panel. As presently permitted, other allowed information may appear in any order and in any direction on the information panel. Thus, flexibility of placement of mandatory information on the

information panel is not lessened for cylindrical or nearly cylindrical containers under the proposed revision.

After careful consideration of the comments received in response to the proposed rule, FSIS is adopting the provisions as published in the **Federal Register** on March 16, 1994 (59 FR 12462).

Executive Order 12866

This final rule has been determined to be not-significant for purposes of Executive Order 12866.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirement on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this final rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this final rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this final rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant effect on small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The final rule provides official establishments with additional flexibility in placing nutrition labeling and other mandatory information on the labeling of meat and poultry products. Small meat and poultry establishments are exempt from nutrition labeling, provided the labels of their products bear no nutrition claims or nutrition information. Therefore, most small establishments will not be affected by the portion of this final rule pertaining to the placement of nutrition information on the labeling.

The other portion of this final rule provides regulatory flexibility in placing other mandatory information, such as the ingredients statement or the name of the company, on the labeling. Such flexibility is already provided to all establishments under current labeling regulations and policy. Therefore, small establishments will see minimal, if any, impact from this portion of the final rule.

Small businesses referred to as label expediters, however, will be affected by the portion of the final rule pertaining to the generic approval of nutrition labeling which has been approved in sketch form. While such entities will be affected because the number of labels requiring the existing expediting service will decrease, the number of firms expediting label approvals is not substantial. Moreover, the Agency believes that since the final rule will only affect that category of labeling bearing nutrition information, the economic impact on the expediting service may not be significant because many of the existing label expediters are likely to modify the services they offer and provide consulting services to their existing clients. This portion of the final rule will have a positive, but not significant, impact on a large number of small meat and poultry processors because it will reduce their direct labeling application costs.

Paperwork Requirements

This final rule requires the category of labels addressed in this rule to be approved only once by FSIS' Food Labeling Division (FLD) in sketch, and if no changes are made, no additional approval is necessary (generic approval). Therefore, to receive final approval, establishments will not have to complete FSIS Form 7234, "Application for Approval of Labels, Marking or Device," which transmits labels to FLD for review and approval. This eliminates duplication in the labeling approval system and reduces the number of labels reviewed and processed by FLD. Therefore, this final rule will expedite the labeling approval process for the specific category of labeling addressed in this rule and will also reduce official establishments' paperwork burden.

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products, Poultry inspection.

Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

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

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.2 is amended by adding paragraphs (f)(4), (g)(2)(iv), and (m), and revising paragraph (g)(2)(iii) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(f) * * *

(4) The ingredients statement may be placed on the information panel, except as otherwise permitted in this subchapter.

(g) * * *

(2) * * *

(iii) On the front riser panel of frozen food cartons, or

(iv) On the information panel.

* * * * *

(m) (1) The information panel is that part of a label that is the first surface to the right of the principal display panel as observed by an individual facing the principal display panel, with the following exceptions:

(i) If the first surface to the right of the principal display panel is too small to accommodate the required information or is otherwise unusable label space, e.g., folded flaps, tear strips, opening flaps, heat-sealed flaps, the next panel to the right of this part of the label may be used.

(ii) If the package has one or more alternate principal display panels, the information panel is to the right of any principal display panel.

(iii) If the top of the container is the principal display panel and the package has no alternate principal display panel, the information panel is any panel adjacent to the principal display panel.

(2) (i) Except as otherwise permitted in this part, all information required to appear on the principal display panel or permitted to appear on the information panel shall appear on the same panel unless there is insufficient space. In determining the sufficiency of the available space, except as otherwise prescribed in this part, any vignettes, designs, and any other nonmandatory information shall not be considered. If there is insufficient space for all required information to appear on a single panel, it may be divided between the principal display panel and the information panel, provided that the information required by any given provision of this part, such as the ingredients statement, is not divided and appears on the same panel.

(ii) All information appearing on the information panel pursuant to this section shall appear in one place without intervening material, such as designs or vignettes.

3. Section 317.5 is amended by adding paragraph (c) to read as follows:

§ 317.5 Generically approved labeling.

* * * * *

(c) Labeling bearing nutrition information which has been approved by the Food Labeling Division, Washington, DC., in sketch form (i.e., printer's proof or other version that clearly shows all required features, size, location, and indication of final color) is approved for use without additional authorization by the Administrator: *Provided,*

(1) That the final label has not been modified, except as permitted in paragraph (b) of this section; and

(2) That the final label is not false or misleading.

4. Section 317.302 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 317.302 Location of nutrition information.

(a) Nutrition information on a label of a packaged meat product shall appear on the label's principal display panel or on the information panel, except as provided in paragraphs (b) and (c) of this section.

(b) * * *

(c) Meat products in packages that have a total surface area available to bear labeling greater than 40 square inches but whose principal display panel and information panel do not provide sufficient space to accommodate all required information may use any alternate panel that can be readily seen by consumers for the nutrition information. In determining the sufficiency of available space for the nutrition information, the space needed for vignettes, designs, and other nonmandatory label information on the principal display panel may be considered.

5. Section 317.313 is amended by revising paragraph (j) to read as follows:

§ 317.313 Nutrient content claims; general principles.

* * * * *

(j)(1) Products may bear a statement that compares the level of a nutrient in the product with the level of a nutrient in a reference food in accordance with 21 CFR 101.13(j), except:

(i) Comparison to product of another manufacturer at 21 CFR 101.13(j)(1)(ii)(B); and

(ii) The placement of the comparison statement on the product label at 21 CFR 101.13(j)(2)(iv)(B).

(2) This statement shall appear adjacent to the most prominent claim or to the nutrition information.

* * * * *

6. Section 317.354 is revised to read as follows:

§ 317.354 Nutrient content claims for "good source," "high," and "more."

(a) Nutrient content claims about a nutrient in a product in relation to the Reference Daily Intake (RDI) established for that nutrient in 21 CFR 101.9(c)(8)(iv) or Daily Reference Value (DRV) established for that nutrient in 21 CFR 101.9(c)(9), excluding total carbohydrate, may be used on the label or in labeling, in accordance with 21 CFR 101.54, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.54(e)(1)(iii)(B) and (e)(2)(iii)(B); and

(2) The meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of the nutrient in the individual food product per labeled serving, with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fiber content of 'reference food' is 1 g per serving; 'this product' contains 4 g per serving").

(c) Quantitative information comparing the level of the nutrient in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fiber content of 'reference product' is 2 g per 3 oz; 'this product' contains 5 g per 3 oz").

7. Section 317.356 is amended by revising paragraph (a) and adding paragraphs (c), (d), and (e) to read as follows:

§ 317.356 Nutrient content claims for "light" or "lite."

(a) *General requirements.* The following nutrient content claims using the term "light" or "lite" to describe a product may be used on the label and in labeling, provided that the product is labeled in compliance with 21 CFR 101.56, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.56 (b)(3)(ii), (c)(1)(ii)(B), (c)(2)(ii)(B), and (g); and

(2) The meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products.

* * * * *

(c) Quantitative information comparing the level of calories and fat content in the product per labeled serving size with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "lite 'this product'—200 calories, 4 g fat; regular 'reference product'—300 calories, 8 g fat per serving"); and

(d) Quantitative information comparing the level of sodium per labeled serving size with that of the reference food it replaces, regardless of the level of calories and fat content in the reference food, is declared adjacent to the most prominent claim or to the nutrition information (e.g., "lite 'this product'—500 mg sodium per serving; regular 'reference product'—1,000 mg per serving"; or "lite 'this product'—170 mg sodium per serving; regular 'reference product'—350 mg per serving").

(e) The term "lightly salted" may be used on a product to which has been added 50 percent less sodium than is normally added to the reference food as described in 21 CFR 101.13(j)(1)(i)(B) and (j)(1)(ii)(B), provided that if the product is not "low in sodium" as defined in 21 CFR 101.61(b)(4), the statement "not a low sodium food" shall appear adjacent to the nutrition information and the information required to accompany a relative claim shall appear on the label or labeling as specified in 21 CFR 101.13(j)(2).

8. Section 317.360 is revised to read as follows:

§ 317.360 Nutrient content claims for calorie content.

(a) Nutrient content claims about the calorie content of a product may be used on the label or in labeling in accordance with 21 CFR 101.60, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.60(b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), and (c)(5)(ii)(B); and

(2) The meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of calories and sugars in the individual food product per labeled serving size with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "calorie content has been reduced from 150 to 100 calories per serving"; or "sugar content has been lowered from 8 g to 6 g per serving").

(c) Quantitative information comparing the level of calories and sugars in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "calorie content has been reduced from 110 calories per 3 oz to 80 calories per 3 oz"; or "sugar content has been reduced from 17 g per 3 oz to 13 g per 3 oz").

9. Section 317.361 is revised to read as follows:

§ 317.361 Nutrient content claims for the sodium content.

(a) Nutrient content claims about the sodium content of a product may be used on the label and in labeling in accordance with 21 CFR 101.61, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.61 (b)(6)(ii)(B), (b)(7)(ii)(B), and (c)(2)(iii); and

(2) The meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of the sodium in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "sodium content has been lowered from 300 to 150 mg per serving").

(c) Quantitative information comparing the level of sodium in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "sodium content has been reduced from 220 mg per 3 oz to 150 mg per 3 oz").

(d) If the product is not sodium free, the statement "not a sodium free food" or "not for control of sodium in the diet" appears adjacent to the nutrition information of the product bearing the claim.

10. Section 317.362 is amended by revising paragraphs (a)(2), (a)(3), (a)(5), (a)(11), (a)(13), and (a)(16), and adding paragraphs (d), (e), and (f) to read as follows:

§ 317.362 Nutrient content claims for fat, fatty acids, and cholesterol content of meat products.

(a) * * *

(2) 21 CFR 101.62(b), except: (i) The placement of the comparison statement on the product label at 21 CFR 101.62(b)(4)(ii)(B) and (5)(ii)(B), and

(ii) The meal products definition shall be as prescribed in § 317.313(l), there will be no provision for main dish products, and the following provision shall be added: A synonym for the term "_____ percent fat free" is "_____ percent lean";

(3) 21 CFR 101.62(c), except:

(i) The placement of the comparison statement on the product label at 21 CFR 101.62(c) (4)(ii)(B) and (5)(ii)(B); and

(ii) There will be no disclosure of the level of total fat and cholesterol in the food in immediate proximity to such claim each time the claim is made, the meal products definition shall be as prescribed in § 317.313(l), and there will be no provision for main dish products;

* * * * *

(5) 21 CFR 101.62(d)(1)(i) (A) through (D) and (d)(1)(ii)(F), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(1)(ii)(F)(*2*), and there will be no provision for main dish products;

* * * * *

(11) 21 CFR 101.62(d)(2)(iii)(E), except the placement of the comparison statement at 21 CFR 101.62(d)(2)(iii)(E)(*2*);

* * * * *

(13) 21 CFR 101.62(d)(4)(i) (A) through (C), except the placement of the comparison statement at 21 CFR 101.62(d)(4)(i)(C)(*2*);

* * * * *

(16) 21 CFR 101.62(d)(5)(i) (A) through (C), except the placement of the comparison statement at 21 CFR 101.62(d)(5)(1)(C)(*2*).

* * * * *

(d) (1) Quantitative information comparing the level of fat in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fat content has been reduced from 8 g to 4 g per serving").

(2) Quantitative information comparing the level of fat in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent such claim or to the nutrition information (e.g., "fat content has been reduced from 8 g per 3 oz to 5 g per 3 oz").

(e) (1) Quantitative information comparing the level of saturated fat in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "saturated fat reduced from 3 g to 1.5 g per serving").

(2) Quantitative information comparing the level of saturated fat in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "saturated fat content has been reduced from 2.5 g per 3 oz to 1.5 g per 3 oz").

(f) (1) Quantitative information for claims of cholesterol free, low cholesterol or reduced cholesterol comparing the level of cholesterol in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "contains no cholesterol compared with 30 mg in one serving of 'reference food'; contains 11 g of fat per serving"; or "cholesterol lowered from 30 mg to 5 mg per serving; contains 13 g of fat per serving").

(2) Quantitative information comparing the level of cholesterol in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "cholesterol content has been reduced from 35 mg per 3 oz to 25 mg per 3 oz").

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

11. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138F; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

12. Section 381.116 is amended by revising the second sentence of paragraph (a) and adding paragraph (c) to read as follows:

§ 381.116 Wording on labels of immediate containers.

(a) * * * Such items of information shall be in distinctly legible form. * * *

* * * * *

(c) (1) The information panel is that part of a label that is the first surface to the right of the principal display panel

as observed by an individual facing the principal display panel, with the following exceptions:

(i) If the first surface to the right of the principal display panel is too small to accommodate the required information or is otherwise unusable label space, e.g., folded flaps, tear strips, opening flaps, heat-sealed flaps, the next panel to the right of this part of the label may be used.

(ii) If the package has one or more alternate principal display panels, the information panel is to the right of any principal display panel.

(iii) If the top of the container is the principal display panel and the package has no alternate principal display panel, the information panel is any panel adjacent to the principal display panel.

(2) (i) Except as otherwise permitted in this part, all information required to appear on the principal display panel or permitted to appear on the information panel shall appear on the same panel unless there is insufficient space. In determining the sufficiency of the available space, except as otherwise prescribed in this part, any vignettes, designs, and any other nonmandatory information shall not be considered. If there is insufficient space for all required information to appear on a single panel, it may be divided between the principal display panel and the information panel, provided that the information required by any given provision of this part, such as the ingredients statement, is not divided and appears on the same panel.

(ii) All information appearing on the information panel pursuant to this section shall appear in one place without intervening material, such as designs or vignettes.

13. Section 381.118 is amended by adding paragraph (e) to read as follows:

§ 381.118 Ingredients statement.

* * * * *

(e) The ingredients statement may be placed on the information panel, except as otherwise permitted in this subchapter.

14. Section 381.122 is amended by revising the last sentence of the paragraph to read as follows:

§ 381.122 Identification of manufacturer, packer, or distributor.

* * * The name and place of business of the manufacturer, packer, or distributor may be shown on the principal display panel, on the 20-percent panel of the principal display panel reserved for required information, on the front riser panel of frozen food cartons, or on the information panel.

15. Section 381.134 is amended by adding paragraph (c) to read as follows:

§ 381.134 Generically approved labeling.

* * * * *

(c) Labeling bearing nutrition information which has been approved by the Food Labeling Division, Washington, DC, in sketch form (i.e., printer's proof or other version that clearly shows all required features, size, location, and indication of final color) is approved for use without additional authorization by the Administrator: *Provided,*

(1) That the final label has not been modified, except as permitted in paragraph (b) of this section; and

(2) That the final label is not false or misleading.

16. Section 381.402 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 381.402 Location of nutrition information.

(a) Nutrition information on a label of a packaged poultry product shall appear on the label's principal display panel or on the information panel, except as provided in paragraphs (b) and (c) of this section.

* * * * *

(c) Poultry products in packages that have a total surface area available to bear labeling greater than 40 square inches but whose principal display panel and information panel do not provide sufficient space to accommodate all required information may use any alternate panel that can be readily seen by consumers for the nutrition information. In determining the sufficiency of available space for the nutrition information, the space needed for vignettes, designs, and other nonmandatory label information on the principal display panel may be considered.

17. Section 381.413 is amended by revising paragraph (j) to read as follows:

§ 381.413 Nutrient content claims; general principles.

* * * * *

(j) (1) Products may bear a statement that compares the level of a nutrient in the product with the level of a nutrient in a reference food in accordance with 21 CFR 101.13(j), except:

(i) Comparison to product of another manufacturer at 21 CFR 101.13(j)(1)(ii)(B); and

(ii) The placement of the comparison statement on the product label at 21 CFR 101.13(j)(2)(iv)(B).

(2) This statement shall appear adjacent to the most prominent claim or to the nutrition information.

* * * * *

18. Section 381.454 is revised to read as follows:

§ 381.454 Nutrient content claims for "good source," "high," and "more."

(a) Nutrient content claims about a nutrient in a product in relation to the Reference Daily Intake (RDI) established for that nutrient in 21 CFR 101.9(c)(8)(iv) or Daily Reference Value (DRV) established for that nutrient in 21 CFR 101.9(c)(9), excluding total carbohydrate, may be used on the label or in labeling, in accordance with 21 CFR 101.54, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.54 (e)(1)(iii)(B) and (e)(2)(iii)(B); and

(2) The meal products definition shall be as prescribed in § 381.413(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of the nutrient in the individual food product per labeled serving, with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fiber content of 'reference food' is 1 g per serving; 'this product' contains 4 g per serving").

(c) Quantitative information comparing the level of the nutrient in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fiber content of 'reference product' is 2 g per 3 oz; 'this product' contains 5 g per 3 oz").

19. Section 381.456 is amended by revising paragraph (a) and adding paragraphs (c), (d), and (e) to read as follows:

§ 381.456 Nutrient content claims for "light" or "lite."

(a) *General requirements.* The following nutrient content claims using the term "light" or "lite" to describe a product may be used on the label and in labeling, provided that the product is labeled in compliance with 21 CFR 101.56, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.56 (b)(3)(ii), (c)(1)(ii)(B), (c)(2)(ii)(B), and (g); and

(2) The meal products definition shall be as prescribed in § 381.413(l), and there shall be no provision for main dish products.

* * * * *

(c) Quantitative information comparing the level of calories and fat content in the product per labeled serving size with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "lite 'this

product'—200 calories, 4 g fat; regular 'reference product'—300 calories, 8 g fat per serving"); and

(d) Quantitative information comparing the level of sodium per labeled serving size with that of the reference food it replaces, regardless of the level of calories and fat content in the reference food, is declared adjacent to the most prominent claim or to the nutrition information (e.g., "lite 'this product'— 500 mg sodium per serving; regular 'reference product'—1,000 mg per serving"; or "lite 'this product'—170 mg sodium per serving; regular 'reference product'—350 mg per serving").

(e) The term "lightly salted" may be used on a product to which has been added 50 percent less sodium than is normally added to the reference food as described in 21 CFR 101.13(j)(1)(i)(B) and (j)(1)(ii)(B), provided that if the product is not "low in sodium" as defined in 21 CFR 101.61(b)(4), the statement "not a low sodium food" shall appear adjacent to the nutrition information and the information required to accompany a relative claim shall appear on the label or labeling as specified in 21 CFR 101.13(j)(2).

20. Section 381.460 is revised to read as follows:

§ 381.460 Nutrient content claims for calorie content.

(a) Nutrient content claims about the calorie content of a product may be used on the label or in labeling in accordance with 21 CFR 101.60, except:

(1) The placement of the comparison statement at 21 CFR 101.60(b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), and (c)(5)(ii)(B); and

(2) The meal products definition shall be as prescribed in § 381.413(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of calories and sugars in the individual food product per labeled serving size with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "calorie content has been reduced from 150 to 100 calories per serving"; or "sugar content has been lowered from 8 g to 6 g per serving").

(c) Quantitative information comparing the level of calories and sugars in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "calorie content has been reduced from 110 calories per 3 oz to 80 calories per 3 oz"; or "sugar content has been reduced from 17 g per 3 oz to 13 g per 3 oz").

21. Section 381.461 is revised to read as follows:

§ 381.461 Nutrient content claims for the sodium content.

(a) Nutrient content claims about the sodium content of a product may be used on the label and in labeling in accordance with 21 CFR 101.61, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.61(b)(6)(ii)(B), (b)(7)(ii)(B), and (c)(2)(iii); and

(2) The meal products definition shall be as prescribed in § 381.413(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of the sodium in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "sodium content has been lowered from 300 to 150 mg per serving").

(c) Quantitative information comparing the level of sodium in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "sodium content has been reduced from 220 mg per 3 oz to 150 mg per 3 oz").

(d) If the product is not sodium free, the statement "not a sodium free food" or "not for control of sodium in the diet" appears adjacent to the nutrition information of the product bearing the claim.

22. Section 381.462 is amended by revising paragraphs (a)(2), (a)(3), (a)(5), (a)(11), (a)(13), and (a)(16), and adding paragraphs (d), (e), and (f) to read as follows:

§ 381.462 Nutrient content claims for fat, fatty acids, and cholesterol content of meat products.

(a) * * *

(2) 21 CFR 101.62(b), except:

(i) The placement of the comparison statement on the product label at 21 CFR 101.62(b)(4)(ii)(B) and (5)(ii)(B); and

(ii) The meal products definition shall be as prescribed in § 381.413(l), there will be no provision for main dish products, and the following provision shall be added: A synonym for the term "_____ percent fat free" is "_____ percent lean";

(3) 21 CFR 101.62(c), except:

(i) The placement of the comparison statement on the product label at 21 CFR 101.62(c)(4)(ii)(B) and (5)(ii)(B); and

(ii) There will be no disclosure of the level of total fat and cholesterol in the food in immediate proximity to such claim each time the claim is made, the meal products definition shall be as prescribed in § 381.413(l), and there will be no provision for main dish products;

* * * * *

(5) 21 CFR 101.62(d)(1)(i) (A) through (D) and (d)(1)(ii)(F), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(1)(ii)(F)(*2*), and there will be no provision for main dish products;

* * * * *

(11) 21 CFR 101.62(d)(2)(iii)(E), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(2)(iii)(E)(*2*);

* * * * *

(13) 21 CFR 101.62(d)(4)(i)(A) through (C), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(4)(i)(C)(*2*);

* * * * *

(16) 21 CFR 101.62(d)(5)(i)(A) through (C), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(5)(i)(C)(*2*).

* * * * *

(d)(1) Quantitative information comparing the level of fat in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fat content has been reduced from 8 g to 4 g per serving").

(2) Quantitative information comparing the level of fat in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent such claim or to the nutrition information (e.g., "fat content has been reduced from 8 g per 3 oz to 5 g per 3 oz").

(e) (1) Quantitative information comparing the level of saturated fat in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "saturated fat reduced from 3 g to 1.5 g per serving").

(2) Quantitative information comparing the level of saturated fat in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "saturated fat content has been reduced from 2.5 g per 3 oz to 1.5 g per 3 oz").

(f) (1) Quantitative information for claims of cholesterol free, low

cholesterol, or reduced cholesterol comparing the level of cholesterol in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "contains no cholesterol compared with 30 mg in one serving of 'reference food'; contains 11 g of fat per serving"; or "cholesterol lowered from 30 mg to 5 mg per serving; contains 13 g of fat per serving").

(2) Quantitative information comparing the level of cholesterol in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "cholesterol content has been reduced from 35 mg per 3 oz to 25 mg per 3 oz").

Done at Washington, DC, on August 2, 1994.

Patricia A. Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

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BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–0824]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; interpretation.

SUMMARY: The Board is publishing its official staff commentary to Regulation DD (Truth in Savings). The commentary applies and interprets the requirements of Regulation DD and is a substitute for individual staff interpretations. The commentary incorporates much of the guidance provided when the regulation was adopted, and addresses additional questions raised since that time.

DATES: This rule is effective August 3, 1994. Compliance is optional until February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Attorney, or Kyung Cho or Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Savings Act (12 U.S.C. 4301 et seq.) is to assist consumers in comparing deposit accounts offered by depository institutions. The act requires institutions to disclose fees, the interest rate, the annual percentage yield (APY), and other account terms whenever a consumer requests the information and before an account is opened. Fees and other information also must be provided on any periodic statement sent to the consumer. Rules are set forth for deposit account advertisements and advance notices to account holders of adverse changes in terms. The act restricts how institutions determine the account balance on which interest is calculated. The act is implemented by the Board's Regulation DD (12 CFR part 230), which became effective on June 21, 1993. The regulation authorizes the issuance of official staff interpretations of the regulation. (See Appendix D to Regulation DD.)

II. Commentary

On February 7, 1994, the Board published for comment a proposed commentary to Regulation DD (59 FR 5536). The commentary is designed to provide guidance to depository institutions in applying the regulation to specific transactions and is a substitute for individual staff interpretations. The Board received about 150 comments, mostly from depository institutions and trade associations. Commenters generally supported the proposal.

In large measure, the commentary incorporates supplementary information accompanying prior rulemakings, and reflects the views expressed therein without substantive change. (See final rule published on September 21, 1992 (57 FR 43337), correction notice published on October 9, 1992 (57 FR 46480), and amendments published on March 19, 1993 (58 FR 15077).) The commentary also addresses issues that have arisen since the publication of the regulation and technical suggestions or concerns raised by commenters.

To avoid unnecessary detail, the discussion accompanying the final commentary does not individually mention technical amendments that clarify the proposed text but make no substantive change in meaning. Similarly, additions to the final commentary of information previously published are not separately noted. For example, the supplementary information accompanying the September 1992 rulemaking discussed deposit accounts denominated in foreign currency and held by consumers as an example of accounts covered by the regulation. Foreign currency accounts were not mentioned in the proposal. Comment 230.2(a)-1 now lists foreign currency accounts among the examples of covered accounts, but the addition is not specifically mentioned in the supplementary information accompanying paragraph 2(a). Additions such as this were added in response to commenters' requests. Many comments have been renumbered, pursuant to the **Federal Register**'s new publication rules.

On May 11, 1994, the Board published a proposal to amend the regulation's rules regarding crediting and compounding practices (59 FR 24378). The proposal also has the effect of producing an annual percentage yield (APY) that reflects the time value of money. On July 11, 1994, the Board published a notice extending to September 6, 1994, the comment period for the May proposal (59 FR 35271). At the same time, the Board solicited comment on an alternative approach for calculating the APY. The approach would allow institutions to disclose an APY equal to the interest rate on time accounts with maturities greater than one year and that do not compound interest but pay interest at least annually. The Board has deferred adopting commentary on provisions of the regulation affected by the proposal, pending final action by the Board.

Section 230.2—Definitions

(a) Account

Comment 2(a)-1 provides examples of accounts subject to the regulation. The Board proposed to narrow the regulation's coverage of trust accounts to individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts, to minimize compliance burdens for institutions.

Many commenters supported the Board's general approach, but questioned whether the regulation should exclude accounts held by individuals pursuant to informal trust arrangements such as "Totten" or payable on death (POD) trusts. Commenters noted the purpose of a Totten trust is to avoid probate proceedings to transfer funds remaining in an account upon a depositor's death. Commenters also noted the account's signature card is often the sole evidence of the trust relationship. These commenters believed consumers opening Totten and POD trust accounts should be afforded the act's protections. The Board concurs, and the commentary reflects this approach.

(b) Advertisement

Comment 2(b)-1 illustrates the scope of commercial messages considered to be advertisements. The Board proposed that advertisements would not include direct oral discussions conducted in person regarding a specific account. Many commenters urged the Board to expand the interpretation to include telephone conversations about specific accounts. The Board has retained the provision as proposed. The Board believes face-to-face discussions allow prospective customers to learn easily and quickly about basic terms of the account (thus, fulfilling the purpose of advertising disclosures). Also, at any time during a face-to-face conversation, consumers may request and receive written disclosures at that time. This is not the case for conversations by telephone. Thus, the commentary clarifies that except for information about an existing account, commercial messages delivered via telephone or voice response machines are advertisements.

(f) Bonus

Comment 2(f)-3 has been added to clarify the rule excluding from bonuses items of *de minimis* value ($10 or less). (See 26 CFR § 1.6049–5(a)(2) published by the Internal Revenue Service, which discusses the fair market value of property received.) Commenters expressed concern about potential violations for failing to disclose as a bonus early in the year an individual item of *de minimis* value deemed to be a bonus when aggregated with another *de minimis* item given in a separate promotional program involving the same account later in the year. The comment provides guidance about aggregating only the market value of items offered for the same promotional program. An example illustrating the rule has been included.

(h) Consumer

An example relating to a landlord-tenant relationship in comment 2(h)-2 has been deleted as unnecessary.

The Board proposed two factors to consider in determining whether an account is held by an unincorporated nonbusiness association of natural persons, and the Board solicited comments on whether those or additional factors would be helpful. Based on the comments received and further analysis, the Board has adopted only one factor in comment 2(h)-5.

(p) Passbook Savings Account

Comment 2(p)-1 clarifies that institutions may consider accounts as "passbook savings" even when direct deposits are made to the account electronically. The comment tracks the requirements of Regulation E (12 CFR 205.9). But accounts that permit other electronic fund transfers—and thus trigger Regulation E's requirement to send statements at least quarterly—are not passbook savings accounts, and institutions must comply with the periodic statement disclosures in § 230.6 of this part. Accounts that send statements are not passbook savings accounts for purposes of Regulation DD, even if consumers are provided with a booklet for their records.

(r) State

The proposal included examples of territories and possessions covered by the act. Commenters requested more examples. Upon further consideration, the Board believes a list of all the territories considered to be "states" is unnecessary. Thus, the comment has not been adopted.

(u) Time Account

Comment 2(u)-1 has been added to clarify when club accounts must be considered time accounts for purposes of the regulation. Although club accounts typically have one feature of a time account (a maturity date), club accounts are not time accounts unless they also require a penalty of at least seven days' interest for a withdrawal of funds during the first six days after the account is opened—subject to exceptions permitted in Regulation D (as discussed in comment 2(u)-2).

(v) Variable-Rate Account

Comment 2(v)-1 clarifies that a certificate of deposit (CD) permitting one or more rate adjustments prior to maturity at the consumer's option is a variable-rate account. The Board believes it is important for consumers to receive disclosures describing when their interest rate and APY could change, such as any time limitations on when the option may be exercised.

Section 230.3—General Disclosure Requirements

(b) General

Comment 3(b)-1 provides guidance on the specificity required when time periods are disclosed. For example, the Board believes slight variations in compounding cycles are consistent with the notion of "monthly" cycles, which are often not based on an actual calendar month. Many commenters generally supported the Board's approach, but expressed concern about the proposal's limitation of 28–33 days to describe a month. The Board has adopted a standard of roughly equivalent intervals occurring during a calendar year. The Board believes this standard is consistent with the act, provides flexibility, and eases compliance.

(e) Oral Responses to Inquiries

Comment 3(e)-3 has been added in response to commenters' requests. It clarifies that this paragraph does not apply to responses to requests for rate information on an existing account.

(f) Rounding and Accuracy Rules for Rates and Yields

Proposed comment 3(f)(2)-2 (regarding accuracy requirements for interest rate disclosures) was a restatement of the regulation and has been deleted as unnecessary. A comment illustrating rounding requirements for the APY has been added.

Section 230.4—Account Disclosures

(a) Delivery of Account Disclosures

(a)(1) Account Opening

Comment 4(a)(1)-1 provides examples of events that trigger the delivery of new account disclosures. The final comment differs from the proposal in several respects.

The proposed commentary discussed the effect of a consumer-initiated change in the term for an automatically renewable time account. In response to commenters' requests, the commentary clarifies that new account disclosures are required when the consumer changes *any* account term required to be disclosed (and not merely the duration of the CD). The clarification provides consistency with § 230.5(b)-5.

Commenters expressed concern about having to give new account disclosures when funds are transferred from one account to another, such as when funds in a money market deposit account (MMDA) are transferred to a NOW account because the consumer exceeded transaction limitations on the MMDA. Some requested clarification that disclosures at the time of transfer are not required if disclosures (including change-in-term notices, if appropriate) for both accounts had previously been given. To minimize possible burdens the Board has adopted that standard in the commentary.

The Board received many comments regarding the proposed guidance for "closed accounts." New account disclosures would have been required if institutions deemed an account closed and then accepted a deposit from the consumer. Commenters noted that consumers with accounts meeting an institution's criteria for a closed

account—such as an account having a $0 balance—do not necessarily intend to close the account. Commenters believed consumers would be confused if new account disclosures were sent when a deposit is subsequently made. Commenters also expressed concerns about the burden of monitoring accounts to ensure compliance.

The statute allows institutions not to pay accrued but uncredited interest when a consumer closes an account. (See 12 U.S.C. 4303(c)(9).) Based on comments received and upon further analysis, the Board believes that if an institution deems an account closed and treats accrued but uncredited interest as forfeited by the consumer, the institution must deem a new account to be opened when a deposit is subsequently accepted. This approach provides flexibility for institutions and consistent treatment for consumers regarding "closed" accounts.

Comment 4(a)(1)-2 clarifies that an institution acquiring accounts through a merger or acquisition is not required to provide new account disclosures. The new institution must comply with § 230.5(a)(1) if it chooses to change terms of the acquired account. Private transactions are distinguishable, however, from acquisitions or mergers involving the Resolution Trust Corporation (RTC) and the Federal Deposit Insurance Corporation (FDIC). In a government-assisted acquisition, the acquiring institution receives only the consumer's funds on deposit. The deposit contract or other legal obligation—the terms and conditions of the account such as fees—stays (and ultimately terminates) with the failed institution. Thus, new account disclosures must be provided if the consumer chooses to open an account with the new institution. Also, if fees are imposed before the new account relationship is established, the fee must be disclosed prior to imposition.

(a)(2) Requests

(a)(2)(i)

Comment (a)(2)(i)-1 clarifies that institutions are not required to send disclosures for accounts no longer offered to the public.

(a)(2)(ii)(A)

Comment 4(a)(2)(ii)(A)-1 has been added to clarify that when responding to a request for disclosures by giving rates "accurate within the most recent seven calendar days," institutions should calculate the time period from the date the institution sends the disclosure.

(b) Content of Account Disclosures

(b)(1)(ii) Variable rates

Comments 4(b)(1)(ii)(B)-1 and 4(b)(1)(ii)(C)-1, dealing with rate changes within the institution's discretion, have been modified. Commenters believed rates derived from formulas based on an institution's cost of funds, for example, are not "solely" in the institution's discretion. In response to commenters' requests, both comments have been revised for clarity and consistency.

(b)(2)(ii) Effect of Closing an Account

Comment 4(b)(2)(ii)-1 is modified from the proposal to reflect that state or other law may affect an institution's ability to include in its contract specific consumer actions considered by the institution to be a request to close the account.

(b)(4) Fees

The Board has provided additional guidance in comment 4(b)(4)-1 for fees imposed for sending to consumers checks that otherwise would be held by the institution. Comment 4(b)(4)-2 clarifies that photocopying fees are incidental fees not required to be disclosed. An example in comment 4(b)(4)-3 was deleted as unnecessary.

(b)(6) Features of Time Accounts

(b)(6)(ii) Early Withdrawal Penalties

Comment 4(b)(6)(ii)-4 has been added in response to commenters requesting guidance for disclosing an early withdrawal penalty.

Section 230.5—Subsequent Disclosures

(a) Change in Terms

Comment 5(a)(1)-3 provides guidance on an institution's responsibility to provide change-in-term notices when account disclosures reflect a term that will change upon the occurrence of an event. An example relating to student accounts has been deleted as unnecessary, and an example about terms in effect for a limited time has been added to comment 5(a)(1)-4 in response to commenters' requests.

Paragraph (a)(2)(ii) Check Printing Fees

In response to comments received, comment 5(a)(2)(ii)-1 has been expanded to exclude increases in fees for printing deposit and withdrawal slips from change-in-term notice requirements, although the Board believes that separate charges for deposit or withdrawal slips, which are typically provided along with checks, are seldom imposed. Many commenters stated that, like check printing fees, fees for printing deposit and withdrawal slips are not within the institution's control, since the consumer determines the quantity ordered.

(b) Notice Before Maturity for Time Accounts Longer than One Month that Renew Automatically

Comment 5(b)-2 provides guidance for disclosing the date when consumers can ascertain applicable rates for a renewing CD. The proposed comment required institutions to indicate when the rate will be available if the date falls on a nonbusiness day. Based on comments received and upon further analysis, the comment has been modified to delete the requirement.

Section 230.6—Periodic Statement Disclosures

(a) General Rule

Comment 6(a)-1 clarifies that if zero interest is earned during the period, institutions may disclose $0 for interest earned (and the annual percentage yield earned) or omit the disclosure, at their option.

(a)(2) Amount of Interest

Comment 6(a)(2)-2 clarifies that institutions may use a variety of terms to disclose interest earned, and that the regulation does not mandate use of the examples.

Section 230.7—Payment of Interest

(a)(1) Permissible Methods

Comment 7(a)(1)-1 has been expanded to reflect the act's legislative history, which cites the "low balance" method as an example of a prohibited interest calculation method.

Proposed comment 7(a)(1)-6 addressed "dormant" accounts, and the Board solicited comment on whether an institution should be permitted to withhold the payment of interest for dormant accounts. Proposed comment 7(b)-4 raised a similar issue for dormant accounts. Many comments were received. Some commenters believed institutions should be permitted to withhold the payment of interest for dormant accounts, if authorized by state or other law and the deposit contract. Other commenters noted that what constitutes a "dormant" account varies widely among the states and institutions. These commenters expressed concern about the impact of the rule if any period of inactivity—however brief—could transform an account to dormant status. Still others raised concerns whether the act, which requires that interest be paid on the full amount of principal in the account each day, permitted such an interpretation.

(12 U.S.C. 4306(a).) Based on the comments received and further analysis, the Board believes that account inactivity does not affect an institution's duty to pay interest. (See comment 7(c)-3, which provides that institutions must accrue interest on funds until the funds are withdrawn from the account.) The Board believes this position—reflected in comment 7(a)(1)-6—is consistent with the purposes of the act and the rule that interest must be calculated for funds in accounts meeting minimum balance requirements for as long as funds remain in the account.

(a)(2) Determination of Minimum Balance to Earn Interest

Comment 7(a)(2)-6 clarifies limitations on minimum balance requirements to earn interest for club accounts—such as "holiday" or "vacation" club. The rule does not apply to a club account's minimum balance requirements for earning bonuses.

(b) Compounding and Crediting Policies

Comment 7(b)-3 has been revised to clarify that the circumstances under which an institution may deem an account closed, and whether accrued but uncredited interest may be deemed forfeited, is subject to state or other law, if any (and to any limitations therein).

Comment 7(b)-4, dealing with the forfeiture of accrued but uncredited interest for dormant accounts, has been withdrawn for the reasons discussed in comment (a)(1)-6 above.

Section 230.8—Advertising

(a) Misleading or Inaccurate Advertisements

Comment 8(a)-2 would have required institutions using indoor signs advertising APYs for tiered-rate accounts to state both the lower and higher dollar amount for the tier corresponding to the advertised APY. Many commenters believed stating both dollar amounts is unnecessary. The Board concurs. Thus, the comment provides that a sign is not misleading or inaccurate if it states the lower dollar amount of the tier corresponding to the advertised annual percentage yield.

Institutions cannot advertise accounts as "free" or "no cost" (or terms of similar meaning) if maintenance and activity fees can be imposed. Comments 8(a)-3 and 8(a)-4 address the scope of "maintenance and activity" fees and addresses advertisements for "free" accounts with optional electronic services. Commenters were divided on whether fees for electronic services such as ATM access should preclude institutions from advertising accounts as free. Based on the comments received and further analysis, the Board believes that ATM services are not different from other optional services such as home banking.

The Board believes that because ATM access is provided only upon a consumer's request and consumers receive information—including the cost of ATM access—before obtaining the service, the imposition of fees for ATM access (including annual fees) does not preclude institutions from advertising accounts as free or no-cost.

The Board received numerous comments on its proposal to consider the term "fees waived" as similar to the terms "free" or "no cost." Many commenters opposed the proposed comment. They stated that the term "fees waived" necessarily implies the existence of charges, and thus is distinguishable from the terms "free" or "no cost." These commenters believed consumers would be unnecessarily disadvantaged if advertising fee waivers were restricted as proposed. Others believed most consumers would not distinguish between the terms and that advertising accounts with "waived fees" raised the concerns the Congress had in mind when prohibiting the advertisement of accounts as free or no-cost or "words of similar meaning." The Board believes that "fees waived" is a term similar to "free" or "no cost;" thus, the commentary (now 8(a)-5) has been retained as proposed.

Comment 8(a)-6 has been modified for clarity.

(b) Permissible Rates

Comment 8(b)-3 provides guidance on advertising accounts for which institutions offer a number of versions (CDs, for example). The Board has revised the comment for clarity without any intended change in meaning.

(c) When Additional Disclosures Are Required

The regulation requires institutions to disclose additional information when the APY is advertised. Comment 8(c)-1 provides examples of account descriptions that do not trigger the additional disclosures.

The Board has eliminated the reference to a bonus of 1% over an institution's current rate for one-year certificates of deposit as an example of a trigger term. Based on comments received and upon further analysis, the Board believes a reference to an institution's own rates (to which a "bonus" rate or margin will be applied) is not a trigger term if those rates are not readily determinable from the advertisement itself. This position is consistent with the rules regarding trigger terms in advertisements under the Board's Regulation Z (12 CFR part 226).

(c)(2) Time Annual Percentage Yield Is Offered

Comment 8(c)(2)-2 has been added in response to commenters' requests. It specifies that an advertisement may refer to the APY as being accurate as of the date of publication, if the date is on the publication itself.

Appendix A—Annual Percentage Yield Calculation

Part II. Annual Percentage Yield Earned for Periodic Statements

Comment app. A.II.A.-1 provides guidance about the treatment of accrued but uncredited interest in the balances used to calculate the APYE. The Board believes an inaccurate APYE would result if institutions include accrued interest in the balance figure when statements are sent less frequently than interest is credited. But when periodic statements are issued more frequently than interest is credited, accrued interest must be included in the balance figure for APYE computation purposes.

B. Special Formula for Use Where Periodic Statements Are Sent More Often Than the Period for Which Interest Is Compounded

Comment app. A.II.B.-1 has been adopted as proposed. Institutions may use the special formula to calculate an APYE on a quarterly statement whether or not a monthly statement is triggered by Regulation E during the quarter. Commenters supported this rule as significantly reducing compliance burdens for institutions.

Comment app. A.II.B.-2 clarifies that the special formula requires institutions to use the actual number of days in the compounding period in calculating the APYE. The Board believes using the actual number of days in a compounding period is necessary to produce an accurate APYE for a specific consumer's account.

Appendix B—Model Clauses and Sample Forms

Proposed comments app. B–6, B–4–1 and B–9–1 have been deleted as unnecessary.

List of Subjects in 12 CFR Part 230

Advertising, Banks, banking, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in savings.

For the reasons set forth in the preamble, the Board amends 12 CFR part 230 as follows:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301, et seq.

2. Part 230 is amended by adding a new Supplement I at the end of the appendices to the Part to read as follows:

Supplement I to Part 230—Official Staff Interpretations

Introduction

1. *Official status.* This commentary is the means by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation DD. Good faith compliance with this commentary affords protection from liability under section 271(f) of the Truth in Savings Act.

Section 230.1—Authority, purpose, coverage, and effect on state laws.

(c) Coverage

1. *Foreign applicability.* Regulation DD applies to all depository institutions, except credit unions, that offer deposit accounts to residents (including resident aliens) of any state as defined in § 230.2(r). Accounts held in an institution located in a state are covered, even if funds are transferred periodically to a location outside the United States. Accounts held in an institution located outside the United States are not covered, even if held by a U.S. resident.

2. *Persons who advertise accounts.* Persons who advertise accounts are subject to the advertising rules. For example, if a deposit broker places an advertisement offering consumers an interest in an account at a depository institution, the advertising rules apply to the advertisement, whether the account is to be held by the broker or directly by the consumer.

Section 230.2—Definitions.

(a) Account

1. *Covered accounts.* Examples of accounts subject to the regulation are:

i. Interest-bearing and noninterest-bearing accounts
ii. Deposit accounts opened as a condition of obtaining a credit card
iii. Accounts denominated in a foreign currency
iv. Individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts
v. Payable on death (POD) or "Totten trust" accounts

2. *Other accounts.* Examples of accounts not subject to the regulation are:

i. Mortgage escrow accounts for collecting taxes and property insurance premiums
ii. Accounts established to make periodic disbursements on construction loans
iii. Trust accounts opened by a trustee pursuant to a formal written trust agreement (not merely declarations of trust on a signature card such as a "Totten trust," or an IRA and SEP account)
iv. Accounts opened by an executor in the name of a decedent's estate

3. *Other investments.* The term "account" does not apply to all products of a depository institution. Examples of products not covered are:

i. Government securities
ii. Mutual funds
iii. Annuities
iv. Securities or obligations of a depository institution
v. Contractual arrangements such as repurchase agreements, interest rate swaps, and bankers acceptances

(b) Advertisement

1. *Covered messages.* Advertisements include commercial messages in visual, oral, or print media that invite, offer, or otherwise announce generally to prospective customers the availability of consumer accounts—such as:

i. Telephone solicitations
ii. Messages on automated teller machine (ATM) screens
iii. Messages on a computer screen in an institution's lobby (including any printout) other than a screen viewed solely by the institution's employee
iv. Messages in a newspaper, magazine, or promotional flyer or on radio
v. Messages that are provided along with information about the consumer's existing account and that promote another account at the institution

2. *Other messages.* Examples of messages that are not advertisements are:

i. Rate sheets in a newspaper, periodical, or trade journal (unless the depository institution, or a deposit broker offering accounts at the institution, pays a fee for or otherwise controls publication)
ii. In-person discussions with consumers about the terms for a specific account
iii. Information given to consumers about existing accounts, such as current rates recorded on a voice response machine or notices for automatically renewable time accounts sent before renewal

(f) Bonus

1. *Examples.* Bonuses include items of value, other than interest, offered as incentives to consumers, such as an offer to pay the final installment deposit for a holiday club account. Items that are not a bonus include discount coupons for goods or services at restaurants or stores.

2. *De minimis rule.* Items with a *de minimis* value of $10 or less are not bonuses. Institutions may rely on the valuation standard used by the Internal Revenue Service to determine if the value of the item is *de minimis*. Examples of items of *de minimis* value are:

i. Disability insurance premiums valued at an amount of $10 or less per year
ii. Coffee mugs, T-shirts or other merchandise with a market value of $10 or less

3. *Aggregation.* In determining if an item valued at $10 or less is a bonus, institutions must aggregate per account per calendar year items that may be given to consumers. In making this determination, institutions aggregate per account only the market value of items that may be given for a specific promotion. To illustrate, assume an institution offers in January to give consumers an item valued at $7 for each calendar quarter during the year that the average account balance in a negotiable order of withdrawal (NOW) account exceeds $10,000. The bonus rules are triggered, since consumers are eligible under the promotion to receive up to $28 during the year. However, the bonus rules are not triggered if an item valued at $7 is offered to consumers opening a NOW account during the month of January, even though in November the institution introduces a new promotion that includes, for example, an offer to existing NOW account holders for an item valued at $8 for maintaining an average balance of $5,000 for the month.

4. *Waiver or reduction of a fee or absorption of expenses.* Bonuses do not include value that consumers receive through the waiver or reduction of fees (even if the fees waived exceed $10) for banking-related services such as the following:

i. A safe deposit box rental fee for consumers who open a new account
ii. Fees for travelers checks for account holders
iii. Discounts on interest rates charged for loans at the institution

(h) Consumer

1. *Professional capacity.* Examples of accounts held by a natural person in a professional capacity for another are attorney-client trust accounts and landlord-tenant security accounts.

2. *Other accounts.* Accounts not held in a professional capacity include accounts held by an individual for a child under the Uniform Gifts to Minors Act.

3. *Sole proprietors.* Accounts held by individuals as sole proprietors are not covered.

4. *Retirement plans.* IRAs and SEP accounts are consumer accounts to the extent that funds are invested in covered accounts. But Keogh accounts are not subject to the regulation.

5. *Unincorporated associations.* An institution may rely on the declaration of the person representing an unincorporated association as to whether the account is held for a business or nonbusiness purpose.

(j) Depository institution and institution

1. *Foreign institutions.* Branches of foreign institutions located in the United States are subject to the regulation if they offer deposit accounts to consumers. Edge Act and Agreement corporations, and agencies of foreign institutions, are not depository institutions for purposes of this regulation.

(k) Deposit broker

1. *General.* A deposit broker is a person who is in the business of placing or facilitating the placement of deposits in an institution, as defined by the Federal Deposit Insurance Act (12 U.S.C. 29(g)).

(n) Interest

1. *Relation to Regulation Q.* While bonuses are not interest for purposes of this regulation, other regulations may treat them as the equivalent of interest. For example, Regulation Q identifies payments of cash or merchandise that violate the prohibition against paying interest on demand accounts. (See 12 CFR § 217.2(d).)

(p) Passbook savings account

1. *Relation to Regulation E.* Passbook savings accounts include accounts accessed by preauthorized electronic fund transfers to the account (as defined in 12 CFR § 205.2(j)), such as an account that receives direct deposit of social security payments. Accounts permitting access by other electronic means are not "passbook saving accounts" and must comply with the requirements of § 230.6 if statements are sent four or more times a year.

(q) Periodic statement

1. *Examples.* Periodic statements do not include:

i. Additional statements provided solely upon request
ii. Information provided by computer through home banking services
iii. General service information such as a quarterly newsletter or other correspondence describing available services and products

(t) Tiered-rate account

1. *Time accounts.* Time accounts paying different rates based solely on the amount of the initial deposit are not tiered-rate accounts.

2. *Minimum balance requirements.* A requirement to maintain a minimum balance to earn interest does not make an account a tiered-rate account.

(u) Time account

1. *Club accounts.* Although club accounts typically have a maturity date, they are not time accounts unless they also require a penalty of at least seven days' interest for withdrawals during the first six days after the account is opened.

2. *Relation to Regulation D.* Regulation D permits in limited circumstances the withdrawal of funds without penalty during the first six days after a "time deposit" is opened. (See 12 CFR § 204.2(c)(1)(i).) But the fact that a consumer makes a withdrawal as permitted by Regulation D does not disqualify the account from being a time account for purposes of this regulation.

(v) Variable-rate account

1. *General.* A certificate of deposit permitting one or more rate adjustments prior to maturity at the consumer's option is a variable-rate account.

Section 230.3 General disclosure requirements.

(a) Form

1. *Design requirements.* Disclosures must be presented in a format that allows consumers to readily understand the terms of their account. Institutions are not required to use a particular type size or typeface, nor are institutions required to state any term more conspicuously than any other term. Disclosures may be made:

i. In any order
ii. In combination with other disclosures or account terms
iii. In combination with disclosures for other types of accounts, as long as it is clear to consumers which disclosures apply to their account
iv. On more than one page and on the front and reverse sides
v. By using inserts to a document or filling in blanks
vi. On more than one document, as long as the documents are provided at the same time

2. *Consistent terminology.* Institutions must use consistent terminology to describe terms or features required to be disclosed. For example, if an institution describes a monthly fee (regardless of account activity) as a "monthly service fee" in account-opening disclosures, the periodic statement and change-in-term notices must use the same terminology so that consumers can readily identify the fee.

(b) General

1. *Specificity of legal obligation.* Institutions may refer to the calendar month or to roughly equivalent intervals during a calendar year as a "month."

(c) Relation to Regulation E

1. *General rule.* Compliance with Regulation E (12 CFR part 205) is deemed to satisfy the disclosure requirements of this regulation, such as when:

i. An institution changes a term that triggers a notice under Regulation E, and uses the timing and disclosure rules of Regulation E for sending change-in-term notices
ii. Consumers add an ATM access feature to an account, and the institution provides disclosures pursuant to Regulation E, including disclosure of fees (See 12 CFR § 205.7.)
iii. An institution complying with the timing rules of Regulation E discloses at the same time fees for electronic services (such as for balance inquiry fees at ATMs) required to be disclosed by this regulation but not by Regulation E
iv. An institution relies on Regulation E's rules regarding disclosure of limitations on the frequency and amount of electronic fund transfers, including security-related exceptions. But any limitations on "intra-institutional transfers" to or from the consumer's other accounts during a given time period must be disclosed, even though intra-institutional transfers are exempt from Regulation E.

(e) Oral response to inquiries

1. *Application of rule.* Institutions are not required to provide rate information orally.

2. *Relation to advertising.* The advertising rules do not cover an oral response to a question about rates.

3. *Existing accounts.* This paragraph does not apply to oral responses about rate information for existing accounts. For example, if a consumer holding a one-year certificate of deposit (CD) requests interest rate information about the CD during the term, the institution need not disclose the annual percentage yield.

(f) Rounding and accuracy rules for rates and yields

(f)(1) Rounding

1. *Permissible rounding.* Examples of permissible rounding are an annual percentage yield calculated to be 5.644%, rounded down and disclosed as 5.64%; 5.645% rounded up and disclosed as 5.65%.

(f)(2) Accuracy

1. *Annual percentage yield and annual percentage yield earned.* The tolerance for annual percentage yield and annual percentage yield earned calculations is designed to accommodate inadvertent errors. Institutions may not purposely incorporate the tolerance into their calculation of yields.

Section 230.4 Account disclosures.

(a) Delivery of account disclosures

(a)(1) Account opening

1. *New accounts.* New account disclosures must be provided when:

i. A time account that does not automatically rollover is renewed by a consumer
ii. A consumer changes a term for a renewable time account (see § 230.5(b)–5 regarding disclosure alternatives)
iii. An institution transfers funds from an account to open a new account not at the consumer's request, unless the institution previously gave account disclosures and any change-in-term notices for the new account
iv. An institution accepts a deposit from a consumer to an account that the institution had deemed closed for the purpose of treating accrued but uncredited interest as forfeited interest (see § 230.7(b)–3)

2. *Acquired accounts.* New account disclosures need not be given when an institution acquires an account through an acquisition of or merger with another institution (but see § 230.5(a) regarding advance notice requirements if terms are changed).

(a)(2) Requests

(a)(2)(i)

1. *Inquiries versus requests.* A response to an oral inquiry (by telephone or in person) about rates and yields or fees does not trigger the duty to provide account disclosures. But when consumers ask for written information about an account (whether by telephone, in person, or by other means), the institution must provide disclosures unless the account is no longer offered to the public.

2. *General requests.* When responding to a consumer's general request for disclosures about a type of account (a NOW account, for example), an institution that offers several variations may provide disclosures for any one of them.

3. *Timing for response.* Ten business days is a reasonable time for responding to requests for account information that consumers do not make in person.

(a)(2)(ii)(A)

1. *Recent rates.* Institutions comply with this paragraph if they disclose an interest rate and annual percentage yield accurate within the seven calendar days preceding the date they send the disclosures.

(a)(2)(ii)(B)

1. *Term.* Describing the maturity of a time account as "1 year" or "6 months," for example, illustrates a statement of the maturity of a time account as a term rather than a date ("January 10, 1995").

(b) Content of account disclosures

(b)(1) Rate information

(b)(1)(i) Annual percentage yield and interest rate

1. *Rate disclosures.* In addition to the interest rate and annual percentage yield, institutions may disclose a periodic rate corresponding to the interest rate. No other rate or yield (such as "tax effective yield") is permitted. If the annual percentage yield is the same as the interest rate, institutions may disclose a single figure but must use both terms.

2. *Fixed-rate accounts.* For fixed-rate time accounts paying the opening rate until maturity, institutions may disclose the period of time the interest rate will be in effect by stating the maturity date. (See Appendix B, B–7—Sample Form.) For other fixed-rate accounts, institutions may use a date ("This rate will be in effect through May 4, 1995") or a period ("This rate will be in effect for at least 30 days").

3. *Tiered-rate accounts.* Each interest rate, along with the corresponding annual percentage yield for each specified balance level (or range of annual percentage yields, if appropriate), must be disclosed for tiered-rate accounts. (See Appendix A, Part I, Paragraph D.)

4. *Stepped-rate accounts.* A single composite annual percentage yield must be disclosed for stepped-rate accounts. (See Appendix A, Part I, Paragraph B.) The interest rates and the period of time each will be in effect also must be provided. When the initial rate offered for a specified time on a variable-rate account is higher or lower than the rate that would otherwise be paid on the account, the calculation of the annual percentage yield must be made as if for a stepped-rate account. (See Appendix A, Part I, Paragraph C.)

(b)(1)(ii) Variable rates

(b)(1)(ii)(B)

1. *Determining interest rates.* To disclose how the interest rate is determined, institutions must:

i. Identify the index and specific margin, if the interest rate is tied to an index
ii. State that rate changes are within the institution's discretion, if the institution does not tie changes to an index

(b)(1)(ii)(C)

1. *Frequency of rate changes.* An institution reserving the right to change rates at its discretion must state the fact that rates may change at any time.

(b)(1)(ii)(D)

1. *Limitations.* A floor or ceiling on rates or on the amount the rate may decrease or increase during any time period must be disclosed. Institutions need not disclose the absence of limitations on rate changes.

(b)(2) Compounding and crediting

(b)(2)(ii) Effect of closing an account

1. *Deeming an account closed.* An institution may, subject to state or other law, provide in its deposit contracts the actions by consumers that will be treated as closing the account and that will result in the forfeiture of accrued but uncredited interest. An example is the withdrawal of all funds from the account prior to the date that interest is credited.

(b)(3) Balance information

(b)(3)(ii) Balance computation method

1. *Methods and periods.* Institutions may use different methods or periods to calculate minimum balances for purposes of imposing a fee (the daily balance for a calendar month, for example) and accruing interest (the average daily balance for a statement period, for example). Each method and corresponding period must be disclosed.

(b)(3)(iii) When interest begins to accrue

1. *Additional information.* Institutions may disclose additional information such as the time of day after which deposits are treated as having been received the following business day, and may use additional descriptive terms such as "ledger" or "collected" balances to disclose when interest begins to accrue.

(b)(4) Fees

1. *Covered fees.* The following are types of fees that must be disclosed:

i. Maintenance fees, such as monthly service fees
ii. Fees to open or to close an account
iii. Fees related to deposits or withdrawals, such as fees for use of the institution's ATMs
iv. Fees for special services, such as stop-payment fees, fees for balance inquiries or verification of deposits, fees associated with checks returned unpaid, and fees for regularly sending to consumers checks that otherwise would be held by the institution

2. *Other fees.* Institutions need not disclose fees such as the following:

i. Fees for services offered to account and nonaccount holders alike, such as travelers checks and wire transfers (even if different amounts are charged to account and nonaccount holders)
ii. Incidental fees, such as fees associated with state escheat laws, garnishment or attorneys fees, and fees for photocopying

3. *Amount of fees.* Institutions must state the amount and conditions under which a fee may be imposed. Naming and describing the fee (such as "$4.00 monthly service fee") will typically satisfy these requirements.

4. *Tied-accounts.* Institutions must state if fees that may be assessed against an account are tied to other accounts at the institution. For example, if an institution ties the fees payable on a NOW account to balances held in the NOW account and a savings account, the NOW account disclosures must state that fact and explain how the fee is determined.

(b)(5) Transaction limitations

1. *General rule.* Examples of limitations on the number or dollar amount of deposits or withdrawals that institutions must disclose are:

i. Limits on the number of checks that may be written on an account within a given time period
ii. Limits on withdrawals or deposits during the term of a time account
iii. Limitations required by Regulation D on the number of withdrawals permitted from money market deposit accounts by check to third parties each month. Institutions need not disclose reservations of right to require notices for withdrawals from accounts required by federal or state law.

(b)(6) Features of time accounts

(b)(6)(i) Time requirements

1. *"Callable" time accounts.* In addition to the maturity date, an institution must state the date or the circumstances under which it may redeem a time account at the institution's option (a "callable" time account).

(b)(6)(ii) Early withdrawal penalties

1. *General.* The term "penalty" may but need not be used to describe the loss of interest that consumers may incur for early withdrawal of funds from time accounts.

2. *Examples.* Examples of early withdrawal penalties are:

i. Monetary penalties, such as "$10.00" or "seven days' interest plus accrued but uncredited interest"
ii. Adverse changes to terms such as a lowering of the interest rate, annual percentage yield, or compounding frequency for funds remaining on deposit
iii. Reclamation of bonuses

3. *Relation to rules for IRAs or similar plans.* Penalties imposed by the Internal Revenue Code for certain withdrawals from IRAs or similar pension or savings plans are not early withdrawal penalties for purposes of this regulation.

4. *Disclosing penalties.* Penalties may be stated in months, whether institutions assess the penalty using the actual number of days during the period or using another method such as a number of days that occurs in any actual sequence of the total calendar months involved. For example, stating "one month's interest" is permissible, whether the institution assesses 30 days' interest during the month of April, or selects a time period between 28 and 31 days for calculating the interest for all early withdrawals regardless of when the penalty is assessed.

(b)(6)(iv) Renewal policies

1. *Rollover time accounts.* Institutions offering a grace period on time accounts that automatically renew need not state whether interest will be paid if the funds are withdrawn during the grace period.

2. *Nonrollover time accounts.* Institutions paying interest on funds following the maturity of time accounts that do not renew automatically need not state the rate (or annual percentage yield) that may be paid. (See Appendix B, Model Clause B–1(h)(iv)(2).)

Section 230.5 Subsequent disclosures.

(a) Change in terms

(a)(1) Advance notice required

1. *Form of notice.* Institutions may provide a change-in-term notice on or with a periodic statement or in another mailing. If an institution provides notice through revised account disclosures, the changed term must be highlighted in some manner. For example, institutions may note that a particular fee has been changed (also specifying the new amount) or use an accompanying letter that refers to the changed term.

2. *Effective date.* An example of language for disclosing the effective date of a change is "As of November 21, 1994."

3. *Terms that change upon the occurrence of an event.* An institution offering terms that will automatically change upon the occurrence of a stated event need not send an advance notice of the change provided the

institution fully describes the conditions of the change in the account opening disclosures (and sends any change-in-term notices regardless of whether the changed term affects that consumer's account at that time).

4. *Examples.* Examples of changes not requiring an advance change-in-terms notice are:

i. The termination of employment for consumers for whom account maintenance or activity fees were waived during their employment by the depository institution

ii. The expiration of one year in a promotion described in the account opening disclosures to "waive $4.00 monthly service charges for one year"

(a)(2) No notice required

(a)(2)(ii) Check printing fees

1. *Increase in fees.* A notice is not required for an increase in fees for printing checks (or deposit and withdrawal slips) even if the institution adds some amount to the price charged by the vendor.

(b) Notice before maturity for time accounts longer than one month that renew automatically

1. *Maturity dates on nonbusiness days.* In determining the term of a time account, institutions may disregard the fact that the term will be extended beyond the disclosed number of days because the disclosed maturity falls on a nonbusiness day. For example, a holiday or weekend may cause a "one-year" time account to extend beyond 365 days (or 366, in a leap year) or a "one-month" time account to extend beyond 31 days.

2. *Disclosing when rates will be determined.* Ways to disclose when the annual percentage yield will be available include the use of:

i. A specific date, such as "October 28"

ii. A date that is easily determinable, such as "the Tuesday before the maturity date stated on this notice" or "as of the maturity date stated on this notice"

3. *Alternative timing rule.* Under the alternative timing rule, an institution offering a 10-day grace period would have to provide the disclosures at least 10 days prior to the scheduled maturity date.

4. *Club accounts.* If consumers have agreed to the transfer of payments from another account to a club time account for the next club period, the institution must comply with the requirements for automatically renewable time accounts—even though consumers may withdraw funds from the club account at the end of the current club period.

5. *Renewal of a time account.* In the case of a change in terms that becomes effective if a rollover time account is subsequently renewed:

i. If the change is initiated by the institution, the disclosure requirements of this paragraph apply. (Paragraph 230.5(a) applies if the change becomes effective prior to the maturity of the existing time account.)

ii. If the change is initiated by the consumer, the account opening disclosure requirements of § 230.4(b) apply. (If the notice required by this paragraph has been provided, institutions may give new account disclosures or disclosures highlighting only the new term.)

6. *Example.* If a consumer receives a prematurity notice on a one-year time account and requests a rollover to a six-month account, the institution must provide either account opening disclosures including the new maturity date or, if all other terms previously disclosed in the prematurity notice remain the same, only the new maturity date.

(b)(1) Maturities of longer than one year

1. *Highlighting changed terms.* Institutions need not highlight terms that changed since the last account disclosures were provided.

(c) Notice for time accounts one month or less that renew automatically

1. *Providing disclosures within a reasonable time.* Generally, 10 calendar days after an account renews is a reasonable time for providing disclosures. For time accounts shorter than 10 days, disclosures should be given prior to the next renewal date. For example, if a time account automatically renews every seven days, disclosures about an account that renews on Wednesday, December 7, 1994, should be given prior to Wednesday, December 14.

(d) Notice before maturity for time accounts longer than one year that do not renew automatically

1. *Subsequent account.* When funds are transferred following maturity of a nonrollover time account, institutions need not provide account disclosures unless a new account is established.

Section 230.6 Periodic statement disclosures.

(a) General rule

1. *General.* Institutions are not required to provide periodic statements. If they do provide statements, disclosures need only be furnished to the extent applicable. For example, if no interest is earned for a statement period, institutions need not state that fact. Or, institutions may disclose "$0" interest earned and "0%" annual percentage yield earned.

2. *Regulation E interim statements.* When an institution provides regular quarterly statements, and in addition provides a monthly interim statement to comply with Regulation E, the interim statement need not comply with this section unless it states interest or rate information. (See 12 CFR § 205.9(b).)

3. *Combined statements.* Institutions may provide information about an account (such as an MMDA) on the periodic statement for another account (such as a NOW account) without triggering the disclosures required by this section, as long as:

i. The information is limited to the account number, the type of account, or balance information, and

ii. The institution also provides a periodic statement complying with this section for each account.

4. *Other information.* Additional information that may be given on or with a periodic statement includes:

i. Interest rates and corresponding periodic rates applied to balances during the statement period

ii. The dollar amount of interest earned year-to-date

iii. Bonuses paid (or any de minimis consideration of $10 or less)

iv. Fees for products such as safe deposit boxes

(a)(1) Annual percentage yield earned

1. *Ledger and collected balances.* Institutions that accrue interest using the collected balance method may use either the ledger or the collected balance in determining the annual percentage yield earned.

(a)(2) Amount of interest

1. *Accrued interest.* Institutions must state the amount of interest that accrued during the statement period, even if it was not credited.

2. *Terminology.* In disclosing interest earned for the period, institutions must use the term "interest" or terminology such as:

i. "Interest paid," to describe interest that has been credited

ii. "Interest accrued" or "interest earned," to indicate that interest is not yet credited

3. *Closed accounts.* If consumers close an account between crediting periods and forfeits accrued interest, the institution may not show any figures for interest earned or annual percentage yield earned for the period (other than zero, at the institution's option).

(a)(3) Fees imposed

1. *General.* Periodic statements must state fees disclosed under § 230.4(b) that were debited to the account during the statement period, even if assessed for an earlier period.

2. *Itemizing fees by type.* In itemizing fees imposed more than once in the period, institutions may group fees if they are the same type. But the description must make clear that the dollar figure represents more than a single fee, for example, "total fees for checks written this period." Examples of fees that may not be grouped together are:

i. Monthly maintenance and excess activity fees

ii. "Transfer" fees, if different dollar amounts are imposed—such as $.50 for deposits and $1.00 for withdrawals

iii. Fees for electronic fund transfers and fees for other services, such as balance inquiry or maintenance fees

3. *Identifying fees.* Statement details must enable consumers to identify the specific fee. For example:

i. Institutions may use a code to identify a particular fee if the code is explained on the periodic statement or in documents accompanying the statement.

ii. Institutions using debit slips may disclose the date the fee was debited on the periodic statement and show the amount and type of fee on the dated debit slip.

4. *Relation to Regulation E.* Disclosure of fees in compliance with Regulation E complies with this section for fees related to electronic fund transfers (for example, totaling all electronic funds transfer fees in a single figure).

(a)(4) Length of period

1. *General.* Institutions providing the beginning and ending dates of the period must make clear whether both dates are included in the period.

2. *Opening or closing an account mid-cycle.* If an account is opened or closed during the period for which a statement is sent, institutions must calculate the annual percentage yield earned based on account balances for each day the account was open.

(b) Special rule for average daily balance method

1. *Monthly statements and quarterly compounding.* This rule applies, for example, when an institution calculates interest on a quarterly average daily balance and sends monthly statements. In this case, the first two monthly statements would omit annual percentage yield earned and interest earned figures; the third monthly statement would reflect the interest earned and the annual percentage yield earned for the entire quarter.

2. *Length of the period.* Institutions must disclose the length of both the interest calculation period and the statement period. For example, a statement could disclose a statement period of April 16 through May 15 and further state that "the interest earned and the annual percentage yield earned are based on your average daily balance for the period April 1 through April 30."

3. *Quarterly statements and monthly compounding.* Institutions that use the average daily balance method to calculate interest on a monthly basis and that send statements on a quarterly basis may disclose a single interest (and annual percentage yield earned) figure. Alternatively, an institution may disclose three interest and three annual percentage yield earned figures, one for each month in the quarter, as long as the institution states the number of days (or beginning and ending dates) in the interest period if different from the statement period.

Section 230.7 Payment of interest.

(a)(1) Permissible methods

1. *Prohibited calculation methods.* Calculation methods that do not comply with the requirement to pay interest on the full amount of principal in the account each day include:

i. Paying interest on the balance in the account at the end of the period (the "ending balance" method)

ii. Paying interest for the period based on the lowest balance in the account for any day in that period (the "low balance" method)

iii. Paying interest on a percentage of the balance, excluding the amount set aside for reserve requirements (the "investable balance" method)

2. *Use of 365-day basis.* Institutions may apply a daily periodic rate greater than 1/365 of the interest rate—such as 1/360 of the interest rate—as long as it is applied 365 days a year.

3. *Periodic interest payments.* An institution can pay interest each day on the account and still make uniform interest payments. For example, for a one-year certificate of deposit an institution could make monthly interest payments equal to 1/12 of the amount of interest that will be earned for a 365-day period (or 11 uniform monthly payments—each equal to roughly 1/12 of the total amount of interest—and one payment that accounts for the remainder of the total amount of interest earned for the period).

4. *Leap year.* Institutions may apply a daily rate of 1/366 or 1/365 of the interest rate for 366 days in a leap year, if the account will earn interest for February 29.

5. *Maturity of time accounts.* Institutions are not required to pay interest after time accounts mature. (See 12 CFR part 217, the Board's Regulation Q, for limitations on duration of interest payments.) Examples include:

i. During a grace period offered for an automatically renewable time account, if consumers decide during that period not to renew the account

ii. Following the maturity of nonrollover time accounts

iii. When the maturity date falls on a holiday, and consumers must wait until the next business day to obtain the funds

6. *Dormant accounts.* Institutions must pay interest on funds in an account, even if inactivity or the infrequency of transactions would permit the institution to consider the account to be "inactive" or "dormant" (or similar status) as defined by state or other law or the account contract.

(a)(2) Determination of minimum balance to earn interest

1. *Daily balance accounts.* Institutions that require a minimum balance may choose not to pay interest for days when the balance drops below the required minimum, if they use the daily balance method to calculate interest.

2. *Average daily balance accounts.* Institutions that require a minimum balance may choose not to pay interest for the period in which the balance drops below the required minimum, if they use the average daily balance method to calculate interest.

3. *Beneficial method.* Institutions may not require that consumers maintain both a minimum daily balance and a minimum average daily balance to earn interest, such as by requiring consumers to maintain a $500 daily balance and a prescribed average daily balance (whether higher or lower). But an institution could offer a minimum balance to earn interest that includes an additional method that is "unequivocally beneficial" to consumers such as the following: An institution using the daily balance method to calculate interest and requiring a $500 minimum daily balance could offer to pay interest on the account for those days the minimum balance is not met as long as consumers maintain an average daily balance throughout the month of $400.

4. *Paying on full balance.* Institutions must pay interest on the full balance in the account that meets the required minimum balance. For example, if $300 is the minimum daily balance required to earn interest, and a consumer deposits $500, the institution must pay the stated interest rate on the full $500 and not just on $200.

5. *Negative balances prohibited.* Institutions must treat a negative account balance as zero to determine:

i. The daily or average daily balance on which interest will be paid

ii. Whether any minimum balance to earn interest is met

6. *Club accounts.* Institutions offering club accounts (such as a "holiday" or "vacation" club) cannot impose a minimum balance requirement for interest based on the total number or dollar amount of payments required under the club plan. For example, if a plan calls for $10 weekly payments for 50 weeks, the institution cannot set a $500 "minimum balance" and then pay interest only if the consumer has made all 50 payments.

7. *Minimum balances not affecting interest.* Institutions may use the daily balance, average daily balance, or any other computation method to calculate minimum balance requirements not involving the payment of interest—such as to compute minimum balances for assessing fees.

(b) Compounding and crediting policies

1. *General.* Institutions choosing to compound interest may compound or credit interest annually, semi-annually, quarterly, monthly, daily, continuously, or on any other basis.

2. *Withdrawals prior to crediting date.* If consumers withdraw funds (without closing the account) prior to a scheduled crediting date, institutions may delay paying the accrued interest on the withdrawn amount until the scheduled crediting date, but may not avoid paying interest.

3. *Closed accounts.* Subject to state or other law, an institution may choose not to pay accrued interest if consumers close an account prior to the date accrued interest is credited, as long as the institution has disclosed that fact.

(c) Date interest begins to accrue

1. *Relation to Regulation CC.* Institutions may rely on the Expedited Funds Availability Act (EFAA) and Regulation CC (12 CFR part 229) to determine, for example, when a deposit is considered made for purposes of interest accrual, or when interest need not be paid on funds because a deposited check is later returned unpaid.

2. *Ledger and collected balances.* Institutions may calculate interest by using a "ledger" or "collected" balance method, as long as the crediting requirements of the EFAA are met (12 CFR 229.14).

3. *Withdrawal of principal.* Institutions must accrue interest on funds until the funds are withdrawn from the account. For example, if a check is debited to an account on a Tuesday, the institution must accrue interest on those funds through Monday.

Section 230.8 Advertising.

(a) Misleading or inaccurate advertisements

1. *General.* All advertisements are subject to the rule against misleading or inaccurate advertisements, even though the disclosures applicable to various media differ.

2. *Indoor signs.* An indoor sign advertising an annual percentage yield is not misleading or inaccurate when:

i. For a tiered-rate account, it also provides the lower dollar amount of the tier corresponding to the advertised annual percentage yield
ii. For a time account, it also provides the term required to obtain the advertised annual percentage yield

3. *Fees affecting "free" accounts.* For purposes of determining whether an account can be advertised as "free" or "no cost," maintenance and activity fees include:

i. Any fee imposed when a minimum balance requirement is not met, or when consumers exceed a specified number of transactions
ii. Transaction and service fees that consumers reasonably expect to be imposed on a regular basis
iii. A flat fee, such as a monthly service fee
iv. Fees imposed to deposit, withdraw, or transfer funds, including per-check or per-transaction charges (for example, $.25 for each withdrawal, whether by check or in person)

4. *Other fees.* Examples of fees that are not maintenance or activity fees include:

i. Fees not required to be disclosed under § 230.4(b)(4)
ii. Check printing fees
iii. Balance inquiry fees
iv. Stop-payment fees and fees associated with checks returned unpaid
v. Fees assessed against a dormant account
vi. Fees for ATM or electronic transfer services (such as preauthorized transfers or home banking services) not required to obtain an account

5. *Similar terms.* An advertisement may not use the term "fees waived" if a maintenance or activity fee may be imposed because it is similar to the terms "free" or "no cost."

6. *Specific account services.* Institutions may advertise a specific account service or feature as free if no fee is imposed for that service or feature. For example, institutions offering an account that is free of deposit or withdrawal fees could advertise that fact, as long as the advertisement does not mislead consumers by implying that the account is free and that no other fee (a monthly service fee, for example) may be charged.

7. *Free for limited time.* If an account (or a specific account service) is free only for a limited period of time—for example, for one year following the account opening—the account (or service) may be advertised as free if the time period is also stated.

8. *Conditions not related to deposit accounts.* Institutions may advertise accounts as "free" for consumers meeting conditions not related to deposit accounts, such as the consumer's age. For example, institutions may advertise a NOW account as "free for persons over 65 years old," even though a maintenance or activity fee is assessed on accounts held by consumers 65 or younger.

(b) Permissible rates

1. *Tiered-rate accounts.* An advertisement for a tiered-rate account that states an annual percentage yield must also state the annual percentage yield for each tier, along with corresponding minimum balance requirements. Any interest rates stated must appear in conjunction with the applicable annual percentage yields for each tier.

2. *Stepped-rate accounts.* An advertisement that states an interest rate for a stepped-rate account must state all the interest rates and the time period that each rate is in effect.

3. *Representative examples.* An advertisement that states an annual percentage yield for a given type of account (such as a time account for a specified term) need not state the annual percentage yield applicable to other time accounts offered by the institution or indicate that other maturity terms are available. In an advertisement stating that rates for an account may vary depending on the amount of the initial deposit or the term of a time account, institutions need not list each balance level and term offered. Instead, the advertisement may:

i. Provide a representative example of the annual percentage yields offered, clearly described as such. For example, if an institution offers a $25 bonus on all time accounts and the annual percentage yield will vary depending on the term selected, the institution may provide a disclosure of the annual percentage yield as follows: "For example, our 6-month certificate of deposit currently pays a 3.15% annual percentage yield."
ii. Indicate that various rates are available, such as by stating short-term and longer-term maturities along with the applicable annual percentage yields: "We offer certificates of deposit with annual percentage yields that depend on the maturity you choose. For example, our one-month CD earns a 2.75% APY. Or, earn a 5.25% APY for a three-year CD."

(c) When additional disclosures are required

1. *Trigger terms.* The following are examples of information stated in advertisements that are not "trigger" terms:

i. "One, three, and five year CDs available"
ii. "Bonus rates available"
iii. "1% over our current rates," so long as the rates are not determinable from the advertisement

(c)(2) Time annual percentage yield is offered

1. *Specified date.* If an advertisement discloses an annual percentage yield as of a specified date, that date must be recent in relation to the publication or broadcast frequency of the media used, taking into account the particular circumstances or production deadlines involved. For example, the printing date of a brochure printed once for a deposit account promotion that will be in effect for six months would be considered "recent," even though rates change during the six-month period. Rates published in a daily newspaper or on television must reflect rates offered shortly before (or on) the date the rates are published or broadcast.

2. *Reference to date of publication.* An advertisement may refer to the annual percentage yield as being accurate as of the date of publication, if the date is on the publication itself. For instance, an advertisement in a periodical may state that a rate is "current through the date of this issue," if the periodical shows the date.

(c)(5) Effect of fees

1. *Scope.* This requirement applies only to maintenance or activity fees described in paragraph 8(a).

(c)(6) Features of time accounts

(c)(6)(i) Time requirements

1. *Club accounts.* If a club account has a maturity date but the term may vary depending on when the account is opened, institutions may use a phrase such as: "The maturity date of this club account is November 15; its term varies depending on when the account is opened."

(c)(6)(ii) Early withdrawal penalties

1. *Discretionary penalties.* Institutions imposing early withdrawal penalties on a case-by-case basis may disclose that they "may" (rather than "will") impose a penalty if such a disclosure accurately describes the account terms.

(d) Bonuses

1. *General reference to "bonus."* General statements such as "bonus checking" or "get a bonus when you open a checking account" do not trigger the bonus disclosures.

(e) Exemption for certain advertisements

(e)(1) Certain media

(e)(1)(iii)

1. *Tiered-rate accounts.* Solicitations for a tiered-rate account made through telephone response machines must provide the annual percentage yields and the balance requirements applicable to each tier.

(e)(2) Indoor signs

(e)(2)(i)

1. *General.* Indoor signs include advertisements displayed on computer screens, banners, preprinted posters, and chalk or peg boards. Any advertisement inside the premises that can be retained by a consumer (such as a brochure or a printout from a computer) is not an indoor sign.

2. *Consumers outside the premises.* Advertisements may be "indoor signs" even though they may be viewed by consumers from outside. An example is a banner, in an institution's glass-enclosed branch office, that is located behind a teller facing customers but is readable by passersby.

Section 230.9 Enforcement and record retention.

(c) Record retention

1. *Evidence of required actions.* Institutions comply with the regulation by demonstrating that they have done the following:

i. Established and maintained procedures for paying interest and providing timely disclosures as required by the regulation, and

ii. Retained sample disclosures for each type of account offered to consumers, such as account-opening disclosures, copies of advertisements, and change-in-term notices; and information regarding the interest rates and annual percentage yields offered.

2. *Methods of retaining evidence.* Institutions must be able to reconstruct the required disclosures or other actions. They need not keep disclosures or other business records in hard copy. Records evidencing compliance may be retained on microfilm, microfiche, or by other methods that reproduce records accurately (including computer files).

3. *Payment of interest.* Institutions must retain sufficient rate and balance information to permit the verification of interest paid on an account, including the payment of interest on the full principal balance.

Appendix A to Part 230—Annual Percentage Yield Calculation

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

1. *Rounding for calculations.* The following are examples of permissible rounding for calculating interest and the annual percentage yield:

i. The daily rate applied to a balance carried to five or more decimal places

ii. The daily interest earned carried to five or more decimal places

Part II. Annual Percentage Yield Earned for Periodic Statements

1. *Balance method.* The interest figure used in the calculation of the annual percentage yield earned may be derived from the daily balance method or the average daily balance method. The balance used in the formula for the annual percentage yield earned is the sum of the balances for each day in the period divided by the number of days in the period.

2. *Negative balances prohibited.* Institutions must treat a negative account balance as zero to determine the balance on which the annual percentage yield earned is calculated. (See commentary to § 230.7(a)(2).)

A. General Formula

1. *Accrued but uncredited interest.* To calculate the annual percentage yield earned, accrued but uncredited interest:

i. May not be included in the balance for statements issued at the same time or less frequently than the account's compounding and crediting frequency. For example, if monthly statements are sent for an account that compounds interest daily and credits interest monthly, the balance may not be increased each day to reflect the effect of daily compounding.

ii. Must be included in the balance for succeeding statements if a statement is issued more frequently than compounded interest is credited on an account. For example, if monthly statements are sent for an account that compounds interest daily and credits interest quarterly, the balance for the second monthly statement would include interest that had accrued for the prior month.

2. *Rounding.* The interest earned figure used to calculate the annual percentage yield earned must be rounded to two decimals and reflect the amount actually paid. For example, if the interest earned for a statement period is $20.074 and the institution pays the consumer $20.07, the institution must use $20.07 (not $20.074) to calculate the annual percentage yield earned. For accounts paying interest based on the daily balance method that compound and credit interest quarterly, and send monthly statements, the institution may, but need not, round accrued interest to two decimals for calculating the annual percentage yield earned on the first two monthly statements issued during the quarter. However, on the quarterly statement the interest earned figure must reflect the amount actually paid.

B. Special Formula for Use Where Periodic Statement is Sent More Often Than the Period for Which Interest is Compounded

1. *Statements triggered by Regulation E.* Institutions may, but need not, use this formula to calculate the annual percentage yield earned for accounts that receive quarterly statements and are subject to Regulation E's rule calling for monthly statements when an electronic fund transfer has occurred. They may do so even though no monthly statement was issued during a specific quarter. But institutions must use this formula for accounts that compound and credit interest quarterly and receive monthly statements that, while triggered by Regulation E, comply with the provisions of § 230.6.

2. *Days in compounding period.* Institutions using the special annual percentage yield earned formula must use the actual number of days in the compounding period.

Appendix B to Part 230—Model Clauses and Sample Forms

1. *Modifications.* Institutions that modify the model clauses will be deemed in compliance as long as they do not delete required information or rearrange the format in a way that affects the substance or clarity of the disclosures.

2. *Format.* Institutions may use inserts to a document (see Sample Form B–4) or fill-in blanks (see Sample Forms B–5, B–6 and B–7, which use underlining to indicate terms that have been filled in) to show current rates, fees, or other terms.

3. *Disclosures for opening accounts.* The sample forms illustrate the information that must be provided to consumers when an account is opened, as required by § 230.4(a)(1). (See § 230.4(a)(2), which states the requirements for disclosing the annual percentage yield, the interest rate, and the maturity of a time account in responding to a consumer's request.)

4. *Compliance with Regulation E.* Institutions may satisfy certain requirements under Regulation DD with disclosures that meet the requirements of Regulation E. (See § 230.3(c).) For disclosures covered by both this regulation and Regulation E (such as the amount of fees for ATM usage, institutions should consult appendix A to Regulation E for appropriate model clauses.

5. *Duplicate disclosures.* If a requirement such as a minimum balance applies to more than one account term (to obtain a bonus and determine the annual percentage yield, for example), institutions need not repeat the requirement for each term, as long as it is clear which terms the requirement applies to.

6. *Sample forms.* The sample forms (B–4 through B–8) serve a purpose different from the model clauses. They illustrate ways of adapting the model clauses to specific accounts. The clauses shown relate only to the specific transactions described.

B–1 Model Clauses for Account Disclosures

B–1(h) Disclosures Relating to Time Accounts

1. *Maturity.* The disclosure in Clause (h)(i) stating a specific date may be used in all cases. The statement describing a time period is appropriate only when providing disclosures in response to a consumer's request.

B–2 Model Clauses for Change in Terms

1. *General.* The second clause, describing a future decrease in the interest rate and annual percentage yield, applies to fixed-rate accounts only.

B–4 Sample Form (Multiple Accounts)

1. *Rate sheet insert.* In the rate sheet insert, the calculations of the annual percentage yield for the three-month and six-month certificates are based on 92 days and 181 days respectively. All calculations in the insert assume daily compounding.

B–6 Sample Form (Tiered-Rate Money Market Account)

1. *General.* Sample Form B–6 uses Tiering Method A (discussed in Appendix A and Clause (a)(iv)) to calculate interest. It gives a narrative description of a tiered-rate account: institutions may use different formats (for

example, a chart similar to the one in Sample Form B–4), as long as all required information for each tier is clearly presented. The form does not contain a separate disclosure of the minimum balance required to obtain the annual percentage yield; the tiered-rate disclosure provides that information.

By order of the Board of Governors of the Federal Reserve System, August 2, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–19224 Filed 8–5–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AGL–23]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters VOR Federal Airways V–172 and V–177 located in Wisconsin and Illinois. Altering V–172 and V–177 will expedite the flow of traffic arriving at the satellite airports in the Chicago, IL, metropolitan area.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter VOR Federal Airways V–172 and V–177 located in Wisconsin and Illinois (59 FR 18506). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The airways listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters VOR Federal Airways V–172 and V–177 located in Wisconsin and Illinois. To expedite the flow of traffic, direct routings are desirable for aircraft arriving at satellite airports in the Chicago metropolitan area. V–172 will be realigned from the newly relocated ELGIN, IL, intersection direct to the Du Page, IL, (DPA) Very High Frequency Omnidirectional Range/Distance Measuring Equipment facility. V–177, heading southeast from the Janesville, WI, (JVL) Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility toward the Joliet, IL, (JOT) VORTAC currently doglegs over the Rockford, IL, (RFD) VORTAC. Realigning V–177 will provide a direct route between the Janesville and Joliet VORTACs and eliminate the dogleg over the Rockford VORTAC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–172 [Revised]

From North Platte, NE, via INT North Platte 073° and Wolbach, NE, 266° radials; Wolbach; Columbus, NE; Omaha, NE, INT Omaha 066° and Newton, IA, 262° radials; Newton; Cedar Rapids, IA; Polo, IL; INT Polo 088° and Du Page, IL, 293° radials; Du Page.

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V–177 [Revised]

From Joliet, IL, via Janesville, WI; Madison, WI; Stevens Point, WI; Wausau, WI; Hayward, WI; Duluth, MN; to Ely, MN.

* * * * *

Issued in Washington, DC, on July 28, 1994.

Reginald C. Matthews,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–19273 Filed 8–5–94, 8:45 am]

BILLING CODE 4910–13–F

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14 CFR Part 71

[Airspace Docket No. 93–ASW–47]

Modification of Class E Airspace: Olney, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace at Olney, TX. A recent amendment which changed the final approach course bearing of the nondirectional radio beacon (NDB) runway (RWY) 17 standard instrument approach procedure (SIAP) necessitated this action. Controlled airspace extending upward from 700 feet above ground level, designated in conjunction with an airport for which an approved instrument approach procedure has been prescribed, is needed for aircraft executing the NDB RWY 17 SIAP. This action is intended to provide adequate Class E airspace for IFR operations at Olney, TX.

EFFECTIVE DATE: 0901 u.t.c., October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort

Worth, TX 76193–0530, telephone 817–222–5595.

SUPPLEMENTARY INFORMATION:

History

On November 30, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace at Olney, TX, was published in the **Federal Register** (58 FR 63129). A recent amendment which changed the final approach course bearing of the non directional radio beacon (NDB) runway (RWY) 17 standard instrument approach procedure (SIAP) necessitated this action. This modification is required to provide adequate Class E airspace for instrument flight rule (IFR) operators executing the amended NDB RWY 17 SIAP.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for updating the latitude of the Olney Municipal Airport, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1994). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class E airspace located at Olney, TX, to provide controlled airspace from 700 feet or more above ground level for aircraft executing the NDB RWY 17 SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Olney, TX [Modify]

Olney Municipal Airport, TX
(Lat. 33°21′03″ N., long. 98°49′09″ W.)
Olney RBN
(Lat. 33°21′04″ N., long. 98°48′58″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Olney Municipal Airport and within 2.5 miles each side of the 347° bearing from the Olney RBN extending from the 6.6-mile radius to 7.6 miles north of the airport.

* * * * *

Issued in Forth Worth, TX, on July 29, 1994.

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–19272 Filed 8–5–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANE–22]

Alteration of VOR Federal Airway V–1

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule modifies Federal Airway V–1 by extending the airway from the Hartford, CT, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility to the Boston, MA, VORTAC. Modifying V–1 simplifies air traffic control (ATC) clearances and reduces the controllers' workload. This action also changes the airway description in the vicinity of the South Florida Low, FL, Offshore Airspace Area. The description is modified to incorporate changes associated with the offshore airspace reconfiguration.

EFFECTIVE DATE: 0901 u.t.c., October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On October 14, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify V–1 from the Hartford, CT, VORTAC to the Boston, MA, VORTAC (58 FR 53164). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies V–1 by extending the airway from the Hartford, CT, VORTAC to the Boston, MA, VORTAC. This action simplifies ATC clearances along this extremely active airway. This action reduces the workload for pilots and controllers.

In addition, this rule changes the floor of V–1 in the vicinity of the South Florida Low, FL, Offshore Airspace Area. On June 22, 1993, the northern boundary of the South Florida Low, FL, Offshore Airspace Area was moved from latitude 28°00′00″ N. to latitude 34°00′00″ N., to ensure that certain ATC operations were conducted in controlled

airspace (58 FR 33907). Relocating the northern boundary of that offshore airspace area prompted changes to the floor of the airway. The floor of V–1 is raised from 2,000 feet mean sea level (MSL) to 2,700 feet MSL to coincide with the floor of the South Florida Low, FL, Offshore Airspace Area.

Since this action involves, in part, the designation of navigable airspace outside of the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–1 [Revised]

From Craig, FL, via INT Craig 020° and Charleston, SC, 214° radials; Charleston; Grand Strand, SC; INT Grand Strand 031° and Kinston, NC, 214° radials; Kinston; Cofield, NC; Norfolk, VA; Cape Charles, VA; INT Cape Charles 006° and Salisbury, MD, 206° radials; Salisbury; Waterloo, DE; INT Waterloo 024° and Coyle, NJ, 216° radials; Coyle; INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy; Deer Park, NY; Madison, CT; Hartford, CT; INT Hartford 040° and Boston, MA, 252° radials; to Boston, MA; excluding the airspace below 2,700 feet MSL outside the United States between STARY INT and Charleston, SC. The portions within R–5002A, R–5002C and R–5002D are excluded during their times of use. The airspace within R–4006 is excluded.

* * * * *

Issued in Washington, DC, on July 29, 1994.

Reginald C. Matthews,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–19274 Filed 8–5–94, 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–AGL–18]

Alteration of VOR Federal Airway V–116; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters Federal Airway V–116 located in Michigan. This action realigns Federal Airway V–116 from the Keeler, MI, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility to the Jackson, MI, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) facility via the Kalamazoo, MI, (VOR/DME) facility. This action improves navigation.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On March 10, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter VOR Federal Airway V–116 (59 FR 11223). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters VOR Federal Airway V–116. Because of signal interference, the minimum en route altitude (MEA) along a segment of the airway is 10,000 feet mean sea level (MSL). Realigning V–116 over the Kalamazoo, MI, VOR/DME would make it possible to lower the MEA to 3,000 feet MSL and enhance navigation.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V-116 [Revised]

From INT Kansas City, MO, 076° and Napoleon, MO, 005° radials, via Macon, MO; Quincy, IL; Peoria, IL; Pontiac, IL; Joliet, IL. From INT Chicago O'Hare, IL, 092° and Chicago Heights, IL, 013° radials; INT Chicago O'Hare 092° and Keeler, MI, 256° radials; Keeler; Kalamazoo, MI; INT Kalamazoo 089° and Jackson, MI, 265° radials; Jackson; INT Jackson 089° and Salem, MI, 252° radials; Salem; Windsor, ON, Canada; INT Windsor 092° and Erie, PA, 281° radials; Erie; Bradford, PA; Stonyfork, PA; INT Stonyfork 098° and Wilkes-Barre, PA, 310° radials; Wilkes-Barre; INT Wilkes-Barre 084° and Sparta, NJ, 300° radials; to Sparta. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on July 28, 1994.

Reginald C. Matthews,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–19275 Filed 8–5–94, 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–ASW–49]

Modification of Class E Airspace: Follett, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace at Follett, TX. Effective May 27, 1993, the nondirectional radio beacon (NDB) Runway (RWY) 35 standard instrument approach procedure (SIAP) serving the Follett-Lipscomb County Airport was canceled. Therefore a portion of the controlled airspace extending upward from 700 feet above ground level designated in conjunction with an airport for which an approved instrument approach procedure has been prescribed is no longer needed. This action is intended to release control of unneeded Class E airspace at Follett-Lipscomb County Airport while maintaining adequate Class E airspace for aircraft executing the remaining SIAP's at Follett-Lipscomb County Airport.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5595.

SUPPLEMENTARY INFORMATION:

History

On November 26, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace at Follett, TX, was published in the **Federal Register** (58 FR 62298). The nondirectional radio beacon (NDB) Runway (RWY) 35 standard instrument approach procedure (SIAP) serving the Follett-Lipscomb County Airport was canceled. This modification is intended to release control of unneeded Class E airspace at Follett-Lipscomb County Airport while maintaining adequate Class E airspace for aircraft executing the remaining SIAP's at Follett-Lipscomb County Airport.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Follett, TX, Class E airspace overlaps the Gage, OK, Class E airspace area. The notice of proposed rulemaking inadvertently omitted a statement excluding the overlapping portion of the Follett, TX, Class E airspace from the Gage, OK, Class E airspace from the narrative description. Additionally, the longitude of the Follett-Lipscomb County Airport has been updated. Other than these changes, this amendment is the same as that proposed in the notice. The FAA has determined that these changes will not increase the scope of this rule.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1994). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Class E airspace located at Follett, TX, to release control of airspace that is no longer needed by aircraft executing the SIAP's at Follett-Lipscomb County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Follett, TX [Modify]

Follett/Lipscomb County Airport, TX
(Lat. 36°26′27″ N., long. 100°07′26″ W.)
Gage VORTAC
(Lat. 36°20′37″ N., long. 99°52′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Follett/Lipscomb County Airport and within 8 miles north and 4 miles south of the 296° and 117° radial's of the Gage VORTAC extending from the airport to 29.1 miles southeast of the airport, excluding that airspace within the Gage, OK, Class E airspace area.

* * * * *

Issued in Fort Worth, TX, on July 29, 1994.

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–19268 Filed 8–5–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–36]

Establishment of Class E Airspace: Leesville, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Leesville Airport, Leesville LA. The development of a Nondirectional Radio Beacon (NDB) standard instrument approach procedure (SIAP) has made this action necessary. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to contain aircraft executing the SIAP. This action is intended to provide adequate Class E airspace for Instrument Flight Rules (IFR) operations for Leesville Airport, Leesville.

EFFECTIVE DATE: 0901 UTC, December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Gregory L. Juro, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5591.

SUPPLEMENTARY INFORMATION:

History

On November 30, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E Airspace at Leesville Airport, Leesville LA, was published in the **Federal Register** (58 FR 63128). A SIAP was developed for the Leesville Airport. The proposal sought to revise the controlled airspace extending upward from 700 feet AGL to contain instrument flight rules (IFR) operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments regarding the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1994). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace located at Leesville Airport, Leesville, LA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW LA E5 Leesville, LA [New]

Leesville Airport, LA
(Lat. 39°10′03″ N., long. 93°20′53″ W.)
Leesville NDB (VED).
(Lat. 31°06′09″ N., long. 93°20′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Leesville Airport and within 2.5 miles each side of the 3600 bearing off the Leesville NDB extending from a 6.5-mile radius area to 7.3 miles north of the Leesville Airport excluding that airspace within the Fort Polk, LA, Class D Airspace.

* * * * *

Issued in Fort Worth, TX, on July 29, 1994.

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–19269 Filed 8–5–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–45]

Modification of Class E Airspace: Chickasha, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace at Chickasha, OK. A new nondirectional radio beacon (NDB) runway (RWY) 17 standard instrument approach procedure (SIAP) has been developed for the Chickasha Municipal Airport. Controlled airspace extending upward from 700 feet above ground level, designated in conjunction with an airport for which an approved instrument approach procedure has been prescribed, is needed for aircraft executing the new NDB RWY 17 SIAP. This action is intended to provide adequate Class E airspace for IFR operations at Chickasha, OK.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5595.

SUPPLEMENTARY INFORMATION:

History

On November 24, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the Class E airspace at Chickasha, OK,

was published in the **Federal Register** (58 FR 62055). A new standard instrument approach procedure (SIAP) has been developed for the Chickasha Municipal Airport. This modification is required to provide adequate Class E airspace for instrument flight rule (IFR) operators executing the new SIAP.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for updating the latitude and longitude of the Chickasha NDB, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1994). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace located at Chickasha, OK.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Chickasha, OK [Modify]

Chickasha Municipal Airport, OK
(Lat. 35°05′46″ N., long. 97°57′58″ W.)
Chickasha NDB
(Lat. 35°06′16″ N., long. 97°58′18″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Chickasha Municipal Airport and within 2.5 miles each side of the 017° bearing from the Chickasha NDB extending from the 6.5-mile radius to 7.5 miles northeast of the airport.

* * * * *

Issued in Fort Worth, TX, on July 29, 1994.

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–19270 Filed 8–5–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–46]

Modification of Class E Airspace: Stillwater, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace at Stillwater, OK. A Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Runway (RWY) 35 standard instrument approach procedure (SIAP) has been developed at Stillwater Municipal Airport. Controlled airspace extending upward from 700 feet above ground level designated in conjunction with an airport for which an approved instrument approach procedure has been prescribed, is needed for aircraft executing the new VOR/DME RWY 35 SIAP. This action is intended to provide adequate Class E airspace for IFR operations at Stillwater, OK.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5595.

SUPPLEMENTARY INFORMATION:

History

On November 30, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace at Stillwater, OK, was published in the **Federal Register** (58 FR 63125). A new standard instrument approach procedure (SIAP) has been developed for the Stillwater Municipal Airport. This modification is required to provide adequate Class E airspace for instrument flight rule (IFR) operators executing the new SIAP.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The proposal published on November 30, 1993 (58 FR 63125), incorrectly listed the latitude of the Stillwater Municipal Airport as 3°09′37″ N. instead of 36°09′37″ N. This was corrected in the **Federal Register** January 14, 1994 (59 FR 2454). Except for this change, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1994). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class E airspace located at Stillwater, OK, to provide controlled airspace from 700 feet or more above ground level for aircraft executing the VOR/DME RWY 35 SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive

Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp. p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Stillwater, OK [Modify]

Stillwater Municipal Airport, OK
(Lat. 36°09′37″ N., long. 97°05′09″ W.)
Stillwater VOR/DME
(Lat. 36°13′27″ N., long. 97°04′53″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Stillwater Municipal Airport and within 8 miles east and 4 miles west of the 005 radial of the Stillwater VOR/DME extending from the 6.5-mile radius to 16 miles north of the VOR/DME, and within 1.7 miles each side of the 183 radial of the Stillwater VOR/DME extending from the 6.5-mile radius to 12.2 miles south of the Stillwater Airport.

* * * * *

Issued in Fort Worth, TX, on July 29, 1994.

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–19271 Filed 9–5–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ASW–48]

Establishment of Class E Airspace: Claremore, OK

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Claremore, OK. Two standard instrument approach procedures (SIAP) have been developed for Claremore Municipal Airport. Controlled airspace extending upward from 700 feet above ground level designated in conjunction with an airport for which an approved instrument approach procedure has been prescribed, is needed for aircraft executing the new SIAP's. This action is intended to provide adequate Class E airspace for IFR operations at Claremore, OK.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5595.

SUPPLEMENTARY INFORMATION:

History

On November 24, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Claremore, OK, was published in the **Federal Register** (58 FR 62062). Two standard instrument approach procedures (SIAP) have been developed for Claremore Municipal Airport. This modification is required to provide adequate Class E airspace for instrument flight rule (IFR) operators executing the new SIAP's.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for updating the longitude of the Claremore Municipal Airport, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1994). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Claremore, OK.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Claremore, OK [New]

Claremore Municipal Airport, OK
(lat. 36°17′40″N., long. 95°28′47″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Claremore Municipal Airport.

* * * * *

Issued in Fort Worth, TX, on July 29, 1994.

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–19267 Filed 8–5–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 785 and 799

[Docket No. 940692–4192]

RIN 0694–AA98

Exports to Rwanda; Imposition of Foreign Policy Controls

AGENCY: Bureau of Export Administration.

ACTION: Final rule.

SUMMARY: Reacting to the turmoil and slaughter of innocent civilians in Rwanda and fulfilling United States obligations to implement an international arms embargo mandated by the United Nations Security Council, the President has banned the sale and supply of arms and related materiel to Rwanda. To supplement the State Department controls on items on the U.S. Munitions List, the Bureau of Export Administration (BXA) is designating certain items on the Commerce Control List (CCL) that are subject to the arms embargo and a policy of denial to Rwanda. No embargoed items may be exported to Rwanda under any General License, including shipments of limited value (GLV).

EFFECTIVE DATE: This rule is effective May 26, 1994, 11:59 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: David Schlechty, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 482–4252.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1994, in order to implement United Nations Security Council Resolution 918 (1994), the President signed Executive Order 12918 prohibiting the sale or supply to Rwanda from the territory of the United States by any person, or by any United States person in any foreign country or other location, or using any U.S. registered vessel or aircraft, of arms and related material of all types, irrespective of origin.

The Executive Order delegates authority, *inter alia*, under section 5 of the United Nations Participation Act, 22 U.S.C. 287c, to take such actions as may be necessary to carry out this arms embargo against Rwanda to the Secretary of Commerce and the Secretary of State, for the types of arms and related material that come under their respective jurisdictions. To carry out this delegation to the Secretary of Commerce, the Bureau of Export Administration (BXA) sets forth the policies in § 785.4 of the EAR and designates certain items on the Commerce Control List (CCL) that are subject to the arms embargo and a policy of denial to Rwanda, effective May 26, 1994. Consistent with the Executive Order, BXA maintains special procedures for exports of such items for the official use of the United Nations Assistance Mission for Rwanda (UNAMIR), the United Nations Observer Mission Uganda Rwanda (UNAMIR), or other entities permitted to have covered items by the United Nations Security Council.

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0007, and 0694–0010.

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

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 771 and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 785

Exports.

Accordingly, Parts 771, 785 and 799 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citation for 15 CFR Parts 771 and 799 is revised to read as follows:

Authority: Pub. L. 264, 59 Stat. 619 (22 U.S.C. 287c), as amended; Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40 and by Pub. L. 103–277, 108 Stat. 1407); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993); and E.O. 12918 of May 26, 1994 (59 FR 28205, May 31, 1994).

2. The authority citation for 15 CFR Part 785 is revised to read as follows:

Authority: Pub. L. 264, 59 Stat. 619 (22 U.S.C. 287c), as amended; Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40 and by Pub. L. 103–277, 108 Stat. 1407); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4,

1993); E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993); and E.O. 12918 of May 26, 1994 (59 FR 28205, May 31, 1994).

PART 771—[AMENDED]

3. Section 771.2 is amended by adding paragraph (c)(6) to read as follows:

§ 771.2 General Provisions.

* * * * *

(c) * * *

(6) The export of the item is subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4 (a) of this subchapter.

* * * * *

PART 785—[AMENDED]

4. Section 785.4 is amended by adding paragraph (a) to read as follows:

§ 785.4 Country Groups T & V.

(a) *Rwanda.* In Executive Order 12918 of May 26, 1994, the President invoked the United Nations Participation Act and the Export Administration Act and directed the Department of Commerce to take action relating to the sale or supply, including transport, of arms and related materiel of all types, regardless of origin, to Rwanda. The President's action is consistent with United States foreign policy, and in conformity with the United Nations Security Council Resolution 918 of May 17, 1994. The Department of Commerce has established the following special policies for items under its licensing jurisdiction.

(1) An embargo is in effect on the sale or supply to Rwanda of arms and related materiel of all types and regardless of origin, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for such items. A validated license is required for the sale, supply or export to Rwanda of embargoed items as listed in paragraphs (a)(1) (i) and (ii) of this section from the territory of the United States by any person. A validated license is also required for the export, reexport, sale or supply to Rwanda of such items by any United States person in any foreign country or other location. (Notwithstanding the reexport provisions of § 774.1 of this subchapter, reexport controls imposed by this embargo apply only to reexports by U.S. persons.) A validated license is further required for the use of any U.S.-registered aircraft or vessel to supply or transport to Rwanda any such items. These requirements apply to embargoed items, regardless of origin. The following policies implement this embargo:

(i) Applications for export to Rwanda of Crime Control and Detection Commodities as described in § 776.14 of this subchapter will generally be denied.

(ii) Applications for export to Rwanda of items described by any ECCN ending in "18A"; items described by ECCNs 1A88F, 2B85F, 5A80D, 6A02A.a.1, a.2, a.3 and c, 6A03A.b.3 and b.4, 6D21B, 6E01A, 6E02A, 9A22B, 9A91F.a, 0A84C, 0A86F, and 0A88F will generally be denied.

(2) This embargo was effective 11:59 p.m. EDT on May 26, 1994. Consistent with United Nations Security Council Resolution 918 and the United Nations Participation Act, this embargo is effective notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to that date, except to the extent provided in regulations, orders, directives or licenses that may be issued in the future under Executive Order 12918 or these regulations.

(3) *Definitions.* For the purposes of this embargo, the term:

(i) "Person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities; and

(ii) "United States person" means any citizen or national of the United States, any lawful permanent resident of the United States, or any corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities, organized under the laws of the United States (including foreign branches).

* * * * *

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

5. In Supplement 1 to § 799.1, Category 1 (Materials), a new ECCN 1A88F is added immediately following ECCN 1A84C to read as follows:

1A88F Bulletproof and bullet resistant vests.

Requirements

Validated License Required: SZ and Rwanda
Unit: Number
Reason for Control: FP (see Note)
GLV: $0
GCT: No
GFW: No

Note: These items are subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4 (a) of this subchapter.

* * * * *

6. In Supplement 1 to § 799.1, Category 2 (Materials Processing), ECCN 2B85F is revised to read as follows:

2B85F Equipment specially designed for manufacturing shotgun shells; and ammunition hand-loading equipment for both cartridges and shotgun shells.

Requirements

Validated License Required: SZ and Rwanda
Unit: $ value
Reason for Control: FP (see Note)
GLV: $0
GCT: No
GFW: No

Note: These items are subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4(a) of this subchapter.

* * * * *

7. In Supplement 1 to § 799.1, Category 5 (Telecommunications and "Information Security"), Subchapter III (Other Equipment, Materials, "Software" and Technology), ECCN 5A80D is revised to read as follows:

5A80D Communications intercepting devices; and parts and accessories therefor. (Specify by name.) (Also see § 776.13 of this subchapter.)

Requirements

Validated License Required: QSTVWYZ and Canada
Unit: $ value
Reason for Control: FP (see Notes)
GLV: $0
GCT: No
GFW: No

Notes: 1. These items are subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4 (a) of this subchapter.

2. Controls on this equipment are maintained in accordance with the Omnibus Crime Control and Safe Streets Act of 1968 (Pub. L. 90–351).

* * * * *

8. In Supplement 1 to § 799.1, Category 6 (Sensors), ECCNs 6A02A and 6A03A are amended by revising the "Requirements" sections and ECCNs 6D21B, 6E01A, and 6E02A are revised to read as follows:

6A02A Optical sensors.

Requirements

Validated License Required: QSTVWYZ
Unit: Number; $ value for parts and accessories
Reason for Control: NS, FP and MT (see Notes)

GLV: $3,000, except $0 for items described in paragraphs a.1, a.2, a.3, and c

GCT: Yes, except MT and FP (see Notes)

GFW: No

Notes: 1. FP controls for regional stability apply to items controlled by 6A02.a.1, a.2, a.3, and c (see § 776.16 (b) of this subchapter).

2. FP controls for human rights apply to all destinations except Australia, Japan, New Zealand, and members of NATO for police model infrared viewers controlled by 6A02.c (see § 776.14 of this subchapter).

3. MT controls apply to optical detectors described in 6A02.a.1, a.3, and a.4 that are specially designed or rated as electromagnetic (including "laser") and ionized-particle radiation resistant.

4. The items listed in 6A02.a.1, a.2, a.3, and c are subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4 (a) of this subchapter.

* * * * *

6A03A Cameras.

Requirements

Validated License Required: QSTVWYZ

Unit: Number

Reason for Control: NS, FP and NP (see Notes)

GLV: $1,500, except $0 for 6A03.a.2 through a.5, b.1, b.3 and b.4

GCT: Yes, except NP and FP (see Notes)

GFW: No

GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia, for NP only (see Notes)

Notes: 1. FP controls for regional stability apply to items controlled by 6A03.b.3 and b.4.

2. NP controls apply to items described in 6A03.a.2, a.3, a.4, a.5, and b.1.

3. The items listed in 6A03.b.3 and b.4 are subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4 (a) of this subchapter.

* * * * *

6D21B "Software" specially designed for the "development" or "production" of equipment controlled by 6A02.a.1, a.2, a.3, a.4, and c, 6A03.b.3 and b.4, 6A07.b and c, 6A22, 6A28, or 6A30.

Requirements

Validated License Required: QSTVWYZ

Unit: $ value

Reason for Control: MT and FP (see Notes)

GTDR: No

GTDU: No

Notes: 1. FP controls for regional stability apply to "software" for the "development" or "production" of equipment controlled by 6A02.a.1, a.2, a.3, and c, or 6A03.b.3 and b.4 (see § 776.16(b)).

2. MT controls apply to "software" for the "development" or "production" of equipment controlled by 6A02.a.1, a.3, and a.4, 6A07.b and c, 6A22, 6A28, or 6A30 (see § 778.7(a)).

3. "Software" for the "development" or "production" of equipment controlled by 6A02.a.1, a.2, a.3, and c, or 6A03.b.3 and b.4 is subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4 (a) of this subchapter.

* * * * *

6E01A Technology according to the General Technology Note for the "development" of equipment, materials or "software" controlled by 6A01, 6A02, 6A03, 6A04, 6A05, 6A06, 6A07, 6A08, 6B04, 6B05, 6B07, 6B08, 6C02, 6C04, 6C05, 6D01, 6D02, or 6D03.

Requirements

Validated License Required: QSTVWYZ

Reason for Control: NS, MT, NP, and FP (see Notes)

GTDR: Yes, except MT, NP, and FP (see Notes)

GTDU: No

GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia, for NP only (see Notes)

Notes: 1. MT controls apply to technology for the "development" of equipment controlled by 6A02.a.1, a.3, or a.4, 6A07.b or c, or 6A08. MT controls on technology for 6A08 equipment apply only when the equipment is designed for airborne applications and is usable in the systems described in § 778.7(a) of this subchapter.

2. FP controls for regional stability apply to technology for the "development" of items controlled by 6A02.a.1, a.2, a.3, or c and 6A03.b.3 and b.4 (see § 776.16(b) of this subchapter).

3. FP controls for human rights apply to all destinations except Australia, Japan, New Zealand, and members of NATO for technology for the "development" of police-model infrared viewers controlled by 6A02.c (see § 776.14 of this subchapter).

4. NP controls apply to technology for the "development" of equipment controlled by 6A03.a.2, a.3, a.4, a.5, or b.1 or 6A05.a.1.c., a.2.a, a.4.c, a.6 (argon ion lasers only), a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, or d.2.c.

5. Technology for the "development" of items controlled by 6A02.a.1, a.2, a.3, or c and 6A03.b.3 or b.4 is subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4 (a) of this subchapter.

Related ECCNs: See 6E21B for MT controls on technology for the "development" of equipment controlled by 6A22, 6A28, 6A29, or 6A30. See 6E40B for NP controls on technology for the "use" of cameras or lasers controlled by 6A03 or 6A05, respectively. See 6E41B for NP controls on technology for the "development", "production", or "use" of cameras or lasers controlled by 6A43 or 6A50, respectively.

6E02A Technology according to the General Technology Note for the "production" of equipment or materials controlled by 6A01, 6A02, 6A03, 6A04, 6A05, 6A06, 6A07, 6A08, 6B04, 6B05, 6B07, 6B08, 6C02, 6C04, or 6C05.

Requirements

Validated License Required: QSTVWYZ

Reason for Control: NS, MT, NP, and FP (see Notes)

GTDR: Yes, except MT, NP, and FP (see Notes)

GTDU: No

GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia, for NP only (see Notes)

Notes: 1. MT controls apply to technology for the "production" of equipment controlled by 6A02.a.1, a.3, or a.4, 6A07.b or c, or 6A08. MT controls on technology for 6A08 equipment apply only when the equipment is designed for airborne applications and is usable in the systems described in § 778.7(a) of this subchapter.

2. FP controls for regional stability apply to technology for the "production" of items controlled by 6A02.a.1, a.2, a.3, or c and 6A03.b.3 or b.4 (see § 776.16(b) of this subchapter).

3. FP controls for human rights apply to all destinations except Australia, Japan, New Zealand, and members of NATO for technology for the "production" of police-model infrared viewers controlled by 6A02.c (see § 776.14 of this subchapter).

4. NP controls apply to technology for the "production" of equipment controlled by 6A03.a.2, a.3, a.4, a.5, or b.1 or 6A05.a.1.c., a.2.a, a.4.c, a.6 (argon ion lasers only), a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, or d.2.c.

5. Technology for the "production" of items controlled by 6A02.a.1, a.2, a.3, or c and 6A03.b.3 or b.4 is subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4 (a) of this subchapter.

Related ECCNs: See 6E22B for MT controls on technology for the "production" of equipment controlled by 6A22, 6A28, 6A29, or 6A30. See 6E40B for NP controls on technology for the "use" of cameras or lasers controlled by 6A03 or 6A05, respectively. See 6E41B for NP controls on technology for the "development", "production", or "use" of cameras or lasers controlled by 6A43 or 6A50, respectively.

9. In Supplement 1 to § 799.1, Category 9 (Propulsion Systems and Transportation Equipment), ECCN 9A22B is revised and ECCN 9A91F is amended by revising the "Requirements" section to read as follows:

9A22B Vehicles designed or modified for the transport or handling of "missile" systems.

Requirements

Validated License Required: QSTVWYZ
Unit: Equipment in number; parts and accessories in $ value
Reason for Control: MT, FP (see Note)
GLV: $0
GCT: No
GFW: No

Note: These items are subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4 (a) of this subchapter.

* * * * *

9A91F Other Aircraft and certain gas turbine engines.

Requirements

Validated License Required: SZ, Iran and Syria. In addition, Rwanda for 9A91.a only.
Unit: Number
Reason for Control: FP (see Note)
GLV: $0
GCT: No
GFW: No

Note: The items listed in 9A91.a are subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4(a) of this subchapter.

* * * * *

10. In Supplement 1 to § 799.1, Category 10 (Miscellaneous), ECCNs 0A18A, 0A84C and 0A86F are revised, and a new ECCN 0A88F is added immediately following ECCN 0A86F to read as follows:

0A18A Items on the International Munitions List

Requirements

Validated License Required: QSTVWYZ
Unit: 0A18.a through .c: $ value; 0A18.d through .f: number
Reason for Control: NS, FP (see Notes)
GLV: 0A18.a and .b: $5000; 0A18.c: $3000; 0A18.d through .f: $1500; Except $0, entire entry, for Rwanda
GCT: No
GFW: No

Notes: 1. FP controls for regional stability apply to 0A18.c, except to NATO, Japan, Australia, and New Zealand.

2. Licenses for export to Iran and Syria will generally be denied.

3. These items are subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4(a) of this subchapter.

List of Items Controlled

a. Power controlled searchlights and control units therefor, designed for military use, and equipment mounting such units; and specially designed parts and accessories therefor.

b. Construction equipment built to military specifications, specially designed for airborne transport; and specially designed parts and accessories therefor.

c. Specially designed components and parts for ammunition, *except* cartridge cases, powder bags, bullets, jackets, cores, shells, projectiles, boosters, fuses and components, primers, and other detonating devices and ammunition belting and linking machines (all of which are controlled by the Office of Defense Trade Control, Department of State).

d. Bayonets.

e. Muzzle-loading (black powder) firearms.

Note: Antique small arms dating prior to 1890 and their reproductions are not controlled by this ECCN 0A18A (See ECCN 0A96G).

f. Military helmets, *except*:

f.1. Conventional steel helmets other than those described by f.2 below.

f.2. Helmets, made of any material, equipped with communications hardware, optional sights, slewing devices or mechanisms to protect against thermal flash or lasers.

Note: Helmets described in 0A18.f.1 are controlled by 0A88. Helmets described in 0A18.f.2 are controlled by the Office of Defense Trade Control, Department of State.

* * * * *

0A84C Shotguns, barrel length 18 inches or over; buckshot shotgun shells; and arms, discharge type (for example, stunguns, shock batons, electric cattle prods, immobilization guns and projectiles, etc.) except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s., including optical sighting devices for firearms.

Requirements

Validated License Required: QSTVWYZ, except for Australia, Japan, New Zealand, and members of NATO (see Notes)
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

Notes: 1. Shotguns with a barrel length 24 inches or over require a validated license for shipment to:

a. Country Groups QSWYZ, regardless of end-user;

b. Rwanda, regardless of end-user;

c. Other destinations in Country Groups T & V, except for Australia, Japan, New Zealand, and members of NATO, *only* if for sale or resale to police or law enforcement agencies.

2. Shotguns with a barrel length of at least 18 inches but less than 24 inches require a validated license to all destinations except Australia, Japan, New Zealand, and members of NATO, regardless of end-user.

3. Shotguns with a barrel length of less than 18 inches are controlled by the Office of Defense Trade Control, Department of State.

4. All items in this ECCN are subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4(a) of this subchapter.

0A86F Shotgun shells, except buckshot shotgun shells, and parts.

Requirements

Validated License Required: SZ and Rwanda
Unit: $ value
Reason for Control: FP (see Note)
GLV: $0
GCT: No
GFW: No

Note: These items are subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4(a) of this subchapter.

0A88F Conventional military steel helmets as described by 0A18.f.1; and machetes.

Requirements

Validated License Required: SZ and Rwanda.
Unit: $ value
Reason for Control: FP (see Note)
GLV: $0
GCT: No
GFW: No

Note: These items are subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4(a) of this subchapter.

Dated: August 1, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–19176 Filed 8–5–94; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 154

[Docket No. RM94–19–000; Order No. 568]

Filing Requirements for Public Utility and Interstate Natural Gas Company Rate Schedules and Tariffs

Issued July 28, 1994.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is modifying Parts 35 and 154 of its regulations to require that public utilities and interstate natural gas companies file with the Commission and serve on parties a marked version of proposed rate schedule and tariff changes that highlights new language and shows deleted language by strikeout.

EFFECTIVE DATE: September 7, 1994.

FOR FURTHER INFORMATION CONTACT: Richard A. White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0491.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPs, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of the document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. The Revised Filing Requirements

The Federal Energy Regulatory Commission (Commission) is amending Parts 35 and 154 of its regulations to require public utilities and interstate natural gas companies to file a marked version of proposed rate schedule and tariff changes that highlights new language and shows deleted language by strikeout. The changes to the Commission regulations are to be effective on September 7, 1994.

On April 15, 1994, the Commission received a joint petition from 18 parties[1] (petitioners), representing a broad array of gas and electric industry interest groups that participate in Commission proceedings. Petitioners requested that natural gas companies[2] and public utilities[3] include in any filing that changes an existing rate schedule or tariff a "redlined" version of the rate schedule or tariff showing all the changes on the pages to be superseded, supplemented, or otherwise changed with the replacement pages.

In support of their request, the petitioners state that the Commission's current filing regulations only require that regulated companies provide a "brief description of the rate schedule change"[4] or a "statement of the nature" of the proposed change."[5] Petitioners state that it is very difficult for interested parties to quickly understand what changes are being made. Petitioners state that the burden of requiring regulated companies to provide marked versions is small because of the widespread availability of computerized highlighting capability.

The Commission agrees with the petitioners. Commission staff and interested parties typically spend an appreciable amount of time performing side-by-side comparisons of the different versions of a document in order to understand the changes. To facilitate review of the documents, for each copy of the filing otherwise required by these regulations a marked version of the filing showing the deletions and additions must be submitted to the Commission and serve on the parties. Marking of the text may be achieved in a number of ways. The new language must be marked by highlight, background shading, bold text or underlined text. Deleted language must be indicated by strike-through. Much time and resources will be saved by the change. Therefore, the Commission is adopting the proposed changes to its regulations.

II. Public Reporting Burden

The Commission estimates the public reporting burden for the collection of information under the rule will increase the existing reporting burden by an average of 45 minutes per response. Filed documents are typically produced using word processors, and most word processing programs have the capability to provide documents in the marked version. Further, little effort is required to produce a marked version by hand, if necessary. The average number of responses to be submitted to the Commission is four times a year. The number of respondents is estimated to be 234 for public utilities and 50 for interstate natural gas pipeline companies. The annual reporting burden associated with this information collection requirement is 702 hours for electric filings and 748 hours for gas filings for a combined total of 1450 hours.

Interested persons may send comments regarding these burden estimates or any other aspect of this information collection, including suggestions for reducing the burden by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE, Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission), FAX: (202) 395–5167.

III. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[6] requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have a "significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if a rule would not have such an effect.

The Commission does not believe that this rule will have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of small entity.[7] Further, even small entities

[1] American Forest & Paper Association, Fuel Managers Association, American Iron and Steel Institute, American Public Gas Association, American Public Power Association, Associated Natural Gas, Chemical Manufacturers Association, Electricity Consumers Resource Council, Electric Generating Association, Hadson Gas Systems, The Fertilizer Institute, Natural Gas Clearinghouse, Northeast Energy Associates, Northwest Industrial Gas Users, Process Gas Consumers Group, Producer-Marketer Transportation Group, Public Service Commission of the State of New York, and Texas Independent Producers and Royalty Owners Association.

[2] As defined in the Natural Gas Act, 15 U.S.C. 717a(6) (1988).

[3] As defined in the Federal Power Act, 16 U.S.C. 824(e) (1988).

[4] 18 CFR 35.13(b)(4).

[5] 18 CFR 154.63 (b)(ii).

[6] 5 U.S.C. 601–612.

[7] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and

Continued

could produce the marked filing with common office copier and a pen. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

IV. Environmental Statement

The Commission has excluded certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.[8] No environmental consideration is raised by the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.[9] The instant rule is purely procedural. Accordingly, no environmental consideration is necessary.

V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[10] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this final rule are contained in FERC–516 "Electric Rate Schedule Filings" (1902–0096) and FERC–542 "Gas Pipeline Rates: Initial Rates, Rate Change & Tracking" (1902–0070); FERC–544 "Gas Pipeline Rates: Rate Change (Formal)" (1902–0153) and FERC–545 "Gas Pipeline Rates: Rate Change (Non Formal)" 1902–0154.

The Commission is issuing this final rule to require that all material filed with the Commission be marked to indicate changes to the rate schedules and tariffs, whether they be additions or deletions. The Commission uses the information to carry out its regulatory responsibilities pursuant to the Energy Policy Act of 1992, the Federal Power Act and the Natural Gas Act. The Commission's Office of Electric Power and Regulation (OEPR) uses the information for review of electric rate filings. The Commission's Office of Pipeline Regulation uses the information to review rate filings by natural gas pipelines for the transportation of gas.

The Commission is submitting to the Office of Management and Budget a notification of these collections of information. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE, Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB, Washington, D.C. 20503, (Attention: Desk Officer for Federal Energy Regulatory Commission) FAX: (202) 395–5167.

VI. Administrative Findings and Effective Date

The Administrative Procedure Act (APA) exempts certain rules from notice and comment requirements.[11] Specifically, the APA exempts "rules of agency organization, procedure, or practice" from the requirements for notice and comment.[12] The requirement to file marked versions of filings qualifies for exemption as a procedural rule because it does not affect the substantive rights of a party.

This order is effective on September 7, 1994.

List of Subjects in 18 CFR Parts 35 and 154

Public Utilities, Natural Gas Companies, Rate Schedules and Tariffs.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends Parts 35 and 154 in Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 35.10, a new paragraph (c) is added to read as follows:

§ 35.10 Form and style of rate schedules.

* * * * *

(c) At the time a public utility files with the Commission and posts under this part to supersede, supplement, or otherwise change the provisions of a rate schedule previously filed with the Commission under this part, in addition to the other requirements of this part, it must file and post a marked version of the pages to be changed showing additions and deletions. The new language must be marked by either highlight, background shading, bold text, or underlined text. Deleted language must be marked by strike-through. A marked version of the pages to be changed must be included in each copy of the filing required to be filed or posted by this part.

PART 154—RATE SCHEDULES AND TARIFFS

3. The authority citation for Part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

4. In § 154.63, a new paragraph (b)(1)(v) is added to read as follows:

§ 154.63 Changes in a tariff, executed service agreement or part thereof.[1]

* * * * *

(b) *Material to be submitted—(1) All filings.*

* * * * *

(v) A marked version of the pages to be changed or superseded showing additions and deletions. All new language must be marked by either highlight, background shading, bold text, or underlined text. Deleted language must be indicated by strike-through. A marked version of the pages to be changed must be included in each copy of the filing required by these regulations.

* * * * *

[FR Doc. 94–18868 Filed 8–5–94; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Parts 154, 157, 270, 271, 272, 273, 274 and 275

[Docket No. RM94–18–000; Order No. 567]

Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production

July 28, 1994.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has reviewed its regulations and has determined that certain of its regulations pertaining to producer natural gas matters are either outdated or serve no useful purpose. Consequently, these outdated or nonessential regulations will be removed from the Commission's regulations.

EFFECTIVE DATE: This final rule is effective July 28, 1994.

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operated and which is not dominant in its field of operation.

[8] 18 CFR 380.4.

[9] 18 CFR 380.4(a)(2)(ii).

[10] 5 CFR 1320.14.

[11] 5 U.S.C. 553(b)(3).

[12] 5 U.S.C. 553(b)(3)(A).

[1] The provisions of this section shall not be applicable to filings made pursuant to §§ 154.81 through 154.86, unless such filing results in a change in rate, charge, classification or service.

FOR FURTHER INFORMATION CONTACT: Sandra Elliott, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0694.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction and Background

The Federal Energy Regulatory Commission (Commission) has reviewed its regulations and has determined that certain of its regulations pertaining to natural gas producer matters are either outdated or serve no useful purpose due to the decontrol of wellhead sales. Some of the regulations under the Natural Gas Act at issue here were promulgated by the Federal Energy Regulatory Commission's predecessor, the Federal Power Commission (FPC). Consequently, these outdated or nonessential regulations will be deleted from the Commission's body of regulations. The regulations to be deleted are located in 18 CFR Parts 154, 157, 270, 271, 272, 273, 274, and 275.

The Commission derives its initial responsibility regarding natural gas matters from the Natural Gas Act of 1938, 15 U.S.C. 717-717(w) (1988) (NGA).[1] Subsequently, Congress amended the NGA by enacting the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1988) (NGPA). The NGPA was enacted in 1978 to deal with the shortages of gas occurring in the 1970's in the interstate market. Under the NGPA, certain categories of natural gas were immediately removed from the Commission's jurisdiction, and other categories of natural gas were removed between 1979 and 1987. Subsequently, Congress passed the Natural Gas Wellhead Decontrol Act of 1989 (Decontrol Act).[2] The Decontrol Act was the final step in the wellhead decontrol of natural gas that was begun by the NGPA. The Decontrol Act deregulated certain categories of first sales of natural gas prior to January 1, 1993, and provided that, as of January 1, 1993, all "first sales" of natural gas, as that term was defined in the NGPA, are no longer subject to federal regulation. The Decontrol Act states that as a result of the repeal of Title I of the NGPA, the provisions of the contracts between the parties for the sale of such gas will govern according to their terms. The Decontrol Act also repealed section 503 of the NGPA which set forth the procedures and requirements for obtaining NGPA well category determinations. However, the NGA still governs the transportation and wholesale sales of natural gas by interstate pipelines. In passing the Decontrol Act, Congress also expressed its intent that the Commission reduce unnecessary filings and reporting requirements.[3]

In light of the complete decontrol of all wellhead sales of natural gas on January 1, 1993, the Commission's regulations implementing Title I of the NGPA and Sections 4, 5, and 7 of the NGA for wellhead sales are no longer necessary, and will be deleted.

II. Public Reporting Burden

The Commission believes that the elimination of these nonessential and outdated regulations will to some extent reduce the reporting burden on producers of natural gas since there will no longer be a need to file applications and changes in rate schedule, and this rule will not impose any new reporting requirements. The Commission is notifying the Office of Management and Budget that the information collection burdens are being reduced by this rule.

III. Discussion

A. Part 154

Section 154.42 pertains to natural gas that is produced by an interstate pipeline or an affiliate thereof and that is delivered to such pipeline or affiliate in a first sale on or after December 1, 1978. This regulation is outdated because of the Decontrol Act. In Order No. 523,[4] the Commission found that the Decontrol Act deregulated the sale of pipeline production for system supply on July 27, 1989. The Commission also found that pipeline production subject to an existing contract with another pipeline or particular customer was eligible for decontrol in accordance with the provisions of the Decontrol Act. Thus, the sale of pipeline production was totally deregulated as of January 1, 1993. Therefore, this section will be deleted.

Sections 154.91-103 specify the requirements for the filing of rate schedules and changes in rate schedules for the sale of natural gas by natural gas producers and gatherers and the requirements governing the Commission's acceptance or rejection of those filings. Since the Decontrol Act deregulated all first sales of natural gas as of January 1, 1993, the filing of rate schedules for the sale of natural gas by producers and gatherers is no longer required and these regulations are obsolete. Therefore, these sections will be deleted.

Sections 154.105-109(b) set forth area rates for interstate natural gas producer sales. The Commission has not established area or national rates since passage of the NGPA in 1978. Sections 104 and 106(a) of the NGPA established maximum lawful prices for certain first sales of natural gas, which reflected the area and national rates established by the Commission. The Decontrol Act deregulated the price for all first sales of natural gas as of January 1, 1993. Therefore, these sections are obsolete and will be removed.

Section 154.110 provides a small producer exemption from the requirements of §§ 154.92-102. As we are removing those sections from the Commission's body of regulations in this order, § 154.110 is no longer needed. Accordingly, this section will be removed.

B. Part 157

Subpart B of Part 157 concerns filings by producers and gatherers for

[1] In Phillips Petroleum Company v. Wisconsin, 347 U.S. 672 (1954), the Court held that the NGA also extended the Commission's jurisdiction over the price for wellhead sales of natural gas for resale in interstate commerce.

[2] Pub. L. No. 101-60; 103 Stat. 157 (1989).

[3] Senate Report 101-39, 101st Cong. 1st Sess. at 15.

[4] Order Implementing the Natural Gas Wellhead Decontrol Act of 1989, 55 FR 17425 (April 25, 1990) FERC Stats. & Regs. Preambles ¶ 30,887 April 18, 1990).

certificates of public convenience and necessity under section 7 of the NGA.

Section 157.23 concerns the filing by producers of applications for NGA 7(c) certificates for the first sale of natural gas for resale in interstate commerce. All first sales were deregulated as of January 1, 1993. In addition, in Order No. 547,[5] the Commission issued a final rule governing jurisdictional sales for resale of natural gas (*e.g.*, LNG or imported gas) by persons who are not interstate pipelines. That rule issued blanket certificates of public convenience and necessity authorizing certificate holders to make jurisdictional gas sales for resale at negotiated rates, with pregranted abandonment, and eliminated the need or requirement for persons to file applications seeking such authorizations. Thus, this section is no longer needed since the blanket certificate will cover any jurisdictional sales formerly subject to this section that still require certificate authorization.

Sections 157.24–27 describe the contents of the application under § 157.23. Since that section is being deleted, these sections are also deleted.

Section 157.28 concerns the filing for temporary authorizations upon the filing of an application under § 157.23. Since that section is being deleted, this section is also deleted.

Section 157.30 governs the abandonment of sales by independent producers, and any first seller. Since all first sales of natural gas have been decontrolled as of January 1, 1993, this section is being deleted.

Section 157.39 excludes small producers, as that term is defined in § 157.40, from the requirements of the above cited provisions in Part 157 except for § 157.30. Since those provisions are being deleted, this section is also deleted.

Section 157.40 excludes small producers, as defined in that section, from various filing requirements. Since those filing requirements are no longer applicable, this section is not necessary.

Section 157.41 requires the inclusion of a prudent operator provision in developing and maintaining deliverability from natural gas reserves in every certificate of public convenience and necessity for the first sale of natural gas for resale. Since the Commission does not have jurisdiction over wellhead production activities or first sales of natural gas, the section is being deleted.

[5] Regulations Governing Blanket Marketer Sales Certificates, 57 FR 57592 (December 8, 1992), III FERC Stats. & Regs. Preambles ¶ 30,957 (November 30, 1992).

C. Parts 270–275

Parts 270 through 275 concern first sale regulations under the NGPA. As explained more fully below, in light of the repeal of NGPA Title 1, effective January 1, 1993, these regulations are not necessary since there no longer are maximum ceiling prices.

Part 270 discusses the application of ceiling prices to the first sales of natural gas. With the repeal of NGPA Title I, effective January 1, 1993, the contract between the parties establishes the price of the natural gas.

Part 271 reflects the maximum lawful price of the various categories of natural gas under NGPA Title I. With the repeal of Title I, effective January 1, 1993, this section is no longer necessary.

Section 271.1105 established the Production-Related Costs Board (Board), with authority to resolve disputes regarding the appropriate allowance for production-related costs in excess of the otherwise applicable maximum lawful price. The repeal of Title I of the NGPA eliminates the need for the Board and deletion of Part 271 terminates the existence of the Board. Therefore, any matter pending before the Board on the effective date of this order, or any subsequent dispute that would have been referred to the Board, will be acted on by the Commission.

Part 272 describes the various categories of gas that were deregulated under the NGPA and the Decontrol Act. Since all first sales of gas were deregulated effective January 1, 1993, the section is no longer necessary.

Part 273 concerns the authority of first sellers to make interim collections (pending a final NGPA well category determination) and retroactive collections (subsequent to a final NGPA well category determination) of certain prices for first sales of natural gas under the NGPA. Part 273 also provides for the refund of any unauthorized interim collections or interim collections in excess of the maximum lawful price under the NGPA. The Decontrol Act deregulated the price for all first sales of natural gas and repealed Section 503 of the NGPA which contained the authority to make interim collections and NGPA eligibility determinations. Therefore, Part 273 is outdated and will be deleted.

Part 274 sets forth procedures and filing requirements for jurisdictional agency determinations that gas produced from a particular well qualifies for certain maximum lawful prices under the NGPA. The Decontrol Act deregulated all first sales of natural gas and repealed Section 503 of the NGPA, which contained the authority to make jurisdictional agency NGPA well category determinations, as of January 1, 1993. Order No. 539–C required that all pending jurisdictional agency NGPA well category determinations be filed with the Commission by April 30, 1994.[6] Accordingly, Part 274 is outdated and will be removed.

Part 275 concerns the procedures and requirements for Commission NGPA well category determinations and Commission review of jurisdictional agency NGPA well category determinations. The Decontrol Act deregulated all first sales of natural gas and repealed Section 503 of the NGPA, which provided the Commission's authority to make NGPA well category determinations and to review jurisdictional agency well category determinations, as of January 1, 1993. The deadline for jurisdictional agency determinations to be filed with the Commission has passed. Accordingly, Part 275 is obsolete and will be deleted. However, rescission of Part 275 is prospective only and any timely filed applications for NGPA well category determination proceedings still pending before the Commission, will continue to be subject to the requirements of Part 275 as that section existed prior to the effective date of this order.

Furthermore, in accordance with the intent of Congress, any first sale of natural gas occurring prior to decontrol will be subject to the Commission's wellhead pricing regulations as they were in effect at the time of the sale. The Senate Report on the 1989 Wellhead Decontrol Act states, "The Committee intends the usual 'savings clause' interpretations, such as those in I U.S.C. 109, to be applied to this legislation."[7] Similarly, the House report on the 1989 Wellhead Decontrol Act states, "the gradual expiration of controls after enactment and before January 1, 1993, and their complete expiration on and after that date, will not affect civil or criminal proceedings pending at the time of decontrol, nor any action or proceeding based on pre-decontrol acts or conduct."[8]

[6] Order Qualifying Certain Tight Formation Gas for Tax Credit, 58 FR 38528 (July 19, 1993), III FERC Stats. & Regs. Preambles ¶ 30,974 (July 12, 1993). The Commission denied extension of the April 30, 1994 deadline in an order issued March 1, 1994. Order Qualifying Certain Tight Formation Gas for Tax Credit, 66 FERC ¶ 61,269 (1994). However, since April 30, 1994, was a Saturday, in accordance with Commission regulations, notices of determination filed by jurisdictional agencies with the Commission by May 2, 1994, were accepted.

[7] S. Rept. No. 39, 101st Cong., 1st Sess. (1989).

[8] H. Rept. No. 29, 101st Cong., 1st Sess. (1989).

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[9] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Because this rule eliminates pricing regulations regarding the sale of natural gas, which reduces the burdens on small entities, the Commission certifies that promulgating this rule does not represent a major federal action having a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[10] require that OMB approve certain information collection requirements imposed by agency rule. Since this order does not impose new regulations and has no impact on current information collections, there is no need to obtain OMB approval as to the deletion of these regulations.

VI. National Environment Policy Act Statement

The Commission concludes that promulgating this rule does not represent a major federal action having significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[11] This rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations.[12] Consequently, neither an environmental impact statement nor an environmental assessment is required.

VII. Effective Date

This rule does not alter the substantive rights or interests of any interested persons, and it merely removes certain outdated and nonessential natural gas regulations from the Commission's body of regulations on a prospective basis. Therefore, prior notice and comment under section 4 of the Administrative Procedure Act (APA)[13] are unnecessary. Since the purpose of this final rule is to remove directives from the Commission's regulations that are no longer pertinent, the Commission finds good cause to make this rule effective immediately upon issuance. This rule therefore is effective July 28, 1994.

List of Subjects

18 CFR Part 154

Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedures, Natural gas, Reporting and recordkeeping requirements.

18 CFR Parts 270, 271, 273 and 274

Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 272

Natural gas.

18 CFR Part 275

Natural gas, Price controls, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends Parts 154, 157, 270, 271, 272, 273, 274, and 275, Title 18, Chapter I, Code of Federal Regulations, as set forth below.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

§ 154.42 and 154.91 thru 154.110 [Removed]

2. Sections 154.42 and 154.91 through 154.110 are removed.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

3. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7102–7352.

Subpart B of Part 157—[Removed and Reserved]

4. Subpart B of Part 157 is removed and reserved.

5. Under the authority of the Gas Wellhead Decontrol Act of 1989, Pub. L. No. 101–60, Parts 270 through 275 are removed.

[FR Doc. 94–18869 Filed 8–5–94; 8:45 am]

BILLING CODE 6717–01–M

[9] 5 U.S.C. 601–612 (1988).

[10] 5 CFR Part 1320.

[11] 18 CFR Part 380.

[12] 18 CFR 380.4(a)(2)(ii).

[13] 5 U.S.C. 533(b) (1988).

18 CFR Parts 341, 342, and 343

[Docket No. RM93–11–001; Order No. 561–A]

Revisions to Oil Pipeline Regulations Pursuant to Energy Policy Act of 1992

July 28, 1994.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to revise the requirements for filing suspension supplements of oil pipeline tariffs in order to provide additional time to file suspension supplements; to modify the circumstances under which oil pipelines may use the cost-of-service methodology for changing rates in order to more closely track the standard for shipper protests to an indexed rate; and to modify the requirements for protests to oil pipeline tariff filings in order to require that a protestant file a verified statement to support its claim of a substantial interest in the proceeding. The effect of these actions will be to provide a more accurate, timely, and balanced approach to oil pipeline ratemaking under the Energy Policy Act of 1992 and the Interstate Commerce Act.

EFFECTIVE DATE: The amendments to Part 341 are effective September 7, 1994, and the amendments to Parts 342 and 343 are effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0224.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this proposed rule will be

available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction

A. Order No. 561

On October 22, 1993, the Federal Energy Regulatory Commission (Commission) issued Order No. 561 in this proceeding.[1] Order No. 561 promulgated regulations pertaining to the Commission's jurisdiction over oil pipelines under the Interstate Commerce Act (ICA),[2] to fulfill the requirements of the Energy Policy Act of 1992 (Act of 1992).[3]

The final rule reflects the Commission's compliance with the mandate of Congress in enacting the Act of 1992. In the final rule, the Commission recognized that Congress deemed certain rates to be just and reasonable, thereby forming a baseline for many future oil pipeline rate changes and obviating future debate over the appropriateness of existing rates, many of which are based on valuation or trended original cost methodologies. The final rule, in accordance with the directive of section 1801 of the Act of 1992, provided a "simplified and generally applicable" approach to changing just and reasonable rates through use of an index system to establish ceiling levels for such rates. The final rule adopted the annual change in the Producer Price Index for Finished Goods, minus one percent (PPI–1), as the appropriate index to determine annual ceiling levels of rates to be charged by oil pipelines.[4]

As alternatives to the indexing approach, the final rule permits, in certain defined circumstances, other rate-setting or rate-changing methodologies. The final rule permits cost-of-service proceedings to establish just and reasonable rates, with regard to initial rates for new service, and also with regard to changes to existing rates where appropriate.[5] The final rule retained the Commission's policy of encouraging settlements of rate issues at any stage in the proceedings. Finally, the final rule continued to allow pipelines to seek Commission authorization to charge market-based rates.[6]

In addition to establishing the ratemaking methodologies to be followed by oil pipelines, the final rule, pursuant to the directives of the Act of 1992, adopted certain reforms to the Commission's procedures relating to oil pipeline proceedings. The final rule also included an updating of Commission regulations pertaining to oil pipeline tariffs.

B. Order on Rehearing

This order on rehearing grants, in certain respects, the applications for rehearing that were filed, and clarifies in part the final rule.[7] The changes made in the rule on rehearing are:

1. Section 341.4 of the regulations is modified to require the filing of suspension supplements within 30 days of the suspension order, instead of 15 as required in the final rule.

2. The "uncontrollable circumstances" test of § 342.4 of the regulations has been modified to provide that the pipeline may use the cost-of-service methodology for changing rates when it can demonstrate that its prudently incurred costs have increased to such an extent that there is a substantial divergence between such costs and the rate produced by application of the index. This change will more closely track the standard for shipper protests to an indexed rate as reflected in § 343.2.

3. Section 343.3 of the regulations has been modified to require that a protestant must file a verified statement which contains a detailed description of the nature and substance of the protestant's substantial interest in the pipeline's tariff filing.

In all other respects, Order No. 561 is affirmed as issued.

The Commission re-affirms that the index approach to oil pipeline ratemaking should be instituted on January 1, 1995. The indexing methodology adopted in the final rule is designed to fulfill both the simplification directive of the Act of 1992 and the just and reasonable standard of the ICA. It will simplify, and thereby expedite, the process of changing rates by allowing, as a general rule, such changes to be made in accordance with a generally applicable index. It will ensure compliance with the just and reasonable standard by subjecting the PPI–1 index to periodic monitoring and, if necessary, adjustment, and, in addition, by providing both pipelines and their customers with an opportunity to show in individual cases that the indexed ceiling level does not comport with the just and reasonable requirement of the ICA.

The Act of 1992 directed the Commission to establish a ratemaking methodology that is "simplified and generally applicable,"[8] and comports with the just and reasonable standard of section 1(5) of the ICA. At the outset of undertaking compliance with the Act of 1992, the Commission was confronted by a significant fact: Congress, in section 1803 of the Act of 1992, deemed the vast majority of existing rates to be just and reasonable, and subject to challenge only under narrowly defined circumstances. Thus, with a few exceptions, the oil pipeline industry's existing rates have been established as a just and reasonable baseline. Moreover, this is a baseline that has resulted not from an examination and confirmation of underlying costs, but from a statutory edict.

This statutory just and reasonable baseline of existing rates, combined with the mandate to simplify and expedite, has focused the Commission's task in this proceeding upon formulating a streamlined way of regulating rate changes. Thus, the indexed rate-cap methodology set forth in the final rule, and re-affirmed in this order, constitutes a simplified and generally applicable methodology of changing rates.

Simplification results from the elimination, with rare exceptions, of rate-specific examinations of costs. Under the indexed rate-cap approach, rates are allowed to change so long as the resulting rate is at or below a ceiling

[1] Revisions to Oil Pipeline Regulations Pursuant to Energy Policy Act, Order No. 561, III FERC Statute & Regulations ¶ 30,985 (1993), which will be referred to herein as the "final rule."

[2] 49 U.S.C. app. 1 (1988).

[3] 42 U.S.C.A. 7172 note (West Supp. 1993).

[4] The Commission stated in the final rule that it would undertake an examination of the relationship between the annual change in the index and the actual cost changes experienced by the oil pipeline industry every five years, beginning in the year 2000.

[5] The Commission, concurrently with the issuance of the final rule, issued a notice of inquiry to explore ways to improve the collection of data on oil pipeline costs, and as a first step in establishing filing requirements for cost-of-service rate filings, to facilitate these cost-of-service proceedings. *See* Cost-of-Service Filing and Reporting Requirements for Oil Pipelines, Notice of Inquiry, IV FERC Stats. & Regs. ¶ 35,528 (October 22, 1993); Notice of Proposed Rulemaking, Cost of Service Filing and Reporting Requirements for Oil Pipelines, Docket No. RM94–2–000, issued concurrently with this order.

[6] The matter of market-based rates is also the subject of a notice of inquiry issued concurrently with the final rule. *See* Market-Based Ratemaking for Oil Pipelines, Notice of Inquiry, IV FERC Stats. & Regs. ¶ 35,527 (October 22, 1993); Notice of Proposed Rulemaking, Market-Based Ratemaking for Oil Pipelines, Docket No. RM94–1–000, issued concurrently with this order.

[7] A list of those parties filing applications for rehearing or requests for clarification is attached as Appendix A to this order, and the names by which they are referred herein.

[8] Section 1801, Act of 1992.

level established by the index. This approach is also generally applicable because a rate cap methodology serves to constrain rates in the pipeline's markets.

The indexing methodology adopted in the final rule and affirmed here is fundamentally based upon costs. The index selected, PPI–1, is that which the evidence in the record indicates most closely approximates the actual cost changes experienced by the oil pipeline industry. Thus, changes in rate ceilings should reflect changes in costs to the pipeline industry. To ensure this nexus is maintained, the Commission will periodically examine the relationship between the selected index and the actual cost changes experienced by the oil pipeline industry. Appropriate adjustments to the index will be made as warranted by the results of this periodic review.

The indexing methodology also provides a mechanism for ensuring in individual cases that the actual rates charged are within the zone of reasonableness required by the just and reasonable standard of the ICA. A protest may be filed against a rate increase that is within the applicable ceiling, if the increase is substantially in excess of the actual increase in costs experienced by the pipeline. The complaint procedure of section 13(1) of the ICA also remains available to challenge existing rates that are arguably unjust and unreasonable. Conversely, a pipeline may file a rate increase that exceeds the applicable ceiling, if it can show that its prudently incurred costs are substantially in excess of the cost changes reflected in the index.

In this fashion, the regulatory scheme adopted by the Commission will provide constant monitoring of the relationship of the index to the costs of both the pipeline industry as a whole and of individual pipelines. To the extent this monitoring indicates a discrepancy between the index and changes in pipeline costs such that the indexed ceilings do not constrain rates to just and reasonable levels, the necessary adjustments to the index, or to its application to a particular rate, will be made.

Although certain petitioners on rehearing have challenged the Commissioner's authority to do so, judicial precedents make clear that an agency may lawfully enforce a "just and reasonable" standard through the imposition of rate caps derived from a broad-based index.[9] The indexed rate-cap methodology adopted in this proceeding has firm legal grounding in these precedents and is, with one exception, no different in substance from the methodologies affirmed in these cases.

The exception is the index that is to be used. In the *Mobil, Northern Telecom,* and other cases, the index in question was the Gross Domestic Product—Implicit Price Deflator (GDP–IPD), which is a measure of general inflation in the economy. In this proceeding, the Commission has selected the PPI–1 as the index to compute rate caps. This decision is based upon the conclusion that the PPI–1, which reflects changes in prices of finished goods, will more closely track the cost changes experienced by a typical pipeline than will the GDP–IPD. To ensure over time that this nexus between the changes in the index and the cost changes experienced by the typical pipeline will be maintained, the Commission will conduct a review of the PPI–1 index every five years, beginning in the year 2000.

An agency may lawfully rely upon the rate caps established by the index to constrain individual rates to just and reasonable levels. There is, in other words, generally no need, under the indexed rate-cap methodology, to examine the relationship between changes in costs and changes in rates on a rate-specific basis. *See, e.g., Permian Basin Area Rate Cases, supra.*

Nonetheless, since there may be cases presenting exceptional circumstances, the methodology includes procedures for both popelines and shippers to show the need for overriding the presumptive validity of the rate cap. These procedures reinforce the appropriateness of using an indexed rate-cap methodology. *See Permian Basin Area Rate Cases* (special relief provision);[10] *National Telecom* (waiver provisions). It should be emphasized that these procedures will be invoked only in truly exceptional cases, in order to achieve the simplification objective of the indexed rate-cap methodology.[11]

It bears emphasizing that the choice of the PPI–1 index for use in the methodology adopted in this rule is not a choice for all time. The operation of this index will be monitored to ensure that actual rates charged customers comply with the just and reasonable standard of the ICA.

II. Issues Raised and Commission Response

A. Choice of Index

1. PPI–1 vs. GDP–IPD

AOPL and its members support the use of a general inflation index, but claim that the choice of PPI–1 is not supported by record evidence and is based on flawed statistical analysis presented by Dr. Alfred Kahn, while voluminous evidence by AOPL (and its members) in favor of using the GDP–IPD, adjusted upward by 2.5 percent (GDP+2.5), has been ignored.

Before addressing this criticism directly, it would be useful to describe briefly how the Commission came to adopt the PPI–1 index for use in this rule.

The final rule in this proceeding is the result of a notice of proposed rulemaking (NOPR) initiated by the Commission on July 23, 1993,[12] in response to the mandate of Congress that the Commission issued a final order revising oil pipeline ratemaking, contained in the Act of 1992. On March 18, 1993, the Commission made available for comment a Proposal for Revisions to Oil Pipeline Regulation Pursuant to the Energy Policy Act of 1992, prepared by the Commission staff (Staff Proposal). Staff proposed, among other things, that the Commission adopt as a primary means of regulating oil pipeline rates an indexing methodology based on PPI–1. Twenty-four sets of comments were received on the Staff Proposal.

In the NOPR, the Commission proposed to use, as its primary means of regulating oil pipeline rates, an indexing system similar to that contained in the Staff Proposal. However, rather than the PPI–1, the Commission proposed to use the GDP–IPD as the index. Forty-two sets of comments were received from parties representing pipelines, shippers, State commissions, consumers, and trade associations.

Included in the comments on the NOPR were the sworn statement of Dr. Alfred Kahn, attached to the comments of Crysen Refining Company, *et al.* Dr.

[9] *See, e.g.,* Mobil Exploration & Producing Southeast, Inc., et al. v. United Distribution Cos., 498 U.S. 211 (1991); National Rural Telecom Association v. FCC, 988 F.2d 174 (D.C. Cir. 1993). *See also* Permian Basin Area Rate Cases, 390 U.S. 747 (1968). In Permian, the area rates for producers were established with reference to an examination of area costs. Appellants argued on appeal that the Commission was required to make a rate-specific cost inquiry. The Court held to the contrary.

[10] In *Permian Basin Area Rate Cases,* the Court did not reach the question whether providing for exceptions was legally necessary, because the Commission's rule contained procedures for exceptions.

[11] In *Permian Basin Area Rate Cases,* the Court noted with approval the Commission's stated intention to grant exceptions to the area rate ceilings only rarely, lest the administrative benefits of regulating through area rates be undermined. The Court also found no infirmity with the Commission's decision not to set forth in advance specific criteria to govern applications for exceptions. 390 U.S. at 772.

[12] 58 FR 37671 (July 13, 1993).

Kahn generally supported the use of PPI–1 as best reflecting the cost changes experienced by product pipelines and reported to the Commission in the pipelines' annual report to the Commission, Form No. 6. AOPL and the pipelines generally supported the use of the GDP–IPD as the index, adjusted upward by 2.5 percent, arguing that this index better reflected pipeline cost changes. Based on these comments, the Staff paper, and the NOPR, the Commission formulated the final rule, adopting as the index for pipeline rates the change in the PPI–1.

Numerous applications for rehearing were filed, and on December 9, 1993, Sinclair Oil Corporation and NCFC filed a response to the application for rehearing of AOPL. This response included the sworn statement of Dr. Robert Means, supporting the Commission's use of PPI–1 and the Kahn statement generally. Thereafter, on December 22, 1993, the Commission requested further comments on the issue of the appropriate index to use for changes to oil pipeline rates.[13] Six statements and comments were received. The supplemental comments of AOPL generally criticized the Kahn and Means studies.

Based on consideration of the foregoing items, the Commission reaffirms its decision to use the PPI–1 as the appropriate index for oil pipeline rate regulation. The choice of PPI–1 was not exclusively dependent on the evidence submitted by Dr. Kahn. The proposal for using PPI–1 was first introduced into the record in this proceeding in the Staff Proposal, before any testimony was submitted. The Staff Proposal argued that PPI–1 would track industry costs better than the Consumer Price Index (CPI) and the GDP–IPD because, for example, the latter were significantly influenced by "rapidly escalating health care costs,"[14] the full extent of which would not be borne by employers. The Commission ultimately chose PPI–1 in the final rule, but this choice did not hinge exclusively on Dr. Kahn's testimony nor solely on his statistical presentation of pipeline costs.

AOPL does not dispute that some general measure of inflation should be used as the index for pipeline rate changes. As AOPL points out, "The only practical and economically sensible method for addressing the oil pipeline industry's capital costs under indexation is to rely upon a general measure of inflation, which by its design captures the underlying changes in capital costs reflected in the cost of goods sold."[15]

Both the GDP–IPD and the PPI–FG are commonly considered and used as measures of general inflation. However, the GDP–IPD has flaws, both as a measure of general inflation and as a contractual price escalator, despite its common use. The flaws are sufficiently serious for the Bureau of Economic Analysis of the Department of Commerce (BEA), the organization responsible for constructing and publishing this index, to have issued a fact sheet recommending against its use as an escalator:

> The Bureau of Economic Analysis does not recommend specific measures for escalation in contractual or other agreements. However, we do recommend that the implicit price deflators (for GDP, GNP, and other components) *not* be used as measures of price change.[16]

The two most important flaws of the GDP–IDP are (1) it is *not* simply a measure of price change, but it also reflects changes in the composition of GDP, and (2) it is subject to revision for up to five years after its publication.

The first problem can be illustrated by health care costs. Health care expenditures and prices have been rising at a much faster rate than other components of GDP and non-health care prices, respectively.[17] Because the GDP–IPD reflects both the increased "weight" given to health care and the increase in its price, it is an upwardly biased measure of health care price inflation. For categories whose share of GDP fall as prices rise, GPD is a downwardly-biased measure of price change.[18]

BEA ordinarily revises the GDP–IPD each July and covers the months and quarters of the most recent calendar year and the preceding two years. Thus, the July 1994 revision will cover the years 1991, 1992, and 1993. Comprehensive revisions are carried out at five year intervals, the most recent of which was released in December 1991.[19]

In contrast to the GDP–IPD, the PPI–FG is a fixed-weight index of the prices of finished goods taken at the producer level. It does not directly include the prices of services, such as those provided by medical doctors and hospitals, by teachers, lawyers, and others. It does reflect indirectly the increased cost of medical care, education, and legal service, since product costs will rise if the wage-benefit package that producers must pay reflects the higher prices of medical, educational, and legal services. Unless offset by productivity gains, producer prices will rise to reflect these higher costs. The PPI will reflect the higher costs of services to the extent that they represent higher costs to producers, but not to the extent that employees rather than employers absorb these higher service costs. For example, the benefits portion of the employment cost index rose by over 84% between 1980 and 1990, but the wages and salaries portion grew only by 58%. The medical care component of the Consumer Price Index rose by 118% during this period. Yet the total compensation index rose by only 65%.[20] Since employers pay the total compensation bill, it is only the latter that reflects the actual inflationary increase in their total wage bill. The GDP–IPD reflects both the increase in producer prices that reflect increases in total worker compensation and the effect of the increase in medical care prices as seen by consumers, as well as any increase in the price of housing and education.

The cost increases experienced by oil pipelines, which essentially do business at the wholesale level, has more closely resembled the cost increase experience of goods producers in the past than that of the economy as a whole, and it will likely continue to do so in the future. Therefore, on a broad conceptual basis, the PPI–FG is a more appropriate choice than GDP for an oil pipeline industry-wide index.

2. Kahn's Analysis

Both Kahn and AOPL provide statistical analyses of pipeline costs as reported in Form No. 6, to discern whether PPI–1 or GDP+2.5 more closely tracks these reported changes in oil pipeline costs. These Form No. 6 data are imperfect and, as AOPL points out, do not necessarily reflect true valuation and/or bookkeeping costs. Moreover, Form No. 6 does not contain the information necessary to compute a

[13] 65 FERC ¶ 61,377 (1993).

[14] Staff Proposal, at 21.

[15] Request of AOPL for Rehearing and Clarification of Final Rule, at p. 15.

[16] BEA's Fact Sheet on the Implicit Price Deflator, attached to the comments of USAir, Inc., to the notice of proposed rulemaking in this proceeding, filed August 12, 1993, in Docket No. RM93–11–000.

[17] *See, e.g.*, Health Care Financing Review, Winter 1992, Vol. 14, No. 2, at pp. 1, 18.

[18] For a thorough discussion of alternative measures of deflating GDP see Young, Alan, "Alternative Measures of Change in Real Output and Prices," pp. 32–48, and Triplett, Jack, "Economic Theory and BEA's Alternative Quantity and Price Indexes," pp. 49–52, *Survey of Current Business*, vol. 72 number 4, April, 1992.

[19] For a more detailed account of BEA's release schedule, see "A Look at How BEA Presents the NIPA's", *Survey of Current Business*," pp. 30–32, vol. 73, number 2, February 1993. For the latest revision, see "Annual Revision of the U.S. National Income and Product Accounts", *Survey of Current Business*, pp. 9–51, vol. 73, number 8, August 1993.

[20] Economic Report of the President, January 1993, Table B–43, 397.

trended original cost (TOC) rate base or a starting rate base as allowed for in Order No. 154–B. Thus, all agree that the measure of the capital cost component of the cost of service is highly unsatisfactory.

Kahn and APOL draw conflicting conclusions from their analyses. Kahn concludes that PPI–1 better tracks costs for product pipelines, and is inconclusive about crude oil pipelines. AOPL alleges a number of statistical flaws in Kahn's analysis, arguing these constitute sufficient basis to discredit support for PPI–1 as an index.

Kahn constructed a sample of pipelines from Form No. 6 data. He dropped from his sample those reported pipeline costs in any given year which were in the upper and the lower 25% of the cost spectrum, primarily to correct for statistical outliers and for incomplete or questionable data; and he divided the pipeline universe into strictly crude carriers and strictly product carriers, eliminating from his sample all pipeline companies which carry both.

AOPL charges the remaining sample is too small to be statistically relevant or informative. It particularly objects to the use of only the middle 50% of reported pipeline costs for computing industry-wide weighted average costs. It notes the potential downward skewing of average industry costs by excluding the top 25% of reported pipeline costs, but neglects to address the potential upward skewing that might result from eliminating the lower 25%.

AOPL obtained from some of the reporting pipelines, corrections to the data originally found by Kahn to be incomplete or questionable. Using these corrected data as supplied by AOPL, Dr. Robert Means [21] subsequently expanded Kahn's analysis to all crude and all product pipelines in the middle 50% of the cost range as reported in any given year. For reasons explained below, his results would also support the choice of PPI–1 as an appropriate index to track the central tendency of reported changes in oil pipeline costs.

As Dr. Means points out in his testimony, the use of only the median 50% of pipeline costs does not in any way negate the value of Kahn's sample as an indicator of the way in which the PPI–1 index tracks normal pipeline costs:

> To be applied without exceptions, a price cap index must be applied to an industry in which the firm's cost changes fall—or, with efficient operation, can be made to fall—within a moderate range. Even with corrections, however, the annual rate of increase in unit operating expenses and net investment for product pipelines still range from 19.89 to −12.89 percent; for crude oil pipelines, the range was from 37.75 to −15.32 percent. . . .
>
> No index can match pipelines' actual cost experience over such a range. However, the remedy for this problem cannot be a different index. A higher index would alleviate the problem of cost underrecovery at the upper end of the range. However, any realistic index would fall short of the requirements of the firms with the highest rates of cost increase, and it would at the same time aggravate the problem of cost overrecovery at the lower end. Precisely the reverse would occur if a lower index was selected.
>
> The composite measure based on the middle 50 percent that was used by Dr. Kahn therefore is a reasonable method for assessing an index even in the absence of any question of erroneous data.[22]

The median is, in fact, often preferred statistically as a measure of central tendency in cases where the distribution is highly skewed.[23] An average may be substantially influenced by one or two extreme outliers, whereas the median, or the middle 50% will not.

There is some dispute among commentors on how to weight average costs. Some use barrel/miles; others advocate using barrels. The choice of weight will significantly affect the average.[24] Use of the median obviates the need to decide on appropriate weights, since the median is determined only by its position relative to the other components of the series.

As noted by Means, use of a median range of pipeline costs is also more appropriate than the use of an index that includes all changes in pipeline costs, no matter how extraordinary. AOPL, in its request for rehearing, provides considerable evidence that the index of PPI–1 will not cover all changes in pipeline costs. It asserts that PPI–1 would not permit pipelines with far-above-average costs to recover those costs within the index. It also shows that the GDP implicit price deflator index would be insufficient to cover all pipeline costs, and that GDP+2.5 percent would better cover the range of extraordinary costs incurred by individual pipelines in any given year.

The role of an index is to accommodate normal cost changes. Its purpose is not to guarantee recovery of all costs at any time and in full, regardless of other circumstances. Even competitive markets do not do this.

AOPL argues that the more generous index would better track, and hence permit more complete recovery of, all reported pipeline costs. If the Commission chose such an index, sufficiently high and generous to encompass even the most extraordinary costs, it would provide windfalls to many oil pipelines by allowing rate changes substantially above cost changes. This would effectively abdicate our responsibilities for rate regulation under the ICA.

The choice of PPI–1 is intended to permit pipelines to recover normal costs through normal operation of the index.[25] Extraordinary costs can be recovered through either of the alternate rate change means—cost of service or settlement rates—as provided in the final rule. In both cases, the pipeline will have an opportunity to recover its costs.

In the Commission's judgment, PPI–1 adequately tracks normal industry average costs. It does not track extraordinary costs. If it did, it would permit at least some pipelines to capture monopoly rents, and foster the inefficiencies inherent in the exercise of monopoly power. PPI–1 may not be the only index that could have been chosen, but it is adequate and reasonable for purposes of regulating oil pipeline rates.

There are also strong equity and administrative reasons for choosing PPI–1 over GDP as an index. The PPI is issued as a final figure once a year and is not subject to further adjustments. Its use thus provides a measure of certainty that does not exist with the GDP–IPD. The GDP–IPD is subject to revisions even five years after so-called final figures are first issued. Adjustments in the GDP–IPD several years after rates have been adjusted would mean that rates would be based on unreliable data, thereby undermining the confidence of the industry, the financial community, and pipeline customers in the rates charged.

AOPL takes issue with two lesser points regarding Kahn's analysis. AOPL alleges that Kahn erred in omitting gathering and delivery costs (10% of

[21] Dr. Means' statement is attached to the filing of Sinclair Oil Corporation and the National Council of Farmer Cooperatives in response to the application for rehearing of AOPL, on December 9, 1993.

[22] Means at 18–19.

[23] George Snedecor and William Cochran, Statistical Methods, Sixth Edition, Iowa State U. Press, 1978, at 123.

[24] *See, e.g.*, Answer of Buckeye Pipeline to Brief of US Air, Inc., dated January 24, 1994, at p. 5, fn 3.

[25] Kahn states in this original testimony, at page 9, footnote 2, that this is the fundamental purpose of an index:

> The mere fact that changes in a particular price or cost index, intended to be applied to all companies across-the-board, diverges substantially from changes in the costs of individual companies is not necessarily an infirmity: the same is true in competitive markets, just as the competitive market price at any given time will typically allow some companies to make very high profits and others to suffer losses.

total industry costs) from his analysis. However, the Commission is concerned with tracking changes in pipeline costs, not in absolute levels of pipeline costs, of which gathering and delivery costs comprise a minor part. Omission of these costs therefore provides some consistency to the costs analyzed without jeopardizing the validity of the analysis.

AOPL also takes issue with Kahn's use of changes in net plant investment (i.e., rate of change in depreciated original cost) as a proxy for oil pipeline capital cost experience. AOPL notes in this regard that reported historical book investment has nothing to do with current costs of capital; reported net investment does not reflect the practice of using parent company equity for investment; and oil pipelines use trended original cost for determining rate base, which cannot be calculated from reported data. In brief, AOPL argues that no generally available or applicable method exists for discerning and calculating a given pipeline's capital cost changes from reported data, for which reason an index of general inflation is required to permit these costs to be tracked. On these grounds AOPL rejects as inaccurate Means' calculation of the industry's rate of return.

Means acknowledges in his testimony that it is not possible to determine a trended original cost rate base from publicly available data. He explains, however, that the relevant question

> * * * does not concern the level of pipelines' aggregate rate base, but rather the rate at which that level is changing. Over the life of an asset, the average annual rate of change will be the same under original cost and trended-original cost methodologies. This follows from the fact that the starting point (original cost) and the end point (zero) is the same under both.[26]

The only capital cost data available for public analysis is in Form No. 6. Use of such a proxy may be imperfect, but AOPL offers no better solution. They prescribe use of a general price deflator to reflect capital costs, which the Commission has accommodated by choosing PPI–1. AOPL would simply have the Commission choose a different deflator, namely GDP or even GDP+2.5. As to Means' rate of return calculations, they are irrelevant to the choice of index.

AOPL's original analysis, in contrast to that of Kahn and Means, focussed only on operating expenses, which are more likely to be affected by inflation.[27] Capital costs, which AOPL did not specifically address, will reflect depreciation and other adjustments that tend to reduce over-all pipeline costs.

3. Construction of Commission Index

USAir, Alberta, and Chevron have urged the Commission to devise its own index of pipeline costs, using data from Form 6.

Under the best of circumstances, construction, verification, and testing of such an index within the near future would be extremely difficult. The data available to the Commission, from Form No. 6, are currently insufficient for constructing an oil pipeline industry index. This is particularly true for capital costs, as discussed in more detail above. Oil pipelines do not file data in their Form No. 6 which permit calculation of their capital costs on a trended original cost basis; as noted earlier, this has in part dictated the need for using a general price inflation index. While the Commission is proposing to revise Form No. 6 in the NOPR issued concurrently, it is unlikely that the data will be sufficient to construct an oil pipeline industry index.[28]

Moreover, a FERC-constructed index would entail serious complications. First, to construct such an index would require the collection of data over some extended period of time in order to have a statistically meaningful set of data points.

Second, if the cost data submitted by individual pipelines were to be used to charge all shippers maximum rates, it may be argued that each submission would and should be subject to challenge by any shipper on any pipeline. While such oversight is not necessarily undesirable *per se*, it might result in an indexing method that falls short of the Act of 1992 goals of simplicity and streamlining.

Third, the extensive vertical integration of the oil industry raises questions concerning meaningfulness of the cost data supplied.[29] Although such companies may operate their pipeline divisions as independent profit centers, vertical integration does permit integrated companies considerable leeway in allocating common costs among their various divisions.

At one extreme, a pipeline could be allocated none of a company's joint or common costs, giving it low rates, and perhaps noticeably lowering the average of reported industry costs. At the other extreme, a company could allocate to its pipeline a share of the company's world-wide common costs, resulting in higher rates and raising the industry cost average significantly. In this latter case, if the integrated pipeline company transports primarily company crude, it would suffer little loss in volumes transported despite its higher rates, and could remain indifferent to the actual level of the rate being charged. Revenues not recovered by the pipeline could be recovered at the producing, refining, or marketing end of the company's operations. The Commission is not suggesting that such cost-shifting would occur, nor that it would necessarily be improper. But the possibility of it occurring undetected in reported data does exist. The net result in either case is that the data available to the Commission for constructing a proper index would be skewed. In any event, the need to improve data collection with regard to oil pipelines is specifically the subject of the separate rulemaking proceeding at Docket No. RM94–2–000.

4. Conclusion

Based upon the record evidence of this proceeding, publicly available data filed with the Commission by pipelines, and the nature and characteristics of the PPI and GDP indexes, the Commission reaffirms its decision to use the annual change in the PPI–1 index to establish rate ceilings under the indexing system. This decision, as stated in the final rule, will be reviewed every five years, beginning with the year 2000.

B. Filing Requirements for the Indexing System

1. Pipeline Filing Requirements

The final rule imposes certain new affirmative filing requirements on pipelines. These new requirements may be broken down into two categories. The first category contains those substantive requirements governing a pipeline's use of the ratemaking methodology established in the final rule. A pipeline

[26] Means, p. 15.

[27] As noted in the final rule, some commentors in fact suggested that only such operating expenses be indexed, which we rejected for reasons explained there.

[28] *See* Notice of Proposed Rulemaking, Cost of Service Filing and Reporting Requirements for Oil Pipelines, Docket No. RM94–2–000, issued concurrently with this order.

[29] Although the Commission collects no data on, and does not have up-to-date information about, the degree to which pipeline companies are shipping their own oil from one company division to another, historically the industry has been highly vertically integrated. According to a Treasury Department staff study, "Implications of Divestiture" (June 1976), the top 20 interstate oil pipeline firms (all major producers and refiners), owned 86.6% of the interstate trunkline capacity in 1972. A Department of Energy study, "United States Petroleum Pipelines" (December 1980), reports that in 1980 integrated pipelines owned by the major oil companies accounted for three out of the top four and 17 of the top 20 pipelines, 66% of total barrel-miles carried, 57% of total barrels delivered per day, and 67% of the undivided interest systems.

is generally required to use the indexing system to change rates. In filing for a rate change under the indexing system, a pipeline must file a proposed rate that is no higher than the ceiling derived from application of the index. If a pipeline wishes to file for a higher rate, it must use a cost-of-service or negotiated-rate methodology and it must justify that use based upon certain factors that are enumerated in the regulations. These requirements are contained in §§ 342.3 and 342.4 of the regulations.

The second new affirmative pipeline filing requirement, contained in § 342.3(e) of the regulations, concerns rate decreases under the indexing system. In any year in which the index is negative, and has the effect of lowering the applicable rate ceiling, a pipeline with a rate above the new ceiling must file a new tariff to bring that rate into compliance with the new ceiling, subject to the provisions of the Act of 1992. This filing must be effective no later than July 1 of the applicable index year.

AOPL, ARCO, Exxon, MPL, and Phillips challenge the Commission's statutory authority to promulgate these requirements on filing rates. Their argument is that the ICA grants to a pipeline sole discretion as to the substantive content of a rate change proposal. Thus, they argue, the Commission is without authority to require a pipeline to abide by the requirements established in the final rule for filing for changes of rates under an indexing system. According to the petitioners, a pipeline has sole control over the substantive contents of a rate filing and, when one is made, the Commission's action in response is limited by section 15(7) of the ICA to acceptance of the filing, or acceptance combined with a suspension of the effective date (of no more than seven months), imposition of a refund obligation, and the convening of a hearing.

Petitioners' argument that these regulations are unlawful because the Commission has no authority to prescribe substantive requirements for rate filings is clearly mistaken. In the first instance, these requirements are grounded in specific authorities contained in the ICA. The end result of this rulemaking proceeding as it relates to the ICA is the same as if the Commission has proceeded in a case specific adjudication. That is, the Commission has identified rate levels that comply with the just and reasonable standard of section 1(5), and it has required that no rates above those levels can be charged to customers, unless the pipeline can show there are unusual circumstances justifying higher rates. Thus, contrary to the view that underlies petitioners' objections, requiring a pipeline to abide by these determinations, reflected in the final rule, is no different than requiring a pipeline to abide by the requirements of an order issued after an adjudication on its existing or proposed rates.

In regard to the rate decrease filing requirement contained in § 342.3(e), AOPL argues that this provision is inconsistent with the ICA's scheme on burden of proof. AOPL notes that the ICA places upon the Commission, or the complainant, the burden of proving that an existing rate is unjust and unreasonable. Contrary to this provision, argues AOPL, the final rule's requirement that a pipeline file for a rate decrease effectively shifts the burden of proof in respect to the lawfulness of an existing rate to the pipeline.

According to these petitioners, the Commission has acknowledged this principle in a prior decision. In *Kuparuk Transportation Co.*, 55 FERC ¶ 61,122 (1991), the Commission declined to order the pipeline to make automatic annual filings to change rates based upon a formula-prescribed ceiling. AOPL argues that the Commission's decision in *Kuparuk* was premised upon the necessity of respecting the ICA's burden-of-proof scheme, in which a pipeline bears the burden of proof on proposed rates, but the challenger bears the burden of proof of showing that existing rates are unlawful.

These arguments of the petitioners are not persuasive.

In complying with the directive of the Act of 1992 to craft a simplified and generally applicable ratemaking methodology for oil pipelines, the Commission has exercised its substantive authorities under the ICA, which are intended to ensure that the rates charged by oil pipelines for transportation services are in accordance with the standard contained in section 1(5) of that statute:

> All charges made for any service rendered or to be rendered in the transportation of * * * property * * * shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared unlawful.

Sections 13(1) and 15(1) grant to the Commission authority to enforce the just and reasonable standard with respect to existing rates. If after an investigation instigated by virtue of a complaint brought by any person under section 13(1), or upon the Commission's own initiative, the Commission finds that an existing rate is not just and reasonable, section 15(1) empowers the Commission "to determine and prescribe what will be the just and reasonable * * * rate * * * or the maximum or minimum * * * to be charged * * *," and to order that the pipeline "shall not thereafter publish, demand, or collect any rate * * * in excess of the maximum * * * so prescribed * * *."

Section 15(7) provides the Commission with similar authority if the pipeline proposes changes to its rates. Thus, under that section the Commission is empowered to investigate proposed rate changes and, if it determines that the proposed change would not establish a lawful rate, issue an order "as would be proper" in the context of remedying an unlawful existing rate under section 15(1).

The requirements of the final rule reflect, and are consistent with, the Commission's authority under these ICA provisions to investigate and establish just and reasonable rate levels. As explained in detail in the previous section of this order and in the order issuing the final rule, the Commission has conducted an on-the-record investigation in this proceeding and has determined that use of a generic, cost-based formula (PPI–1 index) for changing existing rates, the vast majority of which have been deemed just and reasonable by act of Congress, will streamline and expedite the ratemaking process in accordance with the mandate of the Act of 1992, while at the same time ensuring that the resulting rates are just and reasonable within the meaning of section 1(5) of the ICA.

The specific means by which this indexing system will ensure just and reasonable rates is by establishing, in the language of the ICA, rate maximums.[30] Section 342.3(a) of the regulations requires rate changes to produce rates that are no higher than the applicable ceilings. This regulatory requirement reflects the Commission's authority under section 15(7) of the ICA to require that proposed changes yield just and reasonable rates. Section 342.3(e) of the regulations provides that pipelines must reduce existing rates to comply with new ceilings which have been lowered because of the decline in the index. This regulation reflects the Commission's rebuttable finding that a rate above the ceiling is unjust and unreasonable, and under section 15(1) of the ICA, the Commission has the authority to require existing rates that are determined to be unjust and

[30] Section 1(5) of the ICA.

unreasonable to be adjusted to lawful levels.

However, the regulations also provide procedures for both pipelines and their customers to show that the applicable ceilings would not ensure just and reasonable rates. As explained in detail in the final rule, and elsewhere in this order, § 342.4 provides that the pipeline may rebut the presumption in the regulation that the above-ceiling rate is unjust and unreasonable and that rates above the ceiling are justified. The pipeline has the burden of proof to show that the applicable ceilings are too low to allow recoupment of prudently incurred costs, in respect to both proposed and existing rates, except for those rates deemed just and reasonable under section 1803 of the Act of 1992. Section 343.2(c)(1) provides similar protection for customers, by providing for challenges to proposed and existing rates that are within applicable indexed ceilings, but are nonetheless so substantially in excess of actual costs as to be unjust and unreasonable.

Contrary to petitioners' position, nothing in these regulations is inconsistent with section 15(1) of the ICA, which places the burden of proving the unlawfulness of an existing rate on the complainant or the Commission.

The rate decrease requirement of § 342.3(e) is based upon the Commission's finding, in this proceeding, that a rate level in excess of the ceiling established by the PPI–1 index is presumptively unjust and unreasonable.[31] The section simply applies this finding to an existing rate that is in excess of a new, lower ceiling, subject to an opportunity for the pipeline to rebut the presumption to show that its prudently incurred costs justify the above-ceiling rate. Thus, the statutory burden of proof has been fulfilled in this proceeding and is reflected in the regulations.

Kuparuk does not compel a different conclusion, for it involved a distinctly different kind of filing requirement than the rate decrease requirement of the indexing regulations. In *Kuparuk*, it was proposed that a pipeline should be required to make a rate change filing every year, under section 15(7) of the ICA, which would then be subject to review by the Commission. In this review, the burden of proof, as in every case under section 15(7), would be upon the pipeline. This procedure would have upset the statutory scheme for burden of proof because the existing rate to be superseded by the required annual filing, unlike the existing rates subject to § 342.3(e), would not necessarily have been determined to be unjust and unreasonable. In contrast, in this rulemaking, the Commission is exercising its authority under section 15(1) of the ICA to require the pipeline to file a rate decrease.

ARCO specifically maintains that the Commission has no authority summarily to reject a rate filing without a hearing, except for technical formatting reasons. The ICA, ARCO argues, gives a pipeline a statutory right to a hearing to justify its rate proposal. This contention is also without merit. The hearing requirement contained in section 15(1) for existing rates and section 15(7) for proposed rates, has been satisfied by the notice and comment procedures of this rulemaking. All interested persons, including affected pipelines, have had an opportunity to be heard. If a pipeline desires to rebut the presumption that a rate above the ceiling is unjust and unreasonable, it will receive an individual hearing on that matter. However, a pipeline that makes a filing which fails to comply with those standards, without a showing as to why those standards should not apply, has no right to a hearing. There simply would be no disputed facts or issues to warrant a hearing.[32]

In short, the rate methodology provisions of the final rule, including the filing and other substantive requirements in the indexing system, reflect the Commission's exercise of its ICA authority through promulgation of rules of general applicability, as opposed to issuance of orders through case-by-case adjudication. An agency's discretion to exercise its statutory authority in this fashion through a rulemaking, rather than case-by-case, is well established.[33]

The simplification mandate of the Act of 1992 lends further support to the reasonableness of the Commission's decision to proceed through a rulemaking. Section 1801 of the Act of 1992 directs the Commission to implement a "simplified and generally applicable" ratemaking methodology. It is the Commission's judgment, based upon its experience under the ICA and similar statutes, and the evidence compiled in the record of this rulemaking, that an indexing methodology will fulfill this simplification and general applicability directive, while at the same time ensuring that the resultant rates are just and reasonable under the ICA. By its very nature, an indexing methodology is a generic approach to establishing rates. The requirements of the indexing methodology crafted in this final rule therefore are to be applied generically, through rules, subject, as explained above, to opportunities for pipelines and their customers to show in any particular case that the indexed-based ceiling should not apply.

The claims on rehearing against the validity of the filing requirements contained in Part 342 of the new regulations are therefore denied.

2. Challenges to Rates

Under § 343.2(c)(1) of the new regulations, a protest against a proposed rate increase under the indexing system must show that the "increase is so substantially in excess of the actual cost increases incurred" by the pipeline that the proposed rate would be unjust and unreasonable.

Amoco argues that this standard is too vague. It contends that a more appropriate standard would be a change in circumstances since the rate was last changed. Sun, Lakehead, and Buckeye make the same argument on rehearing, arguing for a standard for bringing protests that relates to changed circumstances.

Several other pipelines on rehearing challenge the notion of allowing any protests against a rate increase proposed that is within the applicable ceiling. Thus, Explorer, AOPL, MPL, and Shell argue that allowing challenges to rate increases within the ceiling would defeat the simplification and efficiency goals of the indexing methodology. They contend that the simplification goal would be defeated by the fact that protests, and thus contested rate proceedings, would proliferate. They further contend that the efficiency goal would be defeated because a pipeline would have no incentive to cut costs if to do so would merely create a divergence between those costs and the allowable rate ceiling that could form the basis for a protest.

The position that the protest mechanism should not be available in cases where proposed rate increases comply with the applicable rate ceiling must be rejected. As explained in the final rule, under an indexing system some divergence between the actual costs of a pipeline and its rates is

[31] The pipeline would not be required to lower rates below those deemed just and reasonable by the Act of 1992, since the Commission is not here making any of the findings required by § 1803(b) to allow it to prescribe rates below that level.

[32] *See, e.g.*, United States v. Storer Broadcasting, 351 U.S. 192 (1956); See also Davis & Pierce, Administrative Law Treatise, § 8.3, at 389 (1994):

Even when an agency is required by statute or by the Constitution to provide an oral evidentiary hearing, it need do so only if there exists a dispute concerning a material fact.

[33] *See, e.g.*, Heckler v. Campbell, 461 U.S. 458 (1983); United States v. Storer Broadcasting, note 32, *supra*.

inevitable. An indexing system relies upon industry-wide average costs, not company-specific costs, to establish rates. Moreover, the Commission is requiring that there be a *substantial* divergence between actual costs and rates to allow for efficiency gains that may occur.

The indexing system has been adopted because it complies with Congress' mandate in the Act of 1992 for a simplified and generally applicable ratemaking methodology, in conformity with the just and reasonable standard of the ICA. A measure of the justness and reasonableness of rates is the cost of providing the service. Thus, the divergence between a pipeline's actual cost increases, and its rate increases, while to an extent inevitable under the indexing methodology, should not be allowed to grow so wide as to negate the cost basis of the rate increases. The provision in question allows a protest to be brought against a rate increase that strays too far from the actual cost increases of the pipeline in recognition of the just and reasonable standard that is still applicable under the ICA.

This provision should not, contrary to the contention of AOPL, MPL, Shell, and Explorer, undermine the simplification and efficiency benefits associated with an indexing system of changing rates. Prohibiting the hearing of protests that do not state reasonable grounds for alleging that the proposed rate increase is substantially in excess of cost increases will reduce the number of protests that might otherwise be filed in the absence of such a standard. It is true that prohibiting all protests against proposed rate increases in compliance with the applicable ceiling would further simplify the Commission's review of rates. However, as explained above, such a prohibition would be inconsistent with the just and reasonable standard of the ICA.

The necessity to comply with the just and reasonable standard is also part of the reason for rejecting the argument that a cost-based protest against a proposed rate increase must be rejected in order to ensure the efficiency benefits of indexing. Another reason for rejecting this argument is that the regulation in question does shield a pipeline from cost-based protests where rates are not substantially in excess of costs, thus allowing a pipeline to capture some efficiency gains.

Amoco, Sun, Lakehead, and Buckeye claim that the standard of "so substantially in excess" so as to render the proposed rate "unjust and unreasonable" is vague. This contention, while not entirely inaccurate as a matter of linguistics, is not persuasive as an argument on rehearing. The extent of the divergence between actual cost increases to a pipeline and its proposed rate increase that would justify a finding that the proposed rate is unjust and unreasonable is not susceptible to mathematically precise definition.

This determination is reinforced by these parties' proposal for an alternative standard—changed circumstances. Such a standard is not directly tied to cost changes that may be experienced by a pipeline. Thus, were this standard to be used, there would be the potential for wide divergences between a pipeline's costs and its rates that would nonetheless not be subject to challenge. Such a regulatory regime clearly would not serve as an effective check on rate increases, and would therefore be contrary to the Commission's continuing responsibility to ensure that oil pipeline rates are just and reasonable.

Reflecting a different perspective from that articulated by the pipeline petitioners, some shippers have requested rehearing on the basis that the threshold standard for filing a protest under the indexing system is too stringent.

Kerr-McGee contends that any rate increase that exceeds the actual cost increase experienced by a pipeline is unjust and unreasonable. It argues that protests premised on any divergence from actual costs in the proposed rate should be allowed.

As the cases demonstrate, the requirement that rates under the ICA be just and reasonable does not mean that such rates must perfectly reflect costs, or that non-cost factors may not be taken into account. In *Farmers Union Central Exchange, Inc.* v. *FERC*, 734 F. 2d 1486 (D. C. Cir.), *cert. denied*, 469 U.S. 1034 (1984), the court stated that rates must be within a zone of reasonableness, and that factors other than costs may be taken into account. Further, Kerr-McGee's argument would, if accepted, negate the legality of any indexing system to implement the just and reasonable standard of the ICA. For the reasons explained at length in the final rule,[34] the Commission rejects this argument.

Holly and Total state that the Commission may not limit protests to challenging the increment of the rate increase. According to their view, the Commission's statutory duty is to examine the whole rate when a rate change is proposed. Holly argues that this is required by the principle that the lawfulness of a ratemaking process is dependent upon the end result. Chevron also takes the position on rehearing that the Commission may not lawfully limit protests to challenging the increase in the rate, as opposed to the whole rate.

This limitation is necessary in order to preserve the vitality of the protection for certain existing rates provided in subsection 1803(a) of the Act of 1992. That section deems rates in existence and unchallenged for the one-year period prior to enactment of the Act of 1992 to be just and reasonable and not subject to a complaint under section 13 of the ICA, unless evidence is presented to the Commission which establishes that a substantial change has occurred after the date of enactment of the Act of 1992 in the economic circumstances of the oil pipeline which were the basis of the rate; or in the nature of the services provided which were the basis for the rate; or unless the person filing the complaint was under a contractual prohibition against filing a complaint.[35]

This "grandfathering" provision of the Act of 1992 protects from most complaints the vast majority of rates in existence on the date of enactment. To allow a protestant of a proposed increase of a statutorily protected underlying rate to challenge the whole rate, and not just the proposed increase, would be to remove the protection of section 1803(a) solely on account of the filing of a proposal to effect a modification of that rate. There is no indication that Congress intended the protection of section 1803(a), for those rates that qualify, to be overridden by regulatory actions, or to be of limited duration. The statute clearly states two conditions under which the safe harbor afforded rates under section 1803(a) does not apply. Merely filing a protest against a proposed change to a grandfathered rate is not one of them.

In addition, limiting a protestant to challenging the increment of the rate increase is consistent with the ICA. Under section 15(7), a pipeline proposing a rate change bears the burden of providing the change will result in a rate that is just and reasonable. On the other hand, in an investigation of an existing rate pursuant to sections 13(1) and 15(1), the burden of proving the rate is unjust and unreasonable lies with the complainant (or the Commission, in investigations begun *sua sponte*). To allow a protestant in a section 15(7) proceeding, where the burden of proof lies with the pipeline, to challenge that part of a rate that was pre-existing would therefore be contrary to the statutory scheme.

[34] *See* III FERC Stats. & Regs ¶30,895 (1993), at pp. 30,948–51.

[35] Subsection 1803(b) of the Act of 1992.

It is relevant to note, moreover, that under the indexing system adopted in the final rule, existing rates to the extent not grandfathered under the Act of 1992 remain subject to investigation under the complaint process set forth in section 13(1) of the ICA.

3. Other Issues

Holly and Total argue for an automatic periodic Commission review of pipeline rates. Total suggests that this be done every five years, with the pipelines being required to file cost and revenue data to be used in this process. Total also favors insulating pipelines from protests during the five year intervals between the cost-based rate reviews.

The concern reflected in these requests—that under the indexing system pipeline rates will increasingly diverge from actual pipeline costs—has been addressed by the Commission in its structuring of the index system. First, pipeline rates under the indexing system will be subject to investigation through both the protest and the complaint procedures of the ICA. Second, under the final rule, every five years beginning in the year 2000, the Commission will examine the relationship between changes in the index (PPI–1) and actual cost changes experienced by the oil pipeline industry. The purpose of this review will be to ensure that the ceiling rates established under the indexing system fairly and reasonably track the actual cost changes to the oil pipeline industry, such that rates in compliance with the applicable indexed ceiling are just and reasonable within the meaning of the ICA.

The Commission therefore concludes that the requests of Holly and Total for a periodic review of pipeline rates should not be adopted.

Finally, Chevron makes several specific proposals for changing the filing requirements of the final rule. Chevron requests that the Commission extend the notice period for filing proposed rates to 60 days, and the period for filing a protest in response to such a filing beyond the 15 days contained in the regulation. Further, Chevron suggests that a pipeline be required to send notice of its rate increase filing by telefax or overnight mail.

Chevron's requested changes to the regulations will not be adopted. The proposal to extend the notice period to 60 days for filing rate changes is contrary to the ICA. Section 6(3) of the ICA provides that the notice period shall be 30 days, except that a shorter period may be provided for by rule or in a particular case. Given this statutory 30-day notice period, it is not advisable to adopt Chevron's suggestion that the period for filing a protest in response to a changed tariff filing be greater than 15 days. A longer period would leave an unduly short amount of time for the Commission to review the filing and any protests and make a determination whether to suspend and initiate an investigation of the filing. Finally, Chevron does not make a persuasive case for requiring pipelines to telefax or express mail rate filings, although pipelines are encouraged to voluntarily do so at the request of their shippers.

C. Establishment of Initial Rates

Section 342.2 of the final rule provides a pipeline with two ways of establishing an initial rate for new service. An initial rate may be established through a cost-of-service based filing. As an alternative to a cost-of-service filing, a pipeline may establish an initial rate through an agreement reached with at least one non-affiliated person who intends to use the service in question. Under this alternative, however, a protest filed against such a settlement rate would require the pipeline to justify the rate based upon costs.

1. Market-Based Initial Rates

Plantation and WPL seek rehearing of the lack of a provision for relying upon market forces to justify an initial rate. Plantation argues that a pipeline has a statutory right to file an initial rate of its choosing and to defend its lawfulness in accordance with the suspension and hearing procedures set forth in the ICA. In addition, Plantation states that the establishment of a rate for a service not previously offered is a particularly appropriate context for use of market competition as a justification for the rate because a pipeline cannot exercise market power in a market it is not already serving.

Based upon the comments and reply comments received in this proceeding the Commission concluded that an initial rate should be established either on a cost-of-service or a settlement basis. The Commission was concerned that a pipeline might be able to exercise market power to establish an initial rate that was unjust and unreasonable. In this regard, it is important to note that an initial rate for new service may, depending upon the circumstances, represent no more than an additional receipt or delivery point on an existing pipeline. Contrary to the impression given by Plantation's argument, a new service may not always, or even most of the time, involve additional service to a new market. The pipeline offering the new service, and seeking approval for an initial rate, may be the only or one of the few transporters in an existing market.

The regulations promulgated in the final rule do expressly provide a pipeline with an opportunity to use a market-based methodology to change existing rates, subject to proof that competitive pressures exist to a sufficient degree to restrain rate changes to just and reasonable levels. *See* § 342.4(b). Thus, the Commission has recognized that under some circumstances a market-based rate may be lawful. The regulation, however, provides that market-rates may only be charged after the Commission has determined that such ratemaking methodology is appropriate and lawful. Until such time, a pipeline must show some other basis for its rates, such as costs or compliance with the indexed ceiling.

Rehearing on this issue is denied.

2. Protests of Settlement-based Initial Rates

Plantation and WPL also argue that the settlement option for establishing initial rates does not go far enough. They contend that the regulations should not prohibit the shipper agreeing to the rate from being an affiliate of the pipeline. Further, they maintain that a settlement initial rate should be immune from protests. Thus, under their view, the only mechanism for a party to challenge the justness and reasonableness of a settlement initial rate would be a complaint, with the burden proof, in accordance with section 13(1) of the ICA, being upon the complainant. Plantation and WPL asserts that allowing a protest of a negotiated rate defeats and renders superfluous the negotiation.

Unlike the case of changes of existing rates, the settlement option for initial rates only requires the agreement of one non-affiliated shipper. The purpose of requiring the one shipper who must agree to the initial rate to be unaffiliated with the pipeline is to ensure that the agreement is based upon arms-length negotiations. Allowing a protest to a settlement rate permits those shippers who were not party to that agreement to protect themselves and other shippers from an unjust and unreasonable initial rate. The arguments of Plantation and WPL do not show that these requirements are unreasonable or unfair. In particular, these requirements should not render initial rate settlements, or the negotiations preceding them, meaningless. A pipeline will still have an incentive, and derive a benefit, from

seeking to gain the concurrence of its potential shippers to an initial rate for new service. To the extent concurrence is obtained, a protest is unlikely. If unanimous concurrence of potential shippers is not obtained, the regulation still allows the pipeline to file the initial rate based upon the agreement of at least one non-affiliated shipper. This one-shipper provision simply expands the options for a pipeline. The availability of the protest mechanism in such a case provides balance to the provision from the standpoint of the interests of shippers.

Rehearing on this issue is therefore denied.

D. Other Rate Changing Methodologies

1. Uncontrollable Circumstances Test

Several parties have asked for clarification or rehearing of the requirement contained in § 342.4 that there be cost increases incurred because of "uncontrollable circumstances" before carriers may change rates based on a cost-of-service methodology. AAPC suggests that the Commission clarify that what constitutes "uncontrollable circumstances" will be determined in individual cases. ARCO and Lakehead ask that the standard be relaxed to reflect only that a change in circumstances need occur before the pipeline is allowed to justify its rates on a cost-of-service basis. MPL argues that the rule is too restrictive and may prevent pipelines from recovering their costs associated with catastrophic losses due to accident, equipment failure, or third-party damage, any one of which might lead to extraordinary costs and liabilities.

The Commission's intent in the Final Rule was that there be a change in economic circumstances that justifies use of the cost-of-service methodology brought about by events or conditions outside the control of the pipeline. These circumstances would include, but not be limited to, events such as those alluded to by MPL. It was never the Commission's intent to provide an exhaustive list in the Final Rule of what might constitute "uncontrollable circumstances." [36]

SFPP and Phillips contend that the pipeline seeking to invoke a cost-of-service methodology should be governed by the same standard as those seeking to challenge an indexed rate—*i.e.*, a substantial divergence between costs and the indexed rate. SFPP asserts that the Commission should allow cost-of-service treatment in the event of a divergence in actual costs and indexed rates so substantial that the existing rate level under indexing is not just and reasonable, regardless of the nature of the circumstances.

The Commission is persuaded that a modification such as that proposed by SFPP and Phillips should be made to the test. There indeed may be instances where prudently incurred costs have increased to such an extent that the rate produced by the index would not be just and reasonable. Such cost changes may be the result of planned expansions or of upgrading or replacement of facilities for safety or environmental considerations. Accordingly, where the pipeline can show that the costs are prudently incurred and that there is a substantial divergence in its costs and the rate that would be produced by application of the index, the pipeline will be allowed to charge rates based on a cost-of-service methodology. Section 342.4 will be modified to reflect this change.

2. Fully Allocated Costs

Amoco, AOPL, and WPL object to the Commission's characterization of its current methodology as contemplating use of fully allocated costs to determine proper rates for any movement. In the final rule at footnote 83, the Commission stated, in response to comments addressing the issue of whether the cost-of-service methodology should be applied on a "stand-alone" or fully allocated basis, "The Commission is proposing no change in its current practice of using fully allocated rates." The Commission cited Opinion No. 154–B as illustrative. In this regard, the Commission determines the justness and reasonableness of rates for other modes of transportation it regulates on a fully-allocated cost basis. However, as the commenters point out, this issue has not been determined in a fully litigated case by this Commission under the Interstate Commerce Act. The Commission does not intend by this rulemaking to decide the issue with finality, and proponents of "stand-alone" cost methodology or other costing methodologies will not be precluded from advocating such methodologies in individual cases.[37]

E. Procedures for Streamlining Action on Rates

1. Requirements for Standing

Section 343.3(b) provides that only persons with a substantial economic interest in a tariff filing have standing to file a protest against that filing. A protest must be accompanied by a verified statement as to the protestant's substantial economic interest.

ARCO requests that the Commission amend the regulation on standing to require the verified statement to explain in sufficient detail the nature of the substantial economic interest and its connection to the proposed rate, so that the Commission will be able to make a determination on the standing of the protestant expeditiously. ARCO proposes that the regulation be changed to read as follows:

> Along with the protest, the protestor shall file a verified statement which shall contain a reasonbly detailed description of the nature and substance of the protestor's economic interest in the tariff filing in question.

In support of its request, ARCO notes that the Commission will have a relatively short period of time after the filing of the rate, the protest, and the response to the protest, in which to make a determination on what action to take. Requiring a protestant to explain in reasonable detail how it meets the standing requirement will, according to ARCO, assist the Commission in making a timely decision on standing.

ARCO's suggested amendment to the standing requirement appears to be reasonable. ARCO is not advocating a substantive change in the standing requirement contained in the regulation. Rather, it is requesting that the Commission require that the basis for standing be stated in enough detail to allow an informed decision on standing to be made in a timely fashion. It is obviously to the benefit of the Commission, in performing its review function, and to the interested public, that this be done. Moreover, this should not pose a burden for protestants who possess the requisite substantial economic interest in a tariff filing. Rehearing is granted on this issue, and § 343.3(b) will be revised accordingly.

2. Pipeline Response to a Complaint

Under § 343.4(a) a pipeline may file a response to a complaint no later than 30 days after the complaint is filed. AOPL requests this section be changed to

[36] Some of the items referred to on rehearing were clearly not within the contemplation of the Commission, such as the suggestion by ARCO that it might be allowed to raise its rates in the future to make up for past earnings lost due to competition. (ARCO, pp. 14–16)

[37] As AOPL correctly notes, the Commission's Notice of Inquiry (NOI) at Docket No. RM94–2–000, issued concurrently with the final rule in this proceeding, encompasses the data to be filed with a cost-of-service showing, including the issue of whether such data should be required on a stand-alone or fully-allocated cost basis, or some other basis. Kerr-McGee's recommendation that the Commission establish a simplified cost-of-service method will also be considered in that NOI. *See* NOI at mimeo p. 8. *See also* the NOPR in Docket No. RM94–2–000 issued concurrently with this order.

allow a response to be filed no later than 30 days after service of the complaint, as opposed to filing.

This request will be denied. AOPL has stated no facts indicating that the procedure set forth in § 343.4(a), which is unchanged from current practice, provides insufficient time for a pipeline to file a response to a complaint.

F. Revisions to Existing Procedures

In its application for rehearing, WPL cites five areas of concern about the revisions to existing procedures contained in Part 341 which were adopted in the final rule. Each is discussed below.

1. WPL claims that certain regulations increase the burden on pipelines with no apparent benefit to shippers. It points to an alleged redundancy in § 341.2(c), which requires that transmittal letters describe the filing and explain changes to the carrier's rates, rules, terms, or conditions of service, and § 341.(b)(10)(i), which requires that tariff changes be indicated and described by specific symbols. It cites AOPL for the argument that the requirements of the new regulation would transform a ministerial document into a substantive summary of the filing, whereas the tariff publication itself must identify all such changes. It asserts that to have the letter of transmittal also identify those changes would be superfluous.

WPL reads too much in the Commission's requirements for the transmittal letter. Simply stated, the Commission desires an informative transmittal letter which will briefly state the essential facts—that the carrier is seeking to change its rates and the basis for its rate change—*i.e.*, it is based on the carrier's application of the index, or it is based on the carrier's cost of service, or it is a settlement rate. Moreover, a brief statement of any tariff language changes proposed will suffice. It is not intended that the carrier restate the terms and conditions of its tariff filing in the transmittal letter.

Further, the rule requiring a narrative explanation of tariff changes in a letter of transmittal is not duplicative of § 341.3(b)(10)(i) which refers to designating changes in the tariff by use of uniform symbols. Clearly, these are two separate requirements. A general explanation of the filing is warranted. The brief nature of the description required is not burdensome. Indeed, this requirement is common practice for several carriers which have been including an explanation of their filing in their letters of transmittal for some time, even prior to implementation of these regulations.

WPL also argues that limiting the number of supplements to one rather than five, which currently exists, will likewise burden the pipelines, since they must capsulize all their supplements into one large supplement even if the matter sought to be supplemented could be done in a single page. WPL suggests that if the intent is to consolidate all supplements, the result could be achieved by requiring that subsequent supplements clearly indicate all prior supplements currently in effect.

The Commission finds the rule allowing only one effective supplement is reasonable. The previous rules were written when all tariffs were individually printed by printing press. Now many carriers have computerized the publication of their tariffs, making it easier to merely bring forward all the changes into one complete supplement. In addition, the previous limitations relating to the number of supplements to be filed to an effective tariff, as well as the requirements for the length of the supplements themselves, were confusing and not useful. Since oil pipeline bound tariffs are rarely in excess of forty pages, the previous maximum supplement limitation of five supplements to be filed to a tariff in excess of 200 pages was never reached. Further, under the previous regulations, tariffs of four pages or less could not be supplemented. The rules as currently revised allow one effective supplement to a tariff to be filed. In addition to this one supplement, there are five other types of technical or ministerial supplements which can be filed and are not included in the count. These are correction supplements (three allowed per tariff), suspension supplements, postponement supplements, cancellation supplements, and adoption supplements. The Commission believes this series of supplements is ample to meet the carriers' needs. Given the clarity and uniformity of the rule, the elimination of page restrictions for supplements, and the exception for certain types of supplements, the Commission believes the rule is a balanced one. The Commission denies rehearing on this issue.

2. WPL claims that certain regulations are inconsistent with the explanatory text. It cites § 341.0(a)(7), which requires that pipelines post tariffs at the carrier's principal office and other offices of the carrier where business is conducted with affected shippers, and the textual statement in the final rule that this section "requires such posting only at 'principal' pipeline offices." [38]

[38] III FERC Stats. & Regs. ¶ 30,985, at p. 30,969.

The Commission has determined that a carrier should maintain its tariff in places where it does business with its customers. The Commission used the term "principal pipeline offices" in the explanatory text of the final rule in this context. Confusion over the requirement in § 341.0(a)(7) was created by the use of the term "principal place of business" in its more legalistic sense; however, the sense of what the Commission sought to achieve is contained in the phrase "and other offices where business is conducted with affected shippers."

WPL argues that § 341.3(b)(6)(i) would require that all rules affecting the rates or services provided for in the tariff publication must be included in the tariff publication, whereas the text [39] of the final rule allows for incorporation by reference.

As the Commission explained in the explanatory text, incorporation by reference of rules affecting the rates or services will be allowed, so long as the document to which reference is made is readily available.

3. WPL claims that certain regulations, while clear, do not make sense when applied. It cites § 341.3(b)(6)(iii), which prohibits tariffs from including rules which provide that traffic of any nature will be transported only by special agreement, arguing that agreements such as volume incentive and throughput and deficiency agreements are common industry practice have long been accepted under the ICA. It seeks clarification that the Commission is not banning such agreements.

The Commission did not intend to change the current practice respecting the prohibition of a tariff that provides that traffic of any nature "will be transported only by special agreement." Such a prohibition has always existed in the regulations.[40] The "special agreement" referred to in this context means that the carrier may not require a special agreement available only to one shipper, which would be discriminatory to another similarly situated shipper who sought to ship on the carrier's lines. The Commission did not attempt to bar the use of non-discriminatory throughput and deficiency agreements, or volume incentive agreements. Administration of such agreements will continue as before.

[39] *Ibid.*

[40] Section 341.4(h)(3) of the regulations which existed prior to promulgation of the instant regulations provided, in part, "* * * nor shall any rule be provided to the effect that traffic of any nature will be 'taken only by special agreement' or other provision of like import."

WPL cites § 341.4(f), which requires pipelines to publish suspension supplements within 15 days of suspension, whereas the pipeline does not often receive the suspension notice within sufficient time to do so. It asks that the Commission telecopy such suspension notices to the pipeline.

The Commission will modify § 341.4(f) so that suspension notices must be filed within 30 days of the suspension, thus obviating the need that suspension notices be telecopied to the pipeline.

4. WPL claims that certain regulations appear to serve no purpose, citing § 341.2(b) which prohibits pipelines from posting tariffs more than 60 days before the effective date. WPL argues that the Commission has given no explanation for this requirement, and its imposition may hurt shippers who have a shorter period to find alternatives. Moreover, it argues, such a requirement would unnecessarily inhibit seasonal rate filings.

The Commission does not agree. The Commission encourages carriers to keep their shippers informed of proposed changes in a timely fashion. At times, the carrier may determine that it should notify the shippers at a date sooner than 60 days of its proposal, and nothing in the regulations prohibits this. Also, nothing in the regulations prohibits seasonal filings, as long as there is only one effective date for the tariff. Moreover, since the deadline for filing a protest is proposed to be changed to 15 days after the filing date of the tariff publication and not 12 days before the effective date of the tariff, as has been the past requirement, shippers could be placed in the untenable situation wherein they would be judging the tariff filing under circumstances which could significantly change prior to the effective date of the tariff. This requirement should have no significant effect on the planning functions of the pipeline and its shippers; rather it will streamline the tracking of filings made at the Commission.

5. WPL claims that certain provisions are not properly included in the final rule, citing § 341.8, which requires that pipelines publish in their tariffs rules which in any way increases or decreases the value of service to a shipper. ARCO and AOPL object to including such items as prorationing of capacity, product specification, and connection policies. AOPL argues that the Commission cannot require publication of non-rate terms and conditions of service; ARCO argues that there is no statutory authority for this requirement; rather, the Commission's statutory authority is limited to rates or rate-related matters, not a "public interest" standard, as indicated by the Commission in the text of the final rule.[41]

Section 1(3) of the ICA[42] defines transportation to include "* * * all services in connection with the receipt, delivery, elevation, and transfer in transit * * * storage, and handling of property transported."

Section 1(6) of the ICA[43] requires all carriers to "establish, observe, and enforce * * * just and reasonable regulations and practices affecting classifications, rates, or tariffs, * * * the facilities for transportation, * * * and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property. * * *"

Section 6(1)[44] of the ICA provides that carriers' tariffs shall

> state the places between which property * * * will be carried, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed, and any rules or regulations which in any wise change, affect, or determine any part of the aggregate of such aforesaid rates, fares, and charges, *or the value of the service rendered to the * * * shipper.* * *
> (Emphasis added.)

The three items specifically mentioned by the applicants for rehearing—prorationing policy, line connection policy, and product specification—all constitute conditions of offering transportation service by the carrier, or constitute conditions of "receipt, delivery * * *, and transfer in transit * * *, and handling" by the carrier.[45] They certainly affect the value of services to the shipper. Thus, they are encompassed within the term "transportation" as defined in the ICA.

It is clearly within the Commission's authority under section 6(1) to require that such regulations and practices be contained in the company's tariffs on file with the Commission and open to public inspection. This is a primary purpose of a tariff—to set forth the terms and conditions under which the service of the carrier is offered so as to militate against discrimination and preferential treatment in favor of one shipper over another.[46]

Moreover, these items which are required to be included in tariffs not only affect the value to the shipper of the service offered by the carrier, but also can have a direct effect on access to transportation. Because different carriers implement different policies, a carrier's prorationing, carrier liability, quality bank, and connection policies may adversely affect shippers. As the Commission has stated in another context, "By requiring publication of such tariff provisions, section 6 [of the ICA] helps ensure rate certainty and uniformity between shippers and reduces the possibility of discriminatory treatment between shippers."[47]

All items contained in § 341.8 (except for prorationing policy, carrier liability, quality bank, and line connection policy) have been listed in § 341.10 of the Commission's regulations for a substantial number of years, as ARCO has observed.[48] In fact, § 341.10 required the publication of tariffs which contain all the rules governing the various items listed in that section, as well as all rules "which increase or decrease the value of service to the shipper."

The new items specifically added are rules "which increase or decrease the value of service of shippers," or are required to diminish the possibility of discrimination. Since they are of the same character as those contained in § 341.10, which was superseded by the new § 341.8, the Commission is not convinced that they will constitute the burden on carriers expressed by AOPL, ARCO, and Williams.

G. TAPS

ARCO, Unocal, and Alaska each request that the Commission clarify its intent regarding establishing rates for TAPS carriers and those delivering to TAPS. ARCO requests that the Commission confirm that TAPS and other excluded pipelines will continue to be regulated under the ratemaking standards that are currently in effect, and that nothing in the final rule should be construed to the contrary. Alaska similarly asks that the Commission clarify that three pipelines delivering oil to TAPS—Kuparuk, Endicott, and Milne Point—shall continue to justify their rates under their respective settlement agreements. Unocal requests clarification that the TAPS Settlement Methodology (TSM) is not the sole methodology applicable to TAPS carriers.

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[41] ARCO, p. 25. *See* III FERC Stats. & Regs. ¶ 30,985, at p. 30,969 (1993).

[42] 49 U.S.C. app. § 1(3) (1988).

[43] 49 U.S.C. app. § 1(6) (1988).

[44] 49 U.S.C. app. § 6(1) (1988).

[45] Section 1(3) of the ICA.

[46] *See* Atchison, Topeka & Santa Fe Ry., 607 F. 2d 1199 (7th Cir. 1979); Central R.R. Co. v. Anchor Line, Ltd., 219 F. 716,718 (2d Cir. 1914); Central & S. Motor Frtg. Tar. Assn. v. United States, 273 F. Supp. (D. Del. 1967).

[47] KK Appliance Co., 47 FERC ¶ 61,076 at p. 61,217 (1989).

[48] ARCO, p. 28.

It was not the Commission's intent to change, in any way, the current ratemaking standards for TAPS and excluded carriers. Indeed, as stated in the final rule, the Act of 1992 specifically excluded TAPS and any pipeline delivering oil directly or indirectly to TAPS from the provisions of the Act for ratemaking purposes. As further explained, TAPS and those excluded pipelines will continue to be regulated under the ratemaking standards that are currently in effect.[49] That continues to be the Commission's intent.

H. Miscellaneous Issues

Chevron asserts that the Commission's procedures are not adequately defined, and that such lack of definition now generates protracted oil pipeline rate proceedings. Chevron states that "at a minimum the Commission should scrutinize its discovery and decision-making processes."[50] This would entail, according to Chevron, new regulations that would prevent a pipeline from delaying the rate review process and that would require issuance of orders and decisions in a timely manner.

In response to Chevron's arguments, the Commission believes that the regulations contained in the final rule will streamline and expedite the Commission's ratemaking and decision-making processes. Chevron has not identified any specific changes or additional reforms that would improve and expedite the implementation of the ICA by the Commission.

In particular, as Chevron notes, the discovery process can contribute to delay in the hearing of contested proceedings. The improved filing requirements that will result from the Commission's NOPR in Docket No. RM94-2-000 should ameliorate this problem as it existed in the past. In addition, no specific proposals to expedite and reform discovery procedures were submitted in the comment phase of this rulemaking, by Chevron or anyone else.

The Commission Orders

The applications for rehearing and requests for clarification are granted to the extent reflected herein. In all other respects, such applications and requests are denied.

[49] III FERC Stats. & Regs. ¶ 30,985 (1993), at 30,961.

[50] Chevron Rehearing, at 8.

List of Subjects

18 CFR Part 341

Maritime carriers, Pipelines, Reporting and recordkeeping requirements.

18 CFR Parts 342 and 343

Pipelines, Reporting and recordkeeping requirements.

By the Commission. Commissioner Hoecker concurred in part and dissented in part with a separate statement attached. Commissioner Massey dissented with a separate statement attached.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, Parts 341, 342, and 343, Chapter I, Title 18, Code of Federal Regulations, are amended as set forth below.

The following regulations are effective September 7, 1994.

PART 341—OIL PIPELINE TARIFFS: OIL PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT

1. The authority citation for Part 341 continues to read as follows:

Authority: 42 U.S.C. 7101–7352, 49 U.S.C. 1–27.

2. In § 341.4, paragraph (f) is revised to read as follows:

§ 341.4 Filing requirements for amendments to tariffs.

* * * * *

(f) *Suspension supplements.* A suspension supplement must be filed for each suspended tariff or suspended part of a tariff within 30 days of the issuance of a suspension order. The suspension supplement must be served on all subscribers. The supplement must include the date it is issued, a reproduction of the ordering paragraphs of the suspension order, a statement that the tariff or portion of the tariff was suspended until the date stated in the suspension order, a reference to the docket number under which the suspension order was issued, and a statement that the previous tariff publication remains in effect.

The following regulations are effective January 1, 1995.

PART 342—OIL PIPELINE RATE METHODOLOGIES AND PROCEDURES (EFFECTIVE JANUARY 1, 1995)

1. The authority citation for part 342 continues to read as follows:

Authority: 5 U.S.C. 571–83; 42 U.S.C. 7101–7532; 49 App. U.S.C. 1–85; 42 U.S.C. 7172 note.

2. In § 342.3, paragraph (e) is revised to read as follows:

§ 342.3 Indexing.

* * * * *

(e) *Rate Decreases.* If the ceiling level computed pursuant to § 342.3(d) is below the filed rate of a carrier, that rate must be reduced to bring it into compliance with the new ceiling level; provided, however, that a carrier is not required to reduce a rate below the level deemed just and reasonable under section 1803(a) of the Energy Policy Act of 1992, if such section applies to such rate or to any prior rate. The rate decrease must be accomplished by filing a revised tariff publication with the Commission to be effective July 1 of the index year to which the reduced ceiling level applies.

3. In § 342.4, paragraph (a) is revised to read as follows:

§ 342.4 Other rate changing methodologies.

(a) *Cost-of-service rates.* A carrier may change a rate pursuant to this section if it shows that there is a substantial divergence between the actual costs experienced by the carrier and the rate resulting from application of the index such that rates at the ceiling level would preclude the carrier from being able to charge a just and reasonable rate within the meaning of the Interstate Commerce Act. A carrier must substantiate the prudence of the costs incurred. A carrier that makes such a showing may change the rate in question, based upon the cost of providing the service covered by the rate, without regard to the applicable ceiling level under § 342.3.

* * * * *

PART 343—PROCEDURAL RULES APPLICABLE TO OIL PIPELINE PROCEEDINGS (EFFECTIVE JANUARY 1, 1995)

1. The authority citation for Part 343 continues to read as follows:

Authority: 5 U.S.C. 571–83; 42 U.S.C. 7101–7532; 49 App. U.S.C. 1–85; 42 U.S.C. 7172 note.

2. In § 343.3, paragraph (a) is amended by adding the following sentence at the end thereof as follows:

§ 343.3 Filing of protests and responses.

(a) *Protests.*

* * * * *

Only persons with a substantial economic interest in the tariff filing may file a protest to a tariff filing pursuant to the Interstate Commerce Act. Along with the protest, the protestant must file a verified statement which must contain a reasonably detailed description of the

nature and substance of the protestant's substantial economic interest in the tariff filing.

* * * * *

Appendix—List of Parties Seeking Rehearing and/or Clarification of Order No. 561

Alaska, State of (Alaska)
Alberta Petroleum Marketing Commission (Alberta)
All American Pipeline Company (AAPC)
Amoco Pipeline Company (Amoco)
Association of Oil Pipelines (AOPL)
ARCO Pipe Line Company, Four Corners Pipe Line Company and ARCO Transportation Alaska, Inc. (ARCO)
Buckeye Pipe Line Company, L.P. (Buckeye)
Chevron U.S.A. Products Company (Chevron)
Colonial Pipeline Company (Colonial)
Conoco Pipe Line Company (Conoco)
Exxon Pipeline Company (Exxon)
Holly Corporation (Holly)
Kerr-McGee Refining Corporation (Kerr-McGee)
Lakehead Pipe Line Company (Lakehead)
Marathon Pipe Line Company (MPL)
Petrochemical Energy Group (PEG)
Phillips Pipe Line Company (Phillips)
Plantation Pipe Line Company (Plantation)
SFPP, L.P. (SFPP)
Shell Pipe Line Corporation (Shell)
Sun Pipe Line Company (Sun)
Total Petroleum, Inc. (Total)
US Air, Inc. (USAir)
Unocal Pipeline Company (Unocal)
Williams Pipe Line Company (WPL)

HOECKER, Commissioner, *concurring in part and dissenting in part:*

I largely concurred with the Final Rule adopted in this docket.[1] The regulatory regime that will become effective January 1, 1995, for oil pipelines is generally quite simple for companies whose rates tend to track legitimate cost incurrence. On rehearing, two serious flaws in the Final Rule persist. Consequently, I will dissent in part once again.

First, the rule continues to require that protests to indexed rates will be allowed only where "the *increment* of the rate change produced by application of the index is substantially in excess of the individual pipeline's *increase* in costs." As I explained in my prior dissent on this issue, I would have preferred a rule that allowed protests that can show a substantial divergence between the rate taken as a whole and the pipeline's total costs. Even with an index, costs and rates may occasionally become so unrelated that rates cease to be just and reasonable under the Interstate Commerce Act. We should provide for such exigencies.

Second, I continue to be concerned that the "settlement rate methodology," under which existing rates can be changed or initial rates can be established, may lead to unjust and unreasonable rates wherever negotiations are not constrained by demonstrable market forces. This aspect of the rule should only be adopted pursuant to the market-based rate procedures proposed in Docket No. RM94–1–000.[2] While I fully support settlements, I believe that settlements should be in the public interest and subject to Commission scrutiny. I believe the procedures established in this rule do not adequately safeguard against potential abuses of market power and, indeed, may invite the unlawful use of market power to obtain rate increases in excess of the indexed rate.

For these reasons, as well as those previously expressed in my November 2, 1993 statement, I respectfully concur in part and dissent in part to today's Order.

James J. Hoecker,

Commissioner.

MASSEY, Commissioner, *dissenting:*

I respectfully dissent for the same reasons set out in my statement, issued November 5, 1993, dissenting from Order No. 561.[3]

William L. Massey,

Commissioner.

[FR Doc. 94–18873 Filed 8–5–94; 8:45 am]

BILLING CODE 6717–01–M

[1] A full exposition of my views on Order No. 561 and on regulation of the oil pipeline industry are contained in my statement of November 2, 1993, which will be, belatedly, published at III FERC Stats. and Regs. ¶ 30,985 (1993). Pending publication, a copy of the November statement may be obtained from the Commission's public reference room.

[2] Market-based Ratemaking for Oil Pipelines, Notice of Proposed Rulemaking, issued July ____, 1994, IV FERC Stats. and Regs. ¶ 32,_____ (1994).

[3] 65 FERC ¶ 61,109 (1993).

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Procedures for Attorney General Requests to Review Parole Decisions

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is adopting a procedure for the handling of requests from the Attorney General under 18 U.S.C. 4215(c) to review parole decisions by Regional Commissioners. Although statutory law permits the Attorney General to request the National Appeals Board to review any parole decision of a Regional Commissioner within thirty days of the Regional Commissioner's decision, the provision has been so infrequently used that the Commission has not hitherto published any procedure for the handling of such requests. The purpose of this publication is to set forth such a procedure, and to ensure compliance with other statutory provisions regarding disclosure of the documentary evidence that is relied upon by the Commission, in the case of an Attorney General request that is accompanied by new information.

EFFECTIVE DATE: September 7, 1994.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Office of General Counsel, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Federal parole laws remain in effect until November 1, 1997, for prisoners and parolees who committed their crimes prior to November 1, 1987, and whose sentences place them under the jurisdiction of the U.S. Parole Commission. See Section 235(b) of the Sentencing Reform Act of 1987, Public Law 98–473 (as amended) and 18 U.S.C. 4201 through 4218. Under 18 U.S.C. 4215(c), the Attorney General may request the National Appeals Board of the U.S. Parole Commission to review any decision of a Regional Commissioner, provided the Attorney General's request is received within 30 days of the Regional Commissioner's decision. The National Appeals Board then has 60 days to reaffirm, modify, or reverse the Regional Commissioner's decision. This statutory provision preserves the independence and integrity of the U.S. Parole Commission by providing the Attorney General (and through the Attorney General, the prosecutorial arm of the Department of Justice) with a formal procedure for making objection to any parole release or denial ordered by a Commissioner. Although enacted in 1976, this procedure has been rarely employed, and the Commission has hitherto not had occasion to publish any procedure for the handling of such requests.

The Commission was recently confronted with a request from the Attorney General under 18 U.S.C. 4215 that raised an important procedural question. The request was accompanied by documentary evidence not previously in the Commission's record. If the National Appeals Board were to decide the case without observing the normal right of a federal prisoner to have disclosure and an opportunity to rebut adverse information, see 18 U.S.C. 4208, procedural fairness would not be achieved. On the other hand, the 60-day period allowed by 4215(c) is not enough time for the statutory hearing process to be carried out prior to review and decision by the National Appeals Board. See 18 U.S.C. 4208.

Accordingly, the Commission has decided to adopt a procedure whereby the National Appeals Board will consider the new information in deciding to reaffirm, modify, or reverse the Regional Commissioner's decision within the statutory 60-day period, but will also remand the case for a new

hearing if the decision (and the information) is adverse to the prisoner. After a hearing with the opportunity for rebuttal, the case will be returned to the National Appeals Board for a final decision as to the disposition of the case. Although the final decision of the National Appeals Board will be rendered after the 60-day deadline has expired, the Commission has the statutory authority to delegate to the National Appeals Board this additional decisionmaking responsibility under 18 U.S.C. 4203. The legislative history of the Commission's enabling statute makes it clear that the Commission was intended by Congress to have significant freedom of choice as to the powers to be delegated to the National Appeals Board. 2 U.S. Code Cong. & Admin. News at 354–355 (1976).

This procedure will provide the Attorney General with the unqualified right to have the National Appeals Board review a Regional Commissioner's decision within the statutory deadline, while also providing the prisoner with a meaningful opportunity to rebut any new adverse information before the disposition of the case is deemed to be final. This rule has not been published for notice and comment prior to adoption because it is strictly a rule of procedure.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 and the rule has therefore not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

The Final Rule

Accordingly, the U.S. Parole Commission makes the following amendment to 28 CFR Part 2:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR Part 2, § 2.26 is amended by adding the following paragraph (f):

§ 2.26 Appeal to National Appeals Board.

* * * * *

(f) Upon the written request of the Attorney General seeking review of a decision of a Regional Commissioner, which is received within 30 days of such decision, the National Appeals Board shall reaffirm, modify, or reverse the Regional Commissioner's decision within 60 days of receipt of the Attorney General's request. The National Appeals Board shall inform the Attorney General and the prisoner to whom the decision applies in writing of its decision and the reasons therefor. In the event the Attorney General submits new and significant information that has not previously been disclosed to the prisoner prior to a hearing under these rules, the National Appeals Board shall act within 60 days to reaffirm, modify or reverse the Regional Commissioner's decision, but shall also remand the case for a new hearing if its decision is adverse to the prisoner. The prisoner shall have disclosure of the new information, and the opportunity to dispute that information under § 2.19(c) of this part. Following the hearing, the case shall be returned to the National Appeals Board, together with a recommendation from the hearing examiner, to render a final Commission decision as to the disposition of the case.

Dated: July 22, 1994.

Jasper R. Clay, Jr.,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 94–19214 Filed 8–5–94; 8:45 am]

BILLING CODE 4410–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5027–7]

Standards of Performance for New Stationary Sources, Supplemental Delegation of Authority to the Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of Authority.

SUMMARY: On February 17, 1993, the Commonwealth of Kentucky Department for Environmental Protection requested that EPA delegate authority for implementation and enforcement of additional and revised categories of New Source Performance Standards (NSPS). Since EPA's review of Kentucky's pertinent laws, rules, and regulations showed them to be adequate for the implementation and enforcement of these federal standards, the Agency has made the delegations as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is June 22, 1994.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

All requests, applications, reports and other correspondence required pursuant to the newly delegated standards should not be submitted to the Regional IV office, but should instead be submitted to the following address: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, United States Environmental Protection Agency, Region IV, 345 Courtland Street NE, Atlanta, Georgia, 30365, (404) 347–2864.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with Sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, NSPS.

On April 12, 1977, EPA initially delegated the authority for implementation and enforcement of the NSPS programs to the Commonwealth of Kentucky. On February 17, 1993, Kentucky requested a delegation of authority for implementation and enforcement of the following NSPS categories found in 40 CFR part 60.

New Categories for NSPS

1. Subpart Db—Industrial-Commercial-Institutional Steam Generating Units (except §§ 60.44b(f), 60.44b(g), and 60.44b(a)(4)).
2. Subpart H—Sulfuric Acid Plants.
3. Subpart QQ—Graphics Arts Industry: Publication Rotogravure Printing.
4. Subpart III—Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes (except § 60.613(e)).

5. Subpart NNN—Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations (except § 60.663(e)).
6. Subpart QQQ—Volatile Organic Compound (VOC) Emissions from Petroleum Refinery Wastewater Systems.
7. Subpart SSS—Magnetic Tape Coating Facilities (except §§ 60.711(a)(16), 60.713(b)(1)(i), 60.713(b)(1)(ii), 60.713(b)(5)(i), 60.713(d), 60.715(a), and 60.716)).
8. Subpart TTT—Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines (except §§ 60.723(b)(1), 60.723(b)(2)(i)(C), 60.723(b)(2)(iv), 60.724(e), and 60.725(b)).
9. Subpart VVV—Polymeric Coating of Supporting Substrates Facilities (except §§ 60.743(a)(3)(v) (A) and (B), 60.743(e), 60.745(a), and 60.746.

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for these source categories with the conditions set forth in the original delegation letter of April 12, 1977. Kentucky sources subject to the requirements of these subparts will not be under the jurisdiction of the Commonwealth of Kentucky. On June 22, 1994, EPA delegated the authority for the above mentioned source categories in a letter from Winston A. Smith, Director, Air, Pesticides, and Toxics Management Division to John E. Hornback, Director, Kentucky Division for Air Quality

Action

Since review of the pertinent Kentucky laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned categories of NSPS, the Commonwealth's request for delegation was granted. The EPA hereby notifies the public that it has delegated the authority for the source categories listed above (except those sections, as noted, that may not be delegated).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. This notice is issued under the authority of Sections 101, 110, 111, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 7411, 7412, and 7601).

Dated: June 30, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–19165 Filed 8–5–94; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 721

[OPPTS–50583H; FRL–4752–5]

Sulfur Bridged Substituted Phenols; Modification of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is modifying a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for sulfur bridged substituted phenols based on a modification to the TSCA section 5(e) consent order regulating this substance.

DATES: The effective date of this rule is October 7, 1994. This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on August 22, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 9, 1990 (55 FR 32406), EPA issued a SNUR establishing significant new uses for sulfur bridged substituted phenols (P–89–396). Because of the modification to the consent order for this substance, EPA is modifying this SNUR.

I. Background

The Agency proposed the modification of the SNUR for this substance in the **Federal Register** of September 22, 1993 (58 FR 49269). The background and reasons for the modification of the SNUR are set forth in the preamble to the proposed modification. The Agency received one comment concerning the proposed recordkeeping in the SNUR which EPA will address below. All other parts of the final rule will be issued as proposed. The commenter stated that the proposed recordkeeping requirements under § 721.125(b) and (c) are too broad and burdensome, especially for smaller repackagers and distributors unfamiliar with TSCA who would have to keep records for many individual retail and consumer sites. The commenter questioned whether the proposed recordkeeping was intended to be so broad and suggested that other requirements would address the Agency's objectives for the records normally required under § 721.125(b) and (c). Section 721.125(b) requires: "Records documenting volumes of the substance purchased in the United States by processors of the substance, name and addresses of suppliers and corresponding dates of purchase." Section 721.125(c) requires: "Records documenting the names and addresses (including shipment destination address, if different) of all persons outside the site of manufacture, importation, or processing to whom the manufacturer, importer, or processor directly sells or transfers the substance, the date of each sale or transfer and the quantity of the substance sold or transferred on such date."

EPA recognizes that the recordkeeping requirements in § 721.125(b) and (c) can be potentially broad and burdensome when substances are incorporated into products intended for consumer or retail use. EPA has issued a final SNUR that discusses this issue which was published in the **Federal Register** of February 6, 1992 (57 FR 4576). Consult that SNUR for a more detailed discussion of the issue. The purpose of these recordkeeping requirements is to establish a trail of the substance through the marketplace for enforcement purposes. Such recordkeeping was designed to function best in industrial chemical situations where the number of processors and users is generally limited.

In the TSCA 5(e) consent order modification for this substance, EPA did not make a potential unreasonable risk finding for the use of the substance. It did make such a finding for manufacturing and processing of the substance. EPA has not identified a potential unreasonable risk for users of this substance and the number of processors and users is extensive. Therefore, EPA agrees that in this instance it would be an unnecessary burden to establish the proposed recordkeeping requirement for processors.

EPA attempted to address the potential burden by limiting the recordkeeping requirements in the proposed SNUR to only those manufacturers, importers, and processors who distributed the substance at a concentration at greater than 1 percent. Since the potential risk to processors is lower, EPA will require only manufacturers and importers to retain records required under § 721.125. Recordkeeping under § 721.125(b) will not be required. This will allow EPA to obtain records for enforcement purposes for manufacturers, importers, and processors and relieve the recordkeeping burden on processors.

II. Objectives and Rationale for Modification of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is available in the rulemaking record referenced in Unit III. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

In light of the toxicity data received which demonstrates that the PMN substance is expected to cause liver, blood, and developmental effects, EPA determined that dermal protection for exposed workers and hazard communication requirements were necessary to protect human health. In addition, EPA determined that because the required data had been submitted, the production limit was no longer necessary. The section 5(e) order modification added such dermal protection and hazard communication requirements and eliminated the production limit requirement. The proposed modification of SNUR provisions for the substance designated herein is consistent with the January 7, 1993, modification of the section 5(e) order.

III. Rulemaking Record

The record for the rule which EPA is modifying was established at OPPTS-50583. This record includes information considered by the Agency in developing this rule and includes the modification to consent order to which the Agency has responded with this modification.

IV. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act.

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2131), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070-0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: July 26, 1994.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.5880, by revising paragraphs (a)(2), and (b)(1) and (b)(2) to read as follows:

§ 721.5880 Sulfur bridged substituted phenols (generic name).

(a) * * *

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv) (specifically liver and blood effects), (g)(2)(i), (g)(2)(v), and (g)(5).

(b) *Specific requirements.* * * *

(1) *Recordkeeping requirements.* The recordkeeping requirements as specified in § 721.125(a) and (c) through (h) are applicable to manufacturers and importers of this substance. Any statements requiring processors to keep records in § 721.125 do not apply.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

* * * * *

[FR Doc. 94-18915 Filed 8-5-94; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 381

[Docket No. R-153]

RIN 2133-AB13

Cargo Preference—U.S.-Flag Vessels; Available U.S.-Flag Commercial Vessels

AGENCY: Maritime Administration, Transportation.

ACTION: Final rule

SUMMARY: This amendment to the cargo preference regulations of the Maritime

Administration (MARAD) provides that, for a one-season trial period corresponding to the current Great Lakes shipping season when the St. Lawrence Seaway System is in use, which began on April 5, 1994, MARAD will consider the legal requirement for the carriage of bulk agricultural commodity preference cargoes on privately-owned "available" U.S.-flag vessels to have been satisfied where the cargo is initially loaded at a Great Lakes port on one or more U.S.-flag or foreign-flag vessels, transferred to a U.S.-flag commercial vessel at a Canadian transshipment point outside the St. Lawrence Seaway, and carried on that U.S.-flag vessel to a foreign destination. This amendment will allow Great Lakes ports to compete for agricultural commodity preference cargoes during that one-season trial period.

EFFECTIVE DATE: This final rule is effective on August 8, 1994.

FOR FURTHER INFORMATION CONTACT: John E. Graykowski, Deputy Maritime Administrator for Inland Waterways and Great Lakes, Maritime Administration, Washington, DC 20590, Telephone (202) 366–1718.

SUPPLEMENTARY INFORMATION: United States law at sections 901(b) (the "Cargo Preference Act") and 901b, Merchant Marine Act, 1936, as amended (the "Act"), 46 App. U.S.C. 1241(b) and 1241f, requires that at least 50 percent of cargo "impelled" by Federal programs (preference cargoes), and transported by sea, be carried on privately-owned United States-flag commercial vessels, to the extent that such vessels "are available at fair and reasonable rates." The Secretary of Transportation is desirous of administering that program so that all ports and port ranges may participate. MARAD is amending its cargo preference regulations to facilitate the ability of Great Lakes ports to compete for agricultural commodity preference cargoes for a one-season trial period, corresponding to the Great Lakes shipping season when the St. Lawrence Seaway System is in use. This final rule reflects MARAD's review of comments submitted by nine parties in response to the publication of a notice of proposed rulemaking (NPRM).

Reason for Rule

For a number of reasons, United States-flag commercial vessels in foreign commerce do not now serve the Great Lakes. Consequently, cargoes subject to the cargo preference laws are not loaded on U.S.-flag vessels at Great Lakes ports, resulting in significantly less cargo for these ports than for ports on other United States coasts. MARAD will allow cargoes to be counted toward the preference requirements if they are loaded initially on foreign-flag vessels at U.S. Great Lakes ports for the trip along the St. Lawrence Seaway and then transferred to United States-flag vessels for the ocean portion of their carriage to a foreign destination. When all-U.S. service is not available, the registry ("flag") of a vessel loading the cargo on the Great Lakes and carrying it through the Seaway would not be relevant. This rule will be in effect during a trial period corresponding to the current Great Lakes shipping season when the St. Lawrence Seaway System is in use, which began on April 5, 1994.

The need for this rulemaking arises due to changing shipping conditions affecting U.S.-flag vessels operating in the Great Lakes, resulting in the absence of all-U.S.-flag vessel availability for the carriage of cargo between U.S. Great Lakes ports and foreign countries. Dramatic changes in shipping conditions have occurred since 1960, including the disappearance of any all-U.S.-flag commercial ocean-going service to foreign countries from U.S. Great Lakes ports. The static configuration of the St. Lawrence Seaway system and the evolving greater size of commercial vessels are significant shipping changes. In 1960, the average U.S.-flag general cargo vessel had a deadweight tonnage of 10,976, while in 1993, the average U.S.-flag general cargo vessel had a deadweight tonnage of 17,464. In addition, the average size of U.S.-flag vessels used for the carriage of bulk agricultural product cargoes has increased greatly during the past ten years.

As shown by a table appearing in the interim final rule, no preference cargo has moved on U.S.-flag vessels out of the Great Lakes since 1989, with the exception of the MORMACSKY trial in 1993, discussed hereinafter. The disappearance of Government-impelled cargo flowing from the Great Lakes coincides with the expiration of the Great Lakes "set aside." Under the Food Security Act of 1985, Public Law 99–198, codified at 46 App. U.S.C. 1241f(c)(2), a certain minimum amount of Government-impelled cargo was required to be allocated to Great Lakes ports during calendar years 1986, 1987, 1988, and 1989. That "set-aside" expired in 1989, and was not renewed by the Congress.

At present, the Great Lakes simply do not have any all-U.S.-flag ocean freight capability for carriage of bulk preference cargo. In contrast, the total export nationwide by non-liner vessels of USDA and USAID agricultural assistance program cargoes subject to cargo preference in the 1992–1993 cargo preference year (the latest program year for which figures are available) amounted to 6,297,015 metric tons, of which 4,923,244, or 78.2 percent, was transported on U.S.-flag vessels. (Source: Maritime Administration database.)

In 1993 a unique movement of agriculture commodity preference cargo out of the Great Lakes occurred, involving a U.S.-flag mother ship and two U.S.-flag feeder vessels. Two U.S.-flag lake bulk carriers, the J.L. MAUTHE and the AMERICAN MARINER, served as feeders bringing wheat from a U.S. Great Lakes port to a Canadian transshipment point where the MORMACSKY, a U.S.-flag oceangoing vessel, loaded the cargo destined to Russia. All the vessels were under the control of U.S.-flag carriers. Reportedly, the demonstration was possible as a result of commodity prices in the Midwest which favored the Great Lakes over other U.S. ports.

Proposed Rule and Comments

For the purpose of allowing Great Lakes ports to have the opportunity to compete for agricultural commodity preference cargoes and to assess the results, MARAD issued a NPRM (59 FR 24390, May 11, 1993), proposing to amend its cargo preference regulations at 46 CFR Part 381. That amendment relates to compliance by Federal shipper agencies, pursuant to section 381.8, with applicable cargo preference requirements for programs that they administer. The NPRM proposed to add a new section 381.9, providing that, when direct U.S.-flag service is not available at fair and reasonable rates from U.S. Great Lakes ports, for a one-season trial period, (1) the requirement for "available" U.S.-flag commercial vessels under the Act would be satisfied by U.S.-flag commercial vessels calling at a Canadian transshipment port on the Gulf of St. Lawrence to carry to the ultimate (foreign) destination bulk agricultural commodity cargoes subject to the cargo preference laws, that were initially loaded at U.S. ports on the Great Lakes by U.S.-flag or foreign-flag vessels; and (2) determinations of "fair and reasonable rates for United States commercial vessels" under section 901(b) would include through bills of lading for such available U.S.-flag vessels.

MARAD stated in the NPRM that, based on experience during the one-season trial period, it will consider whether to make the rule permanent or to extend it for a period longer than the

one-season trial period. A comment period of 20 days applied to the one-season trial period.

The nine commenters represent U.S. Great Lakes port and shipping interests, the grain industry, maritime labor and two Federal agencies which administer agricultural commodity assistance programs that are subject to cargo preference requirements. All commenters expressed approval of MARAD's determination that, for a trial period, the transshipped bulk agricultural commodities meet the legal requirement that preference cargoes be carried on privately owned "available" U.S.-flag vessels. Four of the commenters, noting that the one-season trial period cannot, as a practical matter, begin before July 1994, allowing only a shortened season, recommended extending the trial period through the 1995 Great Lakes season, while two commenters specifically limited their approval to a one-season trial period.

The United States Agency for International Development (USAID) suggested that additional consideration of the legal basis for the rule is merited in two areas. First, USAID observed that MARAD failed to state that the rule would further an objective recognized under the Cargo Preference Act. Second, they questioned whether the rule is consistent with several Comptroller General Opinions not cited by MARAD in the NPRM.

This rule is being promulgated pursuant to MARAD's authority under sections 204(b) and 901(b)(2) of the Act, 46 App. U.S.C. 1114(b) and 1241(b)(2). Any rule promulgated by MARAD under the Act must implement the Act's statutory mandate. *Independent U.S. Tanker Owners* v. *Lewis*, 690 F. 2d 908, 917 (D.C. Cir. 1982). The Act was passed to foster an efficient, modern, American-owned and operated merchant fleet, able to carry a substantial portion of American export and import trade, and able to serve as a naval auxiliary in time of war. See the Act's Declaration of Policy, 46 App. U.S.C. § 1101; *Sea-Land Service, Inc.* v. *Dole*, 723 F. 2d 975, 976 (D.C. Cir. 1983).

The Cargo Preference Act, which amended the Act, was passed to enhance promotion of the merchant fleet by assuring that at least 50 percent (now 75 percent for the agricultural export programs affected by this rule) of Government-sponsored cargoes transported on ocean vessels would be moved on privately-owned U.S.-flag commercial vessels. 46 App. U.S.C. § 1241(b), e-o. Congress viewed the Cargo Preference program as fundamental to maintenance of a thriving merchant marine, because the program would assure that a baseline amount of cargo would be available for carriage by the American fleet. S. Rep. No. 1584, 83rd Cong. 2nd Sess. 1 (1954).

By allowing additional ports to participate in moving preference cargoes, the NPRM would potentially benefit the American merchant marine by helping to avoid situations where cargo is routed on foreign-flag vessels due to non-availability of U.S.-flag vessels. Including additional ports makes it more likely that U.S.-flag vessels would be available when and where the preference cargo is set to move, thus giving greater assurance that the mandated 75 percent U.S.-flag carriage of agricultural commodity preference cargo will continue to be achieved.

The NPRM discussed the import of the Comptroller General's decision in B–140872, 39 Comp. Gen. 758 (1960), inasmuch as that decision specifically addressed the issue of foreign-flag feeder vessels in the Great Lakes. It explained that the factual basis underlying the Comptroller General's decision had changed since 1960, leading to a conclusion that the decision does not preclude promulgation of the rule as proposed.

USAID requested that MARAD review the following additional opinions: B–165421, 48 Comp. Gen. 429 (12/23/68); B–155185, unpublished (11/17/69); B–145455, 49 Comp. Gen. 755 (5/5/70); B–136530, 55 Comp. Gen. 1097 (5/12/76). Each of these decisions is predicated on providing the protection to U.S.-flag vessels envisioned in either the 1904 or 1954 Acts. It should be noted that no comments were received on behalf of any U.S.-flag vessel complaining that the proposed rule would reduce or eliminate such protection of the U.S.-flag fleet.

In B–165421, the Comptroller General held that it was a violation of the Cargo Preference Act of 1904, 10 U.S.C. 2631, to use foreign-flag vessels operating from Great Lakes ports to transport military troop support cargo overseas instead of using U.S.-flag vessels operating from the U.S. East Coast, because cost or time and distance considerations could not be used to avoid using U.S.-flag vessels, unless the cost of using U.S.-flag vessels is excessive or otherwise unreasonable. MARAD's NPRM is consistent with B–165421, as MARAD has indicated no intention in the NPRM to allow foreign-flag vessels to perform the entire voyage from Great Lakes ports.

In B–155185, the Comptroller General held that whether the cargo type (urea in that shipment) normally moves in commercial channels already bagged, or in bulk, the Cargo Preference requirements may not be avoided through the "simple device" of either the buyer or seller choosing where the essential item being procured is to be packaged. The holding in B–155185 is not applicable to this NPRM because the 1954 Act is not being avoided.

In B–145455, the Comptroller General held that where service by U.S.-flag vessels is not available for the entire distance between the U.S. port of origin and the overseas destination, the 1904 Act requires transportation by sea aboard U.S.-flag vessels, with transshipment to foreign land carriers to be preferred over transportation by sea aboard U.S. vessels, with transshipment to foreign-flag feeder ship. The Comptroller General was concerned that allowing the option of foreign-flag feeders under the 1904 Act in that circumstance could lead to a reduction in the use of U.S.-flag vessels. 57 Comp. Gen. 531, 537. Here, the rule would not lead to reduction in the use of U.S.-flag vessels because a U.S.-flag vessel would still be needed for the line haul portion of the voyage.

In B–136530, the Comptroller General held that LASH (Lighter Aboard Ship) services to be performed with U.S.-flag vessels and partly with a foreign-flag FLASH (Float On/Float Off LASH vessel) system to deliver Government-sponsored cargoes to the port of Chittagong in Bangladesh contravenes the 1954 Act because there was direct service to Chittagong. MARAD's rule is consistent with the holding in B–136530, inasmuch as foreign-flag feeders will not be permitted if U.S.-flag vessels begin to call at Great Lakes ports.

MARAD has the discretion to determine availability of U.S.-flag vessels to carry preference cargo. The NPRM indicated MARAD's determination that if U.S.-flag oceangoing vessels do not call at Great Lakes ports, "available" U.S.-flag vessels would include U.S.-flag vessels calling at a Canadian transshipment terminal outside the St. Lawrence Seaway that carry bulk agricultural commodity cargoes transshipped from the Great Lakes by foreign-flag feeder vessels. While USAID suggested that additional consideration of the legal basis was merited, no commenter disagreed with MARAD's conclusion that there is sufficient legal authority for promulgation of the proposed rule.

USAID also commented that it was concerned that MARAD's rule "might be interpreted as a requirement that even where total U.S.-flag service is unavailable, USAID-financed purchasers or suppliers would have to utilize partial U.S.-flag service," thus

restricting that agency's flexibility for financing agricultural commodities under its Commodity Import Programs (CIPs). Although USAID presently has no CIPs financing bulk cargoes, it has requested MARAD to consider amending its rule to refer specifically to P.L. 480 cargoes and related programs in order to avoid any confusion in this regard. It is emphasized that this rule will be in effect during an abbreviated one-season trial period limited to the Great Lakes. USAID has not explained how this rule will impair its flexibility under its CIPs and MARAD is not aware of potential difficulties that this rule might present.

MARAD stated in the discussion of the NPRM that it would not interfere with the concept of "lowest landed cost" contained in the regulations, at 7 CFR 1496.5, of the Department of Agriculture's (USDA) Commodity Credit Corporation (CCC), providing that the lowest combined total cost of the commodity, plus transportation charges to the port of destination calculated on the basis of U.S.-flag rates and availability, will prevail with regard to awarding contracts. The combined transportation originating at Great Lakes ports would compete on the basis of lowest landed cost (cost of freight plus cost of commodity) with U.S.-flag vessel availability from the other port ranges.

As for determining a "fair and reasonable" rate for the mixed carriage, the U.S.-flag component would be considered under the existing regulations at 46 CFR part 382 or part 383, as appropriate, with the cost for the foreign-flag component incorporated into the U.S.-flag component, in the same way as the cost of foreign-flag vessels used in lightening operations in the recipient country's territorial waters, if the U.S.-flag carrier offers mixed carriage.

Comments concerning the determination of "fair and reasonable" guideline rates during the trial period were received from the United States Department of Agriculture (USDA). USDA inquired whether MARAD would be willing to provide guideline rates in advance of the commodity award. USDA was concerned that after the commodity was purchased no bidder would be found available at a "fair and reasonable" rate, and USDA or the importing country would find itself unable to arrange substitute foreign-flag ocean carriage, except at very high rates. In situations where the commodity is to be shipped directly from a U.S. Great Lakes port, and the U.S. ocean shipper is arranging the interlake transportation, MARAD is prepared to provide shipper agencies with a determination of availability at "fair and reasonable" rates prior to commodity purchase. However, the change made in the final rule allows the customary practice of offering U.S. produced commodities FOB Canadian transshipment port or point. The situation under these circumstances will not be appreciably different from those where USDA buys a commodity for shipment from most other U.S. port ranges.

USDA and other shipper agencies recognize that, in order for MARAD to provide this guidance in a timely and reliable manner, the shipper agency must provide MARAD with all responsive bids meeting the above criteria at the time they are offered. MARAD will then calculate the appropriate guideline rates and determine if at least one of the offerors is available at a fair and reasonable rate. Since the timing of requests for guideline rates is an administrative matter between Government agencies, no change in the final rule is necessary.

As published, the NPRM would appear to make the shipowner responsible for arranging both the Seaway transportation as well as the transshipment onto a U.S.-flag vessel in Canadian waters. Three commenters noted that this requirement is inconsistent with current practice wherein the supplier arranges the commodity delivery to the deeper water transshipment point. For example, when suppliers offer FOB U.S. Gulf ports, the price of the barge freight down the Mississippi River is included. For purposes of consistency, grain suppliers should be able to offer FOB Canadian transshipment point. In addition to causing higher freight costs, this inconsistency with current practice places an intermodal contracting burden on the shipowners which they may not wish to assume. If the shipowners do not have the option to offer a rate from a Canadian transshipment point the purpose of the rulemaking, which is to give competitive parity to all ports, would be negated. These respondents requested that the NPRM be amended to allow, alternatively, the commodity supplier to offer FOB Canadian transshipment point.

MARAD supports this recommendation because it reflects current commercial practice, would enhance the ability for all ports to compete equally to ensure the lowest cost to the U.S. Government, is consistent with previous implementation of the Great Lakes set-aside and is already covered by USDA regulations. The final rule has been modified to clarify that the supplier may offer the cargo FOB Canadian transshipment point as an alternative to through bills of lading issued by the U.S.-flag carrier covering Great Lakes to final destination.

Rulemaking Analysis and Notices

This rulemaking has been reviewed under Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). It is not considered to be an economically significant regulatory action under section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. However, since this rule would affect other Federal agencies, is of great interest to the maritime industry, and has been determined to be a significant rule under the Department's Regulatory Policies and Procedures, it is considered to be a significant regulatory action under E.O. 12866.

MARAD projects that this rule would allow the movement of up to 300,000 metric tons of agricultural commodities from Great Lakes ports, with a reduction in the shipping cost to sponsoring Federal agencies up to $2 to $3 per metric ton ($900,000).

This rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB

approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.)

List of Subjects in 46 CFR Part 381

Freight, Maritime carriers.

Accordingly, MARAD hereby amends 46 CFR part 381 as follows:

PART 381—[AMENDED]

1. The authority citation for Part 381 is revised to read as follows:

Authority: 46 App. U.S.C. 1101, 1114(b), 1122(d) and 1241; 49 CFR 1.66.

2. A new § 381.9 is added to read as follows:

§ 381.9 Available U.S.-flag service for 1994.

For purposes of shipping bulk agricultural commodities under programs administered by sponsoring Federal agencies from U.S. Great Lakes ports during the 1994 shipping season, if direct U.S.-flag service, at fair and reasonable rates, is not available at U.S. Great Lakes ports, a joint service involving a foreign-flag vessel(s) carrying cargo no farther than a Canadian port(s) or other point(s) on the Gulf of St. Lawrence, with transshipment via a U.S.-flag privately owned commercial vessel to the ultimate foreign destination, will be deemed to comply with the requirement of "available" commercial U.S.-flag service under the Cargo Preference Act of 1954. Shipper agencies considering bids resulting in the lowest landed cost of transportation based on U.S.-flag rates and service shall include within the comparison of U.S.-flag rates and service, for shipments originating in U.S. Great Lakes ports, through rates (if offered) to a Canadian port or other point on the Gulf of St. Lawrence and a U.S.-flag leg for the remainder of the voyage. The "fair and reasonable" rate for this mixed service will be determined by considering the U.S.-flag component under the existing regulations at 46 CFR part 382 or 383, as appropriate, and incorporating the cost for the foreign-flag component into the U.S.-flag "fair and reasonable" rate in the same way as the cost of foreign-flag vessels used to lighten U.S.-flag vessels in the recipient country's territorial waters. Alternatively, the supplier of the commodity may offer the Cargo FOB Canadian transshipment point. Fair and reasonable rates will be determined accordingly.

Dated: August 4, 1994.

By Order of the Maritime Administrator.

Joel C. Richard,

Acting Secretary, Maritime Administration.

[FR Doc. 94–19383 Filed 8–5–94; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 91–273; FCC 94–189]

Notification by Common Carriers of Service Disruptions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Second Report and Order (Order) amends the Commission's rules regarding the reporting of telephone network outages. The amendment enlarges the outage reporting requirement. Previously the rules required only outages that potentially affected 50,000 or more of a carrier's customers to be reported. As amended, the rules require outages potentially affecting 30,000 or more of a carrier's customers to be reported. Fire-related incidents impacting 1,000 or more of a carrier's lines and outages affecting "special" facilities (major airports, 911 PSAPs, nuclear power plants, major military installations and key government facilities) must also be reported under the amended rule. As we stated in that NPRM the information provided by these rules is necessary to improve the Commission's ability to monitor outages and determine what steps may be necessary to ensure network reliability. The amendment will provide the Commission with the additional information it needs to perform this task.

EFFECTIVE DATE: September 7, 1994.

FOR FURTHER INFORMATION CONTACT: Robert E. Kimball, (202) 634–7150, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 91–273, FCC 94–189, adopted July 14, 1994, and released August 1, 1994. The item is available for inspection and copying during normal hours in the Commission's FCC Reference Center (room 230), 1919 M St., NW., Washington, DC, or a copy may be purchased from the duplicating contractor, International Transcription Service, Inc. (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037. The Order will be published in the FCC Record.

OMB Review

The Office of Management and Budget approved the proposals contained in the FNPRM and no substantive or material changes have been made to the final requirements.

Title: Amendment of Part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions (§ 63.100).

OMB Number: 3060–0484.

Expiration Date: 6/30/96.

Action: Revised collections.

Respondents: Business or other for profit.

Frequency of Response: On occasion. Initial report due 120 minutes or 3 days after incident depending on number of potentially affected customers and nature of disruption. Final report due twenty-eight or thirty days after initial report, depending on nature of disruption.

Estimated Annual Burden: 200 responses; 5 hours each; 1000 hours total. These estimates are the same as contained in the Commission's request to OMB which accompanied the NPRM. The information to be furnished is generally gathered by carriers during outages and is presently being voluntarily provided, so the requirement is not burdensome.

Paperwork Reduction: Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Room 234, Paperwork Reduction Project (3060–0484), Washington, D.C. and to the Office of Management and Budget, Paperwork Reduction Project (3060–0484), Washington, D.C. 20503.

Needs and Uses: Section 63.100 of the Commission's Rules, 47 CFR 63.100, is amended to provide for the collection of information which we believe is essential to our mission of ensuring that the public is protected from major disruptions to telephone services. The amendments modify 47 CFR § 63.100 to require that local exchange or interexchange common carriers or competitive access providers that operate either transmission or switching facilities and provide access service or

interstate or international telecommunications service report outages that affect 30,000 or more customers or that affect special facilities and report fire-related incidents impacting 1000 or more lines. With such reports the FCC can monitor and take effective action to ensure network reliability.

Analysis of Proceeding

1. We amend § 63.100 to require, in place of the present requirements, that selected facilities-based common carriers notify the Commission in writing: (1) Within 120 minutes of the carrier's knowledge that it is experiencing an outage that potentially affects 50,000 or more of its customers for 30 minutes or more, (2) within 120 minutes of the carrier's knowledge that it is experiencing an outage which affects special offices and facilities and continues for 30 minutes or more, (3) within 3 days of the carrier's knowledge that it is experiencing an outage potentially affecting 30,000 to 50,000 of its customers for 30 minutes or more, and (4) within 3 days of the carrier's knowledge that it is experiencing a fire-related incident that impacts 1000 or more service lines for 30 minutes or more. These initial reports, in a prescribed format, are to be served on the Commission's monitoring watch officer, on duty 24 hours a day, by facsimile or other recorded means. Not later than thirty days after any reportable outage or incident under the proposed rules, the carrier will file a final service report containing any relevant information not contained in the initial report, including specification of the root cause of the outage or incident and an analysis of any applicable industry "best practices" recommended by the Network Reliability Council, with the Chief of the Commission's Common Carrier Bureau. Carriers are not required to report to the Commission outages affecting nuclear power plants, major military installations and key government facilities under the proposed rules, but they must report such outages, under the terms outlined in the reporting requirements for special facilities (with the exception that final reports, when requested by the National Communications System, are due in twenty-eight days), to the National Communications System. The National Communications System will determine if national security/emergency preparedness concerns would be adversely implicated by further reporting such outages, and, as further reporting is determined to be appropriate in each instance, report these outages to the Commission. The rules further require interexchange carriers (IXCs), and local exchange carriers (LECs) reporting tandem outages, to use real-time blocked calls to determine whether criteria for reporting an outage have been reached. For purposes of complying with the required 50,000 customer threshold, IXCs, and LECs reporting tandem outages, would be required to report outages where more than 150,000 calls are blocked during a 30 minute period and, for purposes of complying with the 30,000 customer threshold, to report outages where more than 90,000 calls are blocked during a 30 minute period. Finally, the amended rule requires carriers experiencing an outage reportable as having affecting a 911 facility to notify the managers of that facility as soon as possible by any electronic means so that measures may be taken to mitigate the effects of the outage.

2. Present § 63.100 of the Commission's Rules, which this Order amends, was established in response to outage incidents that occurred in 1990 and 1991, largely as a result of the introduction of new technology into the telecommunications infrastructure. In January of 1990, for example, AT&T experienced a large scale service failure when software used with its Signaling System 7 contained a coding error. Other major interexchange carriers also experienced significant outages. In June and July of 1991, local exchange carriers Pacific Bell and Bell Atlantic experienced major outages. At that time, the Commission had no systematic way by which to become informed quickly of significant service disruptions and was unable to determine whether certain kinds of technology or equipment threatened service reliability. Present § 63.100 provided a vehicle by which the Commission became better and more quickly informed of certain significant outages.

3. The Report and Order adopting present § 63.100, 7 FCC Rcd 2010 (Released February 27, 1992), 56 FR 7883, March 5, 1992, requested that the Network Reliability Council, a federal advisory committee created by the Commission to provide advice to the Commission for enhancing network reliability, study and recommend suitable additions to the reporting requirement in § 63.100. Section 63.100, as amended in the Order, incorporates many of the outage reporting recommendations of the Council. The Council's membership includes all sectors of the telecommunications industry, as well as state regulators and representatives of large and small telecommunications consumers. All Council meetings are open to the public. Members of the public are invited to present written submissions for the Council's consideration. The final reporting recommendations, sent to the Commission on December 29, 1992, were the result of months of painstaking research by the Threshold Reporting Group, a research committee of the Council composed of industry and consumer telecommunications experts. A variety of possible reporting thresholds and conditions were considered by these experts, by the Council and by the Commission. (For a detailed research summary and analysis, see the Final Recommendation of the Threshold Reporting Group of the Network Reliability Council, December 15, 1992, available in room 6325 of the Commission's offices at 2025 M Street NW., Washington, DC 20554, or through the Commission's contracted copier, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, phone 202/857-3800.)

4. The Commission studied the recommendations and concluded that, with certain modifications, their establishment in the form of a proposed new § 63.100, while cost-effective and not unduly burdensome to the reporting parties, would significantly enhance the capacity of the Commission to monitor outages and to encourage the industry to find ways to further ensure network reliability. The Commission issued a Memorandum Opinion and Order and Further Notice of Proposed Rulemaking (NPRM) in this matter on December 1, 1993, 58 FR 64280, December 6, 1993. The rules proposed therein are generally the same as the amendments established by this Order. Sixteen comments and fourteen reply comments to the NPRM were filed. The Commission carefully considered all comments and has incorporated some of the suggestions of commenters in the amendments. Certain questions such as provisions for more equitable funding for reliability testing have been referred to the Network Reliability Council for further recommendations. The broader collection of information provided for in the amendments is essential to the mission of the FCC and is intended to protect the public from major disruptions to telephone services. To do this, the Commission needs to become aware of a greater number of outages, especially LEC switch outages and outages affecting facilities whose importance is essential to the public welfare. The lower threshold provided for in the amendments will increase by

about three times the number of LEC switch outages reported and will require the reporting of outages affecting 911 emergency services, major airports, nuclear power plants, major military installations and key government facilities. With the information collected, the Commission will be able to better monitor network reliability and take steps as needed to prevent or mitigate outages. The information to be furnished by carriers pursuant to these amendments or its equivalent is normally collected by them, the collection burden has been minimized, and the Commission estimates that the total annual reporting and recordkeeping burden that will result from each collection of information is the same as that reported to OMB with the Commission's NPRM.

Ordering Clauses

Accordingly, pursuant to Sections 1, 4(i), and 201 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154 and 201, § 63.100 of the Commission's Rules, 47 CFR 63.100, Is Amended as set forth below, effective 30 days after publication in the **Federal Register**.

It is Further Ordered, that, the Secretary shall cause a summary of this Order to be published in the **Federal Register** which shall include a statement describing how members of the public may obtain the complete text of this Commission decision. The Secretary shall also provide a copy of this Order to each state utility commission.

List of Subjects in 47 CFR Part 63

Communications common carries, Reporting and recordkeeping requirements, Service disruptions.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, part 63, is amended as follows:

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 201–205, 218 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Secs. 151, 154(i), 154(j), 201–205, 218, and 403, unless otherwise noted.

2. § 63.100 is revised to read as follows:

§ 63.100 Notification of service outage.

(a) As used in this section:

(1) *Outage* is defined as a significant degradation in the ability of a customer to establish and maintain a channel of communications as a result of failure or degradation in the performance of a carrier's network.

(2) *Customer* is defined as a user purchasing telecommunications service from a common carrier.

(3) *Special offices and facilities* are defined as major airports, major military installations, key government facilities, nuclear power plants and 911 public service answering points (PSAPs).

(4) *An outage which potentially affects a 911 special facility* is defined as an outage which disrupts more than 25% of the lines to any PSAP without providing automatic rerouting to an alternative PSAP.

(5) *Major airports* are defined as those airports described by the Federal Aviation Administration as large or medium hubs. The member agencies of the National Communications System (NCS) will determine which of their locations are "major military installations" and "key government facilities."

(6) *An outage which potentially affects a major airport* is defined as an outage that disrupts 50% or more of the air traffic control links or other FAA communications links to any major airport, any outage that has caused an ARTCC or major airport to lose its radar, any ARTCC or major airport outage that is likely to be of media interest, any outage that causes a loss of both primary and backup facilities at any ARTCC or major airport, and any outage to an ARTCC or major airport that is deemed important by the FAA as indicated by FAA inquiry to the carrier management personnel.

(7) *A mission-affecting outage* is defined as an outage that is deemed critical to national security/emergency preparedness (NS/EP) operations of the affected facility by the National Communications System member agency operating the affected facility.

(b) Any local exchange or interexchange common carrier or competitive access provider that operates transmission or switching facilities and provides access service or interstate or international telecommunications service, that experiences an outage which potentially affects 50,000 or more of its customers on any facilities which it owns, operates or leases, must notify the Commission if such outage continues for 30 or more minutes. Satellite carriers and cellular carriers are exempt from this reporting requirement. Notification must be served on the Commission's Monitoring Watch Officer, on duty 24 hours a day in the FCC headquarters building in Washington, D.C., or on a secondary basis it may be served on the Commission's Watch Officer on duty at the FCC's facility at Grand Island, Nebraska. The notification must be by facsimile or other record means delivered within 120 minutes of the carrier's first knowledge that the service outage potentially affects 50,000 or more customers, if the outage continues for 30 or more minutes. Notification shall identify a contact person who can provide further information, the telephone number at which the contact person can be reached, and what information is known at the time about the service outage including: the date and estimated time (local time at the location of the outage) of commencement of the outage; the geographic area affected; the estimated number of customers affected; the types of services affected (e.g. interexchange, local, cellular); the duration of the outage, i.e. time elapsed from the estimated commencement of the outage until restoration of full service; the estimated number of blocked calls during the outage; the apparent or known cause of the incident, including the name and type of equipment involved and the specific part of the network affected; methods used to restore service; and the steps taken to prevent recurrences of the outage. Carriers must indicate, when specifying the types of services affected by any reportable outage, when 911 is one of those services, whether more than 25% of the lines to any PSAP were disrupted and there was no automatic rerouting to an alternate PSAP. The report shall be captioned Initial Service Disruption Report. Lack of any of the above information shall not delay the filing of this report. Not later than thirty days after the outage, the carrier shall file with the Chief, Common Carrier Bureau, a Final Service Disruption Report providing all available information on the service outage, including any information not contained in its Initial Service Disruption Report and detailing specifically the root cause of the outage and listing and evaluating the effectiveness and application in the immediate case of any best practices or industry standards identified by the Network Reliability Council to eliminate

or ameliorate outages of the reported type.

(c) Any local exchange or interexchange common carrier or competitive access provider that operates transmission or switching facilities and provides access service or interstate or international telecommunications service, that experiences an outage which potentially affects at least 30,000 and less than 50,000 of its customers on any facilities which it owns, operates or leases, must notify the Commission if such outage continues for 30 or more minutes. Satellite carriers and cellular carriers are exempt from this reporting requirement. Notification must be served on the Commission's Monitoring Watch Officer, on duty 24 hours a day in the FCC headquarters building in Washington, DC, or on a secondary basis it may be served on the Commission's Watch Officer on duty at the FCC's facility at Grand Island, Nebraska. The notification must be by facsimile or other record means delivered within 3 days of the carrier's first knowledge that the service outage potentially affects at least 30,000 but less than 50,000 customers, if the outage continues for 30 or more minutes.

Notification shall identify the carrier and a contact person who can provide further information, the telephone number at which the contact person can be reached, and what information is known at the time about the service outage including: the date and estimated time (local time at the location of the outage) of commencement of the outage; the geographic area affected; the estimated number of customers affected; the types of services affected (*e.g.* interexchange, local, cellular); the duration of the outage, *i.e.* time elapsed from the estimated commencement of the outage until restoration of full service; the estimated number of blocked calls during the outage; the apparent or known cause of the incident, including the name and type of equipment involved and the specific part of the network affected; methods used to restore service; and the steps taken to prevent recurrences of the outage. Carriers must indicate, when specifying the types of services affected by any reportable outage, when 911 is one of those services whether more than 25% of the lines to any PSAP were disrupted and there was no automatic rerouting to an alternate PSAP. The report shall be captioned Initial Service Disruption Report. Lack of any of the above information shall not delay the filing of this report. Not later than thirty days after the outage, the carrier shall file with the Chief, Common Carrier Bureau, a Final Service Disruption Report providing all available information on the service outage, including any information not contained in its Initial Service Disruption Report and detailing specifically the root cause of the outage and listing and evaluating the effectiveness and application in the immediate case of any best practices or industry standards identified by the Network Reliability Council to eliminate or ameliorate outages of the reported type.

(d) Any local exchange or interexchange carrier or competitive access provider that operates transmission or switching facilities and provides access service or interstate or international telecommunications service that experiences a fire-related incident in any facilities which it owns, operates or leases that impacts 1000 or more service lines must notify the Commission if the incident continues for a period of 30 minutes or longer. Satellite carriers and cellular carriers are exempt from this reporting requirement. Notification must be served on the Commission's Monitoring Watch Officer, on duty 24 hours a day in the FCC headquarters building in Washington, DC, or on a secondary basis it may be served on the Commission's Watch Officer on duty at the FCC's facility at Grand Island, Nebraska. The notification must be by facsimile or other recorded means delivered within 3 days of the carrier's first knowledge that the incident is fire-related, impacting 1000 or more lines for thirty or more minutes. Notification shall identify the carrier and a contact person who can provide further information, the telephone number at which the contact person can be reached, and what information is known at the time about the service outage including: the date and estimated time (local time at the location of the outage) of commencement of the outage; the geographic area affected; the estimated number of customers affected; the types of services affected (*e.g.* interexchange, local cellular); the duration of the outage, *i.e.* time elapsed from the estimated commencement of the outage until restoration of full service; the estimated number of blocked calls during the outage; the apparent or known cause of the incident, including the name and type of equipment involved and the specific part of the network affected; methods used to restore service; and the steps taken to prevent recurrences of the outage. Carriers must indicate, when specifying the types of services affected by any reportable outage, when 911 is one of those services whether more than 25% of the lines to any PSAP were disrupted and there was no automatic rerouting to an alternate PSAP. The report shall be captioned Initial Service Disruption Report. Lack of any of the above information shall not delay the filing of this report. Not later than thirty days after the incident, the carrier shall file with the Chief, Common Carrier Bureau, a Final Report providing all available information on the incident, including any information not contained in its Initial Report and detailing specifically the root cause of the incident and listing and evaluating the effectiveness and application in the immediate case of any best practices or industry standards identified by the Network Reliability Council to eliminate or ameliorate incidents of the reported type.

(e) Any local exchange or interexchange common carrier or competitive access provider that operates transmission or switching facilities and provides access service or interstate or international telecommunications service, that experiences an outage on any facilities which it owns, operates or leases which potentially affects special offices and facilities must notify the Commission if such outage continues for 30 or more minutes regardless of the number of customers affected. Satellite carriers and cellular carriers are exempt from this reporting requirement. Notification must be served on the Commission's Monitoring Watch Officer, on duty 24 hours a day in the FCC headquarters building in Washington, DC, or on a secondary basis it may be served on the Commission's Watch Officer on duty at the FCC's facility at Grand Island, Nebraska. The notification must be by facsimile or other record means delivered within 120 minutes of the carrier's first knowledge that the service outage potentially affects a special facility, if the outage continues for 30 or more minutes. Notification shall identify a contact person who can provide further information, the telephone number at which the contact person can be reached, and what information is known at the time about the service outage including: the date and estimated time (local time at the location of the outage) of commencement of the outage; the geographic area affected; the estimated number of customers affected; the types of services affected (*e.g.* 911 emergency services, major airports); the duration of the outage, *i.e.* time elapsed from the estimated commencement of the outage until restoration of full service; the

estimated number of blocked calls during the outage; the apparent or known cause of the incident, including the name and type of equipment involved and the specific part of the network affected; methods used to restore service; and the steps taken to prevent recurrences of the outage. Carriers must indicate, when specifying the types of services affected by any reportable outage, when 911 is one of those services whether more than 25% of the lines to any PSAP were disrupted and there was no automatic rerouting to an alternate PSAP. The report shall be captioned Initial Service Disruption Report. Lack of any of the above information shall not delay the filing of this report. Not later than thirty days after the outage, the carrier shall file with the Chief, Common Carrier Bureau, a Final Service Disruption Report providing all available information on the service outage, including any information not contained in its Initial Service Disruption Report and detailing specifically the root cause of the outage and listing and evaluating the effectiveness and application in the immediate case of any best practices or industry standards identified by the Network Reliability Council to eliminate or ameliorate outages of the reported type. Under this rule, carriers are not required to report outages affecting nuclear power plants, major military installations and key government facilities to the Commission. Report at these facilities will be made according to the following procedures:

(1) When there is a mission-affecting outage, the affected facility will report the outage to the National Communications System (NCS) and call the service provider in order to determine if the outage is expected to last 30 minutes. If the outage is not expected to, and does not, last 30 minutes, it will not be reported to the FCC. If it is expected to last 30 minutes or does last 30 minutes, the NCS, on the advice of the affected special facility, will either:

(i) Forward a report of the outage to the Commission, supplying the information for initial reports affecting special facilities specified in this section of the Commission's Rules;

(ii) Forward a report of the outage to the Commission, designating the outage as one affecting "special facilities," but reporting it at a level of detail that precludes identification of the particular facility involved; or

(iii) Hold the report at the NCS due to the critical nature of the application.

(2) If there is to be a report to the Commission, a written or oral report will be given by the NCS within 120 minutes of an outage to the Commission's Monitoring Watch Officer, on duty 24 hours a day in the FCC headquarters building in Washington, DC, or on a secondary basis it may be served on the Commission's Watch Officer on duty at the FCC's facility at Grand Island, Nebraska. If the report is oral, it is to be followed by a written report the next business day. Those carriers whose service failures are in any way responsible for the outage must consult with NCS upon its request for information.

(3) If there is to be a report to the Commission, the service provider will provide a written report to the NCS, supplying the information for final reports for special facilities required by this section of the Commission's rules. The service provider's final report to the NCS will be filed within 28 days after the outage, allowing the NCS to then file the report with the Commission within 30 days after the outage. If the outage is reportable as described in paragraph (e)(2) of this section, and the NCS determines that the final report can be presented to the Commission without jeopardizing matters of national security or emergency preparedness, the NCS will forward the report as provided in either paragraphs (e)(1)(i) or (e)(1)(ii) of this section to the Commission.

(f) If an outage is determined to have affected a 911 facility so as to be reportable as a special facilities outage, the carrier whose duty it is to report the outage to the FCC shall as soon as possible by telephone or other electronic means notify any official who has been designated by the management of the affected 911 facility as the official to be contacted by the carrier in case of a telecommunications outage at that facility. The carrier shall convey all available information to the designated official that will be useful to the management of the affected facility in mitigating the affects of the outage on callers to that facility.

(g) In the case of LEC end offices, carriers will use the number of lines terminating at the office for determining whether the criteria for reporting an outage has been reached. In the case of IXC or LEC tandem facilities, carriers must, if technically possible, use real-time blocked calls to determine whether criteria for reporting an outage have been reached. Carriers must report IXC and LEC tandem outages where more than 150,000 calls are blocked during a period of 30 or more minutes for purposes of complying with the required 50,000 potentially affected customers threshold and must report such outages where more than 90,000 calls are blocked during a period of 30 or more minutes for purposes of complying with the 30,000 potentially affected customers threshold. Carriers may use historical data to estimate blocked calls when required real-time blocked call counts are not possible. When using historical data, carriers must report incidents where more than 50,000 calls are blocked during a period of 30 or more minutes for purposes of complying with the required 50,000 potentially affected customers threshold and must report incidents where more than 30,000 calls are blocked during a period of 30 or more minutes for purposes of complying with the 30,000 potentially affected customers threshold.

[FR Doc. 94–19081 Filed 8–5–94; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

48 CFR Chapter 12

RIN 2105–AB54 and RIN 2105–AB75

Revision of Department of Transportation Acquisition Regulation

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule contains revisions to the Transportation Acquisition Regulation (TAR) which was published in the February 1, 1994 **Federal Register** (59 FR 4622) as a notice of proposed rulemaking (NPRM). The revisions address public comments that were received as a result of the February 1, 1994, NPRM. On December 15, 1989, a NPRM addressing revisions to the TAR was also published in the **Federal Register** (54 FR 51426). The primary purpose of that rulemaking was to add TAR coverage on various issues including debarment, suspension, and protests to the agency. However, the December 15, 1989, NPRM was never finalized. This final rule makes the 1989 proposed rule obsolete since changes proposed in it are either incorporated in, or superseded by, this final rule.

This final rule embodies a major revision of the TAR. The TAR was rewritten to: eliminate unnecessary coverage (e.g., it duplicated the Federal Acquisition Regulation (FAR) or other directives, added no value); provide coverage written in plain English; and retain only coverage considered suitable for a regulation. These efforts create a new TAR that is in consonance with the Reinventing Government initiatives by creating a simpler, more comprehensible, and less burdensome regulation. This 1994 edition of the TAR

supersedes the 1988 version. The TAR is codified in Chapter 12 of Title 48 of the Code of Federal Regulations.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Elaine Wheeler, Office of Acquisition and Grant Management, M–61, 400 Seventh Street S.W., Washington, DC 20590: (202) 366–4272.

SUPPLEMENTARY INFORMATION:

A. Background

On February 1, 1994, the TAR was published in the **Federal Register** (59 FR 4623) as a Notice of Proposed Rulemaking (NPRM). Comments were solicited from interested parties, including the public and other Federal agencies. The NPRM announced the Department's intent to revise the TAR to streamline processes, remove guidance applicable to the Department's internal operating procedures, and eliminate unnecessary regulatory burdens. The NPRM contained revised TAR coverage for review and comment. The NPRM established a public comment period which closed on April 4, 1994.

B. Public Comments

Comments were received from one commenter. All comments were considered in developing the final rule. The comments received and the actions taken in response thereto are summarized below:

Comment: The commenter offered that potential problems with (TAR) 48 CFR 1203.104–11, Processing Violations or Possible Violations, could be reduced if the TAR included only language necessary to implement the FAR. The commenter stated that the proposed (TAR) 48 CFR 1203.104(a)(1) and (2) should be revised to state: "The individual designated to review contracting officer determinations is the COCO." The commenter also indicated that (TAR) 48 CFR 1203.104–11(a)(1), (2) and (3), should state: "the duties in these sections may not be further delegated by the HCA."

Response: The first comment regarding Chief of the Contracting Office (COCO) review of contracting officer determination was adopted. The second comment regarding no further delegation by the Head of the Contracting Activity (HCA) was not accepted. We do not agree that the duties of the HCA may not be delegated. (FAR) 48 CFR 3.104–11 establishes the rule with respect to HCA designees. The HCA function can be delegated to an individual at least one organizational level above the contracting officer and must be of Flag Officer or SES rank.

Comment: The commenter recommended that (TAR) 48 CFR 1203.204, Treatment of Violations, be expanded to: (1) identify the DOT decisionmaker; (2) provide safeguards to ensure that the decisionmaker is not personally and substantially involved in the underlying procurement action; and (3) identify the steps to be taken to harmonize the contractor's rights under (FAR) 48 CFR 3.204 and the actions required by the Procurement Integrity Act if the alleged violation occurs during the conduct of a procurement.

Response: The comment was adopted. See the revisions to (TAR) 48 CFR 1203.204.

Comment: The commenter recommended that (TAR) 48 CFR 1209.507 be changed to make the use of (TAR) 48 CFR 1252.209–70, Disclosure of Conflicts of Interest, clause discretionary.

Response: We agree. (TAR) 48 CFR 1209.507 has been modified to state that the contracting officer "may" use the clause at (TAR) 48 CFR 1252.209–70, when applicable.

Comment: The commenter supported the NPRM's contained in (TAR) 48 CFR 1215.804–6, Submission of data, to prohibit contracting officers from requiring contractors to certify submitted data when partial or limited data is obtained for cost realism or price analysis purposes.

Response: The support for this change is appreciated. No change in the proposed TAR chapter 12 is required.

Comment: The commenter recommended that at (TAR) 48 CFR 1217.7100, Policy, the comma at the end of the tenth line be deleted and the remainder of the sentence changed to read: "at no cost to the Federal Government, in exchange for sharing direct energy cost savings" to more accurately reflect 42 U.S.C. 8287(a)(1).

Response: The comment was adopted with slight modification to the proposed wording.

Comment: The commenter recommended that pursuant to (TAR) 48 CFR 1219.1006, DOT maintain records of the number and total dollar amount of architectural and engineering (A&E) services contracts being set-aside for emerging small businesses to see the effect on other small businesses in the A&E services industry.

Response: We agree in principle. Section 712(b)(2) of the Business Opportunity Development Reform Act of 1988 requires the Administrator of the Office of Federal Procurement Policy (OFPP) to adjust the monetary threshold for contracts reserved exclusively for emerging small businesses when the participation goal of 15% has not been attained in a Designated Industry Group (DIG). Under (FAR) 48 CFR 19.1005(a)(3), A&E services is a DIG. To comply with the Act, OFPP monitors small business participation through the Federal Procurement Data System (FPDS). The same data requested by the commenter is captured by and provided to the FPDS through the DOT Contract Information System.

Comment: The commenter commends DOT for placing focus on the qualifications and capability of design professional firms in the evaluation process pursuant to Section 1236.602–1, but questions an evaluation whereby individual contractors are judged based on their hiring performance compared against a locality's minority population.

Response: The comment was adopted. The reference to the percentage of minorities in the locality has been removed, and the selection criteria at (TAR) 48 CFR 1236.602–1(c) have been combined and clarified to give flexibility to the evaluators and permit them to rely upon available data.

Comment: The commenter believes that (TAR) 48 CFR 1252.209–70, Disclosure of Conflicts of Interest, is too broad and narrow and imposes sweeping disclosure requirements. The commenter recommends that DOT contracting officers be required to narrow the data request to the maximum extent practicable by defining in the solicitation the types of effort DOT considers to be related to the work under the solicitation.

Response: We disagree. DOT is a regulatory agency as well as an agency that provides financial assistance and lets contracts. The DOT clause is designed to identify conflicts that may be of a regulatory nature that could potentially apply in a procurement setting. In many cases, a contracting officer may not be aware of potential conflicts of interest, they may exist with a potential contractor due to a regulatory relationship they may have with the agency. The clause is designed to identify any and all relationships that might present a conflict.

Comment: The commenter recommends that (TAR) 48 CFR 1252.216–72(a) should be clarified to make clear that performance evaluations are to be within the judgment of the Government provided they are in accordance with criteria stated in the contract.

Response: This recommendation was accepted and (TAR) 48 CFR 1252.216–72(a) has been changed to address this clarification.

Comment: The commenter recommended deleting the sentence:

"Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government . . ." from (TAR) 48 CFR 1252.217–74, Subcontracts, because in certain circumstances there can be a contractual relationship between a subcontractor and the Government.

Response: The comment was not adopted because the clause serves to clarify rather than leave unclear the Government's intent that there not be privity of contract between the Government and a subcontractor.

Comment: The commenter recommended that (TAR) 48 CFR 1252.217–76, Liability and Insurance, and (TAR) 48 CFR 1252.217–81, Guarantee, be amended in order that both shipyards and the Government may know exactly what insurance coverage is needed on ship repair contracts and what risks each party agrees to assume.

Response: The specific revisions the commenter recommended were not adopted because we do not believe the commenter's interpretation is accurate. However, we do believe that the clauses could be revised. Further clarifications will be accomplished in the next revision to (TAR) 48 CFR chapter 12.

Comment: The commenter recommended that (TAR) 48 CFR 1252.217–81, Guarantee, be amended to reflect a standard 60-day guarantee period to be consistent with (TAR) 48 CFR 1217.7000(c)(2).

Response: The comment was adopted.

Comment: The commenter proposed several technical corrections.

Response: All the technical corrections were adopted except the recommended change (TAR) 48 CFR 1252.217–81. The reference in this clause should be to (TAR) 48 CFR 1217.7000 (c) rather than (e).

C. Additional Changes

After publication of the NPRM, further changes to the TAR were necessary including various edits and the following clarifications or updates which are summarized by part:

(TAR) 48 CFR 1201, Federal Acquisition Regulations System. (TAR) 48 CFR 1201.105, OMB Approval Under the Paperwork Reduction Act, was revised to reflect the expiration date of April 30, 1997, for the collection of the information under (TAR) 48 CFR chapter 12, OMB Control Number 2105–0517.

(TAR) 48 CFR 1209.406–3, Procedures. This section was modified to require submission of a recommended notice of debarment vice the submission of a proposed debarment notice to the senior procurement executive for action.

(TAR) 48 CFR 1209.407–3, Procedures. This section was modified to require submission of a recommended suspension notice vice the submission of a proposed suspension notice to the senior procurement executive for action.

(TAR) 48 CFR 1223.7000, Contract clauses. To assist the contracting officer in determining risks under (TAR) 48 CFR 1252.223–72, a second sentence was added to paragraph (b) to indicate where copies of the referenced National Highway Traffic Safety Administration publications can be obtained.

(TAR) 48 CFR 1252.223–72, Protection of human subjects. This clause has been corrected to reflect the applicability of the clause to all contracts under which human test subjects will be utilized, as prescribed in (TAR) 48 CFR 1223.7000(b).

(TAR) 48 CFR 1253, Forms. Each DOT form was modified to change its expiration date to April 30, 1997, in consonance with the expiration date of OMB Control Number 2105–0517 for the collection of information under (TAR) 48 CFR chapter 12.

The Department is also terminating an earlier rulemaking concerning the TAR. On December 15, 1989 (54 FR 51426), the Department published a NPRM to add TAR coverage on various issues including debarment, suspension, and protests to the agency. Comments were received but the rule was never finalized. This final rule makes the 1989 rule obsolete since changes proposed in it are either incorporated in, or superseded by, this final rule.

D. Regulatory Analyses and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Departments Regulatory Policies and Procedures. The Department does not believe that there would be sufficient Federalism implications to warrant the preparation of a Federalism assessment. This rule will not have a significant economic impact on a substantial number of small entities because the basic policies remain unchanged. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because the final rule contains information collection requirements which require OMB approval under 44 U.S.C. 3501, *et seq.* OMB has granted approval for a 3-year period ending April 30, 1997, under OMB Control Number 2105–0517.

List of Subjects in 48 CFR Chapter 12

Government procurement.

This final rule is issued by delegated authority under 49 CFR 1.59(q). This authority has been redelegated to the Senior Procurement Executive. Issued this 29th day of July 1994, at Washington, DC.

Linda M. Higgins,

Director of Acquisition and Grant Management.

Adoption of Amendments

Title 48 of the Code of Federal Regulations, chapter 12, is revised to read as follows:

PART 1201—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 1201.1—Purpose, Authority, Issuance

1201.101 Purpose.
1201.102 Authority.
1201.103 Applicability.
1201.104 Issuance.
1201.104–1 Publication and code arrangement.
1201.104–2 Arrangement of regulations.
1201.104–3 Copies.
1201.105 OMB Approval Under the Paperwork Reduction Act.

Subpart 1201.2—Administration

1201.201 Maintenance of the FAR.
1201.201–1 The two councils.

Subpart 1201.3—Agency Acquisition Regulations

1201.301 Policy.
1201.301–70 Amendment (TAR) 48 CFR chapter 12.
1201.301–71 Effective date.
1201.301–72 TAC or TN numbering.
1201.304 Agency control and compliance procedures.

Subpart 1201.470—Deviations From the FAR and (TAR)

1201.403 Individual deviations.
1201.404 Class deviations.

Subpart 1201.6—Contracting Authority and Responsibilities

1201.602–3 Ratification of unauthorized commitments.
1201.603–1 General.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1201.1—Purpose, Authority, Issuance

1201.101 Purpose.

The Department of Transportation Acquisition Regulation (TAR) establishes uniform acquisition policies and procedures, which implement and supplement the Federal Acquisition Regulation (FAR).

1201.102 Authority.

The Secretary of Transportation has delegated the authority to issue Department of Transportation (DOT) procurement regulations (i.e., the TAR) to the Assistant Secretary for Administration who has redelegated this authority to the Senior Procurement Executive (SPE).

1201.103 Applicability.

(a) Statute, the FAR, and (TAR) 48 CFR chapter 12 apply to all acquisitions within the Department unless otherwise excluded by statute, the FAR or (TAR) 48 CFR chapter 12.

(b) The following order of precedence applies to resolve any acquisition regulation or procedural inconsistency found within (TAR) 48 CFR chapter 12 or the Transportation Acquisition Manual (TAM):

(1) Statute;

(2) FAR or other applicable regulation;

(3) TAR;

(4) DOT Orders; and

(5) TAM.

(c) The Maritime Administration may depart from the requirements of the FAR and (TAR) 48 CFR chapter 12 as authorized by 40 U.S.C. § 474(16), but shall adhere to those regulations to the maximum extent practicable. Exceptions from the requirements of the FAR and/or TAR shall be documented according to Maritime Administration procedures or in each contract file, as appropriate.

1201.104 Issuance.

1201.104–1 Publication and code arrangement.

(a) The TAR is published in: (1) The **Federal Register**; (2) cumulated form in the CFR; and (3) separate loose-leaf form.

(b) The TAR is issued as chapter 12 of Title 48 of the CFR.

1201.104–2 Arrangement of regulations.

(a) *General.* The TAR, which encompasses both Departmentwide and operating administration-unique guidance (see (TAR) 48 CFR 1201.3), conforms with the arrangement and numbering system prescribed by (FAR) 48 CFR 1.104. Guidance which is unique to an operating administration contains the operating administration acronym directly preceding the cite/page number. The following acronyms apply when regulatory coverage is written:

FAA—Federal Aviation Administration
FHWA—Federal Highway Administration
FRA—Federal Railroad Administration
FTA—Federal Transit Administration
MARAD—Maritime Administration
NHTSA—National Highway Traffic Safety Administration
OST—Office of the Secretary
RSPA—Research and Special Programs Administration
SLSDC—Saint Lawrence Seaway Development Corporation
USCG—United States Coast Guard

(b) *Numbering*—(1) *Departmentwide guidance.*

(i) The numbering illustrations at (FAR) 48 CFR 1.104–2(b) apply to the TAR.

(ii) Coverage within (TAR) 48 CFR chapter 12 is identified by the prefix "12" followed by the complete FAR cite which may be down to the subparagraph level (e.g., (TAR) 48 CFR 1201.201–1).

(iii) Coverage in this chapter 12 that supplements the FAR will use part, subpart, section and subsection numbers ending in "70" through "89". A series of numbers beginning with "70" is used for provisions and clauses (e.g., (TAR) 48 CFR 1201.301–70).

(iv) Coverage in (TAR) 48 CFR chapter 12, other than that identified with a "70" or higher number, that implements the FAR uses the identical number sequence and caption of the FAR segment being implemented which may be down to the subparagraph level. Subparagraph numbers/letters may not be shown as sequential, but may be shown by the specific paragraph/subparagraph implemented from the FAR (e.g., (TAR) 48 CFR 1201.201–1 contains subparagraphs (b) and (d) because only these subparagraphs, correlating to FAR, are being supplemented by (TAR) 48 CFR chapter 12).

(2) *Operating administration-unique guidance.* Supplementary material for which there is no counterpart in the FAR or TAR shall be identified using chapter, part, subpart, section, or subsection numbers of "90" and up (e.g., the U.S. Coast Guard's acronym is "USCG"; a USCG-unique clause pertaining to "Inspection and/or Acceptance" would be designated "USCG 1252.246–90").

(c) *References and citations.* (TAR) 48 CFR chapter 12 may be referred to as the Department of Transportation Acquisition Regulation or the TAR. Cross references to the FAR in (TAR) 48 CFR chapter 12 will be cited by "FAR" followed by the FAR numbered cite, and cross reference to the TAM in (TAR) 48 CFR chapter 12 will be cited by "TAM" followed by the TAM numbered cite. References to specific cites within (TAR) 48 CFR chapter 12 will be by the numbered cite only.

1201.104–3 Copies.

Copies of the TAR in **Federal Register**, loose-leaf, and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC, 20402.

1201.105 OMB Approval Under the Paperwork Reduction Act.

(a) *Data collection by regulation.* The information collection and recordkeeping requirements contained in (TAR) 48 CFR chapter 12 have been approved by the Office of Management and Budget (OMB). The OMB Control Number for the collection of the information under 48 CFR chapter 12 is 2105–0517 which expires on April 30, 1997.

(b) *Data collection under proposed contracts.* Under the regulations implementing the requirements of the Paperwork Reduction Act (5 CFR part 1320), OMB must approve, prior to obligation of funds, proposed contracts which require the collection of information from ten or more non-Federal persons or entities. Solicitations containing this type of information collection may be released prior to OMB approval provided:

(1) A statement is included in the solicitation to the effect that contract award will not be made until OMB approval of the information collection requirements of the proposed contract has been obtained; and

(2) Enough time is permitted to allow receipt of OMB approval prior to contract award.

Subpart 1201.2—Administration

1201.201 Maintenance of the FAR.

1201.201–1 The two councils.

(b) The SPE is responsible for providing a DOT representative to the Civilian Agency Acquisition Council.

(d) The Office of Acquisition and Grant Management is responsible for Departmentwide review and coordination of cases containing proposed FAR revisions, as necessary, approval of DOT-generated cases, and submission of cases to the Civilian Agency Acquisition Council.

Subpart 1201.3—Agency Acquisition Regulations

1201.301 Policy.

(a) (1) *Acquisition regulations*—(i) *Departmentwide acquisition regulations.* The authority of the agency head under (FAR) 48 CFR 1.301(a)(1) is delegated to the Assistant Secretary for Administration.

(ii) *Operating administration acquisition regulations.* Operating

administration acquisition regulations, and any changes thereto, shall be reviewed and approved by the SPE for insertion into the TAR as a TAR supplemental regulation before the SPE submits the proposed coverage for publication in the **Federal Register** in accordance with (FAR) 48 CFR 1.501. Operating administration regulations may be more restrictive or require higher approval levels than those permitted by (TAR) 48 CFR chapter 12 unless specified otherwise.

1201.301–70 Amendment of (TAR) 48 CFR chapter 12.

(a) Changes to the regulation may be the result of recommendations from internal DOT personnel, other Government agencies, or the public. These changes are to be submitted in the following format to the Office of Acquisition and Grant Management, 400 7th Street, S.W., Washington, DC 20590:

(1) *Problem:* Succinctly state the problems created by current TAR language and describe the factual and/or legal reasons necessitating regulatory change.

(2) *Recommendation:* Identify the recommended change by using the current language and lining through the words being deleted and inserting proposed language in brackets. If the change is extensive, deleted language may be displayed by forming a box with diagonal lines connecting the corners.

(3) *Discussion:* Explain why the change is necessary and how the change will solve the problem. Address any cost or administrative impact on Government activities, offerors, and contractors. Provide any other helpful information and documents such as statutes, legal decisions, regulations, reports, etc.

(4) *Collaterals:* Address the need for public comment (see (FAR) 48 CFR 1.301 and (FAR) 48 CFR Subpart 1.5), the Paperwork Reduction Act, and the Regulatory Flexibility Act (see (FAR) 48 CFR 1.301(c)).

(5) *Point of contact:* Provide a point of contact for answering questions regarding the recommendation.

(b) The TAR will be maintained by the SPE through the TAR Council System (i.e., representatives from DOT operating administrations specifically designated to formulate Departmental acquisition policies and procedures).

(1) *Transportation Acquisition Circular (TAC).* TACs containing loose-leaf replacement pages which revise parts, subparts, or paragraphs (also see (TAR) 48 CFR 1201.301–72 below) will be used to amend (TAR) 48 CFR chapter 12. Each replacement page will bear at the top the TAC number and date. A vertical bar next to the coverage indicates that a change has been made.

(2) *TAR Notice (TN).* (i) TNs shall be issued when interim guidance is necessary and as often as may be necessary, under any of the following circumstances:

(A) To promulgate, as rapidly as possible, selected material in a general or narrative manner, in advance of a TAC issuance;

(B) To disseminate other acquisition related information; or

(C) To issue guidance which is expected to be effective for a period of 1 year or less.

(ii) Each TN will terminate upon its specified expiration date.

1201.301–71 Effective date.

Unless otherwise stated, the following applies—

(a) Statements in TACs or TNs to the effect that the material therein is "effective upon receipt," "upon a specified date," or that changes set forth in the document are "to be used upon receipt," mean that any new or revised provisions, clauses, procedures, or forms must be included in solicitations, contracts or modifications issued thereafter; and

(b) Unless expressly directed by statute or regulation, if solicitations are already in process or negotiations complete when the TAC or TN is received, the new information (e.g., forms and clauses) need not be included if it is determined by the chief of the contracting office that its inclusion would not be in the best interest of the Government.

1201.301–72 TAC or TN numbering.

TACs and TNs will be numbered consecutively on a fiscal year basis beginning with number "01" prefixed by the last two digits of the fiscal year (e.g., TNs 94–01 and 94–02 indicate the first two TNs issued in fiscal year 1994).

1201.304 Agency control and compliance procedures.

(a) DOT shall control the proliferation of acquisition regulations by the TAR Council System. (TAR) 48 CFR chapter 12 and any revisions thereto (except for paragraph (b) of this section will be prepared and issued through the TAR Council System. The members of the TAR Council System shall represent their operating administration's viewpoints along with Departmentwide considerations and be selected for their superior expertise and acquisition knowledge. Further coordination (e.g., Offices of the Inspector General and General Counsel) beyond the TAR Council System may be recommended by the TAR Council to the SPE as deemed appropriate.

(b) Operating administration-unique regulations will not be processed through the TAR Council System, but shall be reviewed by operating administration legal counsel and submitted to M–60 for review and approval. (See (TAR) 48 CFR 1252.101 for additional instructions pertaining to provisions and clauses.)

Subpart 1201.470—Deviations From the FAR and TAR

1.403 Individual deviations.

Individual deviations from the FAR and (TAR) 48 CFR chapter 12 may be granted in writing by the Head of the Contracting Activity within the operating administration.

1.404 Class deviations.

Class deviations from the FAR and (TAR) 48 CFR chapter 12 may be granted in writing by the Senior Procurement Executive unless (FAR) 48 CFR 1.405(e) is applicable.

Subpart 1201.6—Contracting Authority and Responsibilities

1201.602–3 Ratification of unauthorized commitments.

(b) *Policy.* It is the policy of DOT that all procurements are to be made only by Government officials having authority to make such acquisitions. Procurements made by other than authorized personnel are contrary to Departmental policy and may be considered matters of serious misconduct on the part of the employee making an unauthorized commitment. Consideration will be given to initiating disciplinary action against an employee who makes an unauthorized commitment.

1201.603–1 General.

Each DOT operating administration is responsible for appointing its contracting officers.

PART 1202—DEFINITIONS OF WORDS AND TERMS

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1202.1—Definitions

1202.1 Definitions.

(a) *Agency, Federal agency,* or *Executive agency* means the Department of Transportation.

(b) *Chief of the contracting office (COCO)* means the individual(s) responsible for managing the contracting office(s) within an operating administration.

(c) *Contracting activity* includes all the contracting offices within an operating administration and is the same as the term "procuring activity."

(d) *Contracting officer* means an individual authorized by virtue of his/her position or by appointment to perform the functions assigned by the Federal Acquisition Regulation and the Transportation Acquisition Regulation.

(e) *Department of Transportation (DOT)* means all of the operating administrations included within the Department of Transportation.

(f) *Head of the agency* or *agency head* means the Secretary of Transportation.

(g) *Head of the contracting activity (HCA)* means the individual responsible for managing the contracting offices within an operating administration who is a member of the Senior Executive Service or a flag officer.

(h) *Head of the operating administration (HOA)* means the individual appointed by the President to manage the operating administration. (For acquisition related matters, the Assistant Secretary for Administration is the HOA for the Office of the Secretary (OST)).

(i) *Operating administration* (OA) means the following components of DOT:

(1) Federal Aviation Administration (FAA);

(2) Federal Highway Administration (FHWA);

(3) Federal Railroad Administration (FRA);

(4) Federal Transit Administration (FTA);

(5) Maritime Administration (MARAD);

(6) National Highway Traffic Safety Administration (NHTSA);

(7) Office of the Secretary (OST);

(8) Research and Special Programs Administration (RSPA);

(9) Saint Lawrence Seaway Development Corporation (SLSDC); and

(10) United States Coast Guard (USCG).

(j) *Senior Procurement Executive* (SPE) means the Director of the Office of Acquisition and Grant Management (M-60).

PART 1203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1203.1—Safeguards

1203.101-3 Agency regulations.
1203.104-11 Processing violations or possible violations.

Subpart 1203.2—Contractor Gratuities to Government Personnel

1203.203 Reporting suspected violations of the Gratuities clause.
1203.204 Treatment of violations.

Subpart 1203.3—Reports of Suspected Antitrust Violations

1203.301 General.

Subpart 1203.4—Contingent Fees

1203.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.
1203.502-2 General.

Subpart 1203.8—Limitation on the Payment of Funds to Influence Federal Transactions

1203.806 Processing suspected violations.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1203.1—Safeguards

1203.101-3 Agency regulations.

(b) 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Executive Branch, supersedes the DOT regulation at 49 CFR part 99.

1203.104-11 Processing violations or possible violations.

(a) The COCO is the reviewing official for processing violations.

(1) When the contracting officer receives information of a violation or possible violation, and concludes that the reported violation or possible violation of the statutory prohibitions has no impact on the pending procurement, the contracting officer shall forward the information required by (FAR) 48 CFR 3.104-11(a)(1) to the COCO for concurrence with the contracting officer's conclusion. If the COCO concurs with the conclusion, the contracting officer shall proceed with the award, and the COCO shall submit the information and conclusion to the HCA.

(2) When the COCO does not concur with the conclusion of the contracting officer, the COCO shall advise the contracting officer to withhold award, and the COCO shall promptly forward the information and documentation to the HCA.

(3) When the contracting officer determines that the information concerning a violation or possible violation will impact the pending procurement, the contracting officer shall promptly forward the information and documentation to the HCA.

(b) The HCA shall review the information transmitted in accordance with subparagraph (a)(1) through (a)(3) of this section and take appropriate action, as required by (FAR) 48 CFR 3.104-11(b).

(c) If the HCA believes that a violation has occurred and the information should be disclosed to a criminal investigative agency (e.g, the Department of Justice) or that there may be a possible violation, and an investigation should be conducted, the HCA shall obtain guidance from legal counsel and the OIG prior to taking any action. If the HCA, pursuant to (FAR) 48 CFR 3.104-11(f), determines that award is justified by urgent and compelling circumstances, or is otherwise in the interests of the Government, a memorandum of the facts and circumstances shall be signed by the HCA and placed in the contract file.

Subpart 1203.2—Contractor Gratuities to Government Personnel

1203.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause shall be reported to the contracting officer responsible for the acquisition (or the COCO if the contracting officer is suspected of the violation). The contracting officer (or COCO) shall obtain from the person reporting the violation, and any witnesses to the violation, the following information:

(1) The date, time, and place of the suspected violation;

(2) The name and title (if known) of the individual(s) involved in the violation; and

(3) The details of the violation (e.g., the gratuity offered or intended) to obtain a contract or favorable treatment under a contract.

(b) The person reporting the violation and witnesses (if any) should be requested to sign and date the information certifying that the information furnished is true and correct.

(c) The COCO shall report suspected violations to the Office of the Inspector General (OIG) (J-1), 400 7th Street, S.W., Washington, DC, 20590, with a copy to General Counsel (C-1) and the OA's Chief Counsel.

1203.204 Treatment of violations.

(a) The authority of the agency head established in (FAR) 48 CFR 3.204(a), to determine whether a gratuities clause violation has occurred, has been delegated to the HCA. If the decision maker pursuant to this delegation has been personally and substantially involved in the procurement, the advice of Government legal counsel should be sought to determine whether an alternate decision maker should be designated.

(b) The COCO shall ensure that the hearing procedures required by FAR 3.204 are afforded to the contractor.

Government legal counsel should be consulted regarding the appropriateness of the hearing procedures that are established.

(c) If the alleged gratuities violation occurs during the "conduct of an agency procurement" as defined by (FAR) 48 CFR 3.104–4(c)(1), the COCO shall consult with Government legal counsel regarding the approach for appropriate processing of either the Procurement Integrity Act violation and/or the Gratuities violation.

Subpart 1203.3—Reports of Suspected Antitrust Violations

1203.301 General.

(b) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for suspected antitrust violations, except suspected antitrust violations shall be reported through legal counsel in accordance with (FAR) 48 CFR 3.303.

Subpart 1203.4—Contingent Fees

1203.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for misrepresentation or violations of the covenant against contingent fees.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.

1203.502–2 General.

(g) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for subcontractor kickbacks.

Subpart 1203.8—Limitation on the Payment of Funds to Influence Federal Transactions

1203.806 Processing suspected violations.

Contracting officers shall report, in accordance with OA procedures, suspected violations of the requirements of 31 U.S.C. 1352 to the Assistant Inspector General for Investigations (JI–1), 400 Seventh Street, S.W., Washington, DC, 20590.

PART 1204—ADMINISTRATIVE MATTERS

Subpart 1204.1—Contract Execution

1204.103 Contract clause.

Subpart 1204.8—Contract Files

1204.804 Closeout of contract files.
1204.804–1 Closeout by the office administering the contract.
1204.804–5 Detailed procedures for closing out contract files.
1204.804–570 Supporting closeout documents.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1204.1—Contract Execution

1204.103 Contract clause.

The contracting officer shall insert the clause at (FAR) 48 CFR 52.204–1, Approval of Contract, filled in as appropriate, in solicitations when approval to award the resulting contract must be obtained from an official at a level above the contracting officer.

Subpart 1204.8—Contract Files

1204.804 Closeout of contract files.

1204.804–1 Closeout by the office administering the contract.

(b) If the contracting officer determines appropriate, the quick closeout procedures under (FAR) 48 CFR 42.708 may be used for the settlement of indirect costs under contracts when the estimated amount (excluding any fixed fee) of the contract is $3 million or less.

1204.804–5 Detailed procedures for closing out contract files.

1204.804–570 Supporting closeout documents.

(a) When applicable (see parenthetical examples in this paragraph) and prior to contract closure, the contracting officer shall obtain the listed DOT and Department of Defense (DOD) forms from the contractor to facilitate contract closeout.

(1) Form DOT F 4220.4, Contractor's Release (e.g., see (FAR) 48 CFR 52.216–7);

(2) Form DOT F 4220.45, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts (e.g., see (FAR) 48 CFR 52.216–7);

(3) Form DOT F 4220.46, Cumulative Claim and Reconciliation Statement (e.g., see (FAR) 48 CFR 4.804–5(a)(13); and

(4) DD Form 882, Report of Inventions and Subcontracts (e.g., see (FAR) 48 CFR 52.227–14).

(b) The forms (See (TAR) 48 CFR part 1253) are used primarily for the closeout of cost-reimbursement, time-and-materials, and labor-hour contracts. However, the forms may also be used for closeout of other contract types or when necessary to protect the Government's interest.

PART 1205—PUBLICIZING CONTRACT ACTIONS

Subpart 1205.1—Dissemination of Information

1205.101 Methods of disseminating information.

Subpart 1205.4—Release of Information

1205.402 General public.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1205.1—Dissemination of Information

1205.101 Methods of disseminating information.

(a)(2) To facilitate public examination of solicitations expected to exceed $10,000, but not expected to exceed the small purchase limitation, COCOs are encouraged to post the notice of the solicitation or a copy of the solicitation in a central location within the contracting office.

(b) DOT publishes a Procurement Forecast of planned procurements each fiscal year, which is available from the DOT Office of Small and Disadvantaged Business Utilization (S–40), 400 Seventh Street, S.W., Washington, DC, 20590.

Subpart 1205.4—Release of Information

1205.402 General public.

It is DOT policy to furnish to the general public, upon request, the following information on proposed contracts and contract awards:

(a) Prior to the opening of sealed bids or the closing date for receipt of proposals, the names of firms invited to submit sealed bids or proposals;

(b) Prior to the opening of sealed bids or the closing date for receipt of proposals, the names of firms which attended pre-proposal or pre-bid conferences, when held;

(c) After the opening of sealed bids, names of firms which submitted bids; and

(d) After contract award, the names of firms which submitted proposals.

Requests for other specific information shall be processed in accordance with the DOT Freedom of Information Act rules and regulations ((TAR) 48 CFR 1224.202).

PART 1206—COMPETITION REQUIREMENTS

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1206.5—Competition Advocates

1206.501 Requirement.

The DOT Senior Competition Advocate (SCA) is located in the Office of the Assistant Secretary for Administration. Correspondence may be sent directly to M–60.

PART 1207—ACQUISITION PLANNING

Subpart 1207.3—Contractor Versus Government Performance

1207.302 General.
1207.307 Appeals.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1207.3—Contractor Versus Government Performance

1207.302 General.

Procedures for DOT's implementation of OMB Circular A–76, Performance of Commercial Activities, and (FAR) 48 CFR 7.3 are found in DOT Order 4400.2 series, Performance of Commercial Activities.

1207.307 Appeals.

DOT appeal procedures for informal administrative review of initial cost-comparison results are contained in DOT Order 4400.2 series.

PART 1209—CONTRACTOR QUALIFICATIONS

Subpart 1209.4—Debarment, Suspension, and Ineligibility

1209.406 Debarment.
1209.406–3 Procedures.
1209.407 Suspension.
1209.407–3 Procedures.

Subpart 1209.5—Organizational Conflicts of Interest

1209.507 Solicitation provisions and contract clause.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1209.4—Debarment, Suspension, and Ineligibility

1209.406 Debarment.

1209.406–3 Procedures.

(a) *Investigation and referral.* The COCO shall submit to the SPE the recommended debarment notice for issuance by the SPE (see (FAR) 48 CFR 9.406–3(c)). Reports and notices shall be coordinated with OA legal counsel prior to submission to the SPE.

(b) *Decisionmaking process.* After receipt of the OA report, the SPE may request from interested parties (including the contractor if deemed appropriate) a meeting or additional supporting information to assist in the debarment decision.

(c) *Notice of proposal to debar.* The SPE shall provide a copy of the dated, signed notice of the debarment action to the COCO.

(d) *Debarring official's decision.* When it is found that the contractor's submission raises a genuine dispute over facts material to the proposed debarment, the SPE may request the DOT Board of Contract Appeals (BCA) to conduct fact finding and provide a report containing the results of the fact finding.

(e) *Notice of debarring official's decision.* The SPE shall notify the COCO prior to deciding whether or not to impose debarment. The COCO shall be furnished the original of the signed SPE decision to include in the contract file. The SPE shall provide a copy of the decision to GSA in accordance with (FAR) 48 CFR 9.404(c).

1209.407 Suspension.

1209.407–3 Procedures.

(a) *Investigation and referral.* The COCO shall submit to the SPE the recommended suspension notice for issuance by the SPE (see (FAR) 48 CFR 9.407–3(c)). Reports and notices shall be coordinated with OA legal counsel prior to submission to the SPE.

(b) *Decisionmaking process.* After receipt of the OA report, the SPE may request from interested parties (including the contractor if deemed appropriate) a meeting or additional supporting information to assist in the suspension decision.

(c) *Notice of suspension.* The SPE shall provide a copy of the dated, signed notice of suspension action to the COCO.

(d) *Suspending official's decision.* When it is found that the contractor's submission raises a genuine dispute over facts material to the proposed suspension, the SPE may request the DOTBCA to conduct fact finding and provide a report containing the results of the fact finding. The SPE shall notify the COCO prior to deciding whether or not to suspend. The COCO shall be furnished the original of the signed SPE decision, which shall be included in the contract file. The SPE shall provide a copy of the decision to GSA in accordance with (FAR) 48 CFR 9.404(c).

Subpart 1209.5—Organizational Conflicts of Interest

1209.507 Solicitation provisions.

The contracting officer may insert the provision at (TAR) 48 CFR 1252.209–70, "Disclosure of Conflicts of Interest" in all solicitations for negotiated acquisitions, above the small purchase limitation established in (FAR) 48 CFR Part 13, when the contracting officer believes the conditions enumerated in (FAR) 48 CFR 9.507–2 warrant inclusion.

PART 1210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

1210.004 Selecting specifications or descriptions for use.
1210.004–70 Offer evaluation and award, brand name or equal descriptions.
1210.011 Solicitation provisions and contract clauses.
1210.011–90 Solicitation provision and contract clause. (USCG)

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

1210.004 Selecting specifications or descriptions for use.

1210.004–70 Offer evaluation and award, brand name or equal descriptions.

(a) An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation may be defective and need to be amended or the requirement resolicited.

(b) The contracting officer shall insert in the solicitation an entry substantially as follows for completion by the offeror in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies:

Offering on _____
Manufacturer's Name _____
Brand _____
No. _____

(c) Except when bid samples are requested for brand name or equal procurements, the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page, listing several such items, or in a manner that may otherwise direct the offeror's attention to this note:

Offerors offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to equality of the product(s) offered (see the provision at (TAR) 48 CFR 1252.210–70, Brand Name or Equal).

1210.011 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at (TAR) 48 CFR 1252.210–70, Brand Name or Equal, in solicitations using a brand name or

equal purchase description whenever practicable.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.210–71, Index for Specifications, when an index or table of contents may be furnished with the specification.

1210.011–90 Solicitation provision and contract clause. (USCG)

(a) The contracting officer shall insert the USCG clause at (TAR) 48 CFR 1252.210–90, Bar Coding Requirement, in solicitations and contracts over the small purchase limitation (also see (TAR) 48 CFR 1213.507–90) when the bar coding of supplies is necessary.

(b) See (TAR) 48 CFR 1213.507–90 for a provision which is required when the USCG clause at (TAR) 48 CFR 1252.210–90, Bar Coding Requirement, is used in small purchases.

PART 1212—CONTRACT DELIVERY OR PERFORMANCE

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1212.3—Priorities and Allocations

1212.302 General.

(c) The USCG is the only DOT OA delegated authority under the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) to assign priority ratings on contracts and orders placed with contractors to acquire products, materials, and services in support of USCG certified national defense related programs.

PART 1213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1213.1—General

1213.107–90 Solicitation provision (supplies). (USCG)

Subpart 1213.5—Purchase Orders

1213.507–90 Clauses. (USCG)

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1213.1—General

1213.107–90 Solicitation provision (supplies). (USCG)

The contracting officer shall insert the USCG provision at (TAR) 48 CFR 1252.210–90, Evaluation Factor for Coast Guard Performance of Bar Coding Requirement, in requests for quotations when the USCG clause at (TAR) 48 CFR 1252.210–90(a), Bar Coding Requirement, is used in small purchases.

Subpart 1213.5—Purchase Orders

1213.507–90 Clauses. (USCG)

The contracting officer shall insert the USCG clause at (TAR) 48 CFR 1252.210–90, Bar Coding Requirement, in requests for quotations and purchase orders issued by the Inventory Control Points when bar coding of supplies is necessary.

PART 1214—SEALED BIDDING

Subpart 1214.2—Solicitation of Bids

1214.205 Solicitation mailing lists.
1214.205–1 Establishment of lists.

Subpart 1214.3—Submission of Bids

1214.302 Bid submission.
1214.303 Modification or withdrawal of bids.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1214.2—Solicitation of Bids

1214.205 Solicitation mailing lists.

1214.205–1 Establishment of lists.

(b) The issuance of a solicitation within a reasonable time (i.e., normally 45 days) after receipt of a SF 129, Solicitation Mailing List Application, constitutes the notification required under (FAR) 48 CFR 14.205–1. If a solicitation is not anticipated for release within a reasonable time after receipt of the SF 129 or if an applicant does not meet the criteria for placement on the list, the contracting officer shall provide a written notification of acceptance or non-acceptance to the applicant within 45 days of application receipt.

(d) Requests for supplemental information shall normally be attached to the SF 129 and forwarded to potential suppliers for completion.

Subpart 1214.3—Submission of Bids

1214.302 Bid submission.

(b) Contracting officers may permit telegraphic bids to be communicated by means of a telephone call from the telegraph office to the designated office provided that procedures and controls have been established by the COCO for receiving and safeguarding these incoming bids.

1214.303 Modification or withdrawal of bids.

(b) The receipt required by (FAR) 48 CFR 14.303(b) for withdrawal of a bid in person shall be worded substantially as follows:

I certify as a bona fide agent for or representative of _____ (Bidder's name and address), I am authorized to withdraw the bid on IFB No. _____ scheduled for opening on _____ and hereby acknowledge receipt of the unopened bid.

_____

(Name and telephone no.)

_____

(Date)

PART 1215—CONTRACTING BY NEGOTIATION

Subpart 1215.1—General Requirements for Negotiation

1215.106 Contract clauses.

Subpart 1215.4—Solicitation and Receipt of Proposals and Quotations

1215.407 Solicitation provisions.
1215.413 Disclosure and use of information before award.
1215.413–1 Alternate I.
1215.413–2 Alternate II.

Subpart 1215.6—Source Selection

1215.612 Formal source selection.

Subpart 1215.8—Price Negotiation

1215.804 Cost or pricing data.
1215.804–2 Requiring certified cost or pricing data.
1215.804–6 Submission of data.

Subpart 1215.9—Profit

1215.970 Payment of profit or fee under contracts.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1215.1—General Requirements for Negotiation

1215.106 Contract clauses.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.215–70, Key Personnel and/or Facilities, in solicitations and contracts when the selection for award is substantially based on the offeror's possession of special capabilities regarding personnel and/or facilities.

Subpart 1215.4—Solicitation and Receipt of Proposals and Quotations

1215.407 Solicitation provisions.

(i) The provision at (FAR) 48 CFR 52.215–35, Annual Representations and Certifications—Negotiation, shall be included when applicable.

1215.413 Disclosure and use of information before award.

1215.413–1 Alternate I.

The alternate procedures at (FAR) 48 CFR 15.413–2 shall be used in lieu of the alternate procedures prescribed at (FAR) 48 CFR 15.413–1.

1215.413–2 Alternate II.

(e) The notice at (FAR) 48 CFR 15.413–2(e) shall be placed on the cover sheet of all proposals, whether solicited or unsolicited. The cite(s) under the first paragraph of the notice shall include, as

a minimum, (TAR) 48 CFR 1215.413–2(f) and the cite of any OA implementing procedures.

(f) Proposals may be released outside of the Government if it is necessary to receive the most competent technical and/or management evaluation available as long as the requirements of (FAR) 48 CFR 15.413–2(f) are met.

Subpart 1215.6—Source Selection

1215.612 Formal source selection.

DOT's formal source selection procedures are contained in TAM (Transportation Acquisition Manual which is stocked by the Government Printing Office), Chapter 1215, Appendix A.

Subpart 1215.8—Price Negotiation

1215.804 Cost or pricing data.

1215.804–2 Requiring certified cost or pricing data.

(a)(5) When certified cost or pricing data are not required (e.g., the action is below the thresholds at (FAR) 48 CFR 15.804–2 or adequate price competition is expected to exist), the contracting officer may ask for partial/limited data when it is necessary for the Government's analysis (e.g., cost realism). The contracting officer shall not require this data to be certified.

(b) If, after receipt of proposals, the contracting officer determines that adequate price competition does not exist, the contracting officer shall obtain, as appropriate (see (FAR) 48 CFR 15.804–2), certified cost or pricing data.

1215.804–6 Submission of data.

The contracting officer may require the submission of DOT Form 4220.44, Contract Pricing Summary, when submitting a proposal that requires a SF 1411.

Subpart 1215.9—Profit

1215.970 Payment of profit or fee under contracts.

Profit or fee shall only be paid on definitized contracts and modifications. Any profit or fee earned during the undefinitized period shall be paid once the contract and/or modification, as applicable, is definitized.

PART 1216—TYPES OF CONTRACTS

Subpart 1216.2—Fixed-Price Contracts

1216.203 Fixed-price contracts with economic price adjustment.
1216.203–4 Contract clauses.
1216.203–470 Solicitation provision.

Subpart 1216.4—Incentive Contracts

1216.405 Contract clauses.

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.

1216.603–4 Contract clauses.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1216.2—Fixed-Price Contracts

1216.203 Fixed-price contracts with economic price adjustment.

1216.203–4 Contract clauses.

1216.203–470 Solicitation provision.

The contracting officer shall insert the provision at (TAR) 48 CFR 1252.216–70, Evaluation of Offers Subject to an Economic Price Adjustment Clause, in solicitations containing an economic price adjustment clause.

Subpart 1216.4—Incentive Contracts

1216.405 Contract clauses.

(a) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–71, Determination of Award Fee, in all cost-plus-award-fee solicitations and contracts.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–72, Performance Evaluation Plan, in all cost-plus-award-fee solicitations and contracts.

(c) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–73, Distribution of Award Fee, in all cost-plus-award-fee solicitations and contracts.

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.

1216.603–4 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–74, Settlement of Letter Contract, in all definitized letter contracts.

PART 1217—SPECIAL CONTRACTING METHODS

Subpart 1217.1—Multiyear Contracting

1217.102 Policy.

1217.102–1 Uses.

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

1217.7000 Clauses.

Subpart 1217.71—Energy Savings Performance Contracts

1217.7100 Policy.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1217.1—Multiyear Contracting

1217.102 Policy.

1217.102–1 Uses.

The FAA Administrator has been granted specific statutory multiyear contracting authority by the Aviation Safety and Capacity Expansion Act of 1990 (Subtitle B of Title IX of Pub. L. 101–508, Omnibus Budget Reconciliation Act of 1990, Section 9118). FAA implementing procedures are contained in Federal Aviation Acquisition Manual Subchapter 1217.1.

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

1217.7000 Clauses.

The following clauses are to be used in specific solicitations and contracts:

(a) The clauses set forth in (TAR) 48 CFR 1252.217–71 through (TAR) 48 CFR 1252.217–74 and (TAR) 48 CFR 1252.217–76 through (TAR) 48 CFR 1252.217–80 shall be included and clause (TAR) 48 CFR 1252.217–75 may be included in sealed bid fixed-price solicitations and contracts for vessel repair, alteration, or conversion which are to be performed within the United States, its possessions, or Puerto Rico.

(b) Unless inappropriate, the clauses set forth in (TAR) 48 CFR 1252.217–71 through (TAR) 48 CFR 1252.217–74 and (TAR) 48 CFR 1252.217–76 through (TAR) 48 CFR 1252.217–80 should be included and (TAR) 48 CFR 1252.217–75 may be included in negotiated solicitations and contracts to be performed outside the United States.

(c) The clause at (TAR) 48 CFR 1252.217–81, Guarantee, shall be used where general guarantee provisions are deemed desirable by the contracting officer.

(1) When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specifications and the absence of defects and deficiencies, no

guarantee clause for that purpose shall be included in the contract.

(2) The customary guarantee period, to be inserted in the first sentence of the clause at (TAR) 48 CFR 1252.217–81, Guarantee, is 60 days. However, in certain instances, the contracting officer may desire to include a clause in a contract for a guarantee period of more than 60 days. In such instances:

(i) Where, after full inquiry, it has been determined that such longer guarantee period will not involve increased costs, a longer guarantee period may be substituted by the contracting officer for the usual 60 days; or

(ii) Where the full inquiry discloses that such longer guarantee period will involve, or is reasonably expected to involve, increased costs, such facts and the reasons for the need for such longer period shall be set forth in letter form to the COCO, requesting approval for use of guarantee period in excess of 60 days. Upon approval, the longer period may be inserted by the contracting officer in the first sentence of the clause at (TAR) 48 CFR 1252.217–81, Guarantee.

Subpart 1217.71—Energy Savings Performance Contracts

1217.7100 Policy.

Federal agencies may enter into multi-year contracts for a period of up to 25 years under Title VIII of the National Energy Conservation Policy Act, 42 U.S.C. 8287, as amended. Energy savings performance arrangements are appropriate where a contractor makes improvements and/or operating changes to Federally-owned buildings and facilities to improve energy efficiency, at no cost to the Federal Government in exchange for a share of energy savings directly resulting from the changes. Proposed actions under this section shall be coordinated with M–60.

PART 1219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1219.2—Policies

1219.201 General policy.

Subpart 1219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1219.708 Solicitation provisions and contract clauses.
1219.708–70 DOT solicitation and contract clause.

Subpart 1219.10—Small Business Competitiveness Demonstration Program

1219.1005 Applicability.
1219.1006 Procedures.
Appendix A Targeted Industry Categories

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1219.2—Policies

1219.201 General policy.

(c) The Director, Office of Small and Disadvantaged Business Utilization (S–40), is responsible for the implementation and execution of the small and small disadvantaged business programs required by sections 8 and 15 of the Small Business Act. HOAs or their designees are responsible for appointing Small and Disadvantaged Business Utilization Liaison Officials within the OAs.

Subpart 1219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1219.708 Solicitation provisions and contract clauses.

1219.708–70 DOT solicitation and contract clause.

The contracting officer shall insert the clause at 1252.219–70, Small Business and Small Disadvantaged Business Subcontracting Reporting, in solicitations and contracts containing the clause at (FAR) 48 CFR 52.219–9.

Subpart 1219.10—Small Business Competitiveness Demonstration Program

1219.1005 Applicability.

(b) *Targeted industry categories.* DOT's targeted industry categories are shown in Appendix A.

1219.1006 Procedures.

(c) *Emerging small business set-aside.* The Office of Federal Procurement Policy published a notice in the **Federal Register**, dated September 13, 1991, that increased the emerging small business reserve amount for Architect-Engineer (A–E) services from $25,000 to $50,000. Therefore, A–E services below $50,000 are reserved for emerging small businesses, if the conditions of (FAR) 48 CFR 19.1006(c)(1) are met.

APPENDIX A

Targeted industry categories [1]	FPDS product and service code
(1) Engineering Development	AT94
(2) Systems Engineering Services (Only).	R414
(3) Radio/TV Communication Equipment (except airborne).	5820
(4) Maintenance Repair, Rebuilding of engines, turbines, components and weapons equipment.	J028/J010

APPENDIX A—Continued

Targeted industry categories [1]	FPDS product and service code
(5) ADP Central Processing Units:	
Analog	7020
Digital	7021
Hybrid	7022
(6) ADP Accessorial Equipment	7035
(7) ADP Components	7050
(8) ADP Development Services and ADP Teleprocessing and Timesharing Services.	D302/D305
(9) Gas Turbines and Jet Engines, Aircraft; and Components.	2840
(10) Radar Equipment (except airborne) and Navigation and Navigational Aids (basic research).	5840/AT31

[1] The industry categories were derived from Federal Procurement Data System Product and Service Codes Manual.

PART 1220—LABOR SURPLUS AREA CONCERNS

Subpart 1220.90—Local Hire

1220.9000 Policy. (USCG)
1220.9001 Solicitation provision and contract clause. (USCG)

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1220.90—Local Hire

1220.9000 Policy. (USCG)

Pub. L. 101–225, Coast Guard Authorization Act of 1989, Section 206, added Section 666 to Title 14 of the United States Code, which requires the U.S. Coast Guard to include a provision for local hire in each contract for construction or services to be performed in whole or in part in a State that has an unemployment rate in excess of the national average rate of unemployment (as determined by the Secretary of Labor). The Secretary of Transportation may waive this requirement in the interest of national security or economic efficiency.

1220.9001 Solicitation provision and contract clause. (USCG)

The contracting officer shall insert the USCG clause at (TAR) 48 CFR 1252.220–90, Local Hire Provision, in all solicitations and contracts as required by (TAR) 48 CFR 1220.9000.

PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1222.1—Basic Labor Policies

1222.101 Labor relations.
1222.101–70 Admittance of union representatives to DOT installations.
1222.101–71 Contract clauses.

Subpart 1222.4—Labor Standards for Contracts Involving Construction

1222.406 Administration and enforcement.
1222.406–9 Withholding from or suspension of contract payments.

Subpart 1222.6—Walsh-Healey Public Contracts Act

1222.608 Procedures.
1222.608–4 Award pending final determination.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1222.1—Basic Labor Policies

1222.101 Labor relations.

1222.101–70 Admittance of union representatives to DOT installations.

(a) It is the policy of DOT to admit labor union representatives of contractor employees to DOT installations to visit work sites and transact labor union business with contractors, their employees, or union stewards pursuant to existing union collective bargaining agreements. Their presence shall not interfere with the contractor's work progress under a DOT contract nor violate the safety or security regulations that may be applicable to persons visiting the installation. The union representatives will not be permitted to conduct meetings, collect union dues, or make speeches concerning union matters while visiting a work site.

(b) Whenever a union representative is denied entry to a work site, the person denying entry shall make a written report to the DOT labor coordinator (i.e., Director, Office of Economics (P–35), Office of the Secretary) or OA labor advisor, if any, within two working days after the request for entry is denied. The report shall include the reason(s) for the denial, the name of the representative denied entry, the union affiliation and number, and the name and title of the person that denied the entry.

1222.101–71 Contract clauses.

(a) The contracting officer, may, when applicable, insert the clause at (TAR) 48 CFR 1252.222–70, Strikes or Picketing Affecting Timely Completion of the Contract Work, in solicitations and contracts.

(b) The contracting officer may, when applicable, insert the clause at (TAR) 48 CFR 1252.222–71, Strikes or Picketing Affecting Access to a DOT Facility, in solicitations and contracts.

Subpart 1222.4—Labor Standards for Contracts Involving Construction

1222.406 Administration and enforcement.

1222.406–9 Withholding from or suspension of contract payments.

(c) *Disposition of contract payments withheld or suspended.*

(1) *Forwarding wage underpayments to the Comptroller General.* The contracting officer shall ensure that a completed Form DOT F 4220.7, Employee Claim for Wage Restitution, is obtained from each employee claiming restitution under the contract. The Comptroller General (Claims Division) must receive this form with a completed SF 1093, Schedule of Withholding Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act, before payment can be made to the employee.

Subpart 1222.6—Walsh-Healey Public Contracts Act

1222.608 Procedures.

1222.608–4 Award pending final determination.

(b) The official authorized to approve the contracting officer's written certification required by (FAR) 48 CFR 22.608–4(b)(1) is the HCA.

PART 1223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 1223.3—Hazardous Material Identification and Material Safety Data

1223.303 Contract clause.

Subpart 1223.70—Safety Requirements for Selected DOT Contracts

1223.7000 Contract clauses.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1223.3—Hazardous Material Identification and Material Safety Data

1223.303 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.223–70, Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits, in solicitations and contracts involving the removal or disposal of hazardous waste material.

Subpart 1223.70—Safety Requirements for Selected DOT Contracts

1223.7000 Contract clauses.

(a) Where all or part of a contract will be performed on Government-owned or leased property, the contracting officer shall insert the clause at (TAR) 48 CFR 1252.223–71, Accident and Fire Reporting.

(b) For all solicitations and contracts under which human test subjects will be utilized, the contracting officer shall insert the clause at (TAR) 48 CFR 1252.223–72, Protection of Human Subjects. Copies of NHTSA Orders 700–1, 700–3 and 700–4 may be obtained in writing from NHTSA, Office of Administrative Operations, Distribution Services, NAD–51, 400 Seventh Street SW., Washington, DC 20590.

PART 1224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

1224.000 Scope of part.

Subpart 1224.1—Protection of Individual Privacy

1224.102–70 Applicability.

Subpart 1224.2—Freedom of Information Act

1224.202 Policy.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

1224.000 Scope of part.

DOT's rules and regulations implementing the Privacy Act of 1974 are located at 49 CFR Part 10.

Subpart 1224.1—Protection of Individual Privacy

1224.102–70 Applicability.

(a) Illustrations of systems of records to which the Privacy Act applies and which shall not be released irrespective of whether the Government or a contractor acting on behalf of the Government is maintaining the records include the following:

(1) Personnel, payroll and background records personal to any officer or employee of DOT, or other person, including his or her residential address;

(2) Medical histories and medical records concerning individuals, including applicants for licenses; and

(3) Any other detailed record containing information identifiable with a particular person.

(b) Illustrations of systems of records to which the Privacy Act does not apply include:

(1) Records that are maintained by a contractor on individuals employed by the contractor in the process of providing goods and services to the Federal government; and

(2) The records generated, when contracting with an educational institution, on contract students pursuant to their attendance (e.g., admission forms, grade reports),

provided that they are similar to those maintained under contracts with educational institutions to provide training, generated on students working under the contract relative to their attendance (e.g., admission forms, grade reports), similar to those maintained on other students and are commingled with records of other students.

Subpart 1224.2—Freedom of Information Act

1224.202 Policy.

DOT rules and regulations implementing the Freedom of Information Act (FOIA) and the names and addresses of the OA FOIA offices are located in 49 CFR Part 7. Specific contract award information shall be requested from the FOIA office of the OA making the contract award.

PART 1225—FOREIGN ACQUISITION

Subpart 1225.90—But American Act—Steel and Manufactured Products

1225.9000 Scope. (FAA)
1225.9001 Definitions. (FAA)
1225.9002 Policy. (FAA)
1225.9003 Order of precedence. (FAA)
1225.9004 Findings. (FAA)
1225.9005 Solicitation provisions and contract clauses. (FAA)

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1225.90—Buy American Act—Steel and Manufactured Products

1225.90 Steel and manufactured products.

1225.9000 Scope. (FAA)

For the FAA, this subpart implements the Buy American provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Subtitle B of Title IX of Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990), and Pub. L. 102–581, The Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, Title I, Sec. 103 and 104, as these apply to the obligation of funds made available in appropriations after November 5, 1990.

1225.9001 Definitions. (FAA)

As used in this subpart:

Manufactured product means an item produced as a result of the manufacturing process.

Manufacturing process means the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials.

1225.9002 Policy. (FAA)

(a) This subpart sets forth the policy for the FAA pursuant to Pub. L. 101–508, and notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated for any project unless steel and manufactured products used in such projects are produced in the United States. Projects funded by the Research, Engineering and Development appropriation are excluded from this provision.

(b) The Act provides that the general provisions in paragraph (a) shall not apply where the Secretary of Transportation finds:

(1) That their application would be inconsistent with the public interest;

(2) That such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(3) In the case of the procurement of facilities and equipment under the Airport and Airway Improvement Act of 1982,

(i) The cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components of the facility or equipment used in the project, and

(ii) Final assembly of the facility or equipment described in this paragraph has taken place in the United States; or

(4) Inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

(c) There is no restriction against a company offering foreign steel or manufactured products in its bid or proposal. The FAA, however, may not award to that company unless it is pursuant to one of the exceptions listed under (TAR) 48 CFR 1225.9002(b) (FAA).

(d) For the purpose of this subpart, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

1225.9003 Order of precedence. (FAA)

(a) Any acquisition of the FAA not subject to Pub. L. 101–508 should be treated as covered under the Buy American Act, unless a Buy American Act exception applies.

(b) Nothing in this subpart relieves the contracting officer of responsibility for complying with the Federal Acquisition Regulation (FAR) 48 CFR Subpart 25.1, Buy American Act—Supplies, and (FAR) 48 CFR Subpart 25.2, Buy American Act Construction Materials, including the requirement to insert any FAR required Buy American clause or provision in solicitations or contracts. To the extent that there may be a conflict between the requirements of the clause prescribed by this subpart and a FAR prescribed Buy American clause, both of which may be required to be included in the same contract, this subpart's clause takes precedence.

(c) The certificate required to be executed by this subpart, entitled, "Buy American Certificate—Steel and Manufactured Products" ((TAR) 48 CFR 1252.225–90), will be in addition to any Buy American certification required by the FAR. Although this may appear to be a situation of a clear duplication of certifications (two Buy American certificates in the same acquisition) the separate certificates implement two separate statutes, which differ in coverage. Consequently, the contents of the two certificates included in the same acquisition may differ. As one example: such materials as copper or aluminum, if end products in the contract and if nondomestic, would be listed in the FAR Buy American certificate, whereas they would not be listed in the certificate required by this subpart. This is because only steel, among nonmanufactured materials, is subject to the restrictions of Pub. L. 101–508, whereas all nondomestic end products are subject to restrictions of the Buy American Act (unless a Buy American Act exception applies).

1225.9004 Findings. (FAA)

In respect to the four findings enumerated in (TAR) 48 CFR 1225.9002(b) (FAA), the following applies:

(a) Based on delegations from the Secretary and the Federal Aviation Administrator, authorities for the making of these findings are established as follows:

(1) Contracts exceeding $1,000,000: Head of the Contracting Activity. For construction contracts, this is for an amount exceeding $100,000.

(2) Contracts below the above dollar thresholds: Contracting officer.

(b) All findings, except those authorized to be made by the contracting officer, shall be coordinated with the Director, Office of Acquisition Policy and Oversight, ACQ–1. Every finding shall be coordinated with the Office of Chief Counsel and the appropriate Program Office.

1225.9005 Solicitation provisions and contract clauses. (FAA)

(a) If the procurement includes the acquisition of steel or manufactured products, the contracting officer shall

insert the FAA provision at (TAR) 48 CFR 1252.225–90, Buy American Certificate—Steel and Manufactured Products (July 1992), in solicitations. Projects funded by the Research, Engineering and Development appropriation to carry out the purpose of Section 302 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1353) are excluded from this requirement. Only those contract actions obligating funds made available in appropriations after November 5, 1990, that have been authorized pursuant to 49 U.S.C. 106(k) and 506(a) of the Airport and Airway Improvement Act of 1982, are subject to this requirement.

(b) If the procurement includes the acquisition of steel or manufactured products, the contracting officer shall insert the FAA clause at (TAR) 48 CFR 1252.225–91, Buy American—Steel and Manufactured Products (July 1992) in solicitations and contracts. Projects funded by the Research, Engineering and Development appropriation to carry out the purpose of Section 302 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1353) are excluded from this requirement. Only those contract actions obligating funds made available in appropriations after November 5, 1990, that have been authorized pursuant to 49 U.S.C. 106(k) and 506(a) of the Airport and Airway Improvement Act of 1982, are subject to this requirement.

PART 1227—PATENTS, DATA, AND COPYRIGHTS

Subpart 1227.3—Patent Rights Under Government Contracts

1227.305 Administration of patent rights clauses.
1227.305–4 Conveyance of invention rights acquired by the Government.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1227.3—Patent Rights Under Government Contracts

1227.305 Administration of patent rights clauses.

1227.305–4 Conveyance of invention rights acquired by the Government.

The contracting officer shall ensure that solicitations and contracts which include a patent rights clause include a means for the contractor to report inventions made in the course of contract performance and at contract completion. This requirement may be fulfilled by requiring the contractor to submit a DD Form 882, Report of Inventions and Subcontracts.

PART 1228—BONDS AND INSURANCE

Subpart 1228.1—Bonds

1228.106 Administration.
1228.106–1 Bonds and bond-related forms.
1228.106–6 Furnishing of information.
1228.106–70 Execution and administration of bonds.
1228–106–490 Contract clause. (USCG)

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.
1228.306–70 Contracts for lease of aircraft.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1228.1—Bonds

1228.106 Administration.

1228.106–1 Bonds and bond-related forms.

(c) SF 25, Performance Bond, prescribed at (FAR) 48 CFR 28.106–1(c), must provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor. Forms other than the SF 25 (e.g., a commercial form) shall not be used by contractors when a performance bond is required.

1228.106–6 Furnishing of information.

(b) The contracting officer shall, upon request, furnish the name and address of the prime contractor's surety or sureties to employees, suppliers, and subcontractors having a contractual or employment relationship with prime contractors, subcontractors or suppliers. When furnishing surety information, the inquirer may also be informed that:

(1) Persons believing that they have legal remedies under the Miller Act are cautioned to consult their own legal advisor regarding the proper steps to take to obtain remedies.

(2) On construction contracts exceeding $2,000, if the contracting officer is informed (through routine compliance checking, a complaint, or a request for information) that a laborer, mechanic, apprentice, trainee, watchman, or guard employed by the contractor or subcontractor at any tier may have been paid wages less than those required by the applicable labor standards provisions of the contract, the contracting officer shall promptly initiate an investigation in accordance with (FAR) 48 CFR Subpart 22.4, irrespective of the employee's rights under the Miller Act. When an employee's request for information is involved, the contracting officer shall inform the inquirer that such investigation will be made. Such investigation is required pursuant to the provisions of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, and Copeland (Anti-Kickback) Act for assuring proper payment to such employees.

(c) When furnishing a copy of a payment bond and contract in accordance with (FAR) 48 CFR 28.106–6(c), the requirement for a copy of the contract may be satisfied by furnishing a machine-duplicate copy of the contractor's first pages which show the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The contracting officer furnishing the copies shall place the statement "Certified to be a true and correct copy" followed by his/her signature, title and name of the OA. The fee for furnishing the requested certified copies shall be determined in accordance with the DOT Freedom of Information Act regulation, 49 CFR Part 7, ((TAR) 48 CFR 1224.202).

1228.106–70 Execution and administration of bonds.

(a) The surety shall be notified, as soon as feasible, of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase "a partnership composed of." If a principal is a corporation, the state of incorporation must also appear on the bond.

(c) Performance or payment bond other than an annual bond shall not antedate the contract to which it pertains.

(d) Bonds shall be filed with the original contract to which they apply, or all bonds shall be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross-reference the applicable bonds.

1228.106–490 Contract clause. (USCG)

The contracting officer shall insert the USCG clause at (TAR) 48 CFR 1252.228–90, Notification of Miller Act Payment Bond Protection, in solicitations and contracts, and shall require its first-tier subcontractors to insert the clause in all of their subcontracts, when payment bonds are required.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.

1228.306–70 Contracts for lease of aircraft.

(a) The contracting officer shall insert the clauses at (TAR) 48 CFR 1252.228–

70 through 1252.228–72, unless otherwise indicated by the specific instructions for their use, in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228–70, Loss of or Damage to Leased Aircraft, in any contract for the lease of aircraft, except in the following circumstances:

(1) When the hourly rental rate does not exceed $250 and the total rental cost for any single transaction is not in excess of $2,500;

(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(c) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228–71, Fair Market Value of Aircraft, when fair market value of the aircraft can be determined.

(d) Section 504 of the Federal Aviation Act of 1958, as amended, provides that no lessor of an aircraft under a bona fide lease of 30 days or more shall be liable by reason of his interest as lessor or title-holder of the aircraft for any injury to or death of persons, or damage to or loss of property, unless such aircraft is in the actual possession or control of such person at the time of such injury, death, damage or loss. On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. In order to take advantage of this coverage, the Risks and Indemnities clause at (TAR) 48 CFR 1252.228–72 prescribed in paragraph (d)(1) of this section shall be used.

(1) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228–72, Risk and Indemnities, in any contract for out-service flight training or for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.

(2) Any contract for out-service flight training shall include a clause in the contract schedule stating substantially that the contractor's personnel shall at all times during the course of the training be in command of the aircraft, and that at no time shall other personnel be permitted to take command of the aircraft.

PART 1231—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1231.2—Contracts With Commercial Organizations

1231.205 Selected costs.
1231.205–32 Precontract costs.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1231.2—Contracts With Commercial Organizations

1231.205 Selected costs.

1231.205–32 Precontract costs.

(a) The decision to incur precontract costs is that of the contractor. No DOT employee can authorize, demand, or require a contractor to incur precontract costs. The contracting officer may advise the prospective contractor that any costs incurred before contract award are at the contractor's sole risk and that if negotiations fail to result in a binding contract, payment of these costs may not be made by the Government.

(b) When the contracting officer determines that incurring precontract costs was necessary to meet the proposed contract delivery schedule of a cost-reimbursement contract, the clause at (TAR) 48 CFR 1252.231–70, Date of Incurrence of Costs, may be inserted in the resultant contract.

PART 1232—CONTRACT FINANCING

Subpart 1232.70—Contract Payments

1232.7002 Invoice and voucher review and approval.
Appendix A Instructions for completing the SF 1034.
Appendix B Instructions for completing the SF 1035.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1232.70—Contract Payments

1232.7002 Invoice and voucher review and approval.

(a) Under fixed-price contracts, the contracting officer shall require the contractor to submit an invoice or voucher in order to receive payment under the contract. The invoice or voucher may be on a form or company letterhead as long as it meets the requirements of the Prompt Payment Act as implemented by OMB Circular A–125—Prompt Payment, (FAR) 48 CFR subpart 32.9, and the contract.

(b) Under other than fixed-price contracts, the contracting office shall require the contractor to submit the SF 1034, Public Voucher for Purchases and Services Other Than Personal, and the SF 1035, Public Voucher for Purchases and Services Other Than Personal (Continuation Sheet), to request payments. The forms must be completed as required by Appendix A, Instructions for Completing the SF 1034, and Appendix B, Instructions for Completing the SF 1035.

Appendix A to Subpart 1232.70—Instructions for Completing the SF 1034

The SF 1034, Public Voucher for Purchases and Services Other Than Personal, shall be completed in accordance with the below instructions. The lettered items correspond to the entries on the form.

Caption on the SF 1034	Data to be Inserted in the Block
1. U.S. Department, Bureau, or establishment and location.	Name and address of the contracting office which issued the contract.
2. Date voucher prepared	Date voucher submitted to the designated billing office cited under the contract or order.
3. Contract no. and date	Contract No. and, when applicable, the Order No. and date as shown on the award document.
4. Requisition no. and date	Leave blank or fill-in in accordance with the instructions in the contract.
5. Voucher no.	Start with "1" and number consecutively. A separate series of consecutive numbers must be used beginning with "1" for each contract number or order number (when applicable). Note: Insert the word "FINAL" if this is the last voucher.
6. Schedule No.; paid by; date invoice received; discount terms; payee's account no.; shipped from/to; weight; government B/L.	Leave all these blocks blank.
7. Payee's name and address	Name and address of contractor as it appears on the contract. If the contract is assigned to a bank, also show "CONTRACT ASSIGNED" below the name and address of the contractor.
8. Number and date of order	Leave blank. (See #3 above.)

Caption on the SF 1034	Data to be Inserted in the Block
9. Date of delivery or service	The period for which the incurred costs are being claimed (e.g., month and year; beginning and ending date of services, etc.).
10. Articles or services	Insert the following: "For detail, see the total amount of the claim transferred from the attached SF 1035, page X of X." One space below this line, insert the following: "COST REIMBURSABLE-PROVISIONAL PAYMENT."
11. Quantity; unit price; (cost; per)	Leave blank.
12. Amount	Insert the total amount claimed from the last page of the SF 1035.
Payee must NOT use the space below.	Do NOT write or type below this line.

Appendix B to Subpart 1232.70—Instructions for Completing the SF 1035

The SF 1035, Public Voucher for Purchases and Services Other Than Personal (Continuation Sheet), shall be completed in accordance with the below instructions.

1. Use the same basic instructions for the SF 1035 as used for the SF 1034. Ensure that the contract and, if applicable, order number, are shown on each continuation sheet. Use as many sheets as necessary to show the information required by the contract, contracting officer, or cognizant audit agency; however, if more than one sheet of SF 1035 is used, each sheet shall be in numerical sequence.

2. The following items are generally entered below the line with Number and Date of Order; Date of Delivery or Service; Articles or Services; Quantity; Unit Price; and Amount (but do not necessarily tie to these captions).

3. Description of data to be inserted as it applies to the contract or order number.

a. Show, as applicable, the target or estimated costs, target or fixed-fee, and total contract value, as adjusted by any modifications to the contract or order. The FAR permits the contracting officer to withhold a percentage of fixed fee until a reserve is set aside in an amount that is considered necessary to protect the Government's interest.

b. Show the following costs and supporting data (as applicable) to the contract or order:

(1) *Direct Labor.* List each labor category, rate per labor hour, hours worked, and extended total labor dollars per labor category.

(2) *Premium Pay/Overtime.* List each labor category, rate per labor hour, hours worked, and the extended total labor dollars per labor category. Note: Advance written authorization must be received from the contracting officer to work overtime or to pay premium rates; therefore, identify the contracting officer's written authorization to the contractor.

(3) *Fringe Benefits.* If fringe benefits are included in the overhead pool, no entry is required. If the contract allows for a separate fringe benefit pool, cite the formula (rate and base) in effect during the time the costs were incurred. If the contract allows for billing fringe benefits as a direct expense, show the actual fringe benefit costs.

(4) *Materials, Supplies, Equipment.* Show those items normally treated as direct costs. Expendable items need not be itemized and may be grouped into major classifications such as office supplies. However, items valued at $5,000 or more must be itemized. See (FAR) 48 CFR Part 45, Government Property, for reporting of property.

(5) *Travel.* List the name and title of traveller, place of travel, and travel dates. If the travel claim is based on the actual costs expended, show the amount for the mode of travel (i.e., airline, private auto, taxi, etc.), lodging, meals, and other incidental expenses separately, on a daily basis. These actual costs must be supported with receipts to substantiate the costs paid. Travel costs for consultants must be shown separately and also supported.

(6) *Other Direct Costs.* Itemize those costs that cannot be placed in categories (1) through (5) above. Categorize these costs to the extent possible.

(7) *Total Direct Costs.* Cite the sum of categories (1) through (6) above.

(8) *Overhead.* Cite the rate, base, and extended amount.

(9) *G&A Expense.* Cite the rate, base, and extended amount.

(10) *Total Costs.* Cite the sum of categories (7) through (9) above.

(11) *Fee.* Cite the rate, base, and extended amount.

(12) *Total Cost and Fee Claimed.* Enter this amount on the SF 1034.

Completion Voucher

The completion (final) voucher is the last voucher to be submitted for incurred, allocable, and allowable costs expended to perform the contract or order. This voucher should include all contract reserves, allowable cost withholdings, balance of fixed fee, etc. However, the amount of the completion voucher when added to the total amount previously paid cannot exceed the total amount of the contract.

PART 1233—PROTESTS, DISPUTES, AND APPEALS

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.
1233.214 Alternative dispute resolution.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.

For DOT contracts, the Board of Contract Appeals (BCA) referenced at (FAR) 48 CFR 33.211 is the Department of Transportation Board of Contract Appeals (S–20), 400 7th Street, S.W., Washington, DC, 20590. The DOTBCA Rules of Procedure are contained in 48 CFR chapter 63, part 6301.

1233.214 Alternative dispute resolution.

(b) The Administrative Dispute Resolution Act (ADRA), Pub. L. 101–552, authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes. The DOTBCA Alternate Dispute Resolution (ADR) procedures are contained in 48 CFR chapter 63, § 6302.30, ADR Methods (Rule 30), and will be distributed to the parties, if ADR procedures are used. These procedures may be obtained from the DOTBCA upon request. ADR procedures may be used when:

(1) There is mutual consent by the parties to participate in the ADR process (with consent being obtained either before or after an issue in controversy has arisen);

(2) Prior to the submission of a claim; and

(3) In resolution of a formal claim

(c) DOT's Dispute Resolution Specialist in accordance with the ADRA is located in the DOT Office of the General Counsel, C–1.

(d) The DOTBCA is designated as the preferred neutral to perform the functions set forth in the Administrative Disputes Resolution Act for DOT operating administrations on a non-reimbursable basis. The BCA may conduct any of the alternative means of dispute resolution set forth in Title 5, U.S.C. Section 581(3), including settlement negotiations under the auspices of a settlement judge, conciliation, facilitation, mediation, fact finding, mini-trials, and arbitration, or any combination of these methods.

PART 1234—MAJOR SYSTEM ACQUISITION

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

1234.003 Responsibilities.

DOT's internal procedures for implementing OMB Circular A–109, Major System Acquisitions, is contained in Chapter 1234, Appendix A, of the Transportation Acquisition Manual

(which is stocked at the Government Printing Office).

PART 1235—RESEARCH AND DEVELOPMENT CONTRACTING

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

1235.003 Policy.

(b) *Cost sharing.* DOT cost sharing policies shall be in accordance with (FAR) 48 CFR 16.303, (FAR) 48 CFR 42.707(a), and OA procedures.

PART 1236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1236.3—Special Aspects of Sealed Bidding in Construction Contracting

1236.305 Preconstruction conference.

Subpart 1236.5—Contract Clauses

1236.570 Special precautions for work at operating airports.

Subpart 1236.6—Architect-Engineer Services

1236.602 Selection of firms for architect-engineer contracts.

1236.602–1 Selection criteria.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1236.3—Special Aspects of Sealed Bidding in Construction Contracting

1236.305 Preconstruction conference.

When the contracting officer considers such action warranted, he/she shall arrange a preconstruction conference with the contractor and such subcontractors as the contractor may designate to assure that there is a clear understanding of the contract requirements (including labor standards provisions) and the rights and obligations of the parties.

Subpart 1236.5—Contract Clauses

1236.570 Special precautions for work at operating airports.

Where any acquisition will require work at an operating airport, insert the clause at (TAR) 48 CFR 1252.236–70, Special Precautions for Work at Operating Airports, in solicitations and contracts.

Subpart 1236.6—Architect-Engineer Services

1236.602 Selection of firms for architect-engineer contracts.

1236.602–1 Selection criteria.

(a) Appropriate criteria in addition to those under (FAR) 48 CFR 36.602–1(a) may include, but are not limited to, the criteria listed below. The extent to which these criteria are used will depend on the size and the complexity of the project. For instance, for small and straight-forward projects, particularly those under the small purchase limitation, the data provided by the SFs 254 and 255 may provide an adequate measure of the firm's experience and qualification required for the project. However, on large and more complex projects, the evaluation criteria should be extended to consider such factors as the firm's suggested design approach, methods, and design ability, such as:

(1) *Capability of the firm to accomplish the work:* (i) Relevant, recent experience and technical knowledge of key project personnel and key outside consultants;

(ii) Total number of personnel the Architect-Engineer (A-E) firm employs in the technical disciplines required for the proposed work.

(2) *Capacity of the firm to accomplish the work.* In assessing the firm's capacity to accomplish the work in the required time, consideration shall be given to the firm's current workload, total number of ongoing projects, and percentage of completion.

(3) *Design ability and understanding of the requirements:*

(i) Technical approach (planning and design process, overall planning and design philosophy), possible concepts (narrative), special design opportunities, innovative design possibilities (including environmental), and provisions for the handicapped;

(ii) Understanding of, and experience in, energy conservation design:

(A) Approach to maximizing energy conservation;

(B) Project building and equipment systems that would significantly impact energy consumption;

(C) Criteria and engineering considerations to be used in building and equipment design; and

(D) Examples of previously used design techniques and measure of results (in BTUs consumed per square foot or energy costs);

(iii) Proposed project schedule and personnel-loading plan;

(iv) Quality of examples of previous work; and

(v) Major awards and other major recognition the firm or members of the firm have received for design excellence.

(4) *Organization and management:*

(i) Project team organization and key personnel roles and responsibilities;

(ii) Project management procedures such as coordination of design effort among technical disciplines;

(iii) Methods used to control project schedule and construction cost estimates; and

(iv) Quality control procedures.

(5) *Record of past performance:*

(i) Accuracy of construction cost estimates (compared to construction bids received and value of awarded construction contract(s);

(ii) Number, dollar amount and reason for construction change orders, if any; and

(iii) A–E/client relationship (for Government contracts, the above information is available from SF 1421, Performance Evaluation (A–E)).

(b) If a design competition is to be used, written approval by the COCO shall be obtained prior to soliciting proposals.

(c) The following evaluation criterion shall be used in the A–E evaluation process for A–E acquisitions above the small purchase limitation. The criterion shall be evaluated separately from other criteria and added to the basic evaluation rating for a composite rating.

Minority and Women Employment—A criterion related to evaluating the number of minorities and women in all relevant job classifications and pay scales that will actually work on the project in comparison to the number of qualified minorities and women of the same job classification and pay scale located in the Standard Metropolitan Statistical Area (SMSA) where the work is to be performed.

PART 1237—SERVICE CONTRACTING

Subpart 1237.1—Service Contracts—General

1237.110 Solicitation provisions and contract clauses.

Subpart 1237.90—Mortuary Services

1237.9000 Solicitation provisions and contract clauses. (USCG)

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1237.1—Service Contracting—General

1237.110 Solicitation provisions and contract clauses.

Contracting officers shall insert the clause at (TAR) 48 CFR 1252.237–70, Qualifications of Employees, in all solicitations and contracts for services which require contract performance at a Government facility.

Subpart 1237.90—Mortuary Services

1237.9000 Solicitation provisions and contract clauses. (USCG).

(a) The contracting officer shall insert the following clauses in solicitations and contracts for mortuary services.

However, USCG clauses (TAR) 48 CFR 1252.237–91 and 1252.237–97 shall not be inserted in solicitations and contracts that include port of entry requirements:

(1) (TAR) 48 CFR 1252.237–90, Requirements;

(2) (TAR) 48 CFR 1252.237–91, Area of Performance;

(3) (TAR) 48 CFR 1252.237–92, Performance and Delivery;

(4) (TAR) 48 CFR 1252.237–93, Subcontracting;

(5) (TAR) 48 CFR 1252.237–94, Termination for Default;

(6) (TAR) 48 CFR 1252.237–95, Group Interment;

(7) (TAR) 48 CFR 1252.237–96, Permits;

(8) (TAR) 48 CFR 1252.237–97, Facility Requirements; and

(9) (TAR) 48 CFR 1252.237–98, Preparation History.

(b) The contracting officer shall insert USCG provision (TAR) 48 CFR 1252.237–99, Award to Single Offeror, in all sealed bid solicitations for mortuary services. Use the basic provision with Alternate I in negotiated solicitations for mortuary services.

(c) The contracting officer shall insert (FAR) 48 CFR 52.245–4, Government-Furnished Property (Short Form) in solicitations and contracts that include port of entry requirements.

PART 1242—CONTRACT ADMINISTRATION

Subpart 1242.2—Assignment of Contract Administration

1242.203 Retention of contract administration.
1242.203–70 Contract clauses.
1242.205 Designation of the paying office.

Subpart 1242.3—Contract Administration Office Functions

1242.302 Contract administration functions.

Subpart 1242.70—Contracting Officer's Technical Representative

1242.7000 Contract clause.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1242.2—Assignment of Contract Administration

1242.203 Retention of contract administration.

(a) Contracting offices may obtain contract administration assistance from the Defense Logistics Agency (DLA), Defense Contract Management Command, Alexandria, VA, when the contracting officer determines that such action is to be in the best interest of DOT.

1242.203–70 Contract clauses.

(a) The contracting officer may use the clause at (TAR) 48 CFR 1252.242–70, Dissemination of Information—Educational Institutions, in lieu of the clause at (TAR) 48 CFR 1252.242–72, Dissemination of Contract Information, in DOT research contracts with educational institutions, except contracts that require the release or coordination of information.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.242–71, Contractor Testimony, in all solicitations and contracts issued by NHTSA. Other OAs may use the clause as deemed appropriate.

(c) The contracting officer may insert the clause at (TAR) 48 CFR 1252.242–72, Dissemination of Contract Information, in all DOT contracts except contracts that require the release or coordination of information.

1242.205 Designation of the paying office.

(a) The assignment of contract administration to a DLA Contract Administration Office (CAO) by the contracting officer does not affect the designation of the paying office unless a transfer of DOT funds to the agency of the CAO is effected, and the funds are converted to the agency's account for payment purposes.

(b) When the contracting officer proposes to delegate the contract payment function to another agency (e.g., DLA), the contracting officer shall discuss the transfer of funds procedures with the OA cognizant payment office.

Subpart 1242.3—Contract Administration Office Functions

1242.302 Contract administration functions.

(a)(13) The CAO, or the contracting officer's designee under fixed price contracts, shall review and approve the contractor's invoice for payment. The CAO shall review and approve contractors' vouchers under cost-reimbursement contracts, and this function cannot be delegated to a COTR. All payments to contractors will be made by the payment office designated in the contract to make payments.

Subpart 1242.70—Contracting Officer's Technical Representative

1242.7000 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.242–73, Contracting Officer's Technical Representative, in solicitations and contracts when it is intended that a representative will be assigned to the contract to perform functions of a technical nature.

PART 1245—GOVERNMENT PROPERTY

Subpart 1245.5—Management of Government Property in the Possession of Contractors

1245.505 Records and reports of Government property.
1245.505–14 Reports of Government property.
1245.505–70 Solicitation provisions and contract clauses.
1245.508–2 Reporting results of inventories.
1245.508–3 Quantitative and monetary control.
1245.511 Audit of property control system.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1245.5—Management of Government Property in the Possession of Contractors

1245.505 Records and reports of Government property.

1245.505–14 Reports of Government property.

When Government property is furnished to or acquired by the contractor to perform the contract, the contract shall require the contractor to submit annual reports (see (FAR) 48 CFR 45.505–14) to the contracting officer not later than September 15 of each year. The contractor's report shall be submitted on Form DOT F 4220.43, Contractor Report of Government Property.

1245.505–70 Solicitation provisions and contract clauses.

Contracting officers shall insert the clause at (TAR) 48 CFR 1252.245–70 in solicitations and contracts when the contract will require Government provided or contractor acquired property.

1245.508–2 Reporting results of inventories.

The inventory report shall also include the following:

(a) Name and title of the individual(s) that performed the physical inventory;

(b) An itemized, categorized listing of all property capitalized:

(1) Land and rights therein;

(2) Other real property;

(3) Plant equipment;

(4) Special test equipment; and

(5) Special tooling;

(c) An itemized listing of the property lost, damaged, destroyed, or stolen, the circumstances surrounding each incident, and the resolution of the incident; and

(d) Any discrepancies between the physical inventory and the contractor's record of Government property.

1245.508–3. Quantitative and monetary control.

Contracting officers shall require the contractor to provide the quantity and unit cost of each item of Government property reported under (TAR) 48 CFR 1245.508–2(b) and (c).

1245.511. Audit of property control system.

(a) The property administrator (or other Government official authorized by the contracting officer) shall audit the contractor's property control system whenever there are indications that the contractor's property control system may be deficient. Examples of deficiencies are:

(1) Failure of the contractor to acknowledge receipt of GFP;

(2) Failure of the contractor to submit the annual property reports required by (TAR) 48 CFR 1245.505–14;

(3) Failure of the contractor to reconcile its physical inventory with its property control record; or

(4) Failure of the contractor to submit a Government property listing when requested by the property administrator.

(b) When it is determined that the contractor's property control system is deficient, the property administrator, in coordination with the contracting officer, shall discuss the deficiencies with the contractor. If the contractor does not take action to correct the deficiencies, the contracting officer shall provide the contractor with a written notice of the deficiencies and the date all deficiencies must be corrected.

PART 1246—QUALITY ASSURANCE

Subpart 1246.7—Warranties

1246.701 Definitions.
1246.701–70 Additional definitions.
1246.701–90 Additional USCG definitions. (USCG)
1246.703 Criteria for use of warranties.
1246.705 Limitations.
1246.706 Warranty terms and conditions.
1246.790 Use of warranties in major system acquisitions by the USCG. (USCG)
1246.790–1 Policy. (USCG)
1246.790–2 Tailoring warranty terms and conditions. (USCG)
1246.790–3 Warranties on Government-furnished property. (USCG)
1246.791 Cost benefit analysis. (USCG)
1246.792 Waiver and notification procedures. (USCG)

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1246.7—Warranties

1246.701 Definitions.

1246.701–70 Additional definitions.

At no additional cost to the Government means at no increase in price for firm-fixed-price contracts, at no increase in target or ceiling price for fixed price incentive contracts (see (FAR) 48 CFR 46.707), or at no increase in estimated cost or fee for cost-reimbursement contracts.

Defect means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Design and manufacturing requirements means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the major system being produced.

Major system means a system or major subsystem used directly by DOT to carry out its mission(s), as defined by TAM Chapter 1234, Major Acquisition Policies and Procedures (for dollar threshold applicable to U.S. Coast Guard, See Coast Guard guidance at (TAR) 48 CFR 1246.701–90). The term does not include:

(a) Related support equipment, such as ground-handling equipment, training devices and accessories thereto, unless a cost effective warranty for the system would require inclusion of such items; or

(b) Commercial items sold in substantial quantities to the general public as described in (FAR) 48 CFR 15.804–3(c).

Performance requirements means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

1246.701–90 Additional USCG definitions. (USCG)

For the USCG, in accordance with Public Law 99–190, the dollar threshold as it pertains to the inclusion of a warranty in major systems acquisitions is $10 million.

1246.703 Criteria for use of warranties.

(a) *Major systems.* The use of warranties in the procurement of major systems by the USCG is mandatory, unless waived (see USCG guidance at (TAR) 48 CFR 1246.792). Other OAs may use the procedures in USCG guidance in this part as a guideline for major systems acquisitions.

(b) *Other systems.*

(1) Acquisition of warranties in the procurement of supplies that do not meet the definition of a major system (e.g., spare, repair, or replenishment parts) is governed by (FAR) 48 CFR 46.703.

(2) Contracting officers should negotiate a warranty that meets or exceeds the requirements of (TAR) 48 CFR 1246.706 when it is advantageous.

1246.705 Limitations.

(a) The following restrictions are applicable to DOT contracts:

(1) The USCG is the only DOT OA which is required to include a warranty in cost reimbursement contracts for the production of major systems acquisitions.

(2) Any warranty on major system acquisitions shall not apply in the case of any system or component thereof which has been furnished by the Government to a contractor except as indicated in the USCG guidance at (TAR) 48 CFR 1246.790–3.

(3) Any warranty obtained shall specifically exclude coverage of combat damage.

1246.706 Warranty terms and conditions.

(a) The contracting officer, in developing the warranty terms and conditions, shall consider the following, and, where appropriate and cost beneficial, shall:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to: (i) an identified revision of a top-level drawing; and/or (ii) an identified specification or revision thereof;

(3) Require that the system conform to the specified Government performance requirements;

(4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the start of the warranty period (e.g., delivery, acceptance, in-service date), the ending of the warranty (e.g., passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of

warranty duration (e.g., extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) Any contract that contains a warranty clause must contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor is reimbursed at established rates for fault isolation work, and that the Government receive credit for any payments where equipment failure is covered by warranty provisions.

1246.790 Use of warranties in major systems acquisitions by the USCG. (USCG)

This subpart sets forth the policy for the USCG to use in obtaining warranties from contractors when contracting for the acquisition of a major system.

1246.790–1 Policy. (USCG)

The USCG shall include a warranty in all contracts for major systems acquisitions. When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer shall ensure that the items listed at (TAR) 48 CFR 1246.706 have been considered. The warranty shall also meet the following requirements:

(a) For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and (FAR) 48 CFR 46.710(b)(2).

(b) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(c) The warranty provided under paragraph (b) of this section shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the Government, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract;

(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action; or

(3) Equitably reduce the contract price.

(d) Any warranty shall specifically exclude coverage of combat damage.

1246.790–2 Tailoring warranty terms and conditions. (USCG)

(a) As the objectives and circumstances vary considerably among major systems acquisition programs, contracting officers shall appropriately tailor the warranty on a case-by-case basis, including remedies, exclusions, limitations and durations, provided the tailoring is consistent with the specific requirements of this subpart and (FAR) 48 CFR 46.706.

(b) Contracting officers of major systems acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(c) Contracting officers are encouraged to structure a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(d) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

1246.790–3 Warranties on Government-furnished property. (USCG)

A contractor for a major systems acquisition shall not be required to provide the warranties specified in (TAR) 48 CFR 1246.790–1 on any property furnished to that contractor by the Government except for:

(a) Defects in installation; and

(b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

1246.791 Cost benefit analysis. (USCG)

Warranties shall be obtained for a major systems acquisition only when it is cost beneficial in accordance with TAM (Copies of the Transportation Acquisition Manual may be obtained from the Government Printing Office) 1246.703. If a specific warranty is considered not to be cost beneficial by the contracting officer, a waiver request shall be initiated in accordance with USCG guidance at 48 CFR 1246.792.

1246.792 Waiver and notification procedures. (USCG)

(a) The Secretary of Transportation, without delegation, may waive the requirement for a warranty for USCG major system acquisitions when the waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. A waiver may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives are notified, in writing, of the Secretary's intention to waive the warranty requirements and the reasons supporting such a determination prior to granting the waiver. The request for Secretarial waiver shall include, at a minimum:

(1) A brief description of the major system and its stage of production (e.g., the number of units delivered and anticipated to be delivered during the life of the program);

(2) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(3) All documentation supporting the request for waiver, such as a cost-benefit analysis.

(b) The waiver request shall be forwarded to the Secretary, via the Office of Acquisition and Grant Management (M–60). The USCG shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation.

PART 1247—TRANSPORTATION

Subpart 1247.1—General

1247.104–370 Contract clause.

Subpart 1247.3—Transportation in Supply Contracts

1247.305 Solicitation provisions, contract clauses, and transportation factors.
1247.305–70 Solicitation provisions.
1247.305–71 Contract clause.

Subpart 1247.5—Ocean Transportation by U.S.-Flag Vessels

1247.506 Procedures.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1247.1—General

1247.104–370 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.247–1, Acceptable Service at Reduced Rates, to implement the requirements of (FAR) 48 CFR 47.104–3.

Subpart 1247.3—Transportation in Supply Contracts

1247.305 Solicitation provisions, contract clauses, and transportation factors.

1247.305–70 Solicitation provisions.

The contracting officer shall insert the following provisions in solicitations, as applicable:

(a) (TAR) 48 CFR 1252.247–2, F.o.b. Origin Information, with Alternates I or II, as applicable, shall be inserted in accordance with (FAR) 48 CFR 47.305–3(b);

(b) (TAR) 48 CFR 1252.247–3, F.o.b. Origin Only, shall be inserted in accordance with (FAR) 48 CFR 47.305–3(e);

(c) (TAR) 48 CFR 1252.247–4, F.o.b. Destination Only, shall be inserted in accordance with (FAR) 48 CFR 47.305–4(b);

(d) (TAR) 48 CFR 1252.247–5, Shipments to Ports and Air Terminals, with Alternates I, II, and III, shall be inserted in accordance with (FAR) 48 CFR 47.305–6(a)(1) through (a)(4);

(e) (TAR) 48 CFR 1252.247–6, F.o.b. Designated Air Carrier's Terminal, Point of Exportation, implements the requirements of (FAR) 48 CFR 47.305–6(a)(5); and

(f) (TAR) 48 CFR 1252.247–7, Nomination of Additional Ports, implements the requirements of (FAR) 48 CFR 47.305–6(d).

1247.305–71 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.247–8, Supply Movement in the Defense Transportation System, in contracts to implement the requirements of (FAR) 48 CFR 47.305–6(f)(1).

Subpart 1247.5—Ocean Transportation by U.S.-Flag Vessels

1247.506 Procedures.

(d) Reports concerning cargo preference shipments/ocean shipments (see (FAR) 48 CFR 47.506(d)) shall, as a minimum, contain the information and follow the procedures within subparagraph (c) of (FAR) 48 CFR 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using Part 1252.

Subpart 1252.2—Texts of Provisions and Clauses

1252.209–70 Disclosure of conflicts of interest.
1252.210–70 Brand name or equal.
1252.210–71 Index for specifications.
1252.210–90 Bar coding requirement. (USCG)
1252.213–90 Evaluation factor for Coast Guard performance of bar coding requirement. (USCG)
1252.215–70 Key personnel and/or facilities.
1252.216–70 Evaluation of offers subject to an economic price adjustment clause.
1252.216–71 Determination of award fee.
1252.216–72 Performance evaluation plan.
1252.216–73 Distribution of award fee.
1252.216–74 Settlement of letter contract.
1252.217–71 Delivery and shifting of vessel.
1252.217–72 Performance.
1252.217–73 Inspection and manner of doing work.
1252.217–74 Subcontracts.
1252.217–75 Lay days.
1252.217–76 Liability and insurance.
1252.217–77 Title.
1252.217–78 Discharge of liens.
1252.217–79 Delays.
1252.217–80 Department of Labor Safety and Health Regulations for Ship Repairing.
1252.217–81 Guarantee.
1252.219–70 Small Business and Small Disadvantaged Business subcontracting reporting.
1252–220–90 Local hire. (USCG)
1252.222–70 Strikes or picketing affecting timely completion of the contract work.
1252.222–71 Strikes or picketing affecting access to a DOT facility.
1252.223–70 Removal or disposal of hazardous substances—Applicable licenses and permits.
1252.223–71 Accident and fire reporting.
1252.223–72 Protection of human subjects.
1252.225–90 Buy American Certificate—Steel and Manufactured Products (FAA)
1252.225–91 Buy American—Steel and Manufactured Products (FAA)
1252.228–70 Loss of or damage to leased aircraft.
1252.228–71 Fair market value of aircraft.
1252.228–72 Risk and indemnities.
1252.228–90 Notification of Miller Act payment bond protection. (USCG)
1252.231–70 Date of incurrence of costs.
1252.236–70 Special precautions for work at operating airports.
1252.237–70 Qualifications of employees.
1252.237–90 Requirements. (USCG)
1252.237–91 Area of performance. (USCG)
1252.237–92 Performance and delivery. (USCG)
1252.237–93 Subcontracting. (USCG)
1252.237–94 Termination for default. (USCG)
1252.237–95 Group interment. (USCG)
1252.237–96 Permits. (USCG)
1252.237–97 Facility requirements. (USCG)
1252.237–98 Preparation history. (USCG)
1252.237–99 Award to single offeror. (USCG)
1252.242–70 Dissemination of information—Educational institutions.
1252.242–71 Contractor testimony.
1252.242–72 Dissemination of contract information.
1252.242–73 Contracting officer's technical representative.
1252.245–70 Government property reports.
1252.247–1 Acceptable service at reduced rates.
1252.247–2 F.o.b. origin information.
1252.247–3 F.o.b. origin only.
1252.247–4 F.o.b. destination only.
1252.247–5 Shipments to ports and air terminals.
1252.247–6 F.o.b. designated air carrier's terminal, point of exportation.
1252.247–7 Nomination of additional ports.
1252.247–8 Supply movement in the Defense Transportation System.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using Part 1252.

(b) *Numbering*—(2)(i) *Provisions or clauses that supplement the FAR.*

(A) Agency-prescribed provisions and clauses permitted by TAR and used on a standard basis (i.e., normally used in two or more solicitations or contracts regardless of contract type) shall be prescribed and contained in the TAR. OAs desiring to use a provision or a clause on a standard basis shall submit a request containing a copy of the clause(s), justification for its use, and evidence of legal counsel review to M–60 in accordance with (TAR) 48 CFR 1201.304 for possible inclusion in the TAR.

(B) Provisions and clauses used on a one-time basis (i.e., non-standard provisions and clauses) may be approved by the contracting officer, unless a higher level is designated by the OA. This authority is permitted subject to:

(*1*) evidence of legal counsel review in the contract file;

(*2*) inserting these clauses in the appropriate sections of the uniform contract format; and

(*3*) ensuring the provisions and clauses do not deviate from the requirements of the FAR and TAR.

Subpart 1252.2—Texts of Provisions and Clauses

1252.209–70 Disclosure of conflicts of interest.

As prescribed in 1209.507, insert the following provision:

Disclosure of Conflicts of Interest (Oct 1994)

It is the Department of Transportation's (DOT) policy to award contracts to only those offerors whose objectivity is not impaired because of any related past, present, or planned interest, financial or otherwise, in organizations regulated by DOT or in organizations whose interests may be substantially affected by Departmental activities. Based on this policy:

(a) The offeror shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an organization regulated by DOT, or with an organization whose interests may be substantially affected by Departmental activities, and which is related to the work under this solicitation. The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors and key personnel of any of the entities. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

(b) The offeror shall describe in detail why it believes, in light of the interest(s) identified in paragraph (a) of this section, that performance of the proposed contract can be accomplished in an impartial and objective manner.

(c) In the absence of any relevant interest identified in paragraph (a) of this section, the offeror shall submit in its proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.

(d) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to DOT, will be used to determine whether an award to the offeror may create a conflict of interest. If any such conflict of interest is found to exist, the Contracting Officer may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

(e) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the Contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been know prior to award, an immediate and full disclosure shall be made in writing to the Contracting Officer. The disclosure shall include a full description of the conflict, a description of the action the contractor has taken, or proposes to take, to avoid or mitigate such conflict. The Contracting Officer may, however, terminate the contract for convenience if he or she deems that termination is in the best interest of the Government.

(End of provision)

1252.210–70 Brand Name or Equal.

As prescribed in (TAR) 48 CFR 1210.011, insert the following provision:

Brand Name or Equal (Oct 1994)

(As used in this provision, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is intended to indicate the quality and characteristics of products that will be satisfactory. Offers offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offers and are determined by the Government to meet fully the salient characteristic requirements listed in the solicitation.

(b) Unless the offeror clearly indicates in its offer that it is offering an "equal" product, its offer shall be considered as offering the brand name product referenced in the solicitation.

(c) If the offeror proposed to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its offer as well as other information reasonably available to the contracting office. CAUTION TO OFFERORS: The contracting office is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the contracting office. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of its offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to: (1) determine whether the product offered meets the salient characteristic requirements of the solicitation; and (2) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to acquire by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting office.

(d) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall: (1) include in its offer a clear description of such proposed modifications; and (2) clearly mark any descriptive material to show the proposed modifications.

(e) Modifications to make a product conform to a brand name product referenced in the solicitation and proposed after the time for receipt of offers, will not be considered.

(End of provision)

1252.210–71 Index for specifications.

As prescribed in (TAR) 48 CFR 1210.011, insert the following clause:

Index for Specifications (Oct 1994)

If an index or table of contents is furnished in connection with specifications, it is understood that such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not to be considered as part of the specification. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

1252.210–90 Bar coding requirement. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1210.011–90 and 1213.507–90, insert the following clause:

Bar Coding Requirements (Oct 1994)

Item markings shall include bar coding in accordance with MIL–STD–1189 as follows:

(a) The stock number shall be bar coded with no prefixes, dashes, spaces, or suffixes encoded. The contract number, the delivery order, or call order number, when used, shall be bar coded with no spaces or dashes encoded.

(b) Prefixes and suffixes to the stock number may be included in the OCR–A in-the-clear markings, but not in the bar code.

(c) Preferred Bar Code Density (characters per inch as defined in MIL–STD–1189) is "standard," but densities from "standard" to "low" are acceptable.

(d) OCR–A characters do not have to be machine readable.

(e) Bar coding shall be machine readable.

(f) Unless otherwise specified herein, minimum bar code height shall be 0.25 inch (6.4 mm) or 15 percent of the bar code length, whichever is greater.

(g) The preferred position of the OCR–A characters is beneath the bar codes, but the OCR–A characters may be over the bar codes.

(h) On outer containers contractors shall either:

(1) Encode the stock numbers and contract number in one line of bar code with the stock number appearing first; or

(2) Encode the item stock number and contract number on two labels, with the top label containing the stock number and the lower label containing the contract number.

(i) On unit and intermediate containers, the item stock number in bar code with OCR–A below may be on the same label as the other data (identification markings) required by MIL–STD–129H. However, the bar code stock number shall appear on the top line with OCR–A characters on the second line; the OCR–A characters may include the stock number prefix and suffix, or alternatively, the complete stock number including any prefix and suffix, shall be repeated as part of the identification markings.

(j) Exclusions from bar code markings are:

(1) Multi-packs/consolidation containers (containers with two or more different stock numbers within).

(2) Reusable shipping containers used for multiple/ different stock number applications.

(3) Items consigned to a prime contractor's plant for installation in production.

(End of clause)

1252.213–90 Evaluation factor for Coast Guard performance of bar coding requirement. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1213.107–90, insert the following provision:

Evaluation Factor for Coast Guard Performance of Bar Coding Requirement (Oct 1994)

If a small business cannot provide the bar coding requirement, as indicated elsewhere in the schedule, the contracting officer will apply the following formula to the quoted amounts:

(a) Unit price quoted by small business $_____

(b) Add unit cost to the USCG to provide bar coding $_____

(c) Adjusted unit price (add lines a. and b.) $_____

The line (c) amount will become the amount the contracting officer considered when determining the lowest quoted amount.

(End of provision)

1252.215–70 Key personnel and/or facilities.

As prescribed in (TAR) 48 CFR 1215.106, insert the following clause:

Key Personnel and/or Facilities (Oct 1994)

(a) The personnel and/or facilities as specified in paragraph (c) are considered essential to the work being performed hereunder and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel and/or facilities, as appropriate.

(b) Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify, in writing, and receive consent from, the Contracting Officer reasonably in advance of the action and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(c) No diversion shall be made by the Contractor without the written consent of the Contracting Officer. The Contracting Officer may ratify, in writing, the change and such ratification shall constitute the consent of the Contracting Officer required by this clause.

The Key Personnel and/or Facilities under this Contract:

(Specify key personnel and/or facilities)

(End of clause)

1252.216–70 Evaluation of offers subject to an economic price adjustment clause.

As prescribed in (TAR) 48 CFR 1216.203–470, insert the following provision:

Evaluation of Offers Subject to an Economic Price Adjustment Clause (Oct 1994)

Offers shall be evaluated without an amount for an economic price adjustment being added. Offers will be rejected which: (1) Increase the ceiling stipulated; (2) limit the downward adjustment; or (3) delete the economic price adjustment clause. If the offer stipulates a ceiling lower than that included in the solicitation, the lower ceiling will be incorporated into any resulting contract.

(End of provision)

1252.216–71 Determination of award fee.

As prescribed in (TAR) 48 CFR 1216.405(a), insert the following clause:

Determination of Award Fee (Oct 1994)

(a) The Government shall, at the conclusion of each specified evaluation period(s), evaluate the contractor's performance for a determination of award fee earned. The contractor agrees that the determination as to the amount of the award fee earned will be made by the Government Fee Determination Official (FDO) and such determination is binding on both parties and shall not be subject to appeal under the "Disputes" clause or to any board or court.

(b) It is agreed that the evaluation of contractor performance shall be in accordance with a Performance Evaluation Plan and that the contractor shall be promptly advised in writing of the determination and reasons why the award fee was or was not earned. It is further agreed that the contractor may submit a self-evaluation of performance of each period under consideration. While it is recognized that the basis for the determination of the fee shall be the evaluation by the Government, any self-evaluation which is received within _____ (insert number) days after the end of the period being evaluated may be given such consideration, if any, as the FDO shall find appropriate.

(c) The FDO may specify in any fee determination that fee not earned during the period evaluated may be accumulated and be available for allocation to one or more subsequent periods. In that event, the distribution of award fee shall be adjusted to reflect such allocations.

(End of clause)

1252.216–72 Performance evaluation plan.

As prescribed in (TAR) 48 CFR 1216.405(b), insert the following clause:

Performance Evaluation Plan (Oct 1994)

(a) A Performance Evaluation Plan shall be unilaterally established by the Government based on the criteria stated in the contract and used for the determination of award fee. This plan shall include the criteria used to evaluate each area and the percentage of award fee (if any) available for each area. A copy of the plan shall be provided to the contractor _____ (insert number) calendar days prior to the start of the first evaluation period.

(b) The criteria contained within the Performance Evaluation Plan may relate to: (1) Technical (including schedule) requirements if appropriate; (2) Management; and (3) Cost.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor _____ (insert number) calendar days prior to the start of the evaluation period to which the change will apply.

(End of clause)

1252.216–73 Distribution of award fee.

As prescribed in (TAR) 48 CFR 1216.405(c), insert the following clause:

Distribution of Award Fee (Oct 1994)

(a) The total amount of award fee available under this contract is assigned according to the following evaluation periods and amounts:

Evaluation Period:

Available Award Fee:

(insert appropriate information)

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a prorata distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon the submission by the contractor to the contracting officer's authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without using a contract modification.

(End of clause)

1252.216–74 Settlement of letter contract.

As prescribed in (TAR) 48 CFR 1216.603–4, insert the following clause:

Settlement of Letter Contract (Oct. 1994)

(a) This contract constitutes the definitive contract contemplated by issuance of letter contract _____ (insert number) dated _____ (insert effective date). It supersedes the letter contract and its modification number(s) _____ (insert number(s)) and, to the extent

of any inconsistencies, governs. (b) The cost(s) and fee(s), or price(s), established in this definitive contract represents full and complete settlement of letter contract _____ (insert number and modification number(s) _____ (insert number(s)). Payment of the agreed upon fee or profit withheld pending definitization of the letter contract, may commence immediately at the rate and times stated within this contract.

(End of clause)

1252.217–71 Delivery and Shifting of Vessel.

As prescribed at 1217.7000(a) and (b), insert the following clause:

Delivery and Shifting of Vessel (Oct. 1994)

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work, the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the Contracting Officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

1252.217–72 Performance.

As prescribed at 1217.7000(a) and (b), insert the following clause:

Performance (Oct. 1994)

(a) Upon the award of the contract, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the contract has been awarded except in the case of emergency work ordered by the Contracting Officer in writing.

(b) The Government shall deliver the vessel described in the contract at the time and location specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the contract.

(c) The Contractor shall without charge,—

(1) Make available to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities at the plant acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property (Fixed Price Contracts) clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The contract will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the contract without advance approval of the Contracting Officer. Dock and sea trials not specified in the contract shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

1252.217–73 Inspection and manner of doing work.

As prescribed at 1217.7000(a) and (b), insert the following clause:

Inspection and Manner of Doing Work (Oct. 1994)

(a) The Contractor shall perform work in accordance with the contract, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the contract, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under this contract shall be in accordance with the best commercial marine practices and the rules and requirements of the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of offer.

(2) When Navy specifications are specified in the contract, the Contractor shall follow Navy standards of material and workmanship. The solicitation shall prescribe the Navy standard whenever applicable.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the contract, in addition to its rights under the Guarantee clause, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the contract, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the contract and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the contract.

(e) The Contractor shall—

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials.

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in the contract, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair.

(6) Furnish the Contracting Officer a "gas-free" or "safe-for-hotwork" certificate before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property (Fixed-Price Contracts) clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(f) Except as otherwise provided in the contract, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 Fahrenheit, the Contractor shall take all necessary steps to—

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable—

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and

shapes set forth in any contract, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the contract requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, and the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the contract specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area "broom clean."

(End of clause)

1252.217–74 Subcontracts.

As prescribed at 1217.7000(a) and (b), insert the following clause:

Subcontracts (Oct 1994)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or between subcontractors.

(End of clause)

1252.217–75 Lay days.

As prescribed at 1217.7000(a) and (b), insert the following clause:

Lay Days (Oct 1994)

(a) Lay day time will be paid by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or marine railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No lay day time shall be paid until all items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed and accepted.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all costs, direct and indirect, to reimburse the Contractor for use of dry dock or marine railway.

(End of clause)

1252.217–76 Liability and insurance.

As prescribed at 1217.7000(a) and (b), insert the following clause:

Liability and Insurance (Oct 1994)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) Loss or damage to the vessel, materials, or equipment. (1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontractors; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a codefendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provision of this paragraph (b).

(c) Indemnification. The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor, or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of $300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this contract and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) Insurance. (1) The Contractor shall, at its own expense, obtain and maintain the following insurance—

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving

evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payments, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event of loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any right of the Government, either—

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of this contract.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) Decide that the loss or damage shall not be replaced or repaired and in that event, the Contracting Officer shall—

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this contract.

(End of clause)

1252.217–77 Title.

As prescribed at 1217.7000(a) and (b), insert the following clause:

Title (Oct 1994)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of this contract shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the contract, or with the approval of the Contracting Officer during performance of the contract, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipments.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

1252.217–78 Discharge of liens.

As prescribed at 1217.7000(a) and (b), insert the following clause:

Discharge of Liens (Oct 1994)

(a) The Contractor shall immediately discharge or cause to be discharged, any lien or right *in rem* of any kind, other than in favor of the Government, that exists or arises in connection with work done or materials furnished under this contract.

(b) If any such lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

1252.217–79 Delays.

As prescribed at 1217.7000(a) and (b), insert the following clause:

Delays (Oct 1994)

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the "Changes" clause.

(End of clause)

1252.217–80 Department of Labor Safety and Health Regulations for Ship Repairing.

As prescribed at 1217.7000(a) and (b), insert the following clause:

Department of Labor Safety and Health Regulations for Ship Repair (Oct 1994)

Nothing contained in this contract shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.);

(b) The Safety and Health Regulations for Ship Repairing (29 CAR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

1252.217–81 Guarantee.

As prescribed at 1217.7000(c), insert the following clause:

Guarantee (Oct 1994)

(a) In the event any work performed or materials furnished by the contractor prove defective or deficient within 60 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 90-day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the contract.

(e) The Contractor's liability shall extend for an additional 90 day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract.

(End of clause)

1252.219–70 Small Business and Small Disadvantaged Business subcontracting reporting.

As prescribed in (TAR) 48 CFR 1219.708–70, insert the following clause:

Small Business and Small Disadvantaged Business Subcontracting Reporting (Oct 1994)

(a) The Contractor shall submit the Summary Subcontract Report (Standard Form 295 (SF–295)) to the Department of Transportation, Office of the Secretary, Office of Small and Disadvantaged Business Utilization (S–42), 400 7th St., SW, Washington, DC, 20590.

(b) The Contractor shall report the information in Blocks 14, 17 and 18 of the SF–295.

(c) The Contractor shall include this clause in all subcontracts that include the clause at (FAR) 48 CFR 52.219–9.

(End of clause)

1252.220–90 Local hire. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1220.9001, insert the following clause:

Local Hire (Oct 1994)

The Contractor shall employ, for the purpose of performing this contract in whole or in part in a State that has an unemployment rate in excess of the national average rate of unemployment (as defined by the Secretary of Labor), individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills. Local Resident means a resident or an individual who commutes daily to that State.

(End of clause)

1252.222–70 Strikes or picketing affecting timely completion of the contract work.

As prescribed in (TAR) 48 CFR 1222.101–71(a), insert the following clause:

Strikes or Picketing Affecting Timely Completion of the Contract Work (Oct 1994)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such strikes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of clause)

1252.222–71 Strikes or picketing affecting access to a DOT facility.

As prescribed in (TAR) 48 CFR 1222.101–71(b), insert the following clause:

Strikes or Picketing Affecting Access to a DOT Facility (Oct 1994)

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (a) is directed at the Contractor or subcontractor or any employee of either; and (b) impedes or threatens to impede access by any person to a DOT facility where the site of the work is located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the use of other available judicial or administrative remedies.

(End of clause)

1252.223–70 Removal or disposal of hazardous substances—applicable licenses and permits.

As prescribed in (TAR) 48 CFR 1223.303, insert the following clause:

Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits (Oct 1994)

The Contractor certifies that it has _____ does not have _____ all licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it hereby certifies that it will obtain all requisite licenses and permits within _____ days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of clause)

1252.223–71 Accident and fire reporting.

As prescribed in (TAR) 48 CFR 1223.7000(a), insert the following clause:

Accident and Fire Reporting (Oct 1994)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work which causes:

(1) A fatality or as much as one lost workday on the part of any employee of the Contractor or subcontractor at any tier;

(2) Damage of $1,000 or more to Federal property, either real or personal;

(3) Damage of $1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or

(4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) of this section shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Federal property (either real or personal), the total value of which is estimated at $100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her authorized representative and shall be confirmed by telegram or facsimile transmission within 24 hours to the Contracting Officer. Such telegram or facsimile transmission shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) of this section may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of:

(i) The extent of injury; and

(ii) The damage and cause of the accident or fire.

Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

1252.223–72 Protection of human subjects.

As prescribed in (TAR) 48 CFR 1223.7000(b), insert the following clause:

Protection of Human Subjects (Oct 1994)

The Contractor shall comply with the National Highway Traffic Safety Administration (NHTSA) principles and procedures (in accordance with NHTSA Order 700–1, 700–3, and 700–4) for the protection of human subjects participating in activities supported directly or indirectly by contracts from DOT. A copy of the applicable NHTSA orders shall be provided to offerors and/or contractors upon request. In fulfillment of its assurance:

(a) A committee competent to review projects and activities that involve human subjects shall be established and maintained by the Contractor.

(b) The committee shall be assigned responsibility to determine for each activity planned and conducted that:

(1) The rights and welfare of subjects are adequately protected;

(2) The risks to subjects are outweighed by potential benefits; and

(3) The informed consent of subjects shall be obtained by methods that are adequate and appropriate.

(c) Committee reviews are to be conducted with objectivity and in a manner to ensure the exercise of independent judgment of the members. Members shall be excluded from review of projects or activities in which they have an active role or a conflict of interests.

(d) Continuing constructive communication between the committee and the project directors must be maintained as a means of safeguarding the rights and welfare of subjects.

(e) Facilities and professional attention required for subjects who may suffer physical, psychological, or other injury as a result of participating in an activity shall be provided.

(f) The committee shall maintain records of committee review of applications and active projects, of documentation of informed consent, and of other documentation that may pertain to the selection, participation, and protection of subjects. Detailed records shall be maintained of circumstances of any review that adversely affects the rights or welfare of the individual subjects. Such materials shall be made available to DOT upon request.

(g) The retention period of such records and materials shall be as specified at (FAR) 48 CFR 4.703.

(h) Periodic reviews shall be conducted by the Contractor to assure, through appropriate administrative overview, that the practices and procedures designed for the protection of the rights and welfare of subjects are being effectively applied.

(Note: If the Contractor has a Department of Health and Human Services approved

Institutional Review Board (IRB) which can appropriately review this contract in accordance with the technical requirements and NHTSA Orders 700–1, 700–3, and 700–4, that IRB will be considered acceptable for the purposes of this contract.

(End of clause)

1252.225–90 Buy American Certificate—Steel and Manufactured Products. (FAA)

As prescribed in 1225.9005(a), insert the following provision in solicitations:

Buy American Certificate—Steel and Manufactured Products (Oct 1994)

(a) By submitting a bid/proposal under this solicitation, except for those items listed by the offeror in paragraph (b), the offeror certifies that steel and manufactured products to be used in the project are produced in the United States and that components of unknown origin are considered to have been produced or manufactured outside the United States.

(b) This certification is required in implementation of Section 9129 of the Aviation Safety and Capacity Expansion Act of 1990, (Subtitle B of Title IX of Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990).

PRODUCT	COUNTRY OF ORIGIN
	.....
	.....
	.....
	.....

(End of provision)

1252.225–91 Buy American—Steel and Manufactured Products. (FAA)

As prescribed in 1225.9005(b), insert the following clause in solicitations and contracts:

Buy American—Steel and Manufactured Products (Oct 1994)

(a) Section 9129 of the Aviation Safety and Capacity Expansion Act of 1990 (Subtitle B of Title IX of Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990) requires the use of steel and manufactured products produced in the United States when a project such as that covered by this contract receives funding.

(b) The Contractor shall deliver only steel and manufactured products produced in the United States. This requirement shall not apply where the Secretary or his or her designee has found—

(1) that its application would be inconsistent with the public interest;

(2) that such materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(3) in the case of the procurement of facilities and equipment under the Airport and Airway Improvement Act of 1982, (i) the cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components to be delivered under this contract, and (ii) final assembly of the facility or equipment to be delivered under this contract has taken place in the United States; or

(4) that inclusion of domestic material will increase the cost of the overall contract by more than 25 percent.

(c) In calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

(d) This clause takes precedence over the provisions of the (FAR) 48 CFR 52.225–3, Buy American—Supplies, and the (FAR) 48 CFR clause 52.225–5, Buy American—Construction Materials, in respect to their applicability to steel and manufactured products.

(End of clause)

1252.228–70 Loss of or damage to leased aircraft.

As prescribed in (TAR) 48 CFR 1228.306–70 (a) and (b), insert the following clause:

Loss of or Damage to Leased Aircraft (Oct 1994)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 1252.228–71, "Fair Market Value of Aircraft," less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor certifies that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) credited to the Government in determining the amount of the Government's liability; or

(2) for an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

1252.228–71 Fair market value of aircraft.

As prescribed in (TAR) 48 CFR 1228.306–70 (a) and (c), insert the following clause:

Fair Market Value of Aircraft (Oct 1994)

For purposes of the clause entitled "Loss of or Damage to Leased Aircraft," it is agreed that the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b):

(a) $_____; or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

(End of clause)

1228.228–72 Risk and indemnities.

As prescribed in (TAR) 48 CFR 1228.306–70 (a) and (d), insert the following clause:

Risk and Indemnities (Oct 1994)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, a Certificate of Insurance shall be delivered to the Contracting Officer.

(End of clause)

1252.228–90 Notification of Miller Act payment bond protection. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1228.9000, insert the following clause:

Notification of Miller Act Payment Bond Protection (Oct 1994)

This notice clause shall be inserted by first tier subcontractors in all their subcontracts and shall contain the surety which has provided the payment bond under the prime contract.

(a) The prime contract is subject to the Miller Act (40 U.S.C. 270), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Miller Act for amounts owed for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Miller Act should consult

their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is:

_____

(Name)

_____

(Street Address)

_____

(City, State, Zip Code)

_____

(Contact & Tel. No.)

(End of clause)

1252.231–70 Date of incurrence of costs.

As prescribed in (TAR) 48 CFR 1231.205–32, insert the following clause:

Date of Incurrence of Costs (Oct 1994)

The Contractor shall be entitled to reimbursement for costs incurred on or after _____ in an amount not to exceed $_____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

1252.236–70 Special precautions for work at operating airports.

As prescribed in (TAR) 48 CFR 1236.570, insert the following clause:

Special Precautions for Work at Operating Airports (Oct 1994)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and material in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and when directed by the Contracting Officer, with red obstruction lights at nights. All equipment operating on the apron, taxiway, runway, and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways, or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flag personnel shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. The maximum speed allowed at the airport shall be established by airport management. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and tail lights during the hours of darkness.

(End of clause)

1252.237–70 Qualifications of employees.

As prescribed in (TAR) 48 CFR 1237.110, insert the following clause:

Qualifications of Employees (Oct 1994)

The Contracting Officer may require dismissal from work of those employees which he/she deems incompetent, careless, insubordinate, unsuitable or otherwise objectionable, or whose continued employment he/she deems contrary to the public interest or inconsistent with the best interest of national security. The Contractor shall fill out, and cause each of its employees on the contract work to fill out, for submission to the Government, such forms as may be necessary for security or other reasons. Upon request of the Contracting Officer, the Contractor's employees shall be fingerprinted. Each employee of the Contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card Form I–151, or who presents other evidence from the Immigration and Naturalization Service that employment will not affect his/her immigration status.

1252.237–90 Requirements. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Requirements (Oct 1994)

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list—

(1) The supplies or services being ordered;
(2) The quantities to be furnished;
(3) Delivery or performance dates;
(4) Place of delivery or performance;
(5) Packing and shipping instructions;
(6) The address to send invoices; and
(7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor's facilities from other sources.

(e) Contracting Officers of the following activities may order services and supplies under this contract—

_____

_____

_____

_____

(End of clause)

1252.237–91 Area of performance. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Area of Performance (Oct 1994)

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

1252.237–92 Performance and delivery. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Performance and Delivery (Oct 1994)

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection completed.

(End of clause)

1252.237–93 Subcontracting. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Subcontracting (Oct 1994)

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

1252.237–94 Termination for default. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Termination for Default (Oct 1994)

(a) This clause supplements and is in addition to the Default clause of this contract.

(b) The Contracting Officer may terminate this contract for default by written notice without the ten day notice required by paragraph (a)(2) of the Default clause if—

(1) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Transportation in fulfilling its responsibility for proper care of remains;

(2) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(3) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(4) The Contractor refuses to perform the services required for any particular remains; or

(5) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

1252.237–95 Group interment. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Group Interment (Oct 1994)

The Government will pay the Contractor for supplies and services provided for remains interred as a group on the basis of the number of caskets furnished, rather than on the basis of the number of persons in the group.

(End of clause)

1252.237–96 Permits. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Permits (Oct 1994)

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

1252.237–97 Facility requirements. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Facility Requirements (Oct 1994)

(a) The Contractor's building shall have complete facilities for maintaining the highest standards for solemnity, reverence, assistance to the family, and prescribed ceremonial services.

(b) The Contractor's preparation room shall be clean, sanitary, and adequately equipped.

(c) The Contractor shall have, or be able to obtain the necessary items (e.g., catafalques, structures, trucks, equipment) for religious services.

(d) The Contractor's funeral home, furnishings, grounds, and surrounding area shall present a clean and well-kept appearance.

(End of clause)

1252.237–98 Preparation history. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Preparation History (Oct 1994)

For each body prepared, or for each casket handled in a group interment, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

1252.237–99 Award to single offeror. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following provision:

Award to Single Offeror (Oct 1994)

(a) Award shall be made to a single offeror.

(b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.

(c) The Government will evaluate offers on the basis of the estimated quantities shown.

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

Alternate I (Oct 1994)

If mortuary services are procured by negotiations, substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is in the best interest of the Government.

1252.242–70 Dissemination of information—educational institutions.

As prescribed in (TAR) 48 CFR 1242.203–70(a), insert the following clause:

Dissemination of Information—Educational Institutions (Oct 1994)

(a) The Department of Transportation (DOT) desires widespread dissemination of the results of funded transportation research. The Contractor, therefore, may publish (subject to the provisions of the "Data Rights" and "Patent Rights" clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results because dissemination will not be sufficiently widespread). All costs of publication pursuant to this clause shall be borne by the Contractor and shall not be charged to the Government under this or any other Federal contract.

(b) Any copy of material published under this clause must contain acknowledgment of DOT's sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of DOT. Articles for publication or papers to be presented to professional societies do not require the authorization of the Contracting Officer prior to release. However, two copies of each article shall be transmitted to the Contracting Officer at least two weeks prior to release or publication.

(c) Press releases concerning the results or conclusions from the research under this contract shall not be made or otherwise distributed to the public without prior written approval of the Contracting Officer.

(d) Publication under the terms of this clause does not release the Contractor from the obligation of preparing and submitting to the Contracting Officer a final report containing the findings and results of research, as set forth in the schedule of the contract.

(End of clause)

1252.242–71 Contractor testimony.

As prescribed in (TAR) 48 CFR 1242.203–70(b), insert the following clause:

Contractor Testimony (Oct 1994)

All requests for the testimony of the Contractor or its employees, and any intention to testify as an expert witness relating to: (a) any work required by, and/or performed under, this contract; or (b) any information provided by any party to assist the Contractor in the performance of this contract, shall be immediately reported to the Contracting Officer. Neither the Contractor nor its employees shall testify on a matter related to work performed or information provided under this contract, either voluntarily or pursuant to a request, in any judicial or administrative proceeding unless approved by the Contracting Officer or required by a judge in a final court order.

(End of clause)

1252.242–72 Dissemination of contract information.

As prescribed in (TAR) 48 CFR 1242.203–70(c), insert the following clause:

Dissemination of Contract Information (Oct 1994)

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. Two copies of any material proposed to be published or distributed shall be submitted to the Contracting Officer.

(End of clause)

1252.242–73 Contracting officer's technical representative.

As prescribed in (TAR) 48 CFR 1242.7000, insert the following clause:

Contracting Officer's Technical Representative (Oct 1994)

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Technical Representative (COTR) to perform functions under the contract such as review and/or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COTR under the contract.

(b) The Contracting Officer cannot authorize the COTR or any other representative to sign documents (i.e., contracts, contract modifications, etc.) that require the signature of the Contracting Officer.

(End of clause)

1252.245–70 Government property reports.

As prescribed in (TAR) 48 CFR 1245.505–70, insert the following clause:

Government Property Reports (Oct 1994)

(a) The Contractor shall prepare an annual report of Government property in its possession and the possession of its subcontractors.

(b) The report shall be submitted to the Contracting Officer not later than September 15 of each calendar year on Form DOT F 4220.43, Contractor Report of Government Property.

(End of clause)

1252.247–1 Acceptable service at reduced rates.

As prescribed in (TAR) 48 CFR 1247.104–370, insert the following clause:

Acceptable Service at Reduced Rates (Oct 1994)

The Contractor is to use carriers that offer acceptable service at reduced rates, if available, to transport supplies under this contract.

(End of clause)

1252.247–2 F.o.b. origin information.

As prescribed in (TAR) 48 CFR 1247.305–70, insert the following provision:

F.O.B. Origin Information (Oct 1994)

The offeror shall furnish information with the offer:

(a) Location of the offeror's actual shipping point(s) (street address, city, state, and zip code) from which supplies will be delivered to the Government;

(b) Whether the offered shipping point has a private railroad siding, and the name of the rail carrier serving it;

(c) When the offered shipping point does not have a private siding, the names and addresses of the nearest public rail siding and of the carrier serving it; and

(d) The quantity of supplies to be shipped from each shipping point.

(End of provision)

Alternate I (Oct 1994)

If delivery is "f.o.b. origin, contractor's facility," and the designated facility is not covered by the line-haul transportation rate, add the following paragraph to the basic provision:

(e) The charges required to deliver the shipment to the point where the line-haul rate is applicable.

Alternate II (Oct 1994)

When delivery is "f.o.b. origin, freight allowed," add the following paragraph to the basic provision:

(e) The basis on which transportation charges will be allowed, including the origin and destination from and to which transportation charges will be allowed.

1252.247–3 F.o.b. origin only.

As prescribed in (TAR) 48 CFR 1247.305–70, insert the following provision:

F.O.B. Origin Only (Oct 1994)

Offers are invited on the basis of f.o.b. origin only. Offers submitted on any other basis will be rejected as nonresponsive.

(End of provision)

1252.247–4 F.o.b. destination only.

As prescribed in (TAR) 48 CFR 1247.305–70, insert the following provision:

F.O.B. Destination Only (Oct 1994)

Offers are invited on the basis of f.o.b. destination only. Offers submitted on any other basis will be rejected as nonresponsive.

(End of provision)

1252.247–5 Shipments to ports and air terminals.

As prescribed in (TAR) 48 CFR 1247.305–70, insert the following provision:

Shipments to Ports and Air Terminals (Oct 1994)

The Offeror shall furnish the following information with the offer:

(a) A delivery schedule in number of units and/or long or short tons;

(b) Maximum quantities available per shipment; and

(c) Other data appropriate to shipment by air carrier.

(End of provision)

Alternate I (Oct 1994)

When the delivery term is "ex dock, pier or warehouse, port of importation" or "c.& f. destination," substitute the following paragraph (c) for the paragraph (c) of the basic provision:

(c) The number of containers or units that can be loaded in a car, truck, or other conveyance of the size normally used (specify type and size) for the commodity.

Alternate II (Oct 1994)

When the delivery term is "f.a.s. vessel, port of shipment," "f.o.b. vessel, port of shipment," or "f.o.b. inland carrier, point of exportation," substitute the following paragraphs (c), (d) and (e) for the paragraph (c) of the basic provision:

(c) The quantity that can be made available for loading to vessel per running day of 24 hours (if acquisition involves a commodity to be shipped in bulk);

(d) The minimum leadtime required to make supplies available for loading to vessel; and

(e) The port and pier or other designation and, when applicable, the maximum draft of vessel (in feet) that can be accommodated.

Alternate III (Oct 1994)

When the delivery term is "c.i.f. destination," substitute the following paragraphs (c) and (d) for the paragraph (c) of the basic provision:

(c) The number of containers or units that can be loaded in a car, truck, or other conveyance of the size normally used (specify type and size) for the commodity; and

(d) The amount and type of marine insurance coverage; e.g., whether the coverage is "With Average" or "Free of Particular Average" and whether it covers any special risks or excludes any of the usual risks associated with the specific commodity involved.

1252.247–6 F.o.b. Designated air carrier's terminal, point of exportation.

As prescribed in (TAR) 48 CFR 1247.305–70, insert the following provision:

F.O.B. Designated Air Carrier's Terminal, Point of Exportation (Oct 1994)

The Offeror shall furnish the following information with the offer:

(a) A delivery schedule in number of units, type of package, and individual weight and dimensions of each package;

(b) Minimum leadtime required to make supplies available for loading into aircraft;

(c) Name of airport and location to which shipment will be delivered; and

(d) Other data appropriate to shipment by air carrier.

(End of provision)

1252.247–7 Nomination of additional ports.

As prescribed in (TAR) 48 CFR 1247.305–70, insert the following provision:

Nomination of Additional Ports (Oct 1994)

(a) Offerors may nominate additional ports (including ports in Alaska and Hawaii) more favorably located to their shipping points; and

(b) These ports will be considered in the evaluation of offers if they possess all requisite capabilities of the listed ports in relation to the supplies being acquired.

(End of provision)

1252.247–8 Supply movement in the Defense Transportation System.

As prescribed in (TAR) 48 CFR 1247.305–71, insert the following clause:

Supply Movement in the Defense Transportation System (Oct 1994)

(a) The Contractor shall dispatch a Transportation Control Movement Document (TCMD) to the appropriate DOD air or water clearance authority in accordance with MILSTAMP procedures for all shipments consigned to DOD air or water terminal transshipment points; and

(b) An Export Release must be obtained for supplies to be transshipped via a water port of loading to overseas destination, except for shipments for which an Export Release is not required, generally shipments of less than 10,000 pounds, (see paragraph 202024 of the Military Traffic Management Regulation, AR 55–355, NAVSUP 4600.70, MCO 4600.14A, AFM 75–2, DLAR 4500.3).

(End of clause)

PART 1253—FORMS

Subpart 1253.2—Prescription of Forms

1253.204 Administrative matters.
1253.215 Contracting by negotiation.
1253.215–270 Price negotiation.
1253.222 Application of labor laws to Government acquisitions.
1253.227–70 Conveyance of invention rights acquired by the Government.
1253.245–70 Report of Government property.

Subpart 1253.3—Illustration of Forms

1253.303 Agency forms.

Appendix to Subpart 1253.3 Tar Matrix

Contractor's Release.
Employee Claim for Wage Restitution.
Contractor Report of Government Property.
Contract Pricing Summary.
Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.
Cumulative Claim and Reconciliation Statement.
Report of Inventions and Subcontracts.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1253.2—Prescription of Forms

1253.204 Administrative matters.

The following forms are prescribed for use in the closeout of applicable contracts, as specified in (TAR) 48 CFR 1204.804–570:

(a) *Form DOT F 4220.4, Contractor's Release.* (See (TAR) 48 CFR 1204.804–570.) Form DOT F 4220.4 is authorized for local reproduction and a copy is furnished for this purpose in Part 1253 of the loose-leaf edition of the (TAR) 48 CFR chapter 12.

(b) *Form DOT F 4220.45, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.* (See (TAR) 48 CFR 1204.804–570.) Form DOT F 4220.45 is authorized for local reproduction and a copy is furnished for this purpose in Part 1253 of the loose-leaf edition of the (TAR) 48 CFR chapter 12.

(c) *Form DOT F 4220.46, Cumulative Claim and Reconciliation Statement.* (See (TAR) 48 CFR 1204.804–570.) Form DOT F 4220.46 is authorized for local reproduction and a copy is furnished for this purpose in Part 1253 of the loose-leaf edition of the (TAR) 48 CFR chapter 12.

(d) *DD Form 882, Report of Inventions and Subcontracts.* (See (TAR) 48 CFR 1204.804–570.) DD Form 882 is authorized for local reproduction and a copy is furnished for this purpose in Part 1253 of the loose-leaf edition of the (TAR) 48 CFR chapter 12.

1253.215 Contracting by negotiation.

1253.215–270 Price negotiation.

The following form(s) may be used in connection with requirements for obtaining cost or pricing data from offerors or contractors, as prescribed in (TAR) 48 CFR 1215.804–6:

Form DOT F 4220.44, Contract Pricing Summary. (See (TAR) 48 CFR 1215.804–6). Form DOT F 4220.44 is authorized for local reproduction and a copy is furnished for this purpose in (TAR) 48 CFR Part 1253 of the loose-leaf edition.

1253.222 Application of labor laws to Government acquisitions.

The following form is prescribed for use in connection with the application of labor laws, as specified in (TAR) 48 CFR 1222.406–9:

Form DOT F 4220.7, Employee Claim for Wage Restitution. (See (TAR) 48 CFR 1222.406–9(c)(1).) Form DOT F 4220.7 is authorized for local reproduction and a copy is furnished for this purpose in Part 1253 of the loose-leaf edition of the (TAR) 48 CFR chapter 12.

1253.227–70 Conveyance of invention rights acquired by the Government.

The following form is prescribed for including a means for contractors to report inventions made in the course of contract performance, as specified in 1227.305–4:

DD Form 882, Report of Inventions and Subcontracts. (See (TAR) 48 CFR 1227.305–4.) DD Form 882 is authorized for local reproduction and a copy is furnished for this purpose in Part 1253 of the loose-leaf edition of the (TAR) 48 CFR chapter 12.

1253.245–70 Report of Government property.

The following form is prescribed for use by contractors to report Government property, as specified in (TAR) 48 CFR 1245.505–14:

Form DOT F 4220.43, Contractor Report of Government Property. (See (TAR) 48 CFR 1245.505–14.) Form DOT F 4220.43 is authorized for local reproduction and a copy is furnished for this purpose in Part 1253 of the loose-leaf edition of the (TAR) 48 CFR chapter 12.

Subpart 1253.3—Illustration of Forms

1253.303 Agency forms.

This subpart contains illustrations of DOT and other agency forms specified by the TAR for use in DOT acquisitions.

Appendix to subpart 1253.3

BILLING CODE 4910–62–P

TAR MATRIX

Key:

P or C = Provision or Clause
IBR = Is Incorporation By Reference authorized?
UCF = Uniform Contract Format Section, when applicable

R = Required
A = Required-When-Applicable
O = Optional

X = Revision

Principle type and/or purpose of contract:

FP SUP = Fixed-Price Supply
CR SUP = Cost-Reimbursement Supply
FP R&D = Fixed-Price Research & Development
CR R&D = Cost-Reimbursement Research & Development
FP SVC = Fixed-Price Service
CR SVC = Cost Reimbursement Service
FP CON = Fixed-Price Construction
CR CON = Cost Reimbursement Construction
T&M LH = Time & Material/Labor Hours
LMV = Leasing of Motor Vehicles
COM SVC = Communication Services
DDR = Dismantling, Demolition, or Removal of Improvements
A-E = Architect-Engineering
FAC = Facilities
IND DEL = Indefinite Delivery
TRN = Transportation
SP = Small Purchases
UTL SVC = Utility Services

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.209-70 Disclosure of Conflicts of Interest	1209.507	P	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.210-70 Brand Name or Equal	1210.011	P	NO	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.210-71 Index for Specifications	1210.011	C	NO	I	A	A	A				A	A				A		A	A		A	
1252.215-70 Key Personnel and/or Facilities	1215.106	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.216-70 Evaluation of Offers Subject to an Economic Price Adjustment Clause	1216.203-470	P	NO	M	A		A		A		A		A	A	A	A	A	A	A	A		A
1252.216-71 Determination of Award Fee	1216.405(a)	C	NO	I		A		A		A		A	A		A	A			A	A		
1252.216-72 Performance Evaluation Plan	1216.405(b)	C	NO	I		A		A		A		A	A		A	A			A	A		
1252.216-73 Distribution of Award Fee	1216.405(c)	C	NO	I		A		A		A		A	A		A	A			A	A		
1252.216-74 Settlement of Letter Contract	1216.603-4	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.217-71 Delivery & Shifting of Vessel	1217.7000(b) and (c)	C	NO	I					A													
1252.217-72 Performance	1217.7000(b) and (c)	C	NO	I					A													
1252.217-73 Inspection and Manner of Doing Work	1217.7000(b) and (c)	C	NO	I					A													

TAR MATRIX-CONT.

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.217-74 Subcontracts	1217.7000(b) and (c)	C	NO	I					A													
12542.217-75 Lay Days	1217.7000(b) and (c)	C	NO	I					A													
1252.217-76 Liability and Insurance	1217.7000(b) and (c)	C	NO	I					A													
1252 217-77 Title	1217 7000(b) and (c)	C	NO	I					A													
1252.217-78 Discharge of Liens	1217 7000(b) and (c)	C	NO	I					A													
1252.217-79 Delays	1217.7000(b) and (c)	C	NO	I					A													
1252.217-80 Department of Labor Safety and Health Regulations for Ship Repair	1217.7000(b) and (c)	C	NO	I					A													
1252.217-81 Guarantee	1217.7000(d)	C	NO	I					A													
1252.219-70 Small Business and Small Disadvantaged Business Subcontracting Report	1219.708-70	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.222-70 Strikes or Picketing Affecting Timely Completion of the Contract Work	1222.101-71(a)	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.222-71 Strikes or Picketing Affecting Access to a DOT Facility	1222.101-71(b)	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.223-70 Removal or Disposal of Hazardous Substances - Applicable Licenses and Permits	1223.303	C	NO	I					A	A	A	A	A			A		A			A	
1252.223-71 Accident and Fire Reporting	1223.7000(a)	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.223-72 Protection of Human Subjects	1223.7000(b)	C	NO	I	A	A	A	A	A	A			A						A		A	
1252.228-70 Loss of or Damage to Leased Aircraft	1228.306-70 (a) and (b)	C	NO	I					A	A			A								A	
1252.228-71 Fair Market Value of Aircraft	1228.306-70 (a) and (c)	C	NO	I					A	A			A								A	

TAR MATRIX-CONT.

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.228-72 Risk and Indemnities	1228.306-70 (a) and (d)	C	NO	I					A	A			A								A	
1252.231-70 Date of Incurrence of Costs	1231.205-32	C	NO	I		A		A		A		A										
1252.236-70 Special Precautions for Work at Operating Airports	1236.570.	C	NO	I							A	A	A			A	A	A			A	A
1252.237-70 Qualifications of Employees	1237.110.	C	NO	I					A	A					A							A
1252.242-70 Dissemination of Information - Educational Institutions	1242.203-70(a)	C	NO	I			A	A														
1252.242-71 Contractor Testimony	1242.203-70(b)	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.242-72 Dissemination of Contract Information	1242.203-70(c)	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.242-73 Contracting Officers Technical Representative	1242.7000.	C	NO	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A		
1252.245-70 Government Property Reports	1245.505-70	C	NO	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A		
1252.247-1 Acceptable Service at Reduced Rates	1247.104-370	C	NO	I		A				A												
1252.247-2 F.O.B. Origin Information	1247.305-70	P	NO	L	A									A					A		A	
1252.247-3 F.O.B. Origin Only	1247.305-70	P	NO	L	A									A					A		A	
1252.247-4 F.O.B. Destination Only	1247.305-70	P	NO	L	A									A					A		A	
1252.247-5 Shipments to Ports and Air Terminals	1247.305-70	P	NO	L	A									A					A		A	
1252.247-6 F.O.B. Designated Air Carrier's Terminal, Port of Exportation	1247.305-70	P	NO	L	A									A					A		A	
1252.247-7 Nomination of Additional Ports	1247.305-70	P	NO	L	A									A					A		A	
1252.247-8 Supply Movement in the Defense Transportation System	1247.305-71	C	NO	F	A									A					A		A	

TAR MATRIX-CONT.

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
FAA 1252.225-90 Buy American Certificate-Steel and Manufactured Products	FAA 1225.9005	P	NO	I	A	A	A	A			A	A						A				
FAA 1252.225-91 Buy American Steel and Manufactured Products	FAA 1225.9005	C	NO	I	A	A	A	A			A	A						A				
USCG 1252.210-90 Bar Coding Requirement	USCG 1210.011-90 & 1213.507-90	C	NO	I	A	A													A		A	
USCG 1252.213-90 Evaluation Factor for Coast Guard Performance of Bar Coding Requirement	USCG 1213.107-90	P	NO	M																	A	
USCG 1252.220-90 Local Hire	USCG 1220.9001	C	NO	I					A	A	A	A			A		A		A			A
USCG 1252.228-90 Notification of Miller Act Payment Bond Protection	USCG 1228.9000.	C	NO	I							A	A										
USCG 1252.237-90 Requirements	USCG 1237.9000.	C	NO	I					A	A									A			
USCG 1252.237-91 Area of Performance	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-92 Performance and Delivery	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-93 Subcontracting	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-94 Termination for Default	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-95 Group Interment	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-96 Permits	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-97 Facility Requirements	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-98 Preparation History	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-99 Award to Single Offeror	USCG 1237.9000.	P	NO	I					A	A									A		A	

DEPARTMENT OF TRANSPORTATION
CONTRACTOR'S RELEASE

OMB Control No. 2106-0517
Expiration Date: 4/30/97

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.

CONTRACT NO.	CONTRACTOR (Name and Address)
_____	_____ _____ _____
SUM OF	DOLLARS
_____ _____	_____

In consideration of the sum stated above, which has been paid or is to be paid to the Contractor, or his assignees, the Contractor, upon payment of the said by the UNITED STATES OF AMERICA (hereinafter called the Government), does remise, release, and discharge t the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows:

2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of this contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the period specified in the said contract; and

3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under any provisions of the said contract relating to patents.

The Contractor agrees, in connection with patent matters and with claims which are not released as set forth above, that he will comply with all provisions of the said contract, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

IN WITNESSES WHEREOF, this release has been executed this _____ day of _____, 19 _____.

WITNESSES

_____
(Contractor)

_____ BY _____

_____ TITLE _____

NOTE: In the case of a corporation, witnesses are not required but the certification below must be completed.

CERTIFICATE

I, _____, certify that I am the _____ secretary of the corporation named as Contractor in the foregoing release; that _____ who signed said release on behalf of the Contractor was then _____ of said corporation; that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL) _____

DEPARTMENT OF TRANSPORTATION

EMPLOYEE CLAIM FOR WAGE RESTITUTION

OMB Control No. 2105-0517
Expiration Date: 4/30/97

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.

TO: The General Accounting Office
Claims Division
Washington, DC 20548

CONTRACT NUMBER

DATE OF CLAIM

EMPLOYEE'S FULL NAME

SSN:

I hereby make claim for payment of unpaid wages due me in the amount of $ _____

as an employee of _____
(Name of Contractor and/or Subcontractor)

performing work under the above number at _____
(location of work)

_____. I was employed

as _____ during the period from _____
(job title) *(month/day/year)*

to _____.
(month/day/year)

This claim constitutes the total amount claimed due and unpaid for the period of employment indicated.

ADDRESS OF EMPLOYEE	SIGNATURE OF EMPLOYEE

Form DOT F 4220.7 (REV.10/94) (EXCEL) PREVIOUS EDITION OBSOLETE AUTHORIZED FOR LOCAL REPRODUCTION

CONTRACTOR REPORT OF GOVERNMENT PROPERTY

OMB Control No. 2105-0517
Expiration Date: 4/30/97

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.

1. Contract Number: _____

2. Report Period Ending: _____

3. Contractor (Name and Address)

4. Contracting Office (Name and Address)

5. Name and location of Government-Owned, Contractor-Operated Plant (if applicable)

6. Any Government property located at a subcontractor's plant? _____ Yes _____No. If yes, give the name and address of the subcontractor(s) on an attached sheet to this report.

7. Date contractor's property control system approved? _____

8. Approved by whom? _____
Name of Agency/Office

9	Starting Balance				Ending Balance	
Property Class (See FAR 45.5)	Total Acquisition Cost (in dollars)	Total Quantity (in acres or units)	Items Added in $	Items Deleted in $	Total Acquisition Cost (in dollars)	Total Quantity (in acres or units)
a. Land & Rights Therein						
b. Other Real Property						
c. Plant Equipment						
d. Special Test Equipment						
e. Special Tooling						
f. Materials in Stock (when total value exceeds $50,000)						

NOTE: This report shall include all Government property (i.e., property furnished by the Government, or acquired or fabricated by the contractor or subcontractors). By signature hereon, the contractor's property administrator certifies that the report was prepared from the contractor's records that are required by FAR 45.5.

10. Typed Name of Contractor Property Administrator

11. Signature and Date

Form DOT F 4220.43 (10/94) (EXCEL) PREVIOUS EDITION OBSOLETE AUTHORIZED FOR LOCAL REPRODUCTION

PAGE OF PAGES

CONTRACT PRICING SUMMARY

(For New Contracts Including Letter Contracts)

(See Instructions on Reverse)

OMB Control No. 2105-0017

Expiration Date: 4/30/97

This form is for use in support of Standard Form 1411 prescribed by GSA, FAR (48 CFR) 53.215-3(c), Format 7A

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0017), Washington, D.C. 20503.

NAME OF OFFEROR	SUPPLIES AND/OR SERVICES TO BE FURNISHED
HOME OFFICE ADDRESS	
DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED	GOV'T SOLICITATION NO.

DETAIL DESCRIPTION OF COST ELEMENTS

1. DIRECT MATERIAL			EST COST ($)	TOTAL EST COST	REFERENCE
A. PURCHASED PARTS					
B. SUBCONTRACTED ITEMS					
C. OTHER – (1) RAW MATERIAL					
(2) STANDARD COMMERCIAL ITEMS					
TOTAL DIRECT MATERIAL					
2. MATERIAL OVERHEAD (Rate % X $ base =)					
3. DIRECT LABOR	ESTIMATED HOURS	RATE/HOUR	EST COST ($)		
TOTAL DIRECT LABOR					
4. LABOR OVERHEAD	O.H. RATE	X BASE =	EST COST ($)		
TOTAL LABOR OVERHEAD					
5. OTHER DIRECT COSTS			EST COST ($)		
A. SPECIAL TOOLING/EQUIPMENT					
TOTAL SPECIAL TOOLING/EQUIPMENT					
B. TRAVEL			EST COST ($)		
(1) TRANSPORTATION					
(2) PER DIEM OR SUBSISTENCE					
TOTAL TRAVEL					
C. INDIVIDUAL CONSULTANT SERVICES			EST COST ($)		
TOTAL INDIVIDUAL CONSULTANT SERVICES					
D. OTHER			EST COST ($)		
TOTAL OTHER					
SUBTOTAL DIRECT COST AND OVERHEAD					
6. GENERAL AND ADMINISTRATIVE (G&A) EXPENSE (RATE % x $ BASE (I.E., COST ELEMENT NOS.) =					
7. ROYALTIES					
8 SUBTOTAL ESTIMATED COST					
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY					
10 SUBTOTAL ESTIMATED COST					
11. FEE OR PROFIT					
12 TOTAL ESTIMATED COST AND FEE OR PROFIT					

Form DOT F 2236.44 (REV. 1994) (EXCEL) (PREVIOUS EDITION OBSOLETE) AUTHORIZED FOR LOCAL REPRODUCTION

INSTRUCTIONS FOR COMPLETING CONTRACT PRICING SUMMARY

Offerors are instructed to prepare their cost proposals in sufficient detail to permit thorough and complete evaluation by the Government. A separate DOT F 4220.44 is required for the basic and each option period (if applicable). The supporting data for the DOT F 4220.44 shall be as follows. (NOTE: The DOT F 4220.44 shall be used to implement the requirements of the SF 1411 and does not relieve offerors from complying with FAR 15.804-6 requirements.)

(a) The basis for all proposed rates (including a copy of the indirect cost pool and a computational trail used to arrive at the proposed rate shall be clearly identified when the proposed rates are not approved by a Government audit agency for use in proposals, or approved by the Government audit agency, but the approval is 12 months or more old. State rather an approved (within 12 months) Government audit agency rate was used.

(b) The information below clarifies FAR 15.804-6 requirements for specific cost elements. The cost elements listed below shall be supported, as a minimum, with the following:

1. DIRECT MATERIAL

A. Purchased Parts: Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoices prices, etc.). Give details on an attached schedule.

B. Subcontracted Items: Show the total cost of subcontract effort and provide a separate SF 1411 and supporting DOT F 4220.44 for each subcontractor or written quotations from the prospective subcontractor in accordance with FAR 15.806-2.

C. Other

(1) Raw Material: Consists of material in a form or state that requires further processing. Provide priced quantities of items required for the proposal. Show total cost and give details on an attached schedule.

(2) Standard Commercial Items: Consists of items that the offeror normally fabricates, in whole or in part, and that are generally stocked in inventory. Provide an appropriate explanation of the basis for pricing. If price is based on cost, provide a cost breakdown; if priced in other than cost, provide justification for exemption from submission of cost or pricing data, as required by FAR 15.804-3(e). Show total cost and give details on an attached schedule.

2. MATERIAL OVERHEAD

Show cost here only if your accounting system provides for such cost segregation and only if this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (item 6).

3. DIRECT LABOR

Show the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Indicate whether actual rates or escalated rates are used. If escalation is included, state the degree (percent) and rationale used.

4. LABOR OVERHEAD

See paragraph (a) above.

5. OTHER DIRECT COSTS

(A) Special Tooling/Equipment: Identify and support specific equipment and unit prices. Use a separate schedule if necessary.

(B) Travel: Identify and support each trip proposed and the persons (or disciplines) designated to make each trip. Identify and support transportation and per diem rates.

(C) Individual Consultant Services: Identify and support the proposed contemplated consultants. State the amount of service estimated to be required and the consultant's quoted daily or hourly rate.

(D) Other Costs: List all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment) and provide bases for pricing.

6. GENERAL AND ADMINISTRATIVE EXPENSE

See paragraph (a) above and base approved by a Government audit agency for use in proposals.

7. ROYALTIES

If more than $250, provide the following information on a separate page for each separate royalty or license fee, name and address of licensor, date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers of each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties. In addition, if specifically requested by the Contracting Officer, provide a copy of the current license agreement and identification of applicable claims of specific patents. (See FAR 27.204 and 31.205-37)

8. SUBTOTAL ESTIMATED COST

Enter the total of all direct and indirect costs excluding Contract Facilities Capital and Cost of Money and Fee or Profit.

9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY

Show total cost on line 9 and attach supporting calculations on the CASB-CMF forms. (See FAR 31.205-10).

10. SUBTOTAL ESTIMATED COST

Enter the total of all proposed costs excluding Fee or Profit and insert this amount in Section 6.A. of SF 1411.

11. FEE OR PROFIT

Enter this proposed Fee or Profit and insert this amount in Section 6.B. of SF 1411.

12. TOTAL ESTIMATED COST AND FEE OR PROFIT

Enter the total estimated cost including Fee or Profit.

(c) Under the column entitled, "Reference," identify the attachment where information supporting the specific cost element may be found.

CONTRACTOR'S ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS

OMB Control No.: 2105-0517
Expiration Date: 4/30/97

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.

Pursuant to the terms of Contract No. _____ and in consideration of the reimbursement of costs and payment of fee, as provided in the said contract and any assignment thereunder, _____ (hereinafter called the Contractor) does hereby:

1. Assign, transfer, set over the release to the UNITED STATES OF AMERICA (hereinafter called the Government), all right, title and interest to all refunds, rebates, credits or other amounts (including any interest thereon) arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafter accrue thereunder.

2. Agree to take whatever action may be necessary to effect prompt collection of all refunds, rebates, credits or other amounts (including any interest thereon) due or which may become due, and to promptly forward to the UNITED STATES TREASURER checks (made payable to the Treasurer of the United States) for any proceeds so collected. The reasonable costs of any such action to effect collection shall constitute allowable costs when approved by the Contracting Officer as stated in the said contract and may be applied to reduce any amounts otherwise payable to the Government under the terms hereof.

3. Agree to cooperate fully with the Government as to any claim or suit in connection with refunds, rebates, credits or other amounts due (including any interest thereon); to execute any protest, pleading, application, power of attorney or other papers in connection with; and to permit the Government to represent it at any hearing, trial, or other proceeding arising out out of such claim or suit.

IN WITNESS WHEREOF, this assignment has been executed this _____ day of _____, _____.

BY: _____
(CONTRACTOR)

CERTIFICATE

I, _____, certify that I am the _____ (official title) of the corporation named as Contractor in the foregoing assignment; that _____ signed said assignment on behalf of the Contractor was then _____ of said corporation by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL) _____

CUMULATIVE CLAIM AND RECONCILIATION STATEMENT

OMB Control No. 2105-0517
Expiration Date: 4/30/97

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.

1. Name of Contractor _____
2. Address of Contractor _____
_____
_____
_____
3. Contract No. _____
4. Delivery/Task Order No. _____

5. The total amount claimed under the above numbered contract, delivery order, or task order number is as follows:

a. Direct Labor..... $ _____
b. Direct Material..... $ _____
c. Other Direct Costs..... $ _____
d. Overhead..... $ _____
e. G&A..... $ _____
f. Subcontract Cost..... $ _____
g. Total Costs (5a through 5f)..... $ _____
h. Fixed Fee..... $ _____
i. Total Amount Claimed..... $ _____

6. Total amount due under the above numbered contract, delivery order, task order is as follows:

a. Total Amount Claimed..... $ _____
b. Total Amount Paid by the Government under Voucher Nos. _____ thru _____ ..... $ _____
c. Total Amount (if any) Withheld, Disallowed, etc. (as explained on the attached sheet)..... $ _____
d. Total Amount Due..... $ _____

I, _____, the _____
(Full Name) (Title)
of the above named contractor, certify that the above statements are correct in accordance with the records of the contractor.

_____
(Signature)

Form DOT F 4220.46 (REV. 10/94) (EXCEL) PREVIOUS EDITION OBSOLETE AUTHORIZED FOR LOCAL REPRODUCTION

REPORT OF INVENTIONS AND SUBCONTRACTS

(Pursuant to "Patent Rights" Contract Clause) (See Instructions on Reverse Side)

Form Approved
OMB NO. 0704-0297
Expires June 30, 1992

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0297), Washington, DC 20503.

1a. NAME OF CONTRACTOR/SUBCONTRACTOR	c. CONTRACT NUMBER	2a. NAME OF GOVERNMENT PRIME CONTRACTOR	c. CONTRACT NUMBER	3. TYPE OF REPORT (X one) ☐ a. INTERIM ☐ b. FINAL
b. ADDRESS (INCLUDE ZIP CODE)	d. AWARD DATE (YYMMDD)	b. ADDRESS (INCLUDE ZIP CODE)	d. AWARD DATE (YYMMDD)	4. REPORTING PERIOD (YYMMDD) a. FROM b. TO

SECTION I - SUBJECT INVENTIONS

5. "SUBJECT INVENTIONS" REQUIRED TO BE REPORTED BY CONTRACTOR/SUBCONTRACTOR (If "None", so state)

a. NAME(S) OF INVENTOR(S) (LAST, FIRST, MI)	b. TITLE OF INVENTION(S)	c. DISCLOSURE NO. PATENT APPLICATION SERIAL NO. OR PATENT NO.	d. ELECTION TO FILE PATENT APPLICATIONS (1) UNITED STATES (a) YES	(b) NO	(2) FOREIGN (a) YES	(b) NO	e. CONFIRMATORY INSTRUMENT OR ASSIGNMENT FORWARDED TO CONTRACTING OFFICER (1) YES	(2) NO

f. EMPLOYER OF INVENTOR(S) NOT EMPLOYED BY CONTRACTOR/SUBCONTRACTOR		g. ELECTED FOREIGN COUNTRIES IN WHICH A PATENT APPLICATION WILL BE FILED	
(1)(a) Name of Inventor (Last, First, MI)	(2)(a) Name of Inventor (Last, First, MI)	(1) Title of Invention	(2) Foreign Countries of Patent Application
(b) Name of Employer	(b) Name of Employer		
(c) Address of Employer (Include ZIP Code)	(c) Address of Employer (Include ZIP Code)		

SECTION II - SUBCONTRACTS (Containing a "Patent Rights" clause)

6. SUBCONTRACTS AWARDED BY CONTRACTOR/SUBCONTRACTOR (If "None", so state)

a. NAME OF SUBCONTRACTOR(S)	b. ADDRESS (Include ZIP Code)	c. SUBCONTRACT NO.(S)	d. DFAR "PATENT RIGHTS" (1) CLAUSE NUMBER	(2) DATE (YYMM)	e. DESCRIPTION OF WORK TO BE PERFORMED UNDER SUBCONTRACT(S)	f. SUBCONTRACT DATES (YYMMDD) (1) AWARD	(2) ESTIMATED COMPLETION

SECTION III - CERTIFICATION

7. CERTIFICATION OF REPORT BY CONTRACTOR/SUBCONTRACTOR *(Not required if ☐ Small Business or ☐ Non-Profit organization.) (X appropriate box)*

a. NAME OF AUTHORIZED CONTRACTOR/SUBCONTRACTOR OFFICIAL (Last, First, MI)	c. I certify that the reporting party has procedures for prompt identification and timely disclosure of "Subject Inventions," that such procedures have been followed and that all "Subject Inventions" have been reported.	
b. TITLE	D. SIGNATURE	E. DATE SIGNED

DD Form 882

Previous editions are obsolete

DD FORM 882 INSTRUCTIONS

GENERAL

This form is for use in submitting INTERIM and FINAL Invention reports to the Contracting Officer and for use in the prompt notification of the award of subcontracts containing a "Patent Rights" clause. If the form does not afford sufficient space, multiple forms may be used or plain sheets of paper with proper identification of information by Item Number may be attached.

An INTERIM report is due at least every 12 months from the date of contract award and shall include (a) a listing of "Subject Inventions" during the reporting period, (b) a certification of compliance with required invention identification and disclosure procedures together with a certification of reporting of all "Subject Inventions," and (c) any required information not previously reported on subcontracts awarded during the reporting period and containing a "Patent Rights" clause.

A FINAL report is due within 6 months if contractor is a small business firm or domestic nonprofit organization and within 3 months for all others after completion of the contract work and shall include (a) a listing of all "Subject Inventions" required by the contract to be reported, and (b) any required information not previously reported on subcontracts awarded during the course of or under the contract and containing a "Patent Rights" clause.

While the form may be used for simultaneously reporting inventions and subcontracts, it may also be used for reporting, promptly after award, subcontracts containing a "Patent Rights" clause.

Dates shall be entered where indicated in certain items on this form and shall be entered in four or six digit numbers in the order of year and month (YYMM) or year, month and day (YYMMDD). Example: April 1986 should be entered as 8604 and April 15, 1986 should be entered as 860415.

Item 1a. Self-explanatory.

Item 1b. Self-explanatory.

Item 1c. If "same" as Item 2c, so state.

Item 1d. Self-explanatory.

Item 2a. If "same" as Item 1a, so state.

Item 2b. Self-explanatory.

Item 2c. Procurement Instrument Identification (PII) number of contract (DFARS 4.7003).

Item 2d thru 5e. Self-explanatory.

Item 5f. The name and address of the employer of each inventor not employed by the contractor or subcontractor is needed because the Government's rights in a reported invention may not be determined solely by the terms of the "Patent Rights" clause in the contract.

Example 1: If an invention is made by a Government employee assigned to work with a contractor, the Government rights in such an invention will be determined under Executive Order 10096.

Example 2: If an invention is made under a contract by joint inventors and one of the inventors is a Government employee, the Government's rights in such an inventor's interest in the invention will also be determined under Executive Order 10096, except where the contractor is a small business or nonprofit organization, in which case the provisions of Section 202(e) of P.L. 96-517 will apply.

Item 5g(1). Self-explanatory.

Item 5g(2). Self-explanatory with the exception that the contractor or subcontractor shall indicate, if known at the time of this report, whether applications will be filed under either the Patent Cooperation Treaty (PCT) or the European Patent Convention (EPC). If such is known, the letters PCT or EPC shall be entered after each listed country.

Item 6a. Self-explanatory.

Item 6b. Self-explanatory.

Item 6c. Self-explanatory.

Item 6d. Patents Rights Clauses are located in FAR 52.227.

Item 6e thru 7b. Self-explanatory.

Item 7c. Certification not required by small business firms and domestic nonprofit organizations.

(Word)

[FR Doc. 94–18972 Filed 8–5–94; 8:45 am]
BILLING CODE 4910–62–C

UNITED STATES INFORMATION AGENCY

48 CFR Chapter 19

Regulation Reduction

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: The United States Information Agency proposed removal of subparts and parts of the Code of Federal Regulations (CFR), Title 48, Chapter 19, as published in the **Federal Register** (59 FR 18090), Friday, April 15, 1994. No written,comments were received by the due date, May 16, 1994. The listed parts, subparts, and/or sections are now being removed from the CFR, Title 48, Chapter 19.

EFFECTIVE DATE: Effective August 8, 1994.

FOR FURTHER INFORMATION CONTACT: Brenda Dade, Office of Contracts, Policy and Procedures Staff, (202) 205–5404. Title 48, Chapter 19 is amended to remove parts, subparts, and/or sections as set forth below:

List of Subjects in 48 CFR Chapter 19

Government procurement.

PART 1901—[AMENDED]

1. The authority citation for Part 1901 continues to read as follows:

Authority: 40 U.S.C. 486(c)

2. Part 1901 is amended by removing section 1901.670 through 1901.670–5.

PART 1903—[AMENDED]

3. The authority citation for Part 1903 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 1903—[AMENDED]

4. Part 1903 is amended by removing section 1903.000; Subpart 1903.1—Safeguards, consisting of sections 1903.101 through 1903.103–2; Subpart 1903.2—Contracting Gratuities to Government Personnel, consisting of sections 1903.203 through 1903.204; and Subpart 1093.3—Reports of Suspected Antitrust Violations, section 1093.301.

PART 1912—[AMENDED]

5. Under the authority of 40 U.S.C. 486(c) Part 1912—Contract Delivery or Performance is removed.

PART 1913—[AMENDED]

6. The authority citation for Part 1913 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 1913—[AMENDED]

7. Part 1913 is amended by removing Subpart 1913.1—General, consisting of sections 1913.106—70 through 1913.107, Subpart 1913.2—Blanket Purchase Agreement, consisting of sections 1913.201 through 1913.203–1; and Subpart 1913.4—Imprest Fund consisting of sections 1913.404 through 1913.405.

8. Under the authority of 40 U.S.C. 486(c) Subchapter D—Socioeconomic Programs, consisting of Part 1919—Small Business and Small Disadvantaged Business Concerns and Part 1922—Application of Labor Laws to Government Acquisitions is removed and reserved.

9. Under the authority 40 U.S.C. 486(c) Subchapter E—General Contracting Requirements, consisting of Part 1927—Patents, Data, and Copyrights and Part 1932—Contract Financing is removed and reserved.

PART 1952—[AMENDED]

10. The authority citation for Part 1952 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 1952—[AMENDED]

11. Part 1952 is amended by removing sections 1952.200 through 1952.212–70, 1952.222–70 through 1952.227–75, and 1952.232–70 through 1952.242–70.

Dated: August 2, 1994.

Philip Rogers,

Director, Office of Contracts.

[FR Doc. 94–19303 Filed 8–5–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–264]

Organization and Delegation of Powers and Duties; Delegations to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation has delegated to the Commandant, United States Coast Guard, the authority contained in 42 U.S.C. 7511b(f) concerning tank vessel emissions, to promulgate safety regulations, to consult with the Administrator of the Environmental Protection Agency concerning emission standards, and to enforce compliance of emission standards as determined by such consultation. The Code of Federal Regulations does not reflect this delegation; therefore, a change is necessary.

EFFECTIVE DATE: This rule become effective August 8, 1994.

FOR FURTHER INFORMATION CONTACT: LCDR Robert F. Corbin, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, (202) 267–1217, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593; or Mr. Steve Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (C–50), (202) 366–9307, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation has delegated to the Commandant, United States Coast Guard, the authority contained in 42 U.S.C. 7511b(f) concerning tank vessel emissions, to promulgate safety regulations, to consult with the Administrator of the Environmental Protection Agency concerning emission standards, and to enforce compliance of emission standards as determined by such consultation. The Code of Federal Regulations does not reflect this delegation; therefore, a change is necessary.

Since this amendment relates to departmental management, organization, procedure, and practice; notice and comment on it are unnecessary and it may be made effective in fewer than 30 days after publication in the **Federal Register**. Therefore, this final rule is effective upon publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322., 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.46 is amended by adding a new paragraph (yy) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(yy) Carry out the functions and exercise the authority vested in the Secretary by 42 U.S.C. 7511b(f), concerning tank vessel emissions, to promulgate safety regulations, to consult with the Administrator of the Environmental Protection Agency concerning emission standards, and to enforce compliance of emission standards as determined by such consultation. This authority may be redelegated.

Issued at Washington, DC, this 15th day of July 1994.

Federico Peña,

Secretary of Transportation.

[FR Doc. 94–19144 Filed 8–5–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 931199–4042; I.D. 080294B]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of certain target species in the Gulf of Alaska (GOA) and is requiring that incidental catches of these species be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the total allowable catches (TAC) of these species have been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 3, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TACs specified for Atka mackerel, northern rockfish, and the shortraker/rougheye rockfish species group in the Western Regulatory Area and the shortraker/rougheye rockfish species group in the Eastern Regulatory Area have been reached. Therefore, NMFS is requiring that further catches of Atka mackerel, northern rockfish, and the shortraker/rougheye rockfish species group in the Western Regulatory Area and the shortraker/rougheye rockfish species group in the Eastern Regulatory Area be treated as prohibited species in accordance with § 672.20(e), effective from 12 noon, A.l.t. August 3, 1994, until 12 midnight, A.l.t., December 31, 1994.

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 3, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–19313 Filed 8–3–94; 4:54 pm]

BILLING CODE 3510–22–F

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50 CFR Part 672

[Docket No. 931199–4042; I.D. 080194B]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of northern rockfish in the Eastern Regulatory Area of the Gulf of Alaska (GOA) and is requiring that incidental catches be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the northern rockfish total allowable catch (TAC) in this area has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 5, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the TAC for northern rockfish in the Eastern Regulatory Area was established by the final notice of groundfish specifications (59 FR 7647, February 16, 1994), as 40 metric tons (mt). The final notice of groundfish specifications also closed the directed fishery for northern rockfish in the Eastern Regulatory Area under § 672.20(c)(2).

The Director of the Alaska Region, NMFS, has determined in accordance with § 672.20(c)(3), that the TAC for northern rockfish in the Eastern Regulatory Area has been reached. Therefore, NMFS is requiring that further catches of northern rockfish in the Eastern Regulatory Area be treated as prohibited species in accordance with § 672.20(e), effective from 12 noon, A.l.t. August 5, 1994, until 12 midnight, A.l.t., December 31, 1994.

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 2, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–19288 Filed 8–5–94; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 151
Monday, August 8, 1994

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

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1726

RIN 0572–AA47

Electric System Construction Policies and Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On June 3, 1994, the Rural Electrification Administration (REA) published a proposed rule requesting public comment on REA's Electric System Construction Policies and Procedures. In response to the public's request for more review time, REA is reopening the comment period on this proposed rule.

DATES: Written comments and recommendations must be received by REA by September 2, 1994.

ADDRESSES: Written comments should be addressed to Fred Gatchell, Acting Director, Electric Staff Division, Rural Electrification Administration, room 1246–S, 14th and Independence Avenue, SW., Washington, DC 20250–1500. REA requires a signed original and three copies of all comments (7 CFR 1700.30(e)). All comments received will be made available for public inspection in room 2234–S (address as above) during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Fred Gatchell, Acting Director, Electric Staff Division, room 1246–S, at the above address. Telephone: (202) 720–1398.

SUPPLEMENTARY INFORMATION: On June 3, 1994, at 59 FR 28924, the Rural Electrification Administration (REA) published a proposed rule on 7 CFR Part 1726, Electric System Construction Policies and Procedures. The proposed rule had a 60-day period for public comments which ended on August 2, 1994. Because of requests from the public for more time to prepare responses, REA is extending this public comment period by 30 days. The new comment period will expire on September 2, 1994.

Dated: August 5, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–19284 Filed 8–5–94; 8:45 am]

BILLING CODE 3410–15–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Leverage

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: SBA proposes to allow Small Business Investment Companies licensed under sections 301(c) and (d) of the Small Business Investment Act of 1958 (Licensees) having no immediate need for SBA financial assistance (Leverage) to reserve the future availability of such financial assistance by obtaining SBA's conditional commitment to guarantee Debentures or Participating Securities (collectively "pooled securities"), and Preferred Securities, that will be offered in the future as the Licensee draws against SBA's commitment.

DATES: Written comments on this proposed rule must be received no later than September 7, 1994.

ADDRESSES: Written comments should be sent to: Robert Stillman, Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Saunders Miller, Office of Program Development; Telephone (202) 205–6510.

SUPPLEMENTARY INFORMATION: Because it is often difficult for Licensees to precisely project their cash needs three months or more into the future, many Licensees consider it prudent to draw down Leverage funds in excess of actual need, hold the Leverage in permissible idle funds investments, and treat the resulting expense, representing the difference between interest expense and return on "idle funds" investments, as an unavoidable cost of participating in the small business investment company program. SBA proposes to relieve Licensees of this additional cost by making it possible for them to assure themselves that a specific amount of Leverage, not less than $1,000,000, but not more than 50 percent of their Regulatory Capital, will be reserved for future draws, as and when needed. Subject to these limitations, the actual amount of any particular request for a reservation of Leverage which is approved by SBA will depend in part on factors other than the applicant Licensee's own financial and regulatory situation, including such matters as the anticipated need for Leverage by all other Licensees making Leverage requests.

Under the terms of this proposed rule, an application for SBA's conditional commitment to reserve Leverage against which draws may be made may be submitted by a Licensee at any time, and would be accompanied by the same financial information and other documentation that is presently required of Licensees that which to have their securities purchased by SBA or included in the next scheduled pooling, except that no securities forms will have to accompany an application for SBA's commitment. For a Licensee wishing to participate in the next pool, and also wishing to obtain SBA's conditional commitment, which would pertain solely to subsequent sales, separate applications would be filed.

SBA will review all such applications for SBA's conditional commitment and make a determination as to whether to grant the request only after reviewing a Licensee's financial and regulatory status as well as its representation as to projected needs. The commitment when granted will represent a conditional agreement on SBA's part to permit a Licensee to make draws against an agreed upon reserved amount of Leverage over a fixed period of time.

As a condition precedent to the effectiveness of a commitment, within thirty days following SBA's notification that the Licensee's application for a commitment for a reservation of Leverage has been approved, or prior to any draw against SBA's commitment if requested within such thirty day period, the Licensee must pay a non-refundable commitment fee. When a Licensee issuing pooled securities draws against SBA's commitment, the amount of the user fee associated with the guarantee of

the Licensee's security or securities will be debited against an account holding the commitment fees and credited against an account holding guaranty fees. Failure to make timely and full payment of the commitment fee will preclude any draws against the commitment, and will cause SBA's commitment to lapse automatically at 5 p.m. Eastern Time on the thirtieth calendar day following SBA's notification of approval.

In any case, SBA's commitment will also lapse at 5 p.m. Eastern Time on the sixtieth calendar day preceding the close of the next full Federal fiscal year following issuance of such commitment. (Under present law, the Federal fiscal year ends on September 30.) Therefore, depending upon when within a given Federal fiscal year a commitment was extended, the term of the commitment may be as short as ten months or as long as twenty-two months.

As indicated above, at the time a Licensee seeks a commitment, it shall submit the same information required for a purchase of preferred securities or for participation in a guaranteed pool sale, including a Financial Statement on SBA Form 468 (Short Form). SBA will consider this information as well as any other available information pertaining to the Licensee's regulatory compliance in deciding whether, and how much of a commitment to reserve Leverage it may approve. If SBA extends a commitment, the Licensee will be required to prepare a Financial Statement on Short Form 468 as of the close of each quarter of its fiscal year during the term of the commitment, and to send a copy of that statement to SBA within 30 days after the close of each quarter. If a request for a draw is submitted within 30 days after the close of the Licensee's fiscal quarter, the Short Form 468 shall accompany the request. SBA will conduct an expedited review of this information and the Licensee's regulatory status in conjunction with its review of each such request.

Requests for a draw may be submitted at any time. It is contemplated that requests for pooled securities may be funded as frequently as twice a month and requests for preferred securities may be funded at any time. The minimum amount of any draw of pooled securities will be $1,000,000, with integral multiples of $100,000 permitted thereafter. When requesting a draw, a Licensee shall submit a certified statement to SBA indicating that there has been no adverse change in its financial condition since the date of its most recent Form 468 (Short Form), plus a statement that the Licensee is in compliance with applicable regulations, and, in appropriate cases, that the Licensee has complied with previous SBA instructions concerning matters such as divestitures and refunds. As indicated above, SBA will review such statements against the information in its own files before it will approve a draw against a commitment.

The Licensee must also furnish SBA with information concerning the specific Financing for which the draw proceeds are intended; and, thereafter, furnish SBA with evidence that the Financing in question has been made or an explanation satisfactory to SBA of why an anticipated Financing has not been made.

SBA's present general practice, which is not proposed to be changed (and which SBA is extending to Participating Securities pursuant to rules published at 59 FR 16898, April 8, 1994) is to extend invitations to Licensees to participate in the creation of a pool of SBA-guaranteed Debentures, against which a public offering of SBA-guaranteed trust or pool certificates is made and the certificates, each evidencing a fractional interest in the pool, sold to long-term investors. Such pools are formed and certificates sold every three months, give or take a few days. Preceding the closing of the sale of the pool certificates there is a ten-day period during which no more Debentures may be considered for inclusion in the pool. During that ten-day period, the rate of interest on debentures or of Prioritized Payments on Participating Securities is determined. When a Licensee requests a draw, it will be deemed to have authorized SBA to guarantee its security immediately, and to have authorized SBA, acting as the Licensee's agent, to sell such security to a short-term investor that will agree to hold the Licensee's security until the Licensee's security is either put into the next pool or is repurchased by SBA because of a definitive determination based on subsequently-received adverse information concerning the Licensee's credit or regulatory status.

If the security is a Debenture, it will be sold to a short-term investor at a discount, calculated as if the maturity date of the Debenture were the next scheduled closing date for the sale of pool certificates. The Licensee will also agree to the payment of additional interest to the short-term investor, at the same rate used to calculate the discount, for each day that the sale of pool certificates is delayed beyond the scheduled date. While payment to the short-term investor of all interest accrued from the date of sale to the actual closing date shall be the responsibility of the Licensee, it shall be guaranteed by SBA. The Licensee's failure to make full payment of such additional interest shall constitute an event giving rise to a condition affecting the Licensee's good standing under SBA's regulations. If the Licensee's security is a Participating Security, the same conditions will apply, however, the Participating Security (Securities) will be sold to a short-term investor at a price equal to the face amount thereof.

Although SBA guarantees the Licensee's undertaking to the short-term investor concerning payment of interest on a Debenture or Prioritized Payments on a Participating Security on the date such Debenture or Participating Security is pooled, the Licensee does not warrant, nor does SBA guarantee, that pooling will take place on any specific date. The short-term investor assumes the risk that the recovery of its invested principal and the receipt of interest or Prioritized Payments will be delayed to the extent that the pool closing is delayed. Based on historical experience, it is unlikely that any such delay will occur and if it does, the duration of the delay should be minimal. The rate at which the Licensee's Debenture will be discounted or at which the Prioritized Payments will accumulate on a Participating Security when either of these securities are sold to a short-term investor will, in both cases, be determined with reference to the current average market yield on obligations of the United States with comparable periods to maturity. However, for the purpose of determining the rate of interest or of Prioritized Payments payable to a short-term investor, "maturity" refers to the next scheduled pooling date, not the stated maturity date of the security in question.

In the normal course of events, when the sale of pool certificates closes, the Licensee's security will be included in the pool, having been purchased, as previously agreed, from the short-term investor with the Licensee's share of the proceeds of the sale of SBA guaranteed certificates issued against the pool.

The sale of the Licensee's security to a short-term investor with SBA's guaranty does not obligate SBA to include that security in a pool of long-term securities in disregard of subsequently-obtained information calling into question either the Licensee's financial soundness or the Licensee's compliance with applicable regulations. If SBA determines to withhold its guarantee of the Licensee's security to the pool, SBA will purchase the Licensee's security from the short-term investor on or before the pool closing date.

Sale of the Licensee's security to a short-term investor with SBA's guaranty does not cut off the Licensee's right to withdraw its security from entering into the pool by repurchasing it directly from the short-term investor if notice is given to SBA at least ten days prior to the pool cut-off date. However, since the sale of the Licensee's security to a short-term investor, and not the subsequent pooling of the security, is the event that discharges SBA from its reservation obligation to the extent of the security's face amount, the Licensee's subsequent repurchase of its security from the short-term investor does not re-obligate SBA under the terms of its commitment, or restore SBA's guarantee authority to the extent of the face amount of the repurchased security.

SBA's approval of an application for a commitment does not lock in any interest or Prioritized Payment rate, nor does SBA's guarantee of a security sold to a short-term investor indicate in any way what the Licensee's interest or Prioritized Payment rate will be when the security is pooled and certificates are sold to long-term investors.

Once in the hands of the pool trustee, the Licensee's Debenture or Participating Security will assume all the terms and characteristics of the other securities in the pool, including an interest or Prioritized Payment rate recalculated with reference to the maturities of the other securities being pooled.

Compliance With Executive Orders 12866, 12612, and 12778, and With the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule will not constitute a significant regulatory action for the purposes of Executive Order 12866 because, if promulgated as final, it is not likely to have an annual impact on the national economy of $100 million or more, and, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it will not have a substantial impact upon a significant number of small entities. This proposed rule will not increase the amount of Leverage available to any particular Licensee or to the industry as a whole, but it is anticipated that if this rule is adopted as proposed, there will be a significant decrease in the percentage of funds derived from the pooling of SBA-guaranteed securities that, at any given time, are classifiable as "idle funds" not invested in Small Concerns. Under present rules, some of SBA risk as a long-term guarantor is taken on in connection with securities whose proceeds are "idle funds" that are not invested in Small Concerns.

1. The legal basis for this proposed regulation is section 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c), and section 20(a)(2) of the Small Business Act, 15 U.S.C. 631 (note) as amended by section 414 of Pub. L. 102–366.

2. The potential benefits of this proposed regulation have been set forth in the discussion above, under Supplementary Information.

3. The potential cost of this proposed regulation cannot be quantified or estimated.

4. There are no Federal rules which duplicate, overlap, or conflict with this proposed rule.

5. SBA is not aware of regulatory alternatives that could achieve the same objectives at lower cost.

This rule was not reviewed under Executive Order 12866.

Executive Order 12612

SBA certifies that this proposed regulation has no federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Executive Order 12278

For the purposes of Executive Order 12278, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

Paperwork Reduction Act

This proposed regulation, if adopted as final, will impose an additional record-keeping requirement on those Licensees that voluntarily avail themselves of the benefit of this proposed rule. Viewing the matter from the Licensee's standpoint, the additional burden of preparing a quarterly short-form financial statement is offset by the assurance of the future availability of Leverage and the reduction of cost resulting from elimination of the need to draw down Leverage funds long before they may be invested in Small Concerns. From SBA's standpoint, the additional recordkeeping is necessary if SBA is not to rely upon out-dated financial information when it funds draws against its commitment.

[Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies]

List of Subject in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, part 107 of Title 13, Code of Federal Regulations is proposed to be amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*; 15 U.S.C. 683; 15 U.S.C. 687(c); 15 U.S.C. 687b; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687m, as amended by Pub. L. 102–366.

2. Part 107 is proposed to be amended by adding a new § 107.215 to read as follows:

§ 107.215 Commitments by SBA.

(a) *General.* A Licensee may apply for SBA's commitment to reserve an amount of Leverage against which SBA may purchase its Preferred Securities or guarantee its Debentures or Participating Securities as and when offered for future public sales. The amount of any such commitment shall be not less than $1,000,000 but not more than 50 percent of Regulatory Capital. Applications shall be prepared and submitted in accordance with § 107.210(b), as amended from time to time, except to the extent that this regulation is inconsistent therewith.

(b) *Commitment fees.* The Licensee shall pay to SBA a non-refundable fee. No request for a draw will be approved unless this fee has been paid in full.

(c) *Automatic revocation of commitment.* Unless the full amount of the commitment fee is paid by 5 p.m. Eastern Time on the 30th calendar day following SBA's notification that its commitment has been extended, SBA's commitment shall be automatically revoked.

(d) *Lapse of commitment.* Notwithstanding payment of the commitment fee, SBA's commitment shall automatically lapse at 5 p.m. Eastern Time on the 60th calendar day preceding the close of the next full Federal fiscal year following issuance of such commitment.

(e) *Additional recordkeeping requirements.* Following notification that SBA's commitment has been granted, a Licensee shall submit a Financial Statement on SBA Form 468 (Short Form) as of the close of each quarter of its fiscal year to SBA within 30 days after the close of the quarter, or with any request for a draw that is made within such 30-day period.

(f) *Draws—(1) Minimum amount of draw.* The minimum face amount of Debentures or Participating Securities that may be issued in connection with

a draw against SBA's commitment is $1,000,000; plus multiples of $100,000 above $1,000,000.

(2) *Procedures for funding draws*—(i) *General.* A request for a draw, which may be submitted at any time, is submitted in the form of a request that the Licensee's Preferred Security be purchased by SBA or that its Debenture or Participating Security be guaranteed by SBA, sold to a short-term investor and subsequently included in the next pool for which the Licensee's securities are eligible. The following documentation shall accompany each such request for a draw:

(A) If such request is submitted within 30 days following the close of the Licensee's fiscal quarter, the request shall be accompanied by a Financial Statement on SBA Form 468 (Short Form) reflecting the Licensee's condition as of the close of that fiscal quarter; otherwise, the request shall be accompanied by a formal statement of no adverse change in financial condition since the filing of the most recent SBA Form 468 (Short Form). If a Licensee is not in compliance with paragraph (e) of this section, no draw request will be considered.

(B) A certified statement executed by an officer of the Licensee or of a corporate general partner of the Licensee, or by an individual that is authorized to act as or for a general partner of the Licensee, as the case may be, representing that the Licensee is in compliance with applicable regulations; i.e., no unresolved regulatory violations.

(C) A statement that the proceeds are needed to fund a particular Small Concern, which statement shall also include the name, address and Standard Industrial Classification Manual Industry number, a summary of the Licensee's proposed Financing, and the scheduled closing date thereof. Within 30 calendar days after the scheduled closing date, the Licensee shall submit an executed copy of SBA Form 1031 confirming the closing of a transaction(s) with the proceeds of the draw, or a written explanation of the failure to close. Failure to make timely submittal of an accurate Form 1031 or satisfactory written explanation of failure to close will preclude consideration of any subsequent draw requests; and may be deemed an event affecting the Licensee's good standing or constituting consent to restricted operations, as the case may be.

(ii) *Draw process*—(A) *General.* By submitting a request for a draw, a Licensee is conclusively presumed to have authorized SBA to purchase its Preferred Security or to have authorized SBA or any agent or trustee designated by SBA to guaranty its Debenture or Participating Security and to sell it with SBA's guarantee, to enter into any agreements (and to bind the Licensee to such agreements) that may be necessary to effect: (*1*) The sale of the Licensee's security to a short-term investor, (*2*) its purchase on the Licensee's behalf (or by the Licensee itself), and (*3*) the subsequent pooling of that security with other securities with the same maturity date: *Provided, however,* That the Licensee shall retain the right to repurchase its securities upon notice to SBA at least 10 days prior to the cut-off date for the pool in which the Licensee's security is to be included by tendering the face amount of the Debenture, or the face amount of the Participating Security plus Earned Prioritized Payments, as the case may be, to the short-term investor.

(B) *Debentures.* An SBA guaranteed Debenture shall be sold to a short-term investor at a discount calculated with reference to a rate determined by the Secretary of the Treasury in accordance with Section 303(b) of the Act (but without regard to any interest subsidy to which the Licensee may be otherwise entitled), as if the maturity date of the Debenture were the next scheduled date for the sale of pool certificates: *Provided, however,* That if the actual sale of pool certificates shall take place after the scheduled date, the Licensee shall pay to the short-term investor, on the actual sale date, an additional sum equal to daily interest as scheduled on the Debenture, at the same rate, from the scheduled sale date to the actual sale date. Failure to make such interest payment on the closing date shall constitute an event giving rise to a condition affecting the Licensee's good standing.

(C) *Participating securities.* The Licensee's Participating Security shall be sold to a short-term investor for a sum equal to the face amount thereof. The Licensee shall undertake, with SBA's guarantee, to pay the short-term investor, at the closing of the next scheduled sale of pool certificates, Prioritized Payments as scheduled on the Security at a rate determined by the Secretary of the Treasury in accordance with Section 303(b) of the Act, as if the maturity date of the Participating Security were the next scheduled date for the sale pool certificates.

Dated: July 22, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–19285 Filed 8–5–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

RIN 1215–AA09

29 CFR Part 570

Child Labor Regulations, Orders and Statements of Interpretation

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: This document extends the period for filing written comments an additional 60 days on revisions to child labor regulations, issued pursuant to the Fair Labor Standards Act (FLSA), governing permissible employment of minors under 18 years of age. This action is being taken in order to provide interested parties additional time to submit comments.

DATES: Comments must be received on or before October 11, 1994.

ADDRESSES: Submit written comments to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3506, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: J. Dean Speer, Director, Division of Policy and Analysis. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219–5122 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8412. This is not a toll free number.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 13, 1994 (59 FR 25167 through 25173) the Department of Labor (the Department) published an advance notice of proposed rulemaking concerning revisions in the child labor regulations, 29 CFR Part 570. These regulations set forth the criteria for the permissible employment of minors under 18 years of age. As indicated by the advance notice of proposed rulemaking, the Department is undertaking a comprehensive review of

the current regulatory standards for child labor employment, and is considering proposing revisions to the regulations which reflect changes in the workplace since their adoption. The Department expressed particular interest in the views of the public on needed changes to Subparts C and E of these regulations. Subpart C (Child Labor Reg. 3) specifies permissible hours and time standards, as well as occupational limitations, for 14- and 15-year-old employees. Subpart E identifies occupations deemed particularly hazardous for, or detrimental to the health or well-being of, employees under 18 years of age. The Department requested that written comments from interested parties be submitted on or before August 11, 1994.

Because of the interest that has been expressed in this proposed rulemaking, and the desire of some commenters to support their comments with detailed statistical information which takes time to prepare, the Department believes it is desirable to extend the comment period for interested parties. Therefore, the period for submitting written comments concerning the advance notice of proposed rulemaking is extended for 60 additional days, to October 11, 1994.

Signed at Washington, DC, on this 2nd day of August, 1994.

Maria Echaveste,

Administrator, Wage and Hour Division.

[FR Doc. 94–19236 Filed 8–5–94; 8:45 am]

BILLING CODE 4510–27–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–5028–6]

Preparation, Adoption, and Submittal of PM_{10} State Implementation Plan, Nonattainment Area Designation for Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: In this document, EPA is announcing its notification to the Governor of Utah that EPA believes that Weber County should be designated nonattainment for PM_{10}.

DATES: No later than 120 days after the State's response, if any, EPA must promulgate the redesignation it deems necessary and appropriate.

ADDRESSES: Information supporting the basis for notifying Utah, that EPA believes Weber County's PM_{10} designation should be revised to nonattainment, is available for inspection during normal business hours at the Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405.

FOR FURTHER INFORMATION CONTACT: Callie Videtich, Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, Denver, Colorado 80202–2466, (303) 293–1754.

SUPPLEMENTARY INFORMATION: On July 1, 1987, the EPA promulgated revised national ambient air quality standards (NAAQS) for particulate matter (PM) (52 FR 24634), replacing total suspended particulates (TSP) as the indicator for PM with a new indicator called PM_{10} that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 microns. At the same time, EPA set forth regulations for implementing the revised particulate matter standards and announced EPA's State Implementation Plan (SIP) development policy elaborating PM_{10} controls necessary to assure attainment and maintenance of the PM_{10} NAAQS (see generally 52 FR 24672). The EPA adopted a PM_{10} SIP development policy dividing all areas of the country into three categories based on their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the new PM_{10} NAAQS and requiring substantial SIP adjustment were placed in group I; (2) areas where attainment of the PM_{10} NAAQS was possible and existing SIP's needed less adjustment were placed in group II; and (3) areas with a strong likelihood of attaining the PM_{10} NAAQS and, therefore, needing adjustments only to their preconstruction review program and monitoring network were placed in group III (52 FR 24672, 24679–24682).

Pursuant to section 107(d)(4)(B) of the Act, areas previously identified as group I and other areas which had monitored violations of the PM_{10} NAAQS prior to January 1, 1989, were, by operation of law, designated nonattainment for PM_{10}. Descriptions of the areas identified as group I and II areas were clarified in a **Federal Register** notice on October 31, 1990 (55 FR 45799). That notice also identified group II areas which violated the standards as of January 1, 1989. The EPA has announced all of the areas that were designated nonattainment by operation of law for PM_{10} upon enactment of the Act in a **Federal Register** notice dated November 6, 1991, (56 FR 56694) with corrections to that notice made November 30, 1992 (57 FR 56762). In these notices, EPA indicated that Weber County was designated unclassifiable for PM_{10}.

In addition, EPA is authorized to promulgate the designation of new areas as nonattainment for PM_{10} pursuant to section 107(d)(3) of the Act on the basis of air quality data, planning and control considerations, or any other air quality-related consideration that the Administrator deems appropriate. Based upon available information, on July 14, 1994, EPA notified the Governor of Utah that it believes that Weber County should be redesignated as nonattainment. Within 120 days of EPA notification, the Governor of Utah must submit to EPA the designation which he considers appropriate for Weber County. No later than 120 days after the State's response, if any, EPA must promulgate the redesignation it deems necessary and appropriate. If redesignated to nonattainment, pursuant to section 189(a)(2)(B) of the Act, the State must submit a PM_{10} SIP to EPA within 18 months after EPA promulgates the nonattainment designation.

This Action

The EPA is, by this notice, identifying for the public Weber County as an area which should be redesignated to nonattainment. Upon receipt of a response by the Governor, EPA will review the submitted information and conduct appropriate rulemaking, at which time the public will have opportunity for review and comment.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Particulate matter.

Authority: Sections 107(d), 110 and 301(a) of the Clean Air Act as amended.

Dated: July 14, 1994.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 94–19290 Filed 8–5–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA21

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior is proposing to amend the regulations for assessing natural resource damages resulting from a discharge of oil into navigable waters

under the Clean Water Act or a release of a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act. The regulations provide procedures that designated Federal, State, and Indian tribe natural resource trustees may use to obtain compensation from potentially responsible parties for injuries to natural resources. The regulations provide an administrative process for conducting assessments as well as two types of technical procedures for the actual determination of injuries and damages. "Type A" procedures are standard procedures for simplified assessments requiring minimal field observation in cases of minor discharges or releases in certain environments. "Type B" procedures are site-specific procedures for detailed assessments in other cases.

The Department of the Interior is proposing to amend the regulations to include an additional type A procedure for assessing natural resource damages in Great Lakes environments. The proposed procedure incorporates a computer model called the Natural Resource Damage Assessment Model for Great Lakes Environments, Version 1.31 (NRDAM/GLE). The same modelling approach used to develop today's proposed NRDAM/GLE is being used to develop a revised type A procedure for coastal and marine environments that will soon be issued as a separate proposed rule.

The Department is also proposing two amendments that would affect all type A procedures. The Department is proposing to revise the conditions under which type A and type B procedures can both be used in the same assessment and to make explicit the scope of judicial review of assessments performed using type A procedures.

DATES: Comments will be accepted through November 7, 1994.

ADDRESSES: Comments should be sent in duplicate to the Office of Environmental Policy and Compliance, ATTN: NRDA Rule-GLE, Room 2340, Department of the Interior, 1849 C Street, NW, Washington, DC 20240, telephone: (202) 208–3301 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday). Computer diskettes containing the NRDAM/GLE can be obtained from the same office.

FOR FURTHER INFORMATION CONTACT: Stephen F. Specht at (202) 208–3301, or SSPECHT@IOS.DOI.GOV on Internet.

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

I. Background
A. Statutory Provisions
B. Overview of the Department's Natural Resource Damage Assessment Regulations
C. History of this Rulemaking
D. Related Rulemakings
II. Phases of an Assessment Incorporating a Type A Procedure
A. Preassessment Phase
B. Assessment Plan Phase
C. Assessment Phase
D. Post-Assessment Phase
III. Nature of Type A Procedures
A. Use of Average Values
B. Regulatory Status of Type A Procedures
IV. NRDAM/GLE
A. Overview
B. User-Supplied Data Inputs
C. Geographic Information System
D. Submodels
V. Conditions Regarding Use of the NRDAM/GLE
A. Primary Conditions
B. Secondary Conditions
VI. Response to Comments

I. Background

A. Statutory Provisions

The Department of the Interior (the Department) is proposing to amend the regulations for assessing natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*) (CERCLA) and the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) (CWA). Under CERCLA, certain categories of potentially responsible parties (PRPs) are liable for natural resource damages resulting from a release of a hazardous substance. CERCLA sec. 107(a). Natural resource damages are monetary compensation for injury to, destruction of, or loss of natural resources. CERCLA section 107(a)(4)(C). CWA creates similar liability for natural resource damages resulting from discharges of oil into navigable waters. CWA sec. 311(f).

Only designated natural resource trustees may recover natural resource damages. CWA recognizes the authority of Federal and State officials to serve as natural resource trustees. CERCLA recognizes the authority of Federal and State officials as well as Indian tribes to act as natural resource trustees.

Damages may be recovered for those natural resource injuries that are not fully remedied by response actions as well as public economic values lost from the date of the discharge or release until the resources have fully recovered. All sums recovered in compensation for natural resource injuries must be used to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources. CERCLA sec. 107(f)(1). Trustee officials may also recover the reasonable costs of assessing natural resource damages.

CERCLA requires the promulgation of regulations for the assessment of natural resource damages resulting either from a discharge of oil into navigable waters under CWA or from a release of a hazardous substance under CERCLA. CERCLA section. 301(c). The regulations are to identify the "best available" procedures for assessing natural resource damages. CERCLA section. 301(c)(2). CERCLA requires that the natural resource damage assessment regulations include two types of assessment procedures. "Type A" procedures are "standard procedures for simplified assessments requiring minimal field observation." CERCLA section. 301(c)(2)(A). "Type B" procedures are "alternative protocols for conducting assessments in individual cases." CERCLA sec. 301(c)(2)(B). Assessments performed by Federal and State trustee officials in accordance with these regulations receive a rebuttable presumption in court. CERCLA sec. 107(f)(2)(C). The promulgation of these regulations was delegated to the Department. E.O. 12316, as amended by E.O. 12580.

The natural resource damage provisions of CWA were amended by the Oil Pollution Act (33 U.S.C. 2701 *et seq.*) (OPA). Among other things, OPA recognized the authority of Indian tribes to sue for natural resource damages resulting from discharges of oil into navigable waters and authorized the National Oceanic and Atmospheric Administration (NOAA) to develop new natural resource damage assessment regulations for discharges of oil into navigable waters. The Department is coordinating its rulemakings with NOAA to ensure, to the maximum extent appropriate, that consistent processes are established for assessing natural resource damages under CERCLA and OPA.

OPA provides that any rule in effect under a law replaced by OPA will continue in effect until superseded. OPA sec. 6001(b). In particular, Senate committee report language makes it clear that "[t]he existing Interior Department rules * * * may be used with a rebuttable presumption in the interim" until NOAA promulgates new regulations. S. Rep. No. 101–94, 101st Cong., 1st Sess. 15 (1990). Therefore, until NOAA promulgates its regulations, the Department's regulations may be used to assess natural resource damages under OPA.

B. Overview of the Department's Natural Resource Damage Assessment Regulations

The Department has published various final rules for the assessment of

natural resource damages: 51 FR 27674 (Aug. 1, 1986); 52 FR 9042 (March 20, 1987); 53 FR 5166 (Feb. 22, 1988); 53 FR 9769 (March 25, 1988). These rulemakings are codified in the Code of Federal Regulations at 43 CFR part 11. The Department also recently published a final rule revising the administrative process and the type B procedures that has not yet been codified in the Code of Federal Regulations. 59 FR 14261 (March 25, 1994).

The Department's natural resource damage assessment regulations provide an administrative process for conducting assessments as well as technical methods for the actual determination of injuries and damages. Assessments performed under the Department's regulations consist of four phases: The Preassessment Phase, the Assessment Plan Phase, the Assessment Phase, and the Post-Assessment Phase.

The Preassessment Phase consists of the activities that precede the actual assessment. For example, upon detecting or receiving notification of a discharge or release, trustee officials decide, based on a number of criteria, whether further assessment actions are warranted. This decision is documented in the Preassessment Screen Determination. For more information on the Preassessment Phase, see subpart B of 43 CFR part 11.

The Assessment Plan Phase includes the preparation of a written Assessment Plan. The Assessment Plan, which is subject to public review and comment, assists the involvement of PRPs, other trustee officials, the general public, and any other interested parties. The Assessment Plan also helps ensure that assessments are performed at a reasonable cost. For more information on the Assessment Plan Phase, see subpart C of 43 CFR part 11, as amended by 59 FR 14281–83.

During the Assessment Phase, trustee officials conduct the work described in the Assessment Plan. The work consists of three steps: Injury Determination; Quantification; and Damage Determination. In Injury Determination, trustee officials determine whether any natural resources have been injured. If trustee officials determine that resources have been injured, they proceed to Quantification, in which they quantify the resulting change in baseline conditions. "Baseline" conditions are the conditions that would have existed had the discharge or release not occurred. Finally, in Damage Determination, trustee officials calculate the monetary compensation to be sought as damages for the natural resource injuries.

When a type A procedure is utilized, trustee officials perform Injury Determination, Quantification, and Damage Determination through the use of a standardized procedure involving minimal field work. The Department is developing different type A procedures for different environments in stages. Only one type A procedure has been included in the regulations to date. That type A procedure incorporates a computer model, called the Natural Resource Damage Assessment Model for Coastal and Marine Environments, Version 1.2 (NRDAM/CME), to perform Injury Determination, Quantification, and Damage Determination for minor discharges or releases in coastal or marine environments. This proposed rule would amend the regulations to include an additional type A procedure to perform Injury Determination, Quantification, and Damage Determination for minor discharges or releases in Great Lakes environments. The proposed procedure incorporates a computer model called the Natural Resource Damage Assessment Model for Great Lakes Environments, Version 1.31 (NRDAM/GLE). For more information on use of a type A procedure during the Assessment Phase, see subpart D of 43 CFR part 11.

When a type A procedure is not applicable or does not address all types of natural resource injuries and lost public economic values, trustee officials may use type B procedures instead of or in addition to a type A procedure. When type B procedures are utilized, trustee officials perform Injury Determination, Quantification, and Damage Determination through the use of site-specific studies. The regulations provide a range of alternative type B scientific and economic methodologies from which trustee officials may choose. For more information on use of type B procedures during the Assessment Phase, see subpart E of 43 CFR part 11, as amended by 59 FR 14283–87.

During the Post-Assessment Phase, trustee officials prepare a Report of Assessment detailing the results of the Assessment Phase. Trustee officials present the Report of Assessment to the PRPs along with a demand for damages and assessment costs. If a PRP does not agree to pay within 60 days, the trustee officials may file suit. Federal and State trustee officials receive a rebuttable presumption of correctness for assessments performed in accordance with the Preassessment Phase, Assessment Plan Phase, Assessment Phase, and Post-Assessment Phase procedures set forth in the regulations. Once damages have been awarded or settlement has been reached, trustee officials establish an account for the recovered damages and prepare a Restoration Plan for use of the recovered damages. For more information on the Post-Assessment Phase, see subpart F of 43 CFR part 11, as amended by 59 FR 14287.

C. History of this Rulemaking

On June 2, 1988, the Department announced its intent to develop a type A procedure for Great Lakes environments. 53 FR 20143. On July 14, 1989, the U.S. Court of Appeals for the District of Columbia Circuit issued two decisions that affected the development of the type A procedure for Great Lakes environments.

State of Ohio v. *United States Department of the Interior* (*Ohio* v. *Interior*) dealt with a challenge to the administrative process and type B procedures. 880 F.2d 432 (D.C. Cir. 1989). The court upheld various aspects of the administrative process and type B procedures but ordered the Department to revise the type B procedures to reflect the statutory preference for using restoration costs as the measure of natural resource damages. The court used the term "restoration costs" to encompass the cost of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured natural resources. The court also ordered the Department to revise the type B procedures to allow for the recovery of all reliably calculated economic values lost to the public as a result of the injury to natural resources.

State of Colorado v. *United States Department of the Interior (Colorado* v. *Interior)* dealt with a challenge to the type A procedure for coastal and marine environments. 880 F.2d 481 (D.C. Cir. 1989). *Colorado* v. *Interior* upheld the Department's sequential approach to developing type A procedures but urged the Department to develop additional type A procedures to address as many different cases as possible. The court remanded the NRDAM/CME, however, based on the reasoning in the *Ohio* v. *Interior* decision, to permit the Department to allow for the calculation of restoration costs. The NRDAM/CME, as originally developed, calculated damages based solely on lost public use of the injured resources.

On September 22, 1989, the Department announced its intent to modify the development of the NRDAM/GLE to conform with *Ohio* v. *Interior* and *Colorado* v. *Interior*. 54 FR 39015. The Department solicited comment on means of incorporating restoration costs and all reliably calculated lost public economic values into the NRDAM/GLE.

D. Related Rulemakings

There are several other ongoing natural resource damage assessment rulemakings.

1. CERCLA

The Department anticipates publishing a proposed rule to revise the NRDAM/CME to comply with *Colorado* v. *Interior* and the statutory biennial review requirement in October 1994. The same modelling approach used to develop today's proposed NRDAM/GLE is being used to revise the NRDAM/CME.

The Department intends to develop additional type A procedures, as is feasible and appropriate, in future rulemakings. The Department plans to convene a public meeting no later than June 1, 1995, to discuss additional environments for which type A procedures may be feasible.

On March 25, 1994, the Department published a final rule revising the administrative process and the type B procedures in partial response to *Ohio* v. *Interior*. 59 FR 14261. The final rule addresses all aspects of the court remand other than the use of a particular economic methodology, known as contingent valuation (CV), to estimate lost nonuse values of injured resources. Nonuse values are those economic values that are not dependent on use of a resource and include the value of knowing that the resource exists and knowing that a resource will be available for future generations. On May 4, 1994, the Department published a notice of proposed rulemaking addressing CV as a type B procedure for estimating lost nonuse values. 59 FR 23097. The comment period on the notice was extended through October 7, 1994. 59 FR 32175 (June 22, 1994).

CERCLA mandates biennial review and revision, as appropriate, of the Department's natural resource damage assessment regulations. The Department will soon publish an advance notice of proposed rulemaking to begin the biennial review of the administrative process and type B procedures.

2. OPA

On January 7, 1994, NOAA published a proposed rule for assessing natural resource damages resulting from oil discharges into navigable waters under OPA. 59 FR 1062. NOAA has indicated that it is likely to allow for use of the NRDAM/GLE after the Department publishes a final rule incorporating the NRDAM/GLE. 59 FR 1124–25.

II. Phases of an Assessment Incorporating a Type A Procedure

This proposed rule would not change the administrative process for performing a natural resource damage assessment already established under the Department's regulations. Under the proposed rule, an assessment incorporating use of the proposed NRDAM/GLE would entail the same four phases already provided for in 43 CFR part 11: The Preassessment Phase, the Assessment Plan Phase, the Assessment Phase, and the Post-Assessment Phase. This proposed rule would provide an additional type A procedure for trustee officials to use during the Assessment Phase. The proposed procedure would be available only for oil discharges or hazardous substance releases that enter Great Lakes environments.

A. Preassessment Phase

During the Preassessment Phase of an assessment incorporating use of the proposed NRDAM/GLE, trustee officials would conduct the activities already provided for in subpart B of 43 CFR part 11. These activities would include the preparation of a Preassessment Screen Determination documenting the trustee officials' decision that additional assessment work was warranted.

B. Assessment Plan Phase

Upon determining that additional assessment work was warranted, trustee officials would begin the Assessment Plan Phase. The Assessment Plan Phase of an assessment incorporating use of the proposed NRDAM/GLE would include the trustee coordination and PRP identification and involvement activities already provided for in subpart C of 43 CFR part 11, as amended by 59 FR 14281. Trustee officials would also prepare a written Assessment Plan documenting their decision to use the NRDAM/GLE as well as the incident-specific information they intend to use as data inputs to the NRDAM/GLE. The Assessment Plan would then be made available for public review and comment as already provided in 43 CFR 11.32, as amended by 59 FR 14282.

1. Conditions Regarding Use of the NRDAM/GLE

To assist trustee officials in deciding whether to use a type A procedure, type B procedures, or a combination, the Department is proposing several conditions regarding use of the NRDAM/GLE. Under the proposed rule, whenever a discharge or release entered a Great Lakes environment, trustee officials would determine if the conditions were met. A Great Lakes environment is defined as any area within Lake Superior, Lake Michigan, Lake Huron, Lake Erie, Lake Ontario, Lake St. Clair, the St. Mary River, the St. Clair River, the Detroit River, the Niagara River, the St. Lawrence River, or their contiguous wetlands or shorelines. Trustee officials would include in the Assessment Plan their determinations of whether the conditions regarding use of the NRDAM/GLE were met.

The goal of the natural resource damage assessment process is to obtain as quickly and cost-effectively as possible the compensation due the public and to restore injured natural resources. Type B procedures can be considerably more expensive and time-consuming than type A procedures. Therefore, the Department believes that type A procedures should be used whenever applicable.

Under the proposed rule, the conditions regarding use of the NRDAM/GLE fall into two categories: Primary conditions and secondary conditions. The absence of any primary condition indicates that use of the NRDAM/GLE is inappropriate. The absence of any secondary condition does not indicate that use of the NRDAM/GLE is inappropriate but does indicate that the NRDAM/GLE might not address all types of natural resource injuries and lost public economic values.

Under the proposed rule, if all primary and secondary conditions were met, trustee officials would be required to use the NRDAM/GLE to calculate all damages in order to get the rebuttable presumption. This approach would be consistent with the existing standards for use of the NRDAM/CME provided at 43 CFR 11.33.

The proposed rule would further provide that if one or more primary conditions were not met, trustee officials would be required to use type B procedures to calculate all damages in order to obtain the rebuttable presumption. This approach differs from the existing standards for use of the NRDAM/CME, which do not specify particular conditions under which trustee officials must use type B procedures instead of the type A procedure.

Finally, the proposed rule would provide that if all primary conditions were met but one or more secondary conditions were not met, trustee officials could use the NRDAM/GLE, type B procedures, or a combination, and obtain a rebuttable presumption. Trustee officials would decide which assessment procedures to use based on considerations of "cost effectiveness" and "reasonable cost," as those terms

are defined in 43 CFR 11.14. Trustee officials would consider whether the benefits of the increased accuracy provided by type B procedures would offset the anticipated additional cost of using type B procedures, and whether the anticipated damages would exceed the anticipated cost of using type B procedures. Trustee officials would document the determination whether to use the NRDAM/GLE, type B procedures, or a combination in the Assessment Plan.

The proposed rule would also require trustee officials to use type B procedures, even if they determined that use of the NRDAM/GLE was appropriate, whenever a PRP submitted a written request for use of type B procedures and agreed within a time frame acceptable to the trustee officials to advance the cost of using type B procedures.

Section V of this preamble contains additional information on the conditions regarding use of the NRDAM/GLE.

2. Use of Combined Type A and Type B Procedures

Existing 43 CFR 11.15(a)(1) provides that, in order to obtain a rebuttable presumption, trustee officials generally must use either a type A procedure or type B procedures during the Assessment Phase but not both. Under the existing regulations, the only time that trustee officials can use both type A and type B procedures for the same discharge or release is when the procedures address different resources and do not result in double counting of damages.

The Department is proposing to delete the existing restriction in 43 CFR 11.15(a)(1) concerning use of both type A and type B procedures during the Assessment Phase and to make various conforming changes throughout the regulations. Under § 11.33(c) of the proposed rule, if all primary conditions regarding use of the NRDAM/GLE were met but one or more secondary conditions were not met, trustee officials would be allowed to use type B procedures to calculate damages for types of natural resource injuries and lost public economic values that were not addressed by the NRDAM/GLE and use the NRDAM/GLE to calculate all other damages, provided there were no double recovery of damages. Trustee officials would also be allowed to calculate all damages through use of type B procedures provided such procedures were cost effective and could be performed at a reasonable cost. A trustee official's decision whether to use the NRDAM/GLE, type B procedures, or a combination during the Assessment Phase would be documented in the Assessment Plan.

For example, one of the proposed secondary conditions regarding use of the NRDAM/GLE is that the primary injuries to biological resources are one or more of the following: Direct mortality resulting from short-term exposure to the discharged oil or released hazardous substance; direct loss of production resulting from short-term exposure to the discharged oil or released hazardous substance; indirect mortality resulting from food web losses; and indirect loss of production resulting from food web losses. Under the proposed rule, if all primary conditions regarding use of the NRDAM/GLE were met but there were significant sublethal injuries, trustee officials would be allowed to use type B procedures to calculate damages for those sublethal injuries and use the NRDAM/GLE to calculate all other damages, provided there were no double recovery of damages.

Trustee officials who used both the NRDAM/GLE and type B procedures could prepare a single Assessment Plan, so long as it included all the necessary information about how they intended to use the NRDAM/GLE, how they intended to apply the type B procedures, and how they intended to ensure no double recovery. During the Assessment Phase, the NRDAM/GLE would be applied in compliance with § 11.42 of the proposed rule, while the type B procedures would be applied in accordance with subpart E of 43 CFR part 11, as amended by 59 FR 14283. After applying the NRDAM/GLE and completing the type B procedures, trustee officials could prepare a single Report of Assessment detailing the results of both the NRDAM/GLE and the type B procedures.

The proposed deletion of the restriction in 43 CFR 11.15(a)(1) concerning use of combined type A and type B procedures would temporarily leave trustee officials without guidance on determining when it is appropriate to use type B procedures in addition to the existing type A procedure for coastal and marine environments. The Department plans to publish a proposed rule revising the type A procedure for coastal and marine environments in October 1994. The Department intends to include standards in that proposed rule that will govern the use of type B procedures in addition to the revised NRDAM/CME. The Department further intends to publish a final rule revising the type A procedure for coastal and marine environments within a few months after a final rule establishing the type A procedure for Great Lakes environments is published. Therefore, the Department believes that deletion of the existing restriction in 43 CFR 11.15(a)(1) in this rulemaking would be appropriate. However, the Department solicits comment on whether the existing restriction in 43 CFR 11.15(a)(1) should be retained with regard to the existing NRDAM/CME until the revised NRDAM/CME is promulgated.

3. User-Supplied Data Inputs

If trustee officials decided to use the NRDAM/GLE, the Assessment Plan would also document the incident-specific information that they intend to use as data inputs to the NRDAM/GLE. Under the proposed rule, the NRDAM/GLE would supply most of the data used to determine injury and damages. However, the Department is proposing to require trustee officials to provide certain incident-specific information for use as data inputs to the NRDAM/GLE.

Section IV.B of this preamble contains additional information on user-supplied data inputs to the NRDAM/GLE.

C. Assessment Phase

After reviewing any comments received on the Assessment Plan, trustee officials would begin the Assessment Phase. The Assessment Phase of an assessment incorporating the NRDAM/GLE, like the Assessment Phase of an assessment incorporating type B procedures, would entail three steps: Injury Determination, Quantification, and Damage Determination. Under the proposed rule, these steps would be performed by the NRDAM/GLE.

The proposed NRDAM/GLE performs Injury Determination through the Physical Fates Submodel and the Biological Effects Submodel. The Physical Fates Submodel determines the pathway of contamination. Injury is determined through the interaction of the Physical Fates Submodel and the Biological Effects Submodel.

The proposed NRDAM/GLE performs Quantification through the Biological Effects Submodel. The NRDAM/GLE databases contain information about the baseline condition of natural resources in Great Lakes environments. The Biological Effects Submodel quantifies the change in baseline conditions as a result of the discharge or release.

The proposed NRDAM/GLE performs Damage Determination through the Restoration Submodel and the Compensable Value Submodel. The Restoration Submodel estimates appropriate restoration costs. The Compensable Value Submodel calculates the economic values lost to

the public pending the reestablishment of baseline conditions. These lost economic values are referred to as compensable values. Consistent with the *Ohio* v. *Interior* and *Colorado* v. *Interior* decisions, the proposed NRDAM/GLE adds compensable values and restoration costs, where appropriate, to produce a damage figure.

Section IV.D of this preamble contains additional information on how the NRDAM/GLE performs Injury Determination, Quantification, and Damage Determination.

D. Post-Assessment Phase

After using the NRDAM/GLE, trustee officials would perform the post-assessment activities already provided for in subpart F of 43 CFR part 11, as amended by 59 FR 14287, including preparation of a Report of Assessment. The proposed NRDAM/GLE provides a printed assessment report that summarizes the computations performed to derive the damage amount. Under the proposed rule, the Report of Assessment would include: the Preassessment Screen Determination; the Assessment Plan, which includes documentation of the trustee officials' determination to use the NRDAM/GLE and documentation of the incident-specific data inputs to the NRDAM/GLE; and the printed assessment report from the NRDAM/GLE.

Trustee officials would present the Report of Assessment to the PRPs along with a demand for damages and assessment costs. Trustee officials may only recover their reasonable assessment costs. If trustee officials used the NRDAM/GLE, reasonable assessment costs would include: the cost of performing the Preassessment Phase and Assessment Plan Phase activities required under subparts B and C of 43 CFR part 11; the cost of developing site-specific data inputs to the NRDAM/GLE; and the cost of using the NRDAM/GLE.

If a PRP did not agree to pay within 60 days, trustee officials could file suit. Federal and State trustee officials would receive a rebuttable presumption of correctness for their assessments provided they complied with the proposed standards for use of the NRDAM/GLE as well as the Preassessment Phase, Assessment Plan Phase, and Post- Assessment Phase procedures set forth in the regulations.

Once damages were awarded or a settlement reached, trustee officials would prepare a written Restoration Plan explaining how they intend to use the recovered damages to restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources. The Restoration Plan would be made available for public comment and review.

Under the proposed rule, trustee officials would have the discretion to determine the appropriate site-specific use of damage recoveries to restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources and would not be restricted to implementing the general restoration methods that were used by the NRDAM/GLE for the calculation of damages.

Type A procedures are designed to assess damages resulting from minor discharges or releases. Therefore, it may not always be practical to prepare a separate Restoration Plan for each award or settlement based on use of a type A procedure. Existing 43 CFR 11.93(d) provides that trustee officials may apply several type A awards to a single Restoration Plan, so long as the Plan is intended to address the same or similar injuries as those identified in each application of the type A procedure.

III. Nature of Type A Procedures

A. Use of Average Values

CERCLA mandates that the type A procedures incorporate simplified procedures for conducting assessments with minimal field observation. CERCLA sec. 301(c)(2)(A). Standardized procedures for simplified assessments rely heavily on average rather than site-specific values. Therefore, a type A procedure may generate a damage figure that is less than, equal to, or greater than the damage figure that would have been calculated if type B procedures had been used for the same discharge or release. Nevertheless, Federal and State trustee officials who comply with the Department's regulations obtain a rebuttable presumption, regardless of whether they use type A or type B procedures. See CERCLA section 107(f)(2)(C).

B. Regulatory Status of Type A Procedures

Type A procedures are developed as regulations. Therefore, once a type A procedure is promulgated as a final rule, the procedure can be changed only through a rulemaking by the Department. For example, the Department is proposing to have the NRDAM/GLE incorporated by reference in the natural resource damage assessment regulations. Thus, once the type A procedure for Great Lakes environments is promulgated as a final rule, trustee officials will have to use the version of the NRDAM/GLE incorporated in the final rule, without any alteration of the submodels or databases, in order to obtain a rebuttable presumption for an assessment using the type A procedure for Great Lakes environments.

Moreover, CERCLA provides that any challenges to regulations promulgated under the statute must be made in the U.S. Court of Appeals for the District of Columbia Circuit within 90 days from the date of promulgation and cannot be made in any civil proceeding to obtain damages. CERCLA section 113(a). Therefore, once a type A procedure is promulgated as a final rule, any challenges to the workings, databases, or underlying structure of the procedure would have to be made within 90 days of the date of promulgation rather than in a particular natural resource damage case.

The Department is proposing to incorporate this statutory provision in the regulations by making explicit that when trustee officials use a type A procedure in compliance with the Department's regulations, a PRP challenge is restricted to the trustee officials' decision to use a type A procedure and the accuracy of any incident-specific data used by the trustee officials to implement the type A procedure. This proposed clarification would apply to all type A procedures, not just the proposed NRDAM/GLE. Also, Federal and State trustee officials who have complied with the Department's regulations obtain a rebuttable presumption of correctness for their decision to use the type A procedure and for their incident-specific data.

For example, once the NRDAM/GLE is promulgated as a final rule, a PRP in a natural resource damage case where the NRDAM/GLE is used in accordance with the Department's regulations will not be able to challenge the NRDAM/GLE submodels or databases. A PRP will only be allowed to challenge the trustee officials' decision to use the NRDAM/GLE and the trustee officials' incident-specific data inputs to the NRDAM/GLE. Federal and State trustee officials who comply with the standards governing use of the NRDAM/GLE, as well as the Preassessment Phase, Assessment Plan Phase, and Post-Assessment Phase procedures set forth in the regulations, will obtain a rebuttable presumption of correctness for their decision to use the NRDAM/GLE and for their incident-specific data inputs. PRPs who wish to avoid being bound by the NRDAM/GLE submodels and databases have the option of funding the performance of type B procedures.

IV. NRDAM/GLE

A. Overview

The proposed NRDAM/GLE consists of integrated submodels and databases that calculate natural resource damages based on appropriate estimated restoration costs and economic values lost to the public pending completion of restoration. The proposed NRDAM/GLE is a complex program that represents state-of-the-art computer modelling; however, it is designed for use by relatively untrained individuals. The proposed NRDAM/GLE is available on diskettes and can be used on most IBM®-compatible personal computers.

The proposed NRDAM/GLE was developed under contract to the Department by Applied Science Associates, Inc., Narragansett, Rhode Island, and HBRS, Inc., Madison, Wisconsin. Intensive efforts were made to ensure that the NRDAM/GLE incorporated the best available scientific and economic data and studies. The data and studies that were obtained were then carefully reviewed by a wide range of experts.

A detailed description of the proposed NRDAM/GLE can be found in the four-volume "CERCLA Type A Natural Resource Damage Assessment Model for Great Lakes Environments Technical Documentation," dated August 1994, prepared for the Department by Applied Science Associates, Inc., and HBRS, Inc. (NRDAM/GLE technical document). Volume I of the NRDAM/GLE technical document discusses the content and derivation of the NRDAM/GLE submodels and databases. Volume II is a user's manual. Volume III is a compilation of all the database tables used by the proposed NRDAM/GLE and discussed in Volume I. Volume IV is a listing of the active source code for the proposed NRDAM/GLE. Under the proposed rule, the NRDAM/GLE and the NRDAM/GLE technical document would be incorporated by reference in the regulations.

Computer diskettes containing the proposed NRDAM/GLE and the NRDAM/GLE technical document can be obtained for review and comment from the address given at the beginning of this notice. The Department solicits comment on all aspects of the proposed NRDAM/GLE, the proposed NRDAM/GLE technical document, and the proposed rule language concerning use of the NRDAM/GLE.

The proposed NRDAM/GLE is supplied with a menu-driven graphic display to assist users. Users can execute the proposed NRDAM/GLE with or without the graphic display. The proposed NRDAM/GLE is available on 3.5 inch diskettes. The minimum computer configuration required to use the proposed NRDAM/GLE is:

- IBM®-compatible personal computer using MS–DOS® 3.1 or higher;
- 80286 processor or better with math co-processor;
- 1.4 megabyte 3.5 inch floppy disk drive;
- 640 kilobytes of RAM with 540 kilobytes available; and
- Hard disk with 30 megabytes of available space.

Also, a VGA color monitor and Microsoft®-compatible mouse are needed to use the graphic display.

For further information on installation of the proposed NRDAM/GLE, see the NRDAM/GLE technical document, Volume II, Section 2.

The Department has endeavored to assure that the proposed NRDAM/GLE is without software coding errors. Although extensive testing and validation efforts have been performed to date, the Department is continuing with additional efforts. The Department anticipates that reviewers may discover coding errors in either the user interface or the model's active code. Reviewers may also identify certain aspects of individual output computations that they consider atypical. In all instances, the Department requests to be informed of the technical circumstances that led to the error or perceived atypical output. In order for the Department to replicate the technical circumstances, the specific user inputs must be provided by the reviewer along with a brief statement describing the error or atypical output. Provision of such technical information need not await formal submission of public comment on the overall rulemaking.

To facilitate reviewers' technical submissions, the Department notes that the proposed NRDAM/GLE creates a series of individual internal files for each scenario that is developed. The Department encourages reviewers to electronically submit the pertinent files to the contact listed at the front of this notice. The user inputs to the NRDAM/GLE may be found in the directories:

/NRDAMGLE/DATA/MODELOUT/*.SCN (ASCII file)
/NRDAMGLE/DATA/MODELOUT/*.CLS (ASCII file)
/NRDAMGLE/DATA/WIND/*.WND (ASCII file).

B. User-Supplied Data Inputs

Most of the data used by the proposed NRDAM/GLE to determine and quantify injury and calculate damages are included in the NRDAM/GLE databases. However, the proposed rule would require trustee officials to provide two categories of incident-specific data inputs to the proposed NRDAM/GLE. One category of data inputs would include information that trustee officials would be required to provide in order to use the proposed NRDAM/GLE. The other category would include additional information that trustee officials would be allowed to provide under certain circumstances.

1. Required User-Supplied Data Inputs

The Department is proposing to require trustee officials to supply the following incident-specific data:

- Identity of the discharged oil or released hazardous substance;
- Amount of the discharged oil or released hazardous substance that entered a Great Lakes environment;
- Length of time over which the discharged oil or released hazardous substance entered a Great Lakes environment;
- Date and time that the discharged oil or released hazardous substance began to enter a Great Lakes environment;
- Latitude and longitude where the discharged oil or released hazardous substance entered a Great Lakes environment;
- Wind velocity and direction during the 30-day period starting 24 hours before the discharged oil or released hazardous substance entered a Great Lakes environment;
- Percentage of the discharged oil or released hazardous substance that was removed during response actions and the timing of the removal;
- Closures of boating areas, Federal public beaches, State public beaches, fisheries, mammal hunting or trapping areas, and waterfowl hunting areas due to the discharge or release; and
- Gross National Product Implicit Price Deflator for the quarter in which the discharge or release occurred.

The Department is also proposing to require trustee officials to determine whether the proposed NRDAM/GLE should consider the effects of ice cover. If trustee officials determine that ice cover effects should be considered, the proposed NRDAM/GLE supplies data on average ice cover for the relevant time period. The Department solicits comment on whether the NRDAM/GLE should always consider the effects of ice cover.

Trustee officials may have direct knowledge of some of the required incident-specific data inputs. Additional information may be available from the On-Scene Coordinator (OSC), who is responsible for managing

response actions following a discharge of oil or release of a hazardous substance. The U.S. Coast Guard will normally be the OSC for discharges and releases in Great Lakes environments.

Hazardous substances are identified by Chemical Abstract Service (CAS) Registry Number. The CAS number and the chemical, physical, and toxicological properties associated with each of the oils and hazardous substances contained in the NRDAM/GLE database are listed the NRDAM/GLE technical document, Volume III, Table III.2.1. Oils are categorized as specified in the NRDAM/GLE technical document, Volume III, Table III.2.4. If a mixture has been discharged or released, trustee officials must select one oil or one hazardous substance in the mixture and use the NRDAM/GLE based on the quantity of the selected oil or hazardous substance contained in the mixture.

Information on wind conditions may be available from local sources or from the National Climatic Data Center, Asheville, NC, (704) 271–4800.

The Gross National Product Implicit Price Deflator is available from the U.S. Department of Commerce/Bureau of Economic Analysis in the Survey of Current Business, Washington, D.C., (202) 606–9900. The Department solicits comment on whether the rule should require trustee officials to supply the Gross Domestic Product Implicit Price Deflator instead of the Gross National Product Implicit Price Deflator. The Gross Domestic Product Implicit Price Deflator is also available from the U.S. Department of Commerce/Bureau of Economic Analysis.

Under the proposed rule, trustee officials would document in the Assessment Plan the required incident-specific information they intend to use as data inputs to the NRDAM/GLE and the form in which they intend to enter the information into the NRDAM/GLE.

For further information on the proposed required incident-specific data inputs, see the NRDAM/GLE technical document, Volume II, Sections 4.1 and 5.1.

2. Additional User-Supplied Data Inputs

In addition to the proposed required incident-specific data inputs, the Department is proposing to allow trustee officials to supply additional incident-specific data inputs under certain circumstances. Under the proposed rule, trustee officials could supply the following data inputs if they estimate that conditions at the point where the discharged oil or released hazardous substance entered a Great Lakes environment differed significantly from the typical values for that season, as built into the proposed NRDAM/GLE, and if the data can be collected consistent with the requirements of reasonable cost and cost effectiveness:

- Water temperature when the discharged oil or released hazardous substance entered a Great Lakes environment;
- Total suspended sediment concentration when the discharged oil or released hazardous substance entered a Great Lakes environment;
- Mean settling velocity of suspended solids when the discharged oil or released hazardous substance entered a Great Lakes environment; and
- Air temperature when the discharged oil or released hazardous substance entered a Great Lakes environment.

Under the proposed rule, if trustee officials decided to develop incident-specific values for these parameters, they would be required to document their decision in the Assessment Plan. If trustee officials do not supply incident-specific values, the proposed NRDAM/GLE supplies default values.

For further information on the proposed additional incident-specific data inputs, see the NRDAM/GLE technical document, Volume II, Sections 4.1 and 5.1.

C. Geographic Information System

The proposed NRDAM/GLE is supported by a geographic information system (GIS) that supplies geographically distributed information to the submodels. The submodels divide space into series of rectangular grids. Each grid contains 2,500 cells. The size of the overall grid and, therefore, the interior cells, varies based on the physical geometry and the availability of natural resource information within each area. For example, smaller grids are used for nearshore areas than are used for offshore areas. Once a submodel selects a grid, the GIS draws the necessary environmental and biotic data from the appropriate databases. Conditions are assumed uniform throughout a particular grid cell.

For further information about the proposed GIS and grid system, see the NRDAM/GLE technical document, Volume I, Section 3.14.

D. Submodels

The proposed NRDAM/GLE includes five submodels: the Hydrodynamics Submodel, the Physical Fates Submodel, the Biological Effects Submodel, the Restoration Submodel, and the Compensable Value Submodel. Under the proposed rule, these submodels would use data from the NRDAM/GLE databases and the incident-specific data inputs supplied by trustee officials to perform Injury Determination, Quantification, and Damage Determination.

1. Hydrodynamic Submodel

The proposed Hydrodynamic Submodel simulates wind-driven currents in Great Lakes environments. The proposed Submodel creates a time series of currents using the incident-specific data on wind conditions supplied by trustee officials and data from the Climatological Database. The time series is used by the Physical Fates Submodel.

For further information on the proposed Hydrodynamic Submodel, see the NRDAM/GLE technical document, Volume I, Section 2.

2. Physical Fates Submodel

The proposed Physical Fates Submodel estimates the distribution of the discharged oil or released hazardous substance on the water surface, along shorelines, in the water column, and in sediments over time. The proposed Submodel uses an array of particles to represent the discharged oil or released hazardous substance. A variable fraction of the contaminant mass is associated with each particle. The distribution of the particles is tracked in both time and space as they move across a gridded environment.

Under the proposed rule, the Physical Fates Submodel simulates: Spreading of surface slicks; evaporation from surface slicks; beaching; entrainment and dissolution in the water column; volatilization from the surface and water column; degradation; removal as a result of response activities; adsorption onto and desorption from particulate matter in the water column; deposition from the water column to bottom sediments; dissolution from sediments to the water column; and removal from the shoreline to the water column or surface. When simulating these processes, the proposed Submodel draws specific data about the physical and chemical properties of the discharged oil or released hazardous substance from the Chemical and Toxicological Database.

The proposed Submodel continues the simulations until all environmental exposure levels are below acute toxicity thresholds. The proposed Chemical and Toxicological Database includes acute toxicity thresholds for each oil and hazardous substance covered by the proposed NRDAM/GLE. The proposed Submodel creates a file of surface slick coverage, shoreline coverage, and substance concentration levels in the water column and in bottom sediments.

This file is used by the proposed Biological Effects Submodel.

For further information on the proposed Physical Fates Submodel, see the NRDAM/GLE technical document, Volume I, Section 3. For further information on the proposed Chemical and Toxicological Database, see the NRDAM/GLE technical document, Volume I, Section 7; and Volume III, Section 2.

3. Biological Effects Submodel

The proposed Biological Effects Submodel determines whether certain types of natural resource injuries have resulted from the discharge or release and, if so, quantifies those injuries. The proposed Biological Effects Submodel determines and quantifies the following types of injury: (1) Direct mortality resulting from short-term exposure to the discharged oil or released hazardous substance; (2) direct loss of production resulting from short-term exposure to the discharged oil or released hazardous substance; (3) indirect mortality resulting from food web losses; and (4) indirect loss of production resulting from food web losses.

The proposed Biological Effects Submodel determines direct mortality of fish and wildlife and direct loss of production for plants and invertebrates by calculating exposure of different species to the discharged oil or released hazardous substance. When performing these calculations, the proposed Biological Effects Submodel uses the data generated by the Physical Fates Submodel concerning the distribution and concentration of the discharged oil or released hazardous substance.

The proposed Biological Effects Submodel determines direct mortality of fish through use of an array of particles to represent fish populations potentially exposed to the discharge or release. Each particle represents a variable number of fish present at the time of the discharge or release. Each contiguous grouping of grid cells of the same habitat type represents a separate ecosystem. The particles move at random within an ecosystem during a single season. Each time a particle enters an area with dissolved water or sediment concentrations above an acute toxicity threshold, the proposed Submodel calculates the percentage mortality of the fish represented by the particle. These calculations continue until concentrations of the discharged oil or released hazardous substance have fallen below acute toxicity thresholds.

The proposed Biological Effects Submodel uses similar calculation procedures to determine direct mortality of birds and mammals. However, under the proposed rule, the Submodel only determines direct mortality of birds and mammals when the discharged oil or released hazardous substance forms a surface slick.

The proposed Biological Effects Submodel determines direct mortality of fish eggs and larvae through use of particle arrays that move with the currents. For plants and invertebrates, the proposed Submodel determines direct loss of production based on the assumption that such biota are uniformly distributed throughout a particular ecosystem rather than through use of particle arrays.

Once direct mortality and direct loss of production have been determined, the proposed Biological Effects Submodel determines indirect mortality and indirect loss of production for fish and wildlife resulting from reductions in food resources. The proposed Submodel uses a food web model to determine the effect that direct mortality and direct loss of production of plants, invertebrates, and noncommercial fish and mammals have on higher trophic-level fish and wildlife.

After determining injuries from both direct exposure and food web losses, the proposed Biological Effects Submodel quantifies those injuries both in terms of lost populations over time and, in the case of fish and wildlife, fishing and hunting losses. The proposed Submodel also computes fishing and hunting losses resulting from closures of fisheries, waterfowl hunting areas, and mammal hunting or trapping areas, as specified by trustee officials. This information is used by the Compensable Value Submodel.

Data on habitat type and species biomass are supplied to the proposed Biological Effects Submodel by the Biological Database. Commenters with additional data on Great Lakes habitats and species biomass are encouraged to provide the data to the Department.

For further information on the proposed Biological Effects Submodel, see the NRDAM/GLE technical document, Volume I, Section 4. For further information on the proposed Biological Database, see the NRDAM/GLE technical document, Volume I, Section 8; and Volume III, Section 3.

4. Restoration Submodel

The proposed Restoration Submodel estimates the cost of restoring the injured resources. Under the proposed rule, the Submodel determines if various restoration actions are warranted and, if so, calculates the cost of those actions.

The first type of restoration action evaluated by the proposed Restoration Submodel is habitat restoration. For each affected habitat, the proposed Submodel evaluates whether a particular restoration action is warranted. When shallow water sediments or sediments in connecting channels are affected, the proposed Submodel evaluates dredging of sediments and refilling with clean material. When deep water sediments are affected, the proposed Submodel evaluates capping of the sediment. When wetlands are affected, the proposed Submodel evaluates removal of the contaminated substrate, replacement with clean material, and replanting. When shorelines are affected, the proposed Submodel evaluates washing of sand and gravel, replacement of mud, and cleaning of rocks and artificial structures.

For each relevant habitat restoration action, the proposed Restoration Submodel compares the total injury that would result if the action were performed with the total injury that would result if the action were not performed and natural recovery were relied upon instead. Injury is quantified in terms of lost public use of injured resources (i.e. compensable value) within the relevant habitat. Data on compensable values are supplied to the Restoration Submodel by the Compensable Value Submodel.

Under the proposed rule, if the relevant habitat restoration action would result in a lower measure of total injury than reliance upon natural recovery, then the Restoration Submodel assumes that the habitat restoration action will be performed. The proposed Restoration Submodel then computes the cost of the habitat restoration action. Cost data are supplied by the Restoration Cost Database.

If the relevant habitat restoration action would not result in a lower measure of total injury than reliance upon natural recovery, then the proposed Restoration Submodel does not compute any habitat restoration costs. Instead, the proposed Submodel computes the cost of restoring the assimilative capacity of Great Lakes environments to baseline.

Assimilative capacity is the ability of a natural resource, such as water, to absorb pollutants. When using type B procedures, trustee officials are allowed to consider lost assimilative capacity when determining the necessary level of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. See 51 FR 27687, 27716 (August 1, 1986); 59 FR 14273 (March

25, 1994). The proposed Restoration Submodel calculates damages associated with restoring baseline assimilative capacity of Great Lakes environments in cases where habitat restoration action is not warranted.

When habitat restoration actions are not warranted, the proposed NRDAM/GLE computes the time it will take until environmental exposure levels are below acute toxicity thresholds. However, some non-acutely toxic chemical mass will remain dispersed in the Great Lakes environments. The continued presence of this chemical mass reduces the overall assimilative capacity of Great Lakes environments. It is not technically feasible to directly remove the remaining dispersed chemical mass. Therefore, the proposed Restoration Submodel assumes that a contaminant mass with toxicity equivalent to the remaining dispersed mass of the discharged oil or released hazardous substance will be removed elsewhere from the Great Lakes environments. Specifically, the proposed Submodel assumes that an equivalent mass of contaminated sediment will be removed from one of 42 harbors, river mouths, or connecting channels in the Great Lakes that have been designated as areas of concern by the International Joint Commission. The proposed Restoration Submodel then computes the cost of removing the contaminated sediment. Cost data are provided by the Restoration Cost Database.

The Department solicits comment on whether alternative methods of restoring lost assimilative capacity, such as controlling discharges from publicly owned treatment works or other point sources, would be more cost effective than the removal of contaminated sediment from the areas of concern. The Department further solicits comment on whether there are sufficient technical data concerning such methods to allow for their incorporation into the NRDAM/GLE.

The proposed Restoration Submodel also computes the cost of restocking fish and wildlife. The proposed Submodel assumes that once the habitat has recovered, either through natural recovery or through implementation of a habitat restoration action, injured fish and wildlife species will be restocked if stocks are available. Data on the availability and cost of stocks are provided by the Restoration Cost Database.

Under the proposed rule, the Restoration Submodel sums the costs of habitat restoration, assimilative capacity restoration, and restocking, as relevant, to calculate the total restoration cost. This figure is added to the compensable value figure computed by the Compensable Value Submodel to form the total damage claim.

For further information on the proposed Restoration Submodel, see the NRDAM/GLE technical document, Volume I, Section 5. For further information on the proposed Restoration Cost Database, see the NRDAM/GLE technical document, Volume I, Section 9; and Volume III, Section 5.

5. Compensable Value Submodel

The proposed Compensable Value Submodel calculates compensable value. Compensable value, as computed by the proposed Submodel, is the sum of certain economic values lost to the public pending completion of either natural recovery or appropriate restoration actions, as determined by the Restoration Submodel. Only public losses are included in compensable value.

The proposed Compensable Value Submodel computes two types of compensable values: (1) Lost consumptive use values; and (2) lost nonconsumptive use values. Consumptive use values are derived from harvesting activities, such as fishing or hunting, that remove a natural resource from the environment. Nonconsumptive use values are derived from activities, such as birdwatching or beach visitation, that do not remove any resources from the environment.

Under the proposed rule, the Compensable Value Submodel does not estimate lost nonuse values. Nonuse values are those values that are not dependent on use of the resource, such as the value of knowing that a resource exists. Virtually no empirical studies have been found that address nonuse values for resources in Great Lakes environments or that are in a form that can be used in the NRDAM/GLE, i.e. that allow the calculation of marginal values appropriate for relatively small losses in the stock of natural resources.

Under the proposed rule, lost consumptive use values are calculated for lost harvests of: (1) Certain commercially exploited fish species; (2) certain commercially exploited furbearer species; (3) certain recreationally harvested fish species; and (4) certain recreationally harvested waterfowl species.

The compensable value for lost harvests of commercially exploited fish and furbearers is the reduction in the in-situ value of the species as a result of the lost harvests. Under the proposed rule, the Compensable Value Submodel assumes that: (1) The marginal productivity of harvest effort recovers completely; (2) the level of harvest effort remains unchanged; and (3) markets for the harvested resources are sufficiently competitive and losses are sufficiently small such that resource prices are not affected. The proposed Compensable Value Submodel computes the reduction in the in-situ value of commercially exploited fish and furbearers by multiplying the total lost harvest of such species, as computed by the Biological Effects Submodel, by the commercial price per unit of harvest, as supplied by the Compensable Value Database.

The compensable value for lost harvests of recreationally harvested fish and waterfowl is the reduction in the associated value of recreational fishing and hunting trips. Under the proposed rule, the Compensable Value Submodel assumes that: (1) The marginal yield of recreational effort recovers completely; and (2) the level and geographic distribution of recreational effort remain unchanged. The proposed Compensable Value Submodel computes the reduction in value of recreational fishing and hunting trips by multiplying the total lost recreational harvest of fish and waterfowl species, as computed by the Biological Effects Submodel, by the marginal value of harvesting an additional fish or bird, as supplied by the Compensable Value Database.

Under the proposed rule, lost nonconsumptive use values are calculated for lost beach visitation, boating, and wildlife viewing. The proposed Compensable Value Submodel computes compensable value for lost beach visitation and boating only if trustee officials specify that there has been a closure of a beach or a boating area. If a closure is specified, the proposed Compensable Value Submodel calculates compensable value by multiplying the geographical area closed per day and the number of days closed, as supplied by trustee officials, by the per day value of trips to the closed area. Data on the per unit value of lost nonconsumptive uses are supplied by the Compensable Value Database.

The proposed Compensable Value Submodel calculates compensable value for lost wildlife viewing only for trips originating within the immediate area. The proposed Compensable Value Submodel first estimates the number of recreational trips affected by the discharge or release, and then estimates a per animal nonconsumptive use value. In cases where there have been significant wildlife viewing losses for trips originating outside the immediate area, trustee officials could use type B procedures to estimate such losses and use the NRDAM/GLE to calculate other

damages. Due to a lack of empirical data, the proposed Compensable Value Submodel does not estimate compensable value for lost recreational opportunities occurring in other locations due to lost migration of the affected wildlife population.

The estimated per animal nonconsumptive use value varies with the size of the affected wildlife population and the estimated number of affected recreational trips. These estimated values are derived by disaggregating average nonconsumptive use values by species and species population. The proposed Compensable Value Submodel estimates a relatively low per animal nonconsumptive use value for species that are abundant and areas that have few affected recreational trips. Alternatively, the proposed Compensable Value Submodel estimates a higher per animal nonconsumptive use value for species that are less abundant and areas that have more affected recreational trips. A detailed explanation of this methodology is provided in the NRDAM/GLE technical document, Volume I, Section 6.4.1. The specific per animal nonconsumptive use values incorporated in the proposed NRDAM/GLE are listed in the NRDAM/GLE technical document, Volume III, Tables III.4.2 through III.4.6.

The Department solicits comments on the reliability of the proposed methodology for computing compensable value for lost wildlife viewing. The Department also solicits comment on ways of improving the reliability of the proposed methodology. Specifically, comments are solicited relating to the applicability of this methodology to different types of wildlife (e.g., mammals, birds, and reptiles) and different locations. Comments are solicited regarding the use of disaggregated average nonconsumptive use values to represent the marginal contribution by one wildlife individual to total nonconsumptive value. The Department also requests comment on whether extremely small and large values for a particular species should be excluded from the NRDAM/GLE and the criterion for doing so. Further, commenters with additional valuation data or alternative valuation methodologies concerning wildlife viewing in Great Lakes environments are encouraged to provide the data and methodologies to the Department.

One alternative under consideration is the deletion of all nonconsumptive wildlife values from the NRDAM/GLE. Many species, such as bald eagles, have no consumptive use. Therefore, if nonconsumptive wildlife values were deleted from the NRDAM/GLE, then the compensable value figure calculated by the model would not reflect any lost economic values associated with such species. In order to obtain compensation for such lost values, trustee officials would have to conduct site-specific type B procedures. The Department solicits comment on whether reliance on type B procedures to capture lost nonconsumptive wildlife values would be feasible for minor discharges and releases in Great Lakes environments. Based on the comments received, the Department will decide whether to retain the proposed compensable values for lost wildlife viewing, modify those values, or delete them from the final version of the NRDAM/GLE.

The proposed Compensable Value Submodel uses the Gross National Product Implicit Price Deflator, as supplied by trustee officials, to adjust per unit values to current dollars. As noted above, the Department solicits comment on whether the Compensable Value Submodel should use the Gross Domestic Product Implicit Price Deflator, rather than the Gross National Product Implicit Price Deflator.

The proposed Compensable Value Submodel discounts the value of future consumptive and nonconsumptive losses using a seven percent discount rate, which is the discount rate for public investment specified in the current version of Office of Management and Budget Circular A–94 (OMB Circular A–94), dated October 29, 1992, which is available from the OMB Publications Office (202–395–7332). The Department is soliciting comment on whether use of a fixed seven percent discount rate (the value specified in Circular A–94) is appropriate or whether trustee officials should be allowed to specify a different discount rate. A possible alternative discount rate for future public losses of natural resources is the consumer rate of time preference, which is the rate of interest at which an individual would be indifferent between consuming goods now and postponing consumption to a later date. Interest rates on investments with little or no default risk, such as U.S. Treasury bonds, provide an estimate of the consumer rate of time preference. The Department solicits comment on whether trustee officials should be allowed to supply a discount rate based on the U.S. Treasury borrowing rate on marketable securities with maturities comparable to the period over which future consumptive and nonconsumptive losses will occur. Information on U.S. Treasury borrowing rates on marketable securities is provided in Appendix C of OMB Circular A–94.

If the U.S. Treasury borrowing rate on marketable securities is used as the discount rate, the Department solicits comment on whether trustee officials should be allowed to determine the appropriate maturity or whether the rule should establish a single maturity that must be used for all cases. For example, because the proposed NRDAM/GLE is designed for minor discharges and releases, it might be reasonable to assume that consumptive and nonconsumptive losses will not extend more than three years into the future. Therefore, trustee officials could be required to use as a discount rate the U.S. Treasury borrowing rate on marketable securities with three-year maturities.

After the Gross National Product Implicit Price Deflator and the discount rate have been applied, the proposed Compensable Value Submodel sums all lost consumptive values and all lost nonconsumptive values to calculate the total compensable value. This figure is added to the restoration costs computed by the Restoration Submodel for a damage figure.

For further information on the proposed Compensable Value Submodel, see the NRDAM/GLE technical document, Volume I, Section 6. For further information on the proposed Compensable Value Database, see the NRDAM/GLE technical document, Volume I, Section 6; and Volume III, Section 4.

V. Conditions Regarding Use of the NRDAM/GLE

The proposed rule provides several conditions regarding use of the NRDAM/GLE. Under the proposed rule, if the discharged oil or released hazardous substance entered a Great Lakes environment, trustee officials would be required to determine if the conditions regarding use of the NRDAM/GLE were met. The conditions regarding use of the NRDAM/GLE fall into two categories primary conditions and secondary conditions.

If all of the conditions, both primary and secondary, were met, trustee officials would be required to use the NRDAM/GLE to calculate all damages in order to get the rebuttable presumption. If trustee officials determined that one or more primary conditions were not met, they would be required to use type B procedures to calculate all damages in order to obtain the rebuttable presumption. If trustee officials determined that all primary conditions were met but one or more secondary conditions were not met, they could use the NRDAM/GLE, type B procedures, or a combination, and obtain a rebuttable

presumption. Trustee officials would decide which assessment procedures to use based on considerations of "cost effectiveness" and "reasonable cost," as those terms are defined in 43 CFR § 11.14. The proposed conditions are discussed below.

A. Primary Conditions

1. Oil Discharged or Hazardous Substance Released

In order to use the proposed NRDAM/GLE, trustee officials must select one of the oils or hazardous substances included in the Chemical Database. The Chemical Database includes 469 oils and hazardous substances. Oils are categorized in the NRDAM/GLE technical document, Volume III, Table III.2.4. The proposed rule allows trustee officials to use the NRDAM/GLE so long as the discharged oil fits into one of the listed categories. However, for hazardous substances, the proposed rule currently provides that unless the released substance is specifically listed in the NRDAM/GLE technical document, Volume III, Table III.2.1, trustee officials may not use the NRDAM/GLE. The Department solicits comment on whether use of a proxy hazardous substance should be allowed, as is proposed for oil. The Department further solicits comment on how appropriate proxies for hazardous substances might be selected.

2. Magnitude of Discharge or Release

The proposed NRDAM/GLE is designed to calculate damages resulting from minor discharges or releases. The proposed NRDAM/GLE uses discrete particles to represent and track the distribution of a discharged oil or a released hazardous substance on the water surface and in the water column. There are a limited number of particles available for computations. Long-term or large discharges or releases that result in widespread distributions of discharged oil or released hazardous substances are beyond the capacity of the proposed NRDAM/GLE.

Also, the proposed NRDAM/GLE assumes that injuries to biological resources are small enough that the ecosystem structure is not significantly changed. For example, the proposed NRDAM/GLE does not address changes in predator-prey relationships or reproductive rates. Moreover, the proposed NRDAM/GLE assumes that injuries to resources that are used by humans are small enough that the marginal values of those resources are not significantly affected. For example, the proposed NRDAM/GLE assumes that the price of commercial harvest does not change as a result of the discharge or release.

Therefore, if there has been a major discharge or release, type B procedures should be used. The effect of a discharge or release will depend on not only the quantity of oil or hazardous substance discharged or released but also the characteristics of the discharged oil or released hazardous substance and the nature of the area in which the discharge or release occurred. For example, the discharge of a very large quantity of oil, under certain circumstances, could constitute a "minor" discharge for purposes of using the NRDAM/GLE. On the other hand, the release of a very small quantity of a highly toxic substance, under certain circumstances, could warrant the use of type B procedures instead of the NRDAM/GLE. Therefore, the Department has not proposed any "bright line" standard for what constitutes a minor discharge or release. Under the proposed rule, trustee officials would decide on a case-by-case basis whether a discharge or release was minor.

3. Proximity of Discharge or Release to Water Surface

The proposed NRDAM/GLE does not model the fate of underwater discharges or releases. Therefore, if the discharged oil or released hazardous substance does not enter a Great Lakes environment at or near the water surface, type B procedures should be used.

4. Distribution of Biological Resources

Any model is, by its nature, a simplification of real-world phenomena. The proposed NRDAM/GLE is built upon thousands of grid cells, each representing a discrete geographic area. Collectively these cells constitute the Great Lakes environments. To enable modelling of complex environmental variables and relationships, each of these cells is assigned an "average" for features such as habitat type and associated values such as biological abundance. These data are intended to be representative of the area covered by the cell. Individual grid cells are the most detailed level to which resource data are assigned.

Several features of the proposed NRDAM/GLE are included to more accurately represent the natural environment. For example, different cell sizes have been used to account for varying conditions and levels of available natural resource information. Cell sizes in nearshore areas are generally much smaller than those in offshore areas. This enables the model to provide more detailed and accurate data for nearshore areas that exhibit greater complexity, variation, and abundance of biological resources. Similarly, data are included to vary biological abundance by season.

Provision of spatial and temporal variation is limited, however, in that resources are uniformly distributed within cells and among contiguous cells with the same habitat designations, and biological abundance is assumed to be uniform and constant within a season. This may not always constitute an adequate representation of the affected environment. Some small but important environments, such as biologically productive wetlands, might be beyond the level of spatial detail provided in the proposed NRDAM/GLE. Similarly, if a discharge or release is expected to affect a population with a short-term increase in density that is significantly different than the seasonal average, type B procedures should be used.

The Department wants to ensure that the NRDAM/GLE reflects the most accurate information available and encourages resource management agencies to review the values associated with cells for which they have expert knowledge. If, within the existing framework of the NRDAM/GLE, data are available that more accurately represent environmental features such as highly productive biological areas, the Department solicits such data. Reviewers of the proposed NRDAM/GLE can identify grid cells and habitat designations through the graphic user interface. Reviewers may use the F5 function key on their computer keyboard to identify the latitude and longitude for specific grid cells displayed by the graphic user interface. Biological abundance figures contained in the proposed Biological Database are provided in the text output of a model application.

5. Nature of Currents

The proposed NRDAM/GLE uses two-dimensional, vertically averaged values for currents in rivers and lakes. Three-dimensional effects, such as reverse flows at depth, vertical shear profiles, upwelling, and downwelling, are not considered. Therefore, if subsurface currents are expected to significantly affect the fate of the discharged oil or released hazardous substance and the subsurface currents are not reasonably uniform with depth, type B procedures should be used.

B. Secondary Conditions

1. Presence of Other Discharges or Releases

The proposed NRDAM/GLE treats each discharge or release as a discrete incident. Therefore, if trustee officials are dealing with the cumulative effects of multiple discharges or releases, use of type B procedures instead of or in addition to use of the NRDAM/GLE may be warranted.

2. Effect of Response Actions

Under the proposed rule, trustee officials would be required to supply information on the percentage of the discharged oil or released hazardous substance that was removed during response actions. The proposed NRDAM/GLE takes this information into consideration when determining injury. However, the proposed NRDAM/GLE does not consider any potential injury to natural resources caused by response actions, such as use of chemical dispersants. The existing regulations provide that natural resource damages include compensation for injuries caused by reasonably unavoidable response actions. 43 CFR 11.15(a)(1). Therefore, if response actions resulted in significant injury to natural resources, use of type B procedures instead of or in addition to use of the NRDAM/GLE may be warranted.

3. Types of Natural Resources Injured

The proposed NRDAM/GLE performs Injury Determination only for biological resources. Therefore, if there have been significant injuries to surface water, groundwater, air, or geologic resources, use of type B procedures instead of or in addition to use of the NRDAM/GLE may be warranted.

4. Pathway of Contamination

The proposed NRDAM/GLE calculates exposure of biological resources to the discharged oil or released hazardous substance only through surface water pathways. Therefore, if there has been significant exposure of biological resources through air, groundwater, biological, or geologic pathways, use of type B procedures instead of or in addition to use of the NRDAM/GLE may be warranted.

5. Type of Biological Injuries

The proposed NRDAM/GLE determines and quantifies the following injuries to biological resources: (1) Direct mortality resulting from short-term exposure to the discharged oil or released hazardous substance; (2) Direct loss of production resulting from short-term exposure to the discharged oil or released hazardous substance; (3) Indirect mortality resulting from food web losses; and (4) Indirect loss of production resulting from food web losses. Therefore, if there have been other significant injuries to biological resources, use of type B procedures instead of or in addition to use of the NRDAM/GLE may be warranted.

6. Nature of Compensable Values

The proposed NRDAM/GLE calculates compensable values for: (1) Lost harvests of commercially exploited fish species; (2) Lost harvests of commercially exploited furbearer species; (3) Lost harvests of recreationally harvested fish species; (4) Lost harvests of recreationally harvested waterfowl species; (5) Lost wildlife viewing for trips originating within the immediate area; (6) Lost beach visitation due to closure; and (7) Lost boating due to closure. Therefore, if the public has lost other significant economic values as a result of the discharge or release, use of type B procedures instead of or in addition to use of the NRDAM/GLE may be warranted.

VI. Response to Comments

The Department received several comments in response to its previous advance notices of proposed rulemaking. All of the comments received were supportive of the efforts to develop a damage assessment model for Great Lakes environments. The Department appreciates the time and effort expended by the commenters.

Comment: Many of the commenters offered suggestions for model development and provided or cited reference material for use in the construction of the model and/or its databases.

Response: The materials provided and cited by the commenters were reviewed and, where appropriate, combined with the materials located by the Department's contractors through extensive literature searches. In some instances the materials provided formed the basis for model assumptions and algorithms.

Comment: Several commenters requested that the NRDAM/GLE calculate the full costs of restoring injured natural resources.

Response: In response to comments received and consistent with *Ohio* v. *Interior* and *Colorado* v. *Interior*, the proposed NRDAM/GLE has been developed to include consideration of restoration costs in the calculation of the damage amount.See Section IV.D.4 of this preamble, and the NRDAM/GLE technical document, Volume I, Section 5.

Comment: Several commenters requested that the NRDAM/GLE address specific types of discharges or releases or specific natural resource effects or values. For example, commenters requested consideration of multiple long-term discharges and releases, low-level chronic effects, cultural or spiritual values, values of resources for subsistence and medicinal uses, water use values for drinking, cooling, and industrial purposes, and nonuse values.

Response: Section 301(c) of CERCLA specifically requires the development of type A procedures for the performance of simplified assessments using minimal field observations.This statutory requirement necessitates an approach limited in scope. Due to modelling constraints, the proposed NRDAM/GLE is limited in application to use in cases resulting from single, short-term discharges or releases,and calculates damages resulting only from mortality biological resources due to short-term exposure and food web losses and certain use-related losses. While the proposed NRDAM/GLE uses state-of-the-art procedures for a model designed for use on readily available personal computers, it is intended for use in determining the consequences of minor discharges and releases.

Consideration of additional types of discharges and releases, injuries, and compensable values is beyond the intended use of the proposed NRDAM/GLE. The decisions on resources and values to be included in the proposed NRDAM/GLE were made based on the availability of data in a form that could be used in the model and produce reliable results. During future biennial reviews, as more data become available, the Department may consider the inclusion of additional resources and values. Meanwhile, as noted in the preamble discussion and regulatory language for the conditions regarding use of the NRDAM/GLE, discharges or releases that affect resources or values that are not adequately reflected in the proposed NRDAM/GLE should be addressed through the application of type B procedures.

Comment: One commenter suggested that the model should have a clear lower limit below which no damages are calculated and that the model should recognize the potential for natural recovery and the possibility of zero damages.

Response: The Department notes that many minor discharges and releases will, and in fact do, result in zero "damages" (i.e. monetary recoveries) in that they are undetected,unreported, or not effectively measurable, or it simply is not cost effective to pursue for

damages even with simplified procedures such as the NRDAM/GLE. However, the Department also notes that CERCLA does not identify a lower limit below which no damages occur nor suggest that such a limit exists.

A natural resource damage assessment must generate a damage claim figure that is based upon the estimated injury to natural resources. The NRDAM/GLE damage figures are scaled to the level of injury that the model estimates to have occurred. Damages are commensurate with the size of the discharge or release as affected by other variables such as the characteristics of the oil or hazardous substance discharged or released, the duration of the discharge or release event, the prevailing weather conditions, and the nature of the affected environment. This can range from zero or near-zero damages for the smallest discharges and releases to millions of dollars for larger discharges or releases of highly toxic substances in more sensitive environments. As mandated by CERCLA, this reflects a compensatory rather than punitive framework.

The proposed NRDAM/GLE does recognize the potential for natural recovery in the determination of appropriate restoration activities. As discussed in Section IV.D.4 of this preamble and in the NRDAM/GLE technical document,Volume I, Section 5, the anticipated rate of natural recovery has a direct bearing on the determination of a damage figure. However, natural recovery does not nullify the injury sustained by the environment nor absolve a responsible party of liability.

Comment: One commenter noted that the type A procedures should require confirmation of injury. The commenter stated this was required under the type B procedures.

Response: Unlike type B procedures, type A procedures are required by CERCLA to involve minimal field observation, in order to facilitate the damage assessment process and expedite the restoration of injured natural resources where feasible. Confirmation of specific injuries may require costly field studies, could delay restoration activities,and might not prove conclusive. When applicable, executing this type A procedure results in a reasonable estimation of damages based on the projected injury to natural resources.Confirmation of injury would not be cost effective for the minor discharges and releases that type A procedures are designed to address. Imposing such requirements on natural resource trustees defeats the purpose of developing and using type A procedures.

Comment: One commenter called for the use of validation techniques, such as sensitivity studies, to ensure that the model is consistent with real-world observations.

Response: The Department agrees that validation is an important factor in establishing the extent to which the NRDAM/GLE reflects "real-world" events. To this end, sensitivity studies were conducted using a wide variety of spill scenarios. The studies systematically analyzed the proposed NRDAM/GLE's sensitivity to variations in spill size and season of spill for sinking substances and floating substances for both rivers and lakes. The results indicate that the proposed NRDAM/GLE behaves in a predictable manner with trends and variations realistically reflecting what would be anticipated in real-world situations.

Unfortunately, the Department is not aware of any specific case studies in Great Lakes environments that provide sufficient detail to validate the results of a discrete NRDAM/GLE application including the results of the Physical Fates, Biological Effects, Restoration, and Compensable Value Submodels. However, the proposed NRDAM/GLE has been developed based on published literature and best available information widely used in other instances for purposes of resource management and regulatory and conservation programs. The application of this technical literature for modelling has been frequently carried out and is also published in the technical literature. The general modelling approach is considered to be technically sound. Further, the Department solicits information, such as case studies, that would be useful in the validation of the NRDAM/GLE.

Comment: One commenter noted difficulties with the documentation for the NRDAM/CME, which was issued in 1987, and called for the NRDAM/GLE to be as "user friendly" as possible.

Response: The Department agrees with the comment and has made ease of use a primary objective in the development of the NRDAM/GLE. The proposed NRDAM/GLE is intended for use by individuals without a strong technical background in computer applications or simulation modelling. Although the proposed NRDAM/GLE can be used in text mode, a menu-driven graphic user interface has been provided to facilitate both the process for entering data and the analysis of results. Use of the NRDAM/GLE should prove more intuitive as technical details on the inner workings of the model and its databases become transparent at the user level. In addition to being simpler to use, better documentation has also been developed. Volume II of the NRDAM/GLE technical document includes a separate, short user's manual describing simple procedures for installing and using the model as well as a troubleshooting section for common questions. Thorough technical documentation is still available to examine the detailed components of the proposed NRDAM/GLE and its assumptions. The Department welcomes comments on specific problems or areas where the user interface and/or documentation is deemed deficient.

Comment: One commenter questioned the selection of toxicity data used in the NRDAM/CME and called for consistency between the NRDAM/GLE and the water quality criteria established by the Environmental Protection Agency (EPA) under the CWA.

Response: The Department's statutory mandate for the development of the NRDAM/GLE is fundamentally different than EPA's responsibility for development of water quality criteria. With an overriding goal of protection of human health and the environment, EPA's criteria are based on toxic concentrations which produce "unacceptable effects." The proposed NRDAM/GLE, on the other hand, is intended to calculate damages commensurate with anticipated effects on biota of concentrations of lethal materials on natural resources as measured against baseline conditions, regardless of whether these conditions are above or below thresholds developed as part of EPA's water quality criteria (e.g., "unacceptable effects" on the environment). The mechanism developed for use in the proposed NRDAM/GLE allows for scaling across a full range of impacts up to total kills in an area. This is necessary in order to assign a dollar figure to whatever level of injury is estimated to occur. The technical documentation for the NRDAM/GLE articulates the specific criteria for the selection of toxicity values. For further information see the NRDAM/GLE technical document, Volume I, Section 4.2 and Section 7.9.

Comment: A commenter requested that, although not addressed in the NRDAM/CME, the NRDAM/GLE should address the impact of the availability of substitute sites, in that the ability to go to another nearby like resource could reduce the value of the disrupted service flows resulting from a spatially-confined resource injury.

Response: Since little information is available to evaluate marginal impacts

of discharged oil and released hazardous substances on recreation, the proposed NRDAM/GLE calculates compensable values for lost recreational use only for cases where closures occur. This approach does assume that the recreational activity is eliminated rather than displaced, and the Department acknowledges that this could lead to an overestimation of damages for compensable values if displacement is actually occurring. On the other hand, the proposed NRDAM/GLE could underestimate such damages in cases where recreational quality is affected, but no closure occurs, or where displacement results in a diminished recreational experience through crowding or increased expense. The relative magnitude and balance of these effects would depend on the individual case. The inclusion of damages for closures without accounting for substitution is the proposed NRDAM/GLE's mechanism for approximating the net effect of the discharge or release on all services provided by natural resources. For further information, see the NRDAM/GLE technical document, Volume I, Section 6.1.

Comment: One commenter recommended modifying the approach used in the NRDAM/CME to value recreational fishing using user-day values that vary according to the species being sought.

Response: The proposed NRDAM/GLE, subject to the availability of data, uses individual values for each significant fish species included in the database. For more information, see the NRDAM/GLE technical document, Volume I, Section 6.3.1.

Comment: One commenter urged selection of a discount rate significantly lower than ten percent, since sediments polluted by non-water-soluble compounds have such a long recovery period that the discount rate becomes a key determinant of the damage estimate derived from effects of such contamination.

Response: As noted in Section IV.D.5 of this preamble, the default discount rate included in the proposed NRDAM/GLE is seven percent. The Department is specifically soliciting comment on alternatives to mandatory use of this rate, including other specific rates or allowance of user-input of a discount rate specific to the circumstances of the incident.

Comment: One commenter questioned the need for a Preassessment Phase in every case of application of a type A procedure, and the appropriateness of public input to processes in the Assessment Phase.

Response: Revision of the overall administrative process for conducting an assessment, including the Preassessment Phase activities and the opportunities for public comment, is beyond the scope of this rulemaking. The Department will consider this comment during the upcoming biennial review of the administrative process and type B procedures.

Comment: Several commenters stated that additional type A procedures should or are required to be developed for environments other than coastal and marine environments and Great Lakes environments. Such additional environments were characterized as riverine, lake and freshwater wetland environments, and inland environments. A commenter requested that type A procedures be developed for all environments for which such regulations are technically feasible.

Response: The Department is evaluating development of additional type A procedures. The Department is considering several methodologies, including development of additional computer models, as well as other approaches, such as matrix, look-up table, compensation formula, and other simplified procedures. The Department intends to convene a public meeting no later than June 1, 1995, to discuss additional environments for which type A procedures may be feasible. *Colorado* v. *Interior* specifically upheld sequential development of type A procedures for various environments. 880 F.2d at 486–90.

Authorship

The primary author of this rule is Mary C. Morton.

Additional authors include James F. Bennett and Stephen F. Specht. David Rosenberger served as the contracting officer's technical representative (COTR) for the development of the NRDAM/GLE.

National Environmental Policy Act, Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Orders 12866, 12630, 12778, and 12612

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no further analysis pursuant to section 102(2)(C) of the National Environmental Policy Act (43 U.S.C. 4332(2)(C)) has been prepared.

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule provides technical procedural guidance for the assessment of damages to natural resources. It does not directly impose any additional cost. As the rule applies to natural resource trustees, it is not expected to have an effect on a substantial number of small entities.

It has been determined that this rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

This rule has been reviewed under Executive Order 12866. It has been determined that this rule does not have takings implications under Executive Order 12630. The Department has certified to the Office of Management and Budget that this rule meets the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778. It has been determined that this rule does not have federalism implications under Executive Order 12612.

List of Subjects in 43 CFR Part 11

Environmental protection, Fish, Great Lakes, Hazardous substances, Incorporation by reference, Indian lands, National forests, National parks, Natural resources, Oil pollution, Public lands, Recreation areas, Wildlife, Wildlife refuges.

For the reasons set out in the preamble, Title 43, Subtitle A of the Code of Federal Regulations is proposed to be amended as follows:

PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. The authority citation for Part 11 continues to read as follows:

Authority 42 U.S.C. 9651(c), as amended.

Subpart A—Introduction

2. Section 11.15 is amended by revising paragraph (a)(1) to read as follows:

§ 11.15 Actions against the responsible party for damages.

(a) * * *

(1) Damages as determined in accordance with this part and calculated based on injuries occurring from the onset of the discharge or release through the recovery period, less any mitigation of those injuries by response actions taken or anticipated, plus any increase in injuries that are reasonably unavoidable as a result of response actions taken or anticipated;

* * * * *

3. Section 11.18 is amended by adding a new paragraph (a)(5) to read as follows:

§ 11.18 Incorporation by reference

(a) * * *

(5) "CERCLA Type A Natural Resource Damage Assessment Model for Great Lakes Environments Technical Documentation," Volumes I-IV, dated August 1994, prepared for the U.S. Department of the Interior by Applied Science Associates, Inc., Narragansett, Rhode Island, and HBRS, Inc., Madison, Wisconsin, available from the Office of Environmental Policy and Compliance, Room 2340, Department of the Interior, 1849 C Street, NW, Washington, DC 20240, telephone (202) 208–3301. Reference is made to this publication in §§ 11.33(c)(1)(i)(A) and 11.42(a), (b), and (c)(2) of this part.

Subpart C—Assessment Plan Phase

4. Section 11.31 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 11.31 Assessment Plan—content

(a) *General content and level of detail.* (1) The Assessment Plan shall identify and document the use of all of the type A and/or type B procedures that will be performed.

* * * * *

(b) *Deciding whether to use a type A procedure, type B procedures, or a combination.* The Assessment Plan shall include documentation of the authorized official's decision whether to use a type A procedure, type B procedures, or a combination. This determination shall be based on the guidance provided in § 11.33 of this part.

* * * * *

5. Section 11.32 is amended by adding a new paragraph (f)(3) to read as follows:

§ 11.32 Assessment plan—development.

* * * * *

(f) * * *

(3) Paragraphs (f)(1) and (f)(2) of this section do not apply to the use of the type A procedures provided for in subpart D of this part.

6. Section 11.33 is amended by revising the heading of the section, revising paragraph (a), and adding new paragraphs (c), (d), and (e) to read as follows:

§ 11.33 Assessment Plan—deciding whether to use a type A procedure, type B procedures, or a combination.

(a) *General.* The authorized official shall decide whether to use a type A procedure provided for in subpart D of this part, type B procedures provided for in subpart E of this part, or a combination of type A and type B procedures.

* * * * *

(c) *Great Lakes environments.* (1) When a discharged oil or released hazardous substance enters a Great Lakes environment, as that term is defined in § 11.42(b) of this part, the authorized official shall determine whether the following conditions are met:

(i) Primary conditions—(A) The discharged oil or released hazardous substance is identified in Table III.2.4 or Table III.2.1 of Volume III of "CERCLA Type A Natural Resource Damage Assessment Model for Great Lakes Environments Technical Documentation," dated August 1994, U.S. Department of the Interior (incorporated by reference, see § 11.18);

(B) The discharge or release was minor;

(C) The discharged oil or released hazardous substance entered a Great Lakes environment at or near the water surface;

(D) The spatial and temporal distribution of biological resources in the area where the discharged oil or released hazardous substance entered a Great Lakes environment is reasonably represented by the data contained in the NRDAM/GLE, as defined in § 11.42(b) of this part; and

(E) Subsurface currents are either: not expected to significantly affect the fate of the discharged oil or released hazardous substance; or reasonably uniform with depth over the water column in the area affected by the discharge or release.

(ii) *Secondary conditions*—(A) The discharge or release was a single event;

(B) Response actions have not caused significant injury to natural resources;

(C) The primary natural resources of concern affected by the discharge or release are biological resources;

(D) Exposure of biological resources to the discharged oil or released hazardous substance results primarily through surface water pathways, as opposed to air, groundwater, biological, or geologic pathways;

(E) The primary injuries to biological resources are one or more of the following: direct mortality resulting from short-term exposure to the discharged oil or released hazardous substance; direct loss of production resulting from short-term exposure to the discharged oil or released hazardous substance; indirect mortality resulting from food web losses; and indirect loss of production resulting from food web losses; and

(F) All significant compensable values, as defined in § 11.83(c)(1) of this part, result from one or more of the following: lost harvests of commercially exploited fish species; lost harvests of commercially exploited furbearer species; lost harvests of recreationally harvested fish species; lost harvests of recreationally harvested waterfowl species; lost wildlife viewing for trips originating within the immediate area; lost beach visitation due to closure; and lost boating due to closure.

(2) If the discharged oil or released hazardous substance entered a Great Lakes environment, as that term is defined in § 11.42(b) of this part, and the authorized official determines that all of the conditions listed in paragraphs (c)(1)(i) and (c)(1)(ii) of this section are met, the authorized official shall use the type A procedure provided for in § 11.42 of this part to calculate all damages.

(3) If the discharged oil or released hazardous substance entered a Great Lakes environment, as that term is defined in § 11.42(b) of this part, and the authorized official determines that all of the conditions listed in paragraph (c)(1)(i) of this section are met and that one or more of the conditions listed in paragraph (c)(1)(ii) of this section are not met, the authorized official shall make a determination whether to use the type A procedure provided for in § 11.42 of this part, the type B procedures provided for in subpart E of this part, or a combination. This determination shall be based on considerations of reasonable cost and cost effectiveness, as defined in § 11.14 of this part. The authorized official may use both type A and type B procedures only if: the type B procedures are used to calculate damages for types of natural resource injuries and compensable values, as defined in §§ 11.62 and 11.83(c)(1) respectively of this part, that are not addressed by the type A procedure; the type A procedure is used to calculate all other damages; and the authorized official does not double count or the authorized official uses techniques that allow any double counting to be estimated and eliminated in the final damage calculation.

(4) If the discharged oil or released hazardous substance entered a Great Lakes environment, as that term is defined in § 11.42(b) of this part, and the authorized official determines that one or more of the conditions listed in paragraph (c)(1)(i) of this section are not met, the authorized official shall use type B procedures to calculate all damages.

(5) Notwithstanding paragraphs (c)(2) and (c)(3) of this section, the authorized official shall use type B procedures rather than a type A procedure

whenever a potentially responsible party submits a written request for use of type B procedures and agrees within a time frame acceptable to the authorized official to advance all reasonable costs of using type B procedures.

(d) *Other environments.* If the discharged oil or released hazardous substance did not enter one of the environments discussed in this section, the authorized official shall use type B procedures to calculate all damages.

(e) *Effect of selection of type B procedures.* If, in accordance with this section, the authorized official decides to use type B procedures in lieu of a type A procedure, and the authorized official cannot confirm exposure in accordance with § 11.34 of this part, the authorized official may not then re-select the type A procedure.

7. Section 11.34 is amended by adding a new paragraph (a)(3) to read as follows:

§ 11.34 Assessment Plan—confirmation of exposure

(a) *Requirement.* * * *

(3) This section does not apply to the use of the type A procedures provided for in subpart D of this part.

8. The heading of subpart D is revised to read as follows:

Subpart D—Type A Procedures

9. Section 11.40 is amended by revising the section heading, revising paragraph (a), removing paragraph (b), redesignating paragraph (c) as paragraph (b) and revising the heading of newly designated paragraph (b) to read as follows:

§ 11.40 Type A procedures—general.

(a) *Purpose.* The purpose of a type A procedure is to provide a standardized methodology for performing Injury Determination, Quantification, and Damage Determination as part of a simplified natural resource damage assessment.

(b) *Assessment costs of using a type A procedure.* * * *

10. A new § 11.42 is added to read as follows:

§ 11.42 Great Lakes environments.

(a) *General.* The type A procedure for Great Lakes environments shall be performed in accordance with this section. The procedure requires the use of the Natural Resource Damage Assessment Model for Great Lakes Environments, Version 1.31 (NRDAM/GLE), which is included and explained in "CERCLA Type A Natural Resource Damage Assessment Model for Great Lakes Environments Technical Documentation," Volumes I–IV, dated August 1994, U.S. Department of the Interior (incorporated by reference, see § 11.18). The NRDAM/GLE performs Injury Determination, Quantification, and Damage Determination using the incident-specific data collected by the authorized official pursuant to paragraphs (c) and (d) of this section.

(b) *Definitions.* As used in this section the phrase:

CAS number means the Chemical Abstract Service Registry Number assigned to a hazardous substance by the American Chemical Society, Chemical Abstract Service, or the number assigned to an oil as specified in Table III.2.1 and Table III.2.4 of Volume III of "CERCLA Type A Natural Resource Damage Assessment Model for Great Lakes Environments Technical Documentation," dated August 1994, U.S. Department of the Interior (incorporated by reference, see § 11.18).

Closure of a boating area means the prohibition by an appropriate agency of recreational boating in a specified area in a Great Lakes environment within five kilometers of the shore due to a discharge of oil or a release of a hazardous substance.

Closure of a Federal beach means the prohibition by an appropriate agency of recreational or other public uses in a specified length of a Federally managed public beach in a Great Lakes environment due to a discharge of oil or a release of a hazardous substance.

Closure of a fishery means the prohibition by an appropriate agency of commercial and recreational fishing in a specified area in a Great Lakes environment due to a discharge of oil or a release of a hazardous substance.

Closure of a mammal hunting or trapping area means the prohibition by an appropriate agency of commercial and recreational hunting or trapping of mammals in a specified area in a Great Lakes environment due to a discharge of oil or a release of a hazardous substance.

Closure of a State beach means the prohibition by an appropriate agency of recreational or other public uses in a specified length of a State or municipally managed public beach in a Great Lakes environment due to a discharge of oil or a release of a hazardous substance.

Closure of a waterfowl hunting area means the prohibition by an appropriate agency of recreational hunting for waterfowl in a specified area in a Great Lakes environment due to a discharge of oil or a release of a hazardous substance.

Great Lakes environment means any area within Lake Superior, Lake Michigan, Lake Huron, Lake Erie, Lake Ontario, Lake St. Clair, the St. Mary River, the St. Clair River, the Detroit River, the Niagara River, the St. Lawrence River downstream to approximately 45° N, 75° W, or their contiguous wetlands or shorelines.

Implicit Price Deflator means the quarterly implicit price deflator for the Gross National Product as provided in the Survey of Current Business, published by the U.S. Department of Commerce/Bureau of Economic Analysis, Washington, D.C., (202) 606–9900.

Nearshore fishery means a fishery in an open water area that is less than 30 feet in depth or is in a connecting channel.

NRDAM/GLE means the Natural Resource Damage Assessment Model for Great Lakes Environments, Version 1.31 (NRDAM/GLE), which is included and explained in "CERCLA Type A Natural Resource Damage Assessment Model for Great Lakes Environments Technical Documentation," Volumes I–IV, dated August 1994, U.S. Department of the Interior (incorporated by reference, see § 11.18). The NRDAM/GLE is a computer model consisting of integrated physical fates, biological effects, restoration, and economic valuation submodels and databases.

Offshore fishery means a fishery in an open water area that is 30 feet or more in depth.

Rocky beach means a beach 75 percent or more of which is covered by bedrock, stones, or boulders.

Sandy beach means a beach less than 75 percent of which is covered by bedrock, stones, or boulders.

Wetland fishery means a fishery that is not in an open water area.

(c) *Required user-supplied data.* (1) The authorized official shall supply the incident-specific information described in paragraphs (c)(2) through (c)(11) of this section for use as inputs to the NRDAM/GLE. The authorized official shall document the information in the Assessment Plan.

(2) The authorized official shall specify the CAS number of the discharged oil or released hazardous substance provided in Table III.2.4 or Table III.2.1 of Volume III of "CERCLA Type A Natural Resource Damage Assessment Model for the Great Lakes Environments Technical Documentation," dated August 1994, U.S. Department of the Interior (incorporated by reference, see § 11.18). For incidents involving the simultaneous discharge or release of two or more oils or hazardous substances, or when a mixture of one or more oils or hazardous substances has been discharged or released in a single incident, the authorized official shall

select one of the oils or hazardous substances present in the simultaneous discharge or release, or in the mixture.

(3) The authorized official shall specify the estimated total mass of discharged oil or released hazardous substance that entered a Great Lakes environment stated in tonnes, barrels, gallons, liters, pounds, or kilograms. For incidents involving the simultaneous discharge or release of two or more oils or hazardous substances, or when a mixture of one or more oils or hazardous substances has been discharged or released in a single incident, the authorized official shall specify only the mass of the oil or hazardous substance selected under paragraph (c)(2) of this section.

(4) The authorized official shall specify the estimated length of time over which the discharged oil or released hazardous substance entered a Great Lakes environment stated in hours.

(5) The authorized official shall specify the year, month, day, and estimated hour when the discharged oil or released hazardous substance first entered a Great Lakes environment.

(6) The authorized official shall specify the latitude and longitude where the discharged oil or released hazardous substance entered a Great Lakes environment.

(7) The authorized official shall specify the estimated wind velocity and direction at the point where the discharged oil or released hazardous substance entered a Great Lakes environment during the 30-day period beginning 24 hours before the discharged oil or released hazardous substance entered a Great Lakes environment. The authorized official shall specify at least one wind velocity stated in knots and the corresponding wind direction stated in the degree angle of the wind's origin.

(8) The authorized official shall specify whether response actions to remove the discharged oil or released hazardous substance from the water surface, bottom sediments, or shoreline have been conducted. If response actions to remove the discharged oil or released hazardous substance were conducted, the authorized official shall specify the percentage of the discharged oil or released hazardous substance that was removed from the water surface, bottom sediments, and shoreline as a result of the response actions; and the number of days after the discharged oil or released hazardous substance entered a Great Lakes environment that the removal began and ended.

(9) The authorized official shall specify whether there were any closures of boating areas, Federal beaches, State beaches, fisheries, mammal hunting or trapping areas, or waterfowl hunting areas. If there were any closures and damages for such closures are to be calculated, the authorized official shall establish the following information and shall include in the Assessment Plan documentation that the closure resulted from the discharge or release being investigated:

(i) For closure of a boating area, the authorized official shall specify: The area closed stated in square kilometers; the number of weekend days of closure stated by calendar month; and the number of weekday days of closure stated by calendar month.

(ii) For closure of a Federal beach, the authorized official shall specify: The length closed stated in meters; the number of days of closure stated by calendar month; and whether the closed area was a rocky or sandy beach.

(iii) For closure of a State beach, the authorized official shall specify: The length closed stated in meters; the number of days of closure stated by calendar month; and whether the closed area was a rocky or sandy beach.

(iv) For closure of a fishery, the authorized official shall specify: the area closed stated in square kilometers; the number of days of closure; and whether the area closed was an offshore, nearshore, or wetland fishery.

(v) For closure of a mammal hunting or trapping area, the authorized official shall specify: the area closed stated in square kilometers; and the number of days of closure.

(vi) For closure of a waterfowl hunting area, the authorized official shall specify: the area closed stated in square kilometers; and the number of days of closure.

(10) The authorized official shall specify the Implicit Price Deflator for the quarter during which the discharged oil or released hazardous substance entered a Great Lakes environment.

(11) The authorized official shall specify whether the NRDAM/GLE should account for the effects of ice cover.

(d) *Additional user-supplied data.* (1) The authorized official may collect any of the additional incident-specific information described in paragraphs (d)(2) through (d)(5) of this section for use as inputs to the NRDAM/GLE if: the authorized official estimates that conditions where the discharged oil or released hazardous substance entered a Great Lakes environment varied significantly from the typical conditions for the time of year in which the discharge or release entered a Great Lakes environment; and the incident-specific information can be collected consistent with the requirements of reasonable cost and cost effectiveness, as defined in § 11.14 of this part. If the authorized official makes a determination to collect any of the incident-specific information described in paragraphs (d)(2) through (d)(5) of this section, the rationale for the determination and the information collected shall be documented in the Assessment Plan. If the information is not collected, the NRDAM/GLE will supply default parameters.

(2) Subject to paragraph (d)(1) of this section, the authorized official may specify the estimated water temperature stated in degrees Celsius at the time and point where the discharged oil or released hazardous substance entered a Great Lakes environment.

(3) Subject to paragraph (d)(1) of this section, the authorized official may specify the estimated total suspended sediment concentration stated in milligrams per liter at the time and point where the discharged oil or released hazardous substance entered a Great Lakes environment.

(4) Subject to paragraph (d)(1) of this section, the authorized official may specify the estimated mean settling velocity of suspended solids stated in meters per day at the time and point where the discharged oil or released hazardous substance entered a Great Lakes environment.

(5) Subject to paragraph (d)(1) of this section, the authorized official may specify the estimated air temperature stated in degrees Celsius at the time and point where the discharged oil or released hazardous substance entered a Great Lakes environment.

(e) *Applying the NRDAM/GLE.* The authorized official shall apply the NRDAM/GLE using the incident-specific data supplied pursuant to paragraphs (c) and (d) of this section.

(f) *Report of Assessment.* After applying the NRDAM/GLE, the authorized official shall prepare a Report of Assessment, as described in § 11.90 of this part.

Subpart F—Post-Assessment Phase

11. Section 11.90 is amended by revising paragraphs (a) and (b) and revising the first sentence of paragraph (c) as follows:

§ 11.90 Post-assessment phase—report of assessment

(a) *Requirement.* At the conclusion of an assessment, the authorized official shall prepare a Report of Assessment that shall consist of the Preassessment Screen Determination, the Assessment Plan, and the information specified in

paragraphs (b) and (c) of this section as applicable.

(b) *Type A procedures.* When the authorized official has used a type A procedure in accordance with subpart D of this part, the Report of Assessment shall include the following information:

(1) When the type A procedure for coastal and marine environments provided for in § 11.41 of this part is used, the Report of Assessment shall include the printed assessment report from the application(s) of the NRDAM/CME, as that term is defined in § 11.41(b) of this part.

(2) When the type A procedure for Great Lakes environments provided for in § 11.42 of this part is used, the Report of Assessment shall include the printed assessment report from the application(s) of the NRDAM/GLE, as that term is defined in § 11.42(b) of this part.

(c) *Type B procedures.* When the authorized official has used type B procedures in accordance with subpart E of this part, the Report of Assessment shall include all documentation supporting the determinations required in the Injury Determination phase, the Quantification phase, and the Damage Determination phase, and specifically including the test results of any and all methodologies performed in these phases. * * *

12. Section 11.91 is amended by revising the first sentence of paragraph (a), removing the heading of paragraph (c), redesignating paragraph (c) as paragraph (c)(1), adding a new heading to paragraph (c), and adding a new paragraph (c)(2) to read as follows:

§ 11.91 Post-assessment phase—demand.

(a) *Requirement and content.* At the conclusion of the assessment, the authorized official shall present to the potentially responsible party a demand in writing for a sum certain, representing the damages determined in accordance with this part and the reasonable cost of the assessment, adjusted if necessary in accordance with § 11.92(b) of this part, delivered in such a manner as will establish the date of receipt. * * *

* * * * *

(c) *Judicial review.* * * *

(2) Judicial review of the damage assessment determinations performed by an authorized official in accordance with this part using one of the type A procedures provided for in subpart D of this part shall be limited to the authorized official's determination under § 11.33 of this part to use the type A procedure and the incident-specific data supplied by the authorized official for use in the type A procedure. When a Federal or State authorized official performs an assessment in accordance with this part using a type A procedure, the rebuttable presumption provided in paragraph (c)(1) of this section shall extend to the authorized official's determination to use the type A procedure and to the incident-specific data collected by the authorized official.

* * * * *

Dated: August 2, 1994.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management, and Budget.

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Using Electronic Cotton Warehouse Receipts-U.S. Warehouse Act

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Provider Agreements.

SUMMARY: The United States Warehouse Act (USWA) and regulations have been amended to allow for the issuance of cotton warehouse receipts in electronic format. The amended USWA and regulations give USWA licensed cotton warehousemen the option of issuing electronic warehouse receipts (EWRs) in lieu of paper warehouse receipts. Other warehouse receipts may be electronically filed in the same system, but such receipts will not be regulated by the terms of the Agreement. Licensed warehousemen opting to issue EWRs will select a provider that has entered into an ASCS Provider Agreement. The Agreement authorizes the provider to electronically file USWA warehouse receipts. Providers may be any qualified individual or entity that meet certain uniform criteria that will be summarized in the Supplementary Information below.

FOR FURTHER INFORMATION: Chief, Licensing Authority Division, Kansas City Commodity Office, United States Department of Agriculture (USDA), ASCS, telephone 816–926–6474, FAX 816–926–6767.

SUPPLEMENTARY INFORMATION:

Authority

Section 17 of the USWA (7 U.S.C. 259) has been amended to allow the use of a central filing system for electronic cotton warehouse receipts. Amended USWA Regulations for Cotton Warehouses were published in the **Federal Register** (59 FR 15033) on March 31, 1994.

Background

Interested and affected parties include, but are not limited to, cotton growers/owners, ginners, warehousemen, merchandisers, lenders, and millers. All interested parties should be made aware that once a USWA licensed warehouseman has opted to issue warehouse receipts electronically, all warehouse receipts must first be issued electronically. When an individual deposits cotton in a participating USWA warehouse and wants a paper warehouse receipt, the EWR must first be issued and canceled before the paper warehouse receipt can be issued.

Interested parties may obtain copies of the Provider Agreement by calling the person listed in the "For Further Information" section. Those interested in applying to become a provider, should so state in their request for a copy of the Provider Agreement. They will be sent copies of the Agreement with a cover letter outlining all the necessary details.

The Agreement includes, but is not limited to, the following topics and elements:

(1) USWA EWRs and other electronic warehouse receipts may be filed in the same central filing system;

(2) the USWA cotton regulations are incorporated;

(3) the hours and rights of access to the system;

(4) the fees to be assessed and collected;

(5) the financial and insurance requirements;

(6) the provider's liability;

(7) the information required for USWA EWRs;

(8) the recordkeeping and security requirements;

(9) system requirements, including shutdown and backup;

(10) transferring EWRs from one provider to another;

(11) transmission requirements; and

(12) cases of suspensions or terminations.

Signed at Washington, DC, on August 1, 1994.

Grant Buntrock,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 94–19280 Filed 8–5–94; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

[Docket No. 94–084–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service during the month of June 1994. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for

determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of June 1994. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under "FOR FURTHER INFORMATION CONTACT."

Done in Washington, DC, this 1st day of August 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–19282 Filed 8–5–94; 8:45 am]

BILLING CODE 3410–34–P

CENTRAL INTELLIGENCE AGENCY

CIA Information Act of 1984; Operational File Exemptions

AGENCY: Central Intelligence Agency.

ACTION: Notice of operational file exemptions.

SUMMARY: The Central Intelligence Agency (CIA) is soliciting comments regarding the historical value of, or other public interest in, the CIA files designated under the CIA Information Act of 1984.

DATES: Comments must be received by September 7, 1994.

ADDRESSES: Submit comments in writing to Director, Information Management, Central Intelligence Agency, Washington, DC 20505. Comments also may be faxed to (703) 482–8361.

FOR FURTHER INFORMATION CONTACT: Edmund Cohen, Director, Information Management, Central Intelligence Agency, Washington, DC 20505, (703) 482–6567.

SUPPLEMENTARY INFORMATION:

Background

In 1984 the CIA Information Act (Act) became law. This Act authorized certain CIA operational files from the Directorates of Operations and Science and Technology and the Office of Security to be designated by the Director of Central Intelligence (DCI) as exempt from the search requirements of the Freedom of Information Act (FOIA). The Act also required that not less than once every ten years the DCI review the exemptions then in force to determine whether such exemptions could be removed from any category of exempted files or any portion thereof. The first such review must be completed by 15 October 1994.

Increased Responsiveness to FOIA, Privacy Act, and Mandatory Declassification Requests

A major purpose of the Act is to expedite the Agency's review of information qualifying for release pursuant to FOIA, Privacy Act, and Mandatory Declassification standards. Under the Act the Agency is relieved of having to search files, and review records contained therein, that would likely result in little, if any, released information under the FOIA. Consequently, the Agency can devote its resources to those files more likely to result in released materials and, thus, FOIA requesters experience much faster processing of those Agency records with a higher likelihood of being released. Since the passage of the Act in 1984, there has been a considerable reduction in the amount of time FOIA requesters must wait for their responses from the Agency. In 1984, when the CIA Information Act was passed, CIA completed action on 2,991 FOIA, Privacy Act, and Mandatory Declassification requests and the median response time for FOIA requests was approximately 15 months. In 1993, CIA completed action on 5,705 requests and reduced the median response time for these requests to 2.4 months. Thus, a primary goal of the Act has been and continues to be met.

Declassification and Release of CIA Information of Historical Value

The Act also sought to encourage CIA to undertake a program for the systematic review for declassification and release of selected information of historical value. The Act required the DCI, in consultation with the Archivist of the United States, the Librarian of Congress, and appropriate representatives of the historical discipline selected by the Archivist, to prepare and submit to Congress a report on the feasibility of conducting systematic review for declassification and release of CIA information of historical value. In his report, submitted on 29 May 1985, the DCI stated that this kind of review was feasible and he described the new Historical Review Program that the Agency had established to carry it out.

Before making his report to Congress, the DCI consulted a panel, made up of the Archivist of the United States, an Assistant Librarian of Congress, and three distinguished historians. This panel recommended that the aim of the new Historical Review Program:

> must be release of inactive records, appraised as permanently valuable, to the public via the National Archives and Records Administration (NARA), as the most effective means of serving the public interest and especially that of historical research.

As part of the DCI's Openness Policy, CIA's Historical Review Program has expanded substantially since 1992. Under the Program, the Center for the Study of Intelligence has undertaken to declassify and release CIA records of significant historical value. Records declassified and transferred to the NARA include:

- Over 140,000 pages from the JFK sequestered collection of documents.
- Over 380 political and economic National Intelligence Estimates primarily on the Soviet Union produced prior to 1984.
- Over 1,000 previously classified articles and book reviews from the CIA's professional journal of intelligence.

Studies in Intelligence

- Over 1,500 pages of records on Raoul Wallenberg.

Since 1992, the CIA History Staff has also published three volumes of documents in its Cold War Records:

- CIA Documents on the Cuban Missile Crisis. This publication is made up of 112 of the most important documents (some of which are excerpts of documents) from that period.
- Selected Estimates on the Soviet Union. This volume includes 27 National Intelligence Estimates on International Politics, Foreign Affairs, Global Issues and Nuclear Arms Control and Disarmament.
- The CIA Under Harry Truman. This publication includes approximately 80 important policy level documents, more than half of which have never been made public before.

The Program has also declassified, released, and transferred to the NARA

the following three formerly classified internal CIA histories:

• The Central Intelligence agency, An Instrument of Government, to 1950.

• General Walter Bedell Smith as Director of Central Intelligence, October 1950–February 1953.

• Allen Welsh Dulles as Director of Central Intelligence, 26 February 1953–29 November 1961.

Finally, related to these declassification and release programs and in conjunction with the Agency's Openness Policy, the Center for the Study of Intelligence:

• Conducted a symposium on Teaching Intelligence which also resulted in an unclassified published report.

• Conducted a symposium on the Cuban missile crisis.

• Conducted a conference entitled "The Origins and Development of the CIA in the Administration of Harry Truman."

• Produced two video tapes in conjunction with its symposium on the Cuban missile crisis and on its conference on the CIA and the Truman Administration.

Basis for the 1984 Designation of CIA Files as Operational

The 1984 Act specified the following three categories for designating CIA files as operational and thus exempted from FOIA search requirements:

1. Files of the Directorate of Operations which document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services;

2. Files of the Directorate of Science and Technology which document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems; and

3. Files of the Office of Security which document investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources.

Throughout the legislative history there is a clear recognition that there is little benefit from the requirement to search and review certain operational files that almost invariably prove to be exempt from release under the FOIA. By exempting only operational files, which document the methods by which intelligence is collected or which describe and identify sources that furnish the intelligence, FOIA requesters are assured of more responsive access to foreign intelligence information provided to U.S. policy makers. Through a reduction in the backlog of FOIA cases, the Agency's response to FOIA requests for nonoperational information becomes more timely. In speaking in support of the bill which eventually became the law, the then Chair of the Senate Select Committee on Intelligence said:

> The purpose of this legislation is to amend the National Security Act of 1947 in order to relieve the CIA of the unproductive burden of searching and reviewing certain operational files under the FOIA. This relief will enable the CIA to become more efficient so that requests under the provisions of the FOIA may be answered more quickly.

In supporting the bill when it was before the House, one member stated for the record that:

> The bill is carefully crafted to achieve three purposes.
>
> First, the bill will relieve the CIA from an unproductive FOIA requirement to search and review certain specifically defined CIA operational files consisting of records which, after line-by-line security review, almost invariably prove not to be releasable under the FOIA.
>
> Second, the bill will provide more effective security for the identities and operational activities abroad of individuals who risk their lives and livelihoods to assist the United States by cooperating with the CIA.
>
> Third, the bill will improve the ability of the CIA to respond to FOIA requests from the public in a timely and efficient manner, while preserving undiminished the amount of information releasable to the public under the FOIA.

Moreover, intelligence sources, current and future, have increased confidence about the Agency's ability to protect them from the threat of exposure many have felt under the FOIA.

Pursuant to the criteria specified in the Act, the DCI in 1984 designated as operational files:

1. Files of the Directorate of Operations:

a. Operational Activity files. These files document the sources and methods involved in foreign intelligence and counterintelligence operations, liaison relationships with foreign governments and their intelligence and security services, and special activities.

b. Operational Interest files. These files contain vulnerability information collected on targets for potential operational activities including foreign intelligence and security services, foreign hostile parties, international narcotics, international terrorism, and clandestine technology transfer.

c. Personality files. These files contain information on persons and sources involved in operational activities and persons of operational and counterintelligence interest, including active and perspective agents, contacts, sources, and targets.

d. Policy and Management files. These files contain information concerning the management of individual projects and decisions made for the conduct of operational activities.

e. Obsolete Category files that remain open, but were created before the establishment of the Directorate of Operations central file system and contain the types of information in the four categories of files listed above.

f. Operational files that are maintained and used within the Directorate of Operations, but that remain outside of and peripheral to the central file system. These are files that contain operational information of the type listed in the first four categories, but is so sensitive that it is compartmented within the Directorate of Operations division or staff directly responsible for the operation. Also included in this category are background and working files derived from materials from the other designated file categories.

2. Files of the Directorate of Science and Technology:

a. Imagery Analysis and Exploitation files. These are files that document the scientific and technical methods used in the collection, analysis, and exploitation of photographic intelligence and other imagery for foreign intelligence and counterintelligence.

b. Signal Intelligence files. These are files which document scientific and technical methods used in the collection, analysis, and exploitation of electromagnetic signals for foreign intelligence and counterintelligence.

c. Operations and Technical Support files. These are files which document scientific and technical methods used in support of human intelligence source operations in the collection of foreign intelligence and counterintelligence.

d. Intelligence Collection Systems files. These files document the use of other scientific and technical methods in conjunction with clandestine operations in collecting foreign intelligence and counterintelligence.

3. Files of the Office of Security:

a. Covert Security Approval and Provisional Covert Security Approval files. These files document investigations to determine the suitability of potential foreign intelligence or counterintelligence sources proposed for use in operational support activities.

b. Operational Approval and Provisional Operational Approval files. These files document investigations to determine the suitability of potential foreign intelligence or

counterintelligence sources proposed for use in operational activities.

c. Security Access Approval files. These files document investigations to determine the suitability of potential foreign intelligence or counterintelligence sources proposed for use in collection activities involving scientific and technical systems.

Solicitation of Comments Regarding Historical Value or Other Public Interest of the Previously Designated Operational Files

In undertaking a decennial review of whether the DCI should remove any of the files designated under the 1984 Act, or portions thereof, from any of the specified categories of exempted files, the DCI hereby solicits comments for his consideration regarding the historical value of, or other public interest in, the subject matter of these particular categories of files or portions thereof and the relationship of that historical value or other public interest to the removal of previously designated files or any portions thereof from such a classification.

Dated: August 2, 1994.

Frank J. Ruocco,

Deputy Director for Administration.

[FR Doc. 94–19223 Filed 8–5–94; 8:45 am]

BILLING CODE 6310–02–M

DEPARTMENT OF COMMERCE

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Michigan Coastal Management Program, the Virgin Islands Coastal Management Program and the Apalachicola National Estuarine Research Reserve.

These evaluations will be conducted pursuant to section 312 and section 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of Coastal Management Programs (CMPs) and National Estuarine Research Reserves (NERRs). Evaluation of CMPs requires findings concerning the extent to which a State has met the national coastal management objectives, adhered to its Coastal Management Program approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. Evaluation of NERRs requires findings concerning the operation and management of the reserve including education and interpretive activities, the consistency of research activities with the approved research guidelines, and the existence of a basis for the continued support of the findings for designation. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site-visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site-visits.

The Michigan Coastal Management Program evaluation site-visit will be from September 12 to September 16, 1994. A public meeting will be held on September 15, 1994 at 7:00 p.m. at the Municipal Offices in Traverse City, Michigan 49685.

The Virgin Islands Coastal Management Program evaluation site-visit will be from September 12 to September 16, 1994. Public meetings will be held on Monday, September 12, 1994 at 6:00 p.m. at the American Legion Hall, Christiansted, St. Croix, on Wednesday, September 14, 1994 at 6:00 p.m. at the Territorial Court, Boulon Center, St. John and on Thursday, September 15, 1994 at 6:00 p.m., at the Department of Planning and Natural Resources, Lower Level Conference Room, Charlotte Amalie, St. Thomas 00802.

The Apalachicola National Estuarine Research Reserve in Florida evaluation site-visit will be from September 19 to September 23, 1994. A public meeting will be held on Wednesday, September 21, 1994 at 7:00 p.m., at the Apalachicola Research Reserve, Robert L. Howell Building, 261 7th Street, Apalachicola, Florida 32320.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the site visit. Please direct written comments to Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will send copies to persons who participated in the evaluations and place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910 (301) 713–3090.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: July 28, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–19216 Filed 8–5–94; 8:45 am]

BILLING CODE 3510–08–M

National Oceanic and Atmospheric Administration

[Docket No. 940700–4200]

RIN 0648–ZA10

NOAA Pan-American Climate Studies Program, Program Announcement

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Pan-American Climate Studies (PACS) Program is a contribution to the National Oceanic and Atmospheric Administration (NOAA) Climate and Global Change Program, and as such is designed to improve our ability to observe, understand, predict, and respond to changes in the global environment. This program builds on NOAA's mission requirements and longstanding capabilities in global change research and prediction. The PACS Program is a contributing element of the U.S. Global Change Research Program (USGCRP), which is coordinated by the interagency Committee on Environmental and Natural Resources. NOAA's program is designed to complement other agency contributions to that national effort.

DATES: Full proposals must be received at OGP no later than September 9, 1994. The deadline for submission to this Announcement should be strictly followed. We anticipate that review will occur during the fall of 1994 and funding should begin during the early

spring of 1995 for most approved projects. April 1, 1995, should be used as the proposed start date on proposals, unless otherwise directed by a Program Manager. Applicants should be notified of their status within 3 to 6 months.

ADDRESSES: Proposals should be submitted to: Office of Global Programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, suite 1225, Silver Spring, MD 20910–5603, Attn.: Dr. Kenneth Mooney.

TO OBTAIN AN APPLICATIONS KIT OR FOR FURTHER INFORMATION CONTACT: Kenneth Mooney or Michael Patterson, NOAA/Office of Global Programs, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910–5603; 301–427–2089, OMNET: K.Mooney or M.Patterson, Internet: Mooney@ogp.noaa.gov or Patterson@ogp.noaa.gov; or Stephen Piotrowica, NOAA/Office of Oceanic and Atmospheric Research, 1315 East-West Highway, Rm. 11560, Silver Spring, MD 20910, 301–713–2465, OMNET: S.PIOTROWICZ, Internet: SPiotrowicz@vines.erl.gov

SUPPLEMENTARY INFORMATION:

Funding Availability

This Program Announcement is for projects to be conducted over a one or two year period. NOAA believes that the Climate and Global Change Program will benefit significantly from a strong partnership with outside investigators. Current Program plans assume that approximately 50% of the total anticipated resources available ($2–3 million) in FY 1995 will support extramural efforts, particularly those involving the academic community. Actual funding levels may be subject to change depending on the final FY 1995 budget appropriation. The funding instrument will be a grant unless it is anticipated that NOAA will be substantially involved in the implementation of the project for which an award is to be made, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaboration between NOAA or NOAA scientists and a recipient scientist or technician and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. NOAA will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement.

Program Authority

Authority: U.S.C. 1463; 33 U.S.C. 883d and 883e; 15 U.S.C. 2907; 15 U.S.C. 2931.

(CFDA No. 11.431)—Climate and Atmospheric Research

Program Objectives

PACS is a joint Program of the NOAA Office of Global Programs and Office of Oceanic and Atmospheric Research/Environmental Research Laboratories. PACS will fall within the scope of the U.S. GOALS (Global Ocean-Atmosphere-Land System) Program and address the advancement of our ability to predict seasonal to interannual climate variability over the Americas with an emphasis on precipitation. The domain of interest in PACS is the tropics extending westward from Africa to the central Pacific plus the adjoining extratropical regions with which it interacts. Because of its emphasis on precipitation, PACS will have close connections with the Global Energy Water Cycle Experiment (GEWEX). Specific scientific objectives are to better understand and more realistically model (1) the seasonally varying mean climate over the Americas and adjacent ocean regions, with emphasis on the intertropical convergence zones, the North and South American monsoons, the equatorial cold tongues, the subtropical oceanic stratus decks, and the dominant tropical and extratropical cyclone tracks; (2) the role of boundary processes in forcing seasonal to interannual climate variability, with emphasis on tropical sea surface temperature in relation to continental precipitation; (3) the coupling between the oceanic mixed layer and the atmospheric planetary boundary layer in the tropical Atlantic and eastern Pacific; and (4) the processes that determine the structure and evolution of the tropical sea surface temperature field. Although the principal focus of PACS is on seasonal and interannual variability on a regional (>500 km) scale, higher frequency phenomena such as the diurnal cycle, the Madden-Julian Oscillation, and mesoscale phenomena such as sea breeze circulations and circulations forced by orography, coastlines and contrasts in vegetation will be taken into account, as needed, with reference to the maintenance of the mean state and in the interpretation, diagnosis and modeling of variability on the seasonal to interannual time scale.

Program Priorities

The first two years of PACS are expected to focus on empirical studies, modeling, and pilot monitoring studies. Modeling efforts are expected to address the precipitation climatology and its seasonal to interannual variability over the Americas, including mesoscale structure; large-scale ocean-atmosphere coupling, and oceanographic processes that influence sea surface temperature variability in the PACS region. Empirical studies would include one-year efforts to develop datasets required to meet the objectives of PACS. In addition, funding requests for monitoring proposals should not exceed $150,000 per year.

Eligibility

Extramural eligibility is limited to U.S. institutions. Non-academic proposers are urged to seek collaboration with academic institutions. Universities, non-profit organizations, for-profit organizations, State and local governments, and Indian Tribes, are included among entities eligible for funding under this announcement.

Award Period

Proposals in support of the objectives of PACS are expected to be of either one- or two-years duration in preparation for program expansion.

Evaluation Criteria

Consideration for financial assistance will be given to those proposals which address one of the Program Priorities listed above and meet the following evaluation criteria:

(1) Scientific Merit (20%): Intrinsic scientific value of the subject and the study proposed.

(2) Relevance (20%): Importance and relevance to the goal of the Climate and Global Change Program and to the research areas listed above.

(3) Methodology (20%): Focused scientific objective and strategy, including measurement strategies and data management considerations; project milestones; and final products.

(4) Readiness (20%): Nature of the problem; relevant history and status of existing work; level of planning, including existence of supporting documents; strength of proposed scientific and management team; past performance record of proposers.

(5) Linkages (10%): Connections to existing or planned national and international programs; partnerships with other agency or NOAA participants, where appropriate.

(6) Costs (10%): Adequacy of proposed resources; appropriate share of total available resources; prospects for joint funding; identification of long-term commitments. (Matching funding is encouraged, but is not required.)

Selection Procedures

All proposals will be evaluated and ranked in all accordance with the assigned weights of the above evaluation criteria by (1) independent peer mail review, and/or (2) independent peer panel review of both NOAA and non-NOAA experts in the field may be used in this process. Their recommendations and evaluations are considered by the program Manager/ Officer in final selections. Those ranked by the panel and rated by the program Manager/Officer as not recommended for funding are not given further consideration and are notified of non-selection. For the proposals rated either Excellent, Very Good or Good, the Program managers will: (a) ascertain which proposals meet the objectives, fit the criteria posted, and do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other federal agencies, (b) select the proposals to be funded, (c) determine the total duration of funding for each proposal, and (d) determine the amount of funds available for each proposal. Awards are not necessarily made to the highest-scored proposals.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

Proposal Submission

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) Full Proposals: (1) Applicants are not required to submit more than an original and two copies of applications. (2) Proposals must be limited to 30 pages (numbered), including budget, investigators vitae, and all appendices, and should be limited to funding requests for one to two year duration. (3) Proposals should be sent to the NOAA Office of Global Programs at the above address. (4) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(b) Required Elements: All proposals should include the following elements:

(1) Signed title page: The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which project area is being addressed. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s) investigator(s), total proposed cost and budget period.

(3) Statement of work: The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goal of the Climate and Global Change Program, and the program priorities listed above. Benefits of proposed project to the general public and the scientific community should be discussed. Results from related projects supported by NOAA and other agencies should be included. The statement of work, excluding figures and other visual materials, must not exceed 15 pages of text. Appended information may not be used to circumvent the page length limit. Investigators wishing to submit group proposals that may exceed the 15 page limit should discuss this possibility with the appropriate Program Officer prior to submission. In general, proposals from 3 or more investigators may include a statement of work containing up to 10 pages of overall project description plus up to 5 pages per person of individual project descriptions.

(4) Budget: Applicants must submit a detailed budget using the Standard Form 424a(4–92), Budget Information—Non-Construction Programs. The form is included in the standard NOAA application kit. Unless otherwise directed by the appropriate Program Manager, April 1, 1995, should be used as the target start date for proposals.

(5) Vitae: Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(6) Current and pending support: For each investigator, submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending support.

(7) List of suggested reviewers: The cover letter may include a list of individuals qualified and suggested to review the proposal. It also may include a list of individuals that applicants would prefer to not review the proposal. Such lists may be considered at the discretion of the Program Officer.

(c) Other requirements:

Primary applicant Certification—All primary applicants must submit a completed Form DC–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying". Applicants are also hereby notified of the following:

(1) Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

(2) Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(3) Anti-Lobbying—Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must subject an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients must require applicants/bidders for subgrants, contracts subcontracts, or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(5) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(6) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover pre-award costs.

(7) Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(8) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(9) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(10) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of Commerce are made.

(11) Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged to the extent feasible, to purchase American-made equipment or products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Section 606 (a)and (b).

(12) The total dollar amount of the indirect cots proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(d) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(e) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA Climate and Global Change Program. The NOAA Climate and Global Change Program does not have direct TDD (telephone Device for the Deaf) capabilities, but can be reached through the State of Maryland supplied TDD contact number, 800–735–2258, between the hours of 8:00 am–4:30 pm.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866. The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046.

Dated: August 3, 1994.

J. Michael Hall,

Director, Office of Global Programs, National Oceanic and Atmospheric Administration.

[FR Doc. 94–19286 Filed 8–5–94; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 071494E]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit No. 933 (P317C).

SUMMARY: Notice is hereby given that Mr. Jeff Goodyear, Department of Zoology, University of British Columbia, Vancouver, B.C., Canada, V8R 1S4, and Ms. Jan Straley, School of Fisheries and Ocean Sciences, University of Alaska Fairbanks, Fairbanks, AK 99835, have been issued a permit to take humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: On May 11, 1994, notice was published in the **Federal Register** (59 FR 24406) that a request for a scientific research permit to tag humpback whales (*Megaptera novaeangliae*) had been submitted by the above-named individuals. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Dated: August 1, 1994

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–19252 Filed 8–5–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071594D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification No. 1 to scientific research permit no. 843 (P771#68).

SUMMARY: Notice is hereby given that a request for modification of scientific research permit No. 843 submitted by the Alaska Fisheries Science Center, NMFS, NOAA, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Bldg. 4, Seattle, WA 98115, has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, P.O Box 21668, Juneau, AK 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: On June 13, 1994, notice was published in the **Federal Register** (59 FR 30345) that a modification of permit No. 843, issued June 2, 1993 (58 FR 32520), had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 843 has been modified to authorize the permit holder to capture and radio tag up to 50 harbor seals in

order to determine a correction factor to be applied towards the number of seals at sea or moving between haulout sites, and thus missed by aerial surveys.

Dated: August 2, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–19251 Filed 8–5–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 072594A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification No. 2 to scientific research permit No. 765 (P70E)

SUMMARY: Notice is hereby given that a request for modification of Scientific Research Permit No. 765 submitted by Dr. William A. Watkins, Senior Research Specialist, Woods Hole Oceanographic Institution, Woods Hole, MA 02543 has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/712–3389); and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/291–9200).

SUPPLEMENTARY INFORMATION: On July 5, 1994, notice was published in the **Federal Register** (59 FR 34417) that a modification of Permit No. 765, issued February 25, 1994 (57 FR 7735) and as modified on December 3, 1992 and amended on March 17, 1994, had been requested by the above-named individual. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The Permit authorized tagging, sound play back and incidental harassment on sperm whales in international waters in the Caribbean. The modification authorizes tagging activities on fin, sei and sperm whales in international waters off Iceland.

Issuance of this modification, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 2, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–19287 Filed 8–5–94; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision To Upgrade the Wastewater Treatment System at Marine Corps Base, Camp Lejeune, NC

Pursuant to Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, and the Council of Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision to upgrade the wastewater treatment system at Marine Corps Base (MCB), Camp Lejeune, North Carolina. The upgrade involves the elimination of six treated effluent discharges (three from the most nutrient sensitive waters of the upper New River, two of which are in proximity to high quality shellfishing waters of the lower New River, and one discharge to the Atlantic Intracoastal Waterway). The existing wastewater treatment plants will be replaced with an advanced wastewater treatment facility to be constructed north of Frenchs Creek that will have a design capacity of 15 million gallons per day (MGD) and be capable of a high degree of nutrient removal. The new advanced wastewater treatment plant will be in operation by December 31, 1998, and will process all MCB Camp Lejeune wastewater, except for flows from Onslow Beach which will be processed at a new rapid infiltration facility to be constructed at that location.

Upgrade of the wastewater treatment facilities will be divided into three phases. The first phase will require construction of approximately 35 miles of new wastewater transmission pipeline, and will consolidate flows from six treatment plants to an outfall located in the New River near the existing Hadnot Point treatment plant. The new pipeline will be constructed mostly along existing right-of-way and will require construction of seven new pump stations. During Phase I, the Hadnot Point Plant will be upgraded to include additional chlorination facilities to accommodate the increased flows. Shutdown of the Courthouse Bay and Rifle Range treatment plants will be incorporated into Phase I of the Project as well as construction of rapid infiltration facilities at Onslow Beach. Phases II and III will involve construction of a new advanced wastewater treatment plant north of Frenchs Creek, a new outfall diffuser pipe located approximately 13 miles upstream from the mouth of the New River, and shutdown of existing treatment plants at Camp Geiger, Camp Johnson, Tarawa Terrace, and Hadnot Point.

The North Carolina Division of Environmental Management determined that the New River is no longer able to absorb all of the nutrients being discharged to it. Thus, the State has established a goal to upgrade water quality in the region and is implementing a policy that will reduce the number of point source discharges and substantially limit the nutrient loading of effluent streams entering the New River. As a result of this policy initiative, the Marine Corps entered into a Special Order by Consent with the State agreeing to reduce the number of its outfalls and improve the quality of its treated waste discharges.

A Wastewater Treatment Master Plan was prepared to identify alternatives for reducing the number of outfalls and improving treated outfall water quality. The analysis gathered information on existing treatment plants, base operations, future development, available treatment and disposal options, and environmental concerns. From this effort eight options were closely examined for the development of alternatives at each plant. From the evaluation of the eight options came the development of five scenarios that were evaluated over a twenty year life cycle. They were evaluated based on costs, land use impacts that could affect the MCB Camp Lejeune military mission, and environmental concerns. This analysis lead to the development of three build alternatives and the "No Action" alternative, which were addressed in the Draft Environmental Impact Statement (DEIS). These alternatives were (1) a new 15 MGD advanced treatment plant with a river discharge to accommodate all flows, (2) a new 15 MGD secondary treatment plant with an ocean outfall to accommodate all flows and (3) a combination of land application for the

plants currently discharging to the lower New River (Rifle Range and Courthouse Bay Plants) and the Intracoastal Waterway (Onslow Beach Plant), and construction of a new 13.7 MGD advanced wastewater treatment plant with river discharge for the remaining flows.

Based on socio-economic, environmental and operational impacts of the three wastewater treatment system upgrade alternatives, the DEIS concluded that the alternative which combined river discharge and land application was the least desirable option from an environmental and operations perspective. This option would eliminate large tracts of critical training area on the Base (750 acres ±) and would have potential adverse impacts to endangered species, floodplains and sites contaminated with hazardous materials. The advanced wastewater treatment of all effluent with river discharge and the ocean outfall options were determined to have comparable environmental impacts. With regard to nutrient loads to the New River system, the ocean outfall alternative would contribute the smallest amount. However, the potential permitting difficulties for an ocean outfall; the strict schedule of compliance outlined in the Special Order by Consent between MCB Camp Lejeune and the State of North Carolina; U.S. Environmental Protection Agency Region IV's general policy to discourage new ocean outfalls (as stated in their scoping response); and the lack of any North Carolina Division of Environmental Management policy regarding ocean outfalls resulted in the advanced wastewater treatment with river discharge alternative being identified as the preferred option in the DEIS.

Several commentors on the DEIS suggested the Marine Corps did not fully study land application of wastewater flows, including off-base land application options. In response to these comments a Land Application Feasibility Study was undertaken to examine the potential for large-scale land application of wastewater flows. The study concluded that land application is not an economically feasible alternative for disposal of all MCB Camp Lejeune wastewater. An individual land application treatment facility was also studied for disposal of wastewater from the Rifle Range plant and was also determined not to be cost effective. However, the study did recommend that treated effluent from Onslow Beach be disposed of via rapid infiltration rather than being pumped to the new plant for treatment and discharge to the New River. As a result, the preferred alternative was modified, and as identified in the Final Environmental Impact Statement (FEIS), is a combination of a new advanced wastewater treatment facility located in the Frenchs Creek area of MCB Camp Lejeune with diffused discharge into the New River, and a new rapid infiltration facility at Onslow Beach. Under this alternative, a significant length of pipeline from Onslow Beach to the Frenchs Creek site will not be needed, and impacts to terrestrial vegetation, wildlife, wetlands and the Intracoastal Waterway will be minimized or eliminated.

Construction of a new 15 MGD advanced wastewater treatment plant with river discharge and a rapid infiltration system at Onslow Beach will result in minor socio-economic and land use impacts. About 35 miles of existing road right-of-way will be temporarily disturbed for placement of transmission lines, and approximately 25± acres will be used for the treatment plant site in the Frenchs Creek area. Construction of treatment facilities is not expected to impact population growth, but the local economy will benefit from the $80± million construction project through job stimulation. No impact to regional transportation systems will be felt, but traffic on MCB Camp Lejeune will likely experience delays during pipeline construction. Parks and recreation facilities on Base will not be impacted; however, there will be minor disruption at several picnic areas on MCB Camp Lejeune during pipeline construction. Proper site layout, engineering design and operation will minimize odor impacts to MCB Camp Lejeune recreational beaches. Existing utilities are adequate to support the proposed action.

No cultural resources will be affected at the new plant site. Ten archaeological sites were located during the intensive survey of the proposed wastewater transmission line. Four sites required further testing to determine their National Register eligibility status. One of the sites was determined to be eligible. While pipeline construction impact to this site cannot be avoided, mitigation through data recovery will ensure no adverse effects occur to the site. Additional archeological testing will also be conducted at one other site which the North Carolina Department of Cultural Resources believes has the potential for being eligible. The Onslow Beach rapid infiltration facility site is located on a barrier island and has been frequently disturbed by training exercises and tracked vehicular movement; therefore, the probability of this site containing cultural resources is low. Consultation with the North Carolina Department of Cultural Resources is being completed to assure full compliance with the National Historic Preservation Act.

Impact to topography, soils, geology, and groundwater will be minimal. Sedimentation and erosion control plans will be submitted to the North Carolina Division of Land Resources, Land Quality Section for review and approval. Floodplains will be crossed at several locations by transmission lines, but subsurface placement will eliminate any risks of increased flooding. Proper design and operation of the rapid infiltration system at Onslow Beach will minimize any potential impact to groundwater quality. The project will not encroach on any sites contaminated with hazardous materials.

Water quality in the New River will be minimally impacted by constituents commonly found in treated domestic wastewater effluent. The Wasteload Allocation Study prepared by the North Carolina Division of Environmental Management indicates that dilution and dispersion of treated domestic wastewater effluent will be rapid. Concentration of various constituents anticipated in the treated wastewater effluent will pose only a minor impact on ambient conditions at the point of discharge and decrease quickly from that point. A multi-port diffuser will be used to achieve maximum initial dilution and other engineering techniques will improve plume velocity and mixing. Details of the diffuser design will be coordinated with the North Carolina Division of Environmental Management during the National Pollutant Discharge Elimination System (NPDES) permitting process. The impact of a fresh water discharge to the saline environment of the New River will be minimal and will not adversely affect the movement of aquatic life within the New River estuary. Water quality in the New River will be beneficially impacted since the discharged treated domestic wastewater effluent from the new advanced wastewater treatment plant will be of a higher quality than the effluent from existing MCB Camp Lejeune wastewater treatment plants. The much higher level of treatment will result in a 78 percent reduction of oxygen consuming substances as compared to the current situation. Nitrogen and phosphorus will be reduced by 87 percent and 80 percent, respectively, from existing conditions. Dechlorination facilities being constructed in Phase II will eliminate chlorine residuals in the effluent. Monitoring programs for

influent and effluent will be established as part of the NPDES permit. Potential impacts to sediments will be mitigated through a monitoring program to address pre- and post-construction level of contaminants around the diffuser. Parameters for this testing (i.e., sample period, sample size, and toxicants monitored) will be established during the NPDES permitting process.

The potential for spills will be minimized through operation of modern state-of-the-art monitoring equipment which allows early detection of abnormal conditions at remote sites. Additionally, a state-of-the-art advanced wastewater treatment facility with dual-path treatment systems, as required by North Carolina regulations, will mitigate the potential for spills more effectively than the existing facilities.

Steps are being taken by MCB Camp Lejeune to reduce the wastewater flow requiring treatment. Construction and renovation projects are required to include water conservation devices. Studies have been undertaken to identify opportunities to recycle and reclaim wastewater. MCB Camp Lejeune has also recently conducted several Infiltration and Inflow studies of the base wastewater collection system. Improvements to the wastewater collection system underway and those planned in the near term, along with water conservation methods, will provide MCB Camp Lejeune the opportunity to eliminate unnecessary flows to the wastewater system.

This action will have no impact upon ambient air quality or noise levels.

A small amount of terrestrial habitat will be displaced by transmission line construction and vegetation will be removed from the 25 acres needed for treatment plant construction and the two acres required for the rapid infiltration system at Onslow Beach. The tract at Onslow Beach to be used for the rapid infiltration system has been cleared for some time, therefore there will be minimal impact to the natural vegetation community.

No permanent displacement of wetlands will occur at the plant site, rapid infiltration system site, or wetland crossings by the pipeline. By selecting pipeline routes along existing rights-of-way, impacts to wetlands have been minimized. Section 404 Nationwide Permit Numbers 12 and 26 will apply for these crossings. Pipeline crossings of the New River near Camp Geiger, Northeast Creek, Bearhead Creek, and Wallace Creek will be accomplished using directional drilling techniques that will pass under these waterbodies and not disturb aquatic habitats or wetlands.

No federally protected threatened or endangered species will be affected. Limiting construction of the underwater component of the project to certain months (1 September through 1 April) will further reduce the short-term impacts to primary nursery areas and alligator habitat.

The proposed action has been evaluated with respect to environmental and social impacts, as well as access to public information and an opportunity for public participation in the NEPA process as mandated by Executive Order 12898, "Federal Actions to Address Environmental Justices in Minority Populations and Low-Income Populations." The project is consistent with the goals and provisions of that Executive Order.

A Coastal Consistency Determination was prepared for this project and it concluded that the proposed action is being carried out in a manner consistent, to the maximum extent practicable, with the enforceable policies of the North Carolina Coastal Management Plan. The North Carolina Division of Coastal Management concurs with this determination. Coordination will continue with the North Carolina Division of Coastal Management for pipeline crossings of wetlands.

Preparation of the Environmental Impact Statement began with a public scoping process to identify issues that should be addressed in the document. Involvement in scoping was offered through a combination of documented public announcements and a meeting with State of North Carolina agencies. Public announcements were handled through scoping letters sent to Federal, State, and local governmental agencies, citizen groups and associations and the general public. Also, a Notice of Intent to prepare an Environmental Impact Statement was published in local newspapers and the **Federal Register**. Scoping took place between December 1991 and January 1992.

The Notice of Availability of the DEIS appeared in the **Federal Register** on June 18, 1993. The DEIS was distributed to agencies and officials of Federal, State and local governmental agencies, citizens groups and associations, public libraries, and to other interested parties. The public review period for the DEIS was from June 13, 1993 through August 2, 1993. During this period a public hearing was held on July 13, 1993 at Jacksonville Senior High School, Jacksonville, North Carolina. The FEIS was distributed to agencies and officials of Federal, State and local governmental agencies, citizens groups and associations, public libraries, and to other interested parties on June 3, 1994.

The Department of the Navy believes that there are no outstanding issues to be resolved with respect to this project. Questions regarding the Environmental Impact Statement prepared for this action may be directed to Mr. Robert Warren, Environmental Management Department, MCB Camp Lejeune, NC 28542, telephone (910) 451–5003.

August 2, 1994.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy (Environmental and Safety).

[FR Doc. 94–19192 Filed 8–5–94; 8:45 am]

BILLING CODE 3810–AE–P

Notice of Availability of Invention for Licensing

AGENCY: Department of the Navy, DOD.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Requests for copies of the patent applications cited should be directed to the Office of Naval Research (ONR 00CC), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia, 22217–5660, and must include the application serial number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC), 800 North Quincy Street, Arlington, Virginia, 22217–5660, telephone (703) 696–4001.

Patent application 08/136,586: SURFACE-LAMINATED PIEZOELECTRIC-FILM SOUND TRANSDUCER; filed October 18, 1993; and

Patent application (Navy Case number 75,574): LOXANES WITH STRONG HYDROGEN BOND DONATING FUNCTIONALITIES; filed May 27, 1994.

Dated: July 26, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–19187 Filed 8–5–94; 8:45 am]

BILLING CODE 3810–AE–M

Notice of Availability of Invention for Licensing

AGENCY: Department of the Navy, DOD.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available

for licensing by the Department of the Navy.

Requests for copies of the patent applications cited should be directed to the Office of Naval Research (ONR 00CC), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia, 22217–5660, and must include the application serial number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC), 800 North Quincy Street, Arlington, Virginia, 22217–5660, telephone (703) 696–4001.

Patent application 08/250,768: SILOXANES WITH STRONG HYDROGEN BOND DONATING FUNCTIONALITIES; filed May 27, 1994.

Dated: July 26, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–19188 Filed 8–5–94; 8:45 am]

BILLING CODE 3810–AE–M

Intent To Grant Partially Exclusive Patent License; First Choice Armor & Equipment, Inc.

AGENCY: Department of the Navy, DOD.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to First Choice Armor & Equipment, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned invention described in U.S. Patent No. 5,060,314, entitled "Multi-Mission Ballistic Resistant Jacket" issued October 29, 1991.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC), 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: July 26, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, NSN, Federal Register Liaison Officer.

[FR Doc. 94–19189 Filed 8–5–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Financial Assistance Award: Intent To Award Cooperative Agreement to University of New Mexico Board of Regents New Mexico Engineering Research Institute

AGENCY: Department of Energy, Albuquerque Operations Office.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Albuquerque Operations Office, announces that, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth in 10 CFR 600.7(b)(2)(i)(D) to the New Mexico Engineering Research Institute (NMERI), an institute within the College of Engineering of the University of New Mexico (UNM), under the DOE New Independent States Industrial Partnering Program (IPP). NMERI will support the activities of the DOE National Laboratories, commercial firms, and universities in their efforts to construct working agreements which will engage scientists and technologists in the New Independent States (NIS) of the former Soviet Union (FSU) in cooperative ventures for the commercialization of NIS technologies.

FOR FURTHER INFORMATION CONTACT: Susan L. Connor, U. S. Department of Energy, Albuquerque Operations Office, Energy and Technologies Division, P.O. Box 5400, Albuquerque, NM 87185–5400, Telephone: (505) 845–4345, FAX (505) 845–5960.

SUPPLEMENTARY INFORMATION: The objective of this award is to comply with Section 575 of the Foreign Operations, Export Financing, and Related Programs Appropriation Act of 1994, which contains provisions to establish a DOE program with the NIS. The Act authorizes the Secretary of Energy to enter into partnerships involving U.S. industry, universities, and the DOE National Laboratories and key NIS institutes to promote U.S. competitiveness and to encourage enterprise development in the NIS.

NMERI will provide organizational, management, administrative and logistical support to the United States Industry Coalition (USIC), a for-profit corporation established for the purpose of selecting and facilitating industry cost-share partnerships with DOE National Laboratories involving public and private funding for product commercialization. NMERI will also serve as a catalyst to bring together a consortium of universities to support the Section 575 program. One of the principal purposes for establishing a consortium of universities is to provide equal opportunities for universities from across the U.S. to participate in USIC programs and projects.

NMERI will organize and coordinate the activities of the Universities Consortium which will (1) develop curricula and teach courses to NIS institutes related to program management and business, and (2) team with U.S. industries to establish, maintain and operate a voice, data, and video telecommunications capability between involved entities in the U.S. and the NIS.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the proposed project is meritorious and that the probability of achieving the anticipated objectives is high. The applicant has exclusive domestic capability to perform the activity successfully, based upon unique technical expertise. The qualifications and capabilities of the key personnel are exceptional, including expertise and experience in collaborative research with Russian scientists, Russian studies, management, engineering, international business, computer science, and document preparation.

In late 1992 NMERI developed and began executing a plan for establishing the Center for the Exchange of technology between Russia and the U.S. (CEDRUS). The CEDRUS plan included (a) development of U.S./Russia telecommunication links; (b) establishment of technology transfer partnerships between U.S. companies, U.S. universities, and Russian research institutions; and (c) development and delivery of telecommunications-based management and business practices training for Russian participants. During early 1993 several meetings were held with representatives of U.S. industry, DOE National Laboratories, DOD laboratories and U.S. universities interested in Russia technology transfer. In June, 1993, NMERI and the National Technological University conducted a technology transfer teleconference test which included 25 U.S. companies, the Central Design Bureau in St. Petersburg and the Kurchatov Institute in Moscow. This experience, along with NMERI's extensive R&D work with the Russians on the TOPAZ space reactor in Albuquerque, provides the foundation for the only existing program that could feed directly into, act as the model for, and support all aspects of USIC organization and operations. In addition, through the TOPAZ program NMERI is providing special assistance to the Russian institutes by arranging for

support services for Russian nationals residing in the U.S. The President of UNM, Dr. Richard Peck, has received letters of support and intent to participate in the IPP program from six FSU scientific institutes and associations.

NMERI has already accomplished much toward forming the Universities Consortium and the industry coalition. NMERI has experience managing large complex contracts for the federal government, foreign governments, and the public-private sector, with management and administrative systems in place. NMERI is currently under contract to develop and implement a high computing center with a broad-band communications network connecting Maui, Hawaii, with Albuquerque, New Mexico, and other U.S. locations.

DOE funding for the proposed activity is estimated to be $3 million, with no cost sharing required. A 12-month project period is anticipated.

Issued in Albuquerque, New Mexico July 27, 1994.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–19298 Filed 8–5–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER94–155–002, et al.]

Catex Vitol Electric Inc., et al.; Electric Rate and Corporate Regulation Filings

August 1, 1994.

Take notice that the following filings have been made with the Commission:

1. Catex Vitol Electric Inc.

[Docket No. ER94–155–002]

Take notice that on July 25, 1994, Catex Vitol Electric Inc. filed certain information as required by the Commission's January 14, 1994, letter order in Docket No. ER94–155–000. Copies of Catex Vitol Electric Inc.'s informational filing are on file with the Commission and are available for public inspection.

2. Florida Power & Light Company

[Docket No. ER94–573–000]

Take notice that Florida Power & Light Company, on July 26, 1994, tendered for filing the following agreements:

• Amendment Number Five to "St. Lucie Unit No. 2 Participation Agreement," dated as of June 6, 1980, between FPL and the Orlando Utilities Commission

• Amendment Number Four to "St. Lucie Unit No. 2 Participation Agreement," dated as of February 2, 1982, between FPL and the Florida Municipal Power Agency

Comment date: August 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER94–1314–000]

Take notice that on July 15, 1994, Niagara Mohawk Power Corporation tendered for filing an amendment to its May 31, 1994, filing in the above-referenced docket.

Comment date: August 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER94–1340–000]

Take notice that on July 15, 1994, Niagara Mohawk Power Corporation tendered for filing an amendment to its June 9, 1994, filing in the above-referenced docket.

Comment date: August 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Public Service Company

[Docket No. ER94–1391–000]

Take notice that Southwestern Public Service Company (Southwestern) on July 22, 1994, tendered for fling an amendment to its original filing in ER94–1391–000.

The amendment is a request for waiver of the Commission's regulations so that service may begin on August 22.

Comment date: August 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19199 Filed 8–5–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. GP94–16–000]

State of Louisiana Office of Conservation—Geopressured Brine Gas Well Determinations (FERC Nos. JD94–04615, et al.); Notice of Preliminary Finding

August 2, 1994.

The Office of Conservation for the State of Louisiana (Louisiana) determined that the natural gas produced from five wells qualifies as natural gas produced from geopressured brine under Section 107(c)(2) of the Natural Gas Policy Act of 1978 (NGPA).

For the reasons discussed below, the Commission issues this Notice of Preliminary Finding that the determinations are not supported by substantial evidence.

Background

The Definition of "Natural Gas Produced from Geopressured Brine"

Section 272.103(c) of the Commission's regulations defines "natural gas produced from geopressured brine" as natural gas dissolved before initial production of the natural gas in subsurface brine aquifers with at least 10,000 parts of dissolved solids per million parts of water (ppm) and with an initial reservoir geopressure gradient in excess of 0.465 per square inch (psi) for each vertical foot of depth. This definition was adopted to implement NGPA Section 107(c)(2), which provides that "natural gas produced from geopressured brine" is "high-cost natural gas."

In the Interim Rule and Final Rule adopting the definition of "natural gas produced from geopressured brine," the Commission held that free gas (i.e., gas which is freed from solution in the brine) cannot qualify as production from geopressured brine.[1] The Commission based its decision on the language of NGPA Section 107(c)(2), which required that the gas be produced from the brine, and the fact that gas that was not dissolved in brine could be economically produced through less

[1] Interim Rules Defining and Deregulating Certain High-Cost Natural Gas, FERC Stats. and Regs., Regulations Preambles, 1977–1981, ¶30,094; Final Rule Defining and Deregulating Certain High-Cost Gas, FERC Stats. and Regs., Regulations Preambles, 1977–1981, ¶30,147.

expensive conventional production techniques. Accordingly, the Commission stated that if the gas has broken free from the brine before initial production (before any fluids are withdrawn from the reservoir), such gas would not qualify under the definition the Commission adopted to implement NGPA Section 107(c)(2).

Louisiana's Determinations

Louisiana notified the Commission that gas produced from the Edna Delcambre #1 Well (FERC No. JD94–04615), the Exxon Fee #13 Well (FERC No. JD94–06209), the Exxon Fee #16-Alt Well (FERC No. JD94–06208), the Exxon Fee #18-Alt Well (FERC No. JD94–06207), and the Exxon Fee #24 Well (FERC No. JD94–06206) qualifies as natural gas produced from geopressured brine under NGPA Section 107(c)(2).[2] The wells are currently owned and operated by WRT Energy Corporation (WRT).

Staff's Tolling Letter

Staff's May 20, 1994 letter to Louisiana noted that each record showed that each well produced predominantly free gas before the well began to produce significant amounts of fluids. Since the Commission had stated that gas that had broken free from the brine before any fluids are withdrawn from the reservoir could not qualify under its definition, staff requested Louisiana to explain why it believes the gas qualifies under the Commission's definition and to provide additional information to support each determination.[3]

Response to Tolling Letter

Louisiana's response, which was received on July 5, 1994, forwards a June 22, 1994 letter (plus supporting data) from WRT that responds to the tolling letter. Louisiana states that WRT's letter addresses the deficiencies in question.

WRT's June 22, 1994 letter provides the additional data requested in the tolling letter and explains why WRT believes that gas from the subject wells qualifies under Section 107(c)(2).[4] WRT asserts that geological processes in the Gulf of Mexico cause continual compaction of source rocks and that this compaction generally results in the expulsion of salt water (or brine) which contains minute quantities of hydrocarbons dissolved in the brine. The brines generally migrate vertically, which results in lower pressures, and eventually free gas is evolved from the brine. This free gas, WRT continues, remains immobile until it has reached a critical gas saturation, at which point this free gas begins to flow along with the brine. Thus, WRT concludes, the natural evolution of geopressured brine involves not only gas in solution but also free gas that can be either mobil or immobile.

WRT contends that the phrase "broken free" is ambiguous and that the Commission's statement in the Interim Rule was clearly intended to disqualify gas that pre-existed as mobile free accumulations of gas. WRT further contends that immobile free gas is an entirely different situation since it is not able to be produced through conventional means and is necessary to recover gas from a geopressured brine well. WRT concludes, therefore, that the Commission's statement that free gas could not qualify as gas produced from geopressured brine was not intended to include naturally occurring free gas within the reservoir below the critical saturation point (i.e., the Commission did not mean to exclude immobile free gas that cannot be produced by conventional means from the definition).

Discussion

The Edna Delcambre #1 well produces from the Planulina 8 Sand, Reservoir A, in the Tigre Lagoon Field, which was discovered in 1947. The other four wells (Exxon Fee #13, #16, #18, and #24 wells) all produce from the 14,600' Sand, in the Lac Blanc Field, which was discovered in 1957.[5] The records also indicate that the Edna Delcambre #1 well began producing from the Planulina 8 Sand in 1982; and the Exxon Fee #13, #16, #18, and #24 wells began producing from the 14,600' Sand between 1982 and 1989. Thus, the 14,600' Sand, Reservoir C, and Planulina 8 Sand, Reservoir A, had been producing free gas for many years before WRT took over the operation of these wells.[6]

After it acquired the wells, WRT applied secondary/enhanced recovery techniques and equipment, thereby extending the economic limit of both the wells and the subject reservoirs. Therefore, due to the expense of such techniques and equipment, WRT interprets the Commission's reference to gas that has "broken free" to refer to free gas, like a gas cap type reservoir accumulation, that can be produced by conventional means only—not to "immobile" free gas that cannot be produced without some production enhancement techniques.

We disagree with WRT's interpretation, which would allow certain free gas in the subject reservoirs to qualify as geopressured brine gas simply because the geopressure gradient in the reservoirs exceeds 0.465 psi/foot and the concentration of total dissolved solids exceeds 10,000 ppm. Our regulations and intent are clear. The Commission explicitly stated that gas not dissolved in brine (i.e., free gas) cannot qualify as a high-cost gas under NGPA Section 107(c)(2). Similarly, when the Commission stated that any gas that has "broken free" of the brine prior to the onset of fluids production does not qualify as natural gas produced from geopressured brine, there is nothing to indicate that the mobility of the gas that had broken free mattered.

The decision to exclude free gas reflects the Commission's belief that Congress deregulated gas produced from geopressured brine to provide an incentive for drilling wells into previously unproduced geopressured brine aquifers to tap gas dissolved in brine, not for producing gas from partially depleted or nearly depleted gas reservoirs.[7] The Commission notes that incentives for gas production from depleted or nearly depleted gas reservoirs such as WRT's were provided by the statute (under the Section 108 enhanced recovery stripper gas well category) and by the Commission under the Section 107(c)(5) production enhancement gas category, pursuant to the authority conferred upon the Commission to establish an incentive

[2] The Commission received the determination for the Edna Delcambre #1 well on April 7, 1994; the other determinations were received on May 3, 1994.

[3] Staff requested: (1) shut-in bottomhole pressure histories and complete production histories for all of the wells that produced, or are producing, from one of these reservoirs; (2) subsurface structure maps, isopach maps, and cross-sections, detailing the initial and current-day geographical and vertical limits of each free gas reservoir, and the location of gas/water contacts; (3) a complete set of the well history records and Louisiana potential test reports for the 5 wells; and (4) a published reference detailing the solubility of natural gas in formation waters.

[4] The Commission received WRT's response on June 23, 1994. However, under Section 275.202, staff's letter tolled the Commission's 45-day review period until a response from Louisiana is received. Since Louisiana's response was received on July 5, 1994, the 45-day review period ends August 19, 1994.

[5] The Exxon Fee #13, #16, and #18 wells produce from the 14,600' Sand, Reservoir C, while the #24 well produces from an adjacent fault block—Reservoir A.

[6] WRT acquired its interest in the Delcambre #1 well in 1988 and became the operator of the Lac Blanc Field in 1993. The previous operators qualified the subject wells under Section 102 or 103.

[7] NGPA Section 121 provides that the high-cost gas described in Sections 107(c)(1) to (c)(4) will be deregulated on the effective date of the incremental pricing rule.

rate for other gas produced under high costs or high risks.

Under Section 275.202(a) of the regulations, the Commission may make a preliminary finding, before any determination becomes final, that the determination is not supported by substantial evidence in the record. The record for each well clearly shows that the well: (1) was not completed in a previously unproduced geopressured brine aquifer; (2) produced free gas from the reservoir before the onset of significant fluids production; and (3) is still producing varying quantities of free gas. Therefore, based on the above discussion, the Commission hereby makes a preliminary finding that Louisiana's determinations for the subject wells are not supported by substantial evidence in the records upon which they were made. Louisiana or the applicant may, within 30 days from the date of this preliminary finding, submit written comments and request an informal conference with the Commission, pursuant to § 275.202(f) of the regulations. A final Commission order will be issued within 120 days after the issuance of this preliminary finding.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19248 Filed 8–5–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–336–000]

Colorado Interstate Gas Co., Notice of Proposed Changes in FERC Gas Tariff

August 2, 1994

Take notice that on July 29, 1994, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 230, reflecting tariff changes necessary to give CIG adequate time to file supporting workpapers with CIG's quarterly L&U Percentage change filings.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and that the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such petitions or protests should be filed on or before August 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19200 Filed 8–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–335–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 2, 1994

Take notice that on July 29, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following proposed changes, to be effective September 1, 1994:

First Revised Sheet No. 98
Original Sheet No. 99

Columbia states that the instant limited Section 4(e) filing represents Columbia's second filing pursuant to Section 39, "Account No. 191 Reconciliation Mechanism," of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Columbia states that the filing reflects activity affecting Columbia's pre-November 1, 1993, Account No. 191 balance, which was booked between December 31, 1993, and July 31, 1994, and results in a downward adjustment of approximately $1.5 million from the Account No. 191 balance submitted in Docket No. RP94–158–000. This filing also satisfies the reporting requirement contained in Section 39.5 of said Section 39 that Columbia submit a report detailing its Account No. 191 balance, reflecting adjustments through the nine-month period following elimination of its PGA.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19201 Filed 8–05–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–5–2–000]

East Tennessee Natural Gas Co.; Notice of Rate Filing

August 2, 1994

Take notice that on July 29, 1994, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 5, with a proposed effective date of August 1, 1994.

East Tennessee states that the purpose of this filing is to pass through take-or-pay transition costs assessed to East Tennessee by Tennessee Gas Pipeline Company (Tennessee) pursuant to Section 37 of the General Terms and Conditions of Second Revised Volume No. 1 of East Tennessee's tariff. Tennessee made its filing assessing costs effective July 1, 1994, against East Tennessee in Docket No. RP94–261–000 filed on May 31, 1994, as revised in a July 15, 1994, compliance filing in Docket No. RP94–261–001. The provisions of Section 37 of East Tennessee's tariff require East Tennessee to file to pass through the Tennessee charges within thirty days of billing by Tennessee. Tennessee billed East Tennessee for the increase on August 15, 1994.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before August 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding.

Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19202 Filed 8–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–174–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Semi-Annual Transporter's Use Report

August 2, 1994

Take notice on July 29, 1994, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed with the Federal Energy Regulatory Commission (Commission) its Semi-Annual Transporter's Use Report.

Great Lakes states that the purpose of its filing is to comply with Section 4.3 of Rate Schedules FT and IT of its FERC Gas Tariff, Second Revised Volume No. 1. Great Lakes further states that the above-described tariff provisions require Great Lakes to file, each January 31, and July 31, workpapers setting forth the calculations of the monthly Transporter's Use percentages applicable during each month of the immediately preceding six-month period.

Great Lakes states that copies of the filing were served on each of its customers, the Public Service Commissions of the States of Minnesota, Wisconsin and Michigan, and on all remaining parties listed on the service list maintained by the Commission's Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19203 Filed 8–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–685–000]

Mississippi River Transportation Corp. and NorAm Gas Transmission Co.; Notice of Application

August 2, 1994.

Take notice that on July 26, 1994, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, and NorAm Gas Transmission Company (NGT), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP94–685–000, an abbreviated application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon a certificated natural gas exchange service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, MRT and NGT, the successor in interest to Arkansas Louisiana Gas Company, request authority to abandon a natural gas exchange agreement set forth in MRT's Rate Schedule X–12 in MRT's FERC Gas Tariff, Original Volume No. 2, and NGT's Rate Schedule XE–42 in NGT's FERC Gas Tariff, First Revised Volume No. 2. Applicants state that the agreement required MRT to provide up to 100 Mcf of gas to service the White Oak Subdivision near Bossier City, Louisiana. In exchange, Applicants states that NGT agreed to redeliver equivalent volumes to MRT's system at a point near Sherrill, Arkansas. Applicants state that on June 2, 1993, in Docket No. CP93–291–000, MRT was authorized to add the White Oak Subdivision delivery point to MRT's transportation service agreements with Arkla, a Division of NorAm Energy Corporation, the local distribution company which services the White Oak Subdivision, Applicants state that the exchange agreement is no longer needed to provide service to the subdivision.

Applicants state that no facilities will be abandoned as a result of the instant proposal.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 23, 1994, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under this procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 94–19204 Filed 8–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–172–007 and RP94–238–002]

Panhandle Eastern Pipe Line Co.; Notice of Proposed Changes in FERC Gas Tariff

August 2, 1994.

Take notice that on July 29, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing. The proposed effective date of the revised tariff sheets is July 1, 1994.

Panhandle states that this filing is made in compliance with the Commission's June 30, 1994, Order Accepting And Suspending Tariff Sheets Subject to Refund and Conditions which required certain changes to the tariff sheets which Panhandle filed on May 10, 1994.

Panhandle states that it has modified the amount of its proposed direct bill amounts to former sales customers and has modified certain portions of Section 18.12 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 in accordance with the Commission's directives in the June 30, 1994, Order.

Panhandle states that copies of its filing have been served on all affected customers, all parties to this proceeding and applicable state regulatory commissions.

Any person desiring to protest the said filing should file a protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19205 Filed 8–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–294–002]

Panhandle Eastern Pipe Line Co.; Notice of Proposed Changes in FERC Gas Tariff

August 2, 1994.

Take notice that on July 29, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing. The proposed effective date of the revised tariff sheets is July 1, 1994.

Panhandle states that this filing is made in compliance with the Commission's July 14, 1994, Order Accepting And Suspending Tariff Sheets Subject to Refund and Conditions, And Convening Technical Conference which required certain changes to the tariff sheets which Panhandle filed on June 16, 1994.

Panhandle states that in compliance with the Commission's July 14, 1994 Order it has recomputed the firm surcharges applicable to Stranded Transportation Costs and has refiled its tariff sheets to reflect these computations. In addition, Panhandle has modified certain portions of Section 18.13 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 as required by the July 14, 1994, Order.

Panhandle states that copies of its filing have been served on all affected customers, all parties to this proceeding and applicable state regulatory commissions.

Any person desiring to protest the said filing should file a motion protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19206 Filed 8–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–337–000]

Texas Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

August 2, 1994.

Take notice that on July 29, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with an effective date of September 1, 1994:

Sixth Revised Sheet No. 10
Eighth Revised Sheet No. 12
Fourth Revised Sheet No. 18

Texas Gas states that the revised tariff sheets are being filed pursuant to Section 33.3 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to recover ninety percent (90%) of its Gas Supply Realignment costs from its firm transportation customers and ten percent (10%) of its Gas Supply Realignment Costs form its IT customers. The total GSR costs, including applicable interest, proposed to be recovered by this filing are $10,391,531.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected jurisdictional customers, those appearing on the applicable service lists, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Secs. 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19207 Filed 8–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–34–012].

Williston Basin Interstate Pipeline Co.; Notice of Report of Refunds

August 2, 1994.

Take notice that on July 20, 1994, Williston Basin Interstate Pipeline Company (Williston) tendered for filing a refund report. Williston Basin states that the report documents refunds of amounts due customers under Williston's Docket Nos. RP89–34–000, RP89–257–000, and RP90–2–000 for the locked-in period from June 1, 1989, through May 31, 1992.

Williston states that it is filing the refund report pursuant the Commission's Order Affirming in Part and Reversing in Part Initial Decision issued May 3, 1994, in the above referenced dockets, and the Commission's Notice of Extension of Time issued May 24, 1994, in Docket Nos. RP89–34–009, RP89–257–002, and RP90–2–012.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should be filed on or before August 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19208 Filed 8–5–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders During the Week of April 18 Through April 22, 1994

During the week of April 18 through April 22, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 C.F.R. Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issuance of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestall Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: August 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Kadane Corporation, Wichita Falls, Texas, LEE-0103, Reporting Requirements

Kadane Corporation filed an Application for Exception from the requirement that it file Form EIA-23, the "Annual Survey of Domestic Oil and Gas Reserves." In considering the request, the DOE found that the firm was not affected by the reporting requirement in a way that was significantly different from other similar reporting firms. Accordingly on April 21, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

Ullman Oil, Inc., Chagrin Falls, Ohio, LEE-00102, Reporting Requirements

Ulman Oil, Inc filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship. On April 21, 1994, the DOE issued a Proposed Decision and Order which tentatively determined that the exception request should be denied.

[FR Doc. 94-19295 Filed 8-5-94; 8:45 am]

BILLING CODE 6450-01-P

Issuance of Decisions and Orders During the Week of April 18 Through April 22, 1994

During the Week of April 18 through April 22, 1994 the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Interlocutory Order

Boeing Petroleum Services, Inc. DynMcDermott Petroleum Operations Company, 4/20/94, LWZ-0026, LWZ-0027

Boeing Petroleum Services, Inc. (Boeing) and DynMcDermott Petroleum Operations Company (DynMcDermott) filed Motions to Dismiss in a proceeding initiated by complainant Francis M. O'Laughlin (O'Laughlin) under the DOE Contractor Employee Protection Program, 10 C.F.R. Part 708. [*Francis M. O'Laughlin* vs. *Boeing Petroleum Services, Inc.*], OHA Case No. LWA-0005. In the Motion filed by Boeing, the firm sought the dismissal of O'Laughlin's complaint and his request for a hearing. In the Motion filed by DynMcDermott, the firm sought the dismissal of DynMcDermott as a party in the O'Laughlin proceeding. In considering Boeing's motion, the DOE rejected Boeing's contentions that (i) O'Laughlin's complaint was untimely and (ii) failed to state an actionable claim under Part 708. In considering DynMcDermott's motion, the DOE determined that although DynMcDermott is the management and operating contractor successor to Boeing, DynMcDermott is not a proper party to the proceeding. This is because O'Laughlin's request for reinstatement is not a remedy properly available to O'Laughlin under the circumstances of this case, even assuming his claim was meritorious. Accordingly, Boeing's Motion to Dismiss was denied and DynMcDermott's Motion to Dismiss was granted.

Motion for Reconsideration

OXY USA INC., 4/21/94, LRR-0016, LRR-0017, LRZ-0028, LRZ-0029

The DOE issued a Decision and Order concerning four motions filed in a pending enforcement proceeding involving OXY USA Inc. (OXY), Case No. LRO-0003. In that proceeding, the DOE is considering OXY's Statement of Objections to a Revised Proposed Remedial Order issued to the firm by the DOE's Economic Regulatory Administration (ERA).

The four motions consisted of the following: (i) Oxy's Motion for Reconsideration of OHA's dismissal of its Motion to Recuse, (ii) Utilities, Transporters and Manufacturers' Motion for Reconsideration of OHA's dismissal of a prior Motion for Reconsideration, (iii) ERA's Motion to Compel and (iv) ERA's Motion to Strike. The DOE determined that all four motions should be denied.

Refund Applications

MARATHON PETROLEUM COMPANY/ *INDEPENDENT OIL & TIRE COMPANY*, 4/21/94 *RR250-9*

The Office of Hearings and Appeals (OHA) issued a Decision and Order concerning a Motion for Reconsideration filed by Independent Oil & Tire Company in the Marathon Petroleum Company special refund proceeding. In a prior determination the OHA found that Independent had not shown that it was entitled to a refund in excess of its maximum volumetric refund, and in connection with its request for a full volumetric refund, that the firm had not made a reasonable demonstration that it had banks of unrecouped increased product costs. Accordingly, the firm was granted a mid-range presumptive level refund of $13,748, including interest. In its Motion, Independent requested that the OHA reconsider its denial of the above-volumetric refund request and its finding that the firm had not made a reasonable showing of banks of unrecouped increased product costs. In considering the Motion, the OHA found that the Motion was untimely filed. In

this regard, the OHA pointed out that (i) the Motion was filed more than one year after the issuance of the determination denying the above-volumetric refund, and (ii) that the Marathon refund proceeding had been closed for nearly one year. The OHA stated that the reason any funds remained in the Marathon escrow account was simply because of a pending court appeal involving a Marathon refund application filed by another firm. Therefore, the OHA stated that it would only consider reopening the Marathon proceeding if Independent demonstrated that an egregious error occurred. After reviewing the information submitted with the Motion, the OHA found that no such error occurred. The OHA determined, with respect to the issue of the above-volumetric overcharge, that Independent sought to reargue the legal determination made by OHA in the earlier decision and further, that new information submitted by Independent could have been submitted earlier. With respect to the issue of whether Independent had banks of unrecouped costs, OHA found that the additional information submitted by the firm did not provide adequate corroboration. Accordingly, the Motion was denied.

NATIONAL HELIUM CORP./CALIFORNIA, 4/20/94 *RQ3–588*

The DOE issued a Decision and Order granting a second-stage refund application filed by the State of California. In its application, California requested $618,075 of the National Helium Corp. second-stage refund monies to fund five projects intended to reduce motor vehicle travel, congestion and fuel consumption. The DOE affirmed the timely restitutionary benefits of the state's plan for the funds, and identified the proposed recipients of those benefits (the people of California) as injured consumers of refined petroleum products. The California plan was thus found to satisfy the criteria for a second-stage refund restitutionary program. Accordingly, California's Application for Refund was granted.

TEXACO INC./HARRY'S TEXACO, 4/22/94 RF321–20972

The DOE issued a Decision and Order partially rescinding an Application for Refund filed on behalf of Harry's Texaco in the Texaco Inc. special refund proceeding. The DOE found that the applicant had been granted a refund on the basis of purchases made by another retailer/reseller. The DOE then received from Texaco a schedule of purchases for Harry's Texaco, which reflected purchases that were less than those upon which the initial refund had been based. Therefore, the DOE issued a supplemental Decision and Order authorizing a lesser refund and requiring Harry's Texaco to repay the difference.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

AMERON, INC	RF272–42426	04/18/94
AMERON, INC	RD272–42426	
ANTHONY DESALVO *ET AL*	RF272–82420	04/20/94
ATLANTIC RICHFIELD COMPANY/CARRERA IMPORTS *ET AL*	RF304–13431	04/20/94
CRYSTAL SOAP & CHEMICAL CO. *ET AL*	RF272–92825	04/20/94
ENRON CORP./B&H PROPANE, INC. CENTRAL BUTANE GAS SERVICE	RF340–145	04/21/94
	RF340–164	
TRI-CITY GAS, INC	RF340—186	
GULF OIL CORP./A & H FARM *ET AL*	RF300–21046	04/22/94
GULF OIL CORP./AVALON DAIRIES	RF300–19842	04/22/94
GULF OIL CORP./BENSON FUEL OIL CO., INC	RF300–20609	04/21/94
GULF OIL CORP./HUGHTON'S GULF	RF300–21788	04/22/94
GULF OIL CORP./RAY CITY GULF *ET AL*	RF300–18665	04/19/94
KAWNEER COMPANY, INC	RF272–16752	04/18/94
KAWNEER COMPANY, INC	RD272–16752	
SHELL OIL COMPANY/CANNON STREET SHELL	RF315–8225	04/18/94
STATE OF MARYLAND DEPARTMENT HEALTH & MENTAL HYGIENE	RF272–87985	04/21/94
TEXACO INC./COOMER'S TEXACO SERVICE	RF321–19138	04/19/94
HARTSFIELD TEXACO	RF321–20971	
TEXACO INC./FRANK'S TEXACO	RF321–20974	04/21/94
TEXACO INC./HARNDEN'S TEXACO	RF321–20973	04/21/94
TEXACO INC./KEN'S TEXACO *ET AL*	RF321–550	04/21/94
TEXACO INC./OK GARAGE *ET AL*	RF321–19009	04/18/94
TRI STATE HOMES, INC. *ET AL*	RF272–57057	04/18/94

Dismissals

The following submissions were dismissed:

Name	Case No.
ANDY'S EZ-GO GULF SERVICE	RF300–20799
ATILES TEXACO SERVICE	RF321–14663
DEVCO OIL COMPANY	RF304–14802
EDDIE BO'S TEXACO	RF321–1022
GEISKOPF'S TEXACO	RF321–19468
GRIPE-CLIFTON OIL CO	RF321–8525
JERSEYMAID MILK PRODUCTS	RF321–17273
NORTH JENSEN TEXACO	RR321–148
O'BANNIONS, INC	RF321–13883
O'BANNIONS, INC	RF321–13888
O'BANNIONS, INC	RF321–13885
O'BANNIONS, INC	RF321–13886
O'BANNIONS, INC	RF321–13891

Name	Case No.
O'BANNIONS, INC	RF321-13890
O'BANNIONS, INC	RF321-13884
O'BANNIONS, INC	RF321-13889
O'BANNIONS, INC	RF321-13882
O'BANNIONS, INC	RF321-13887
O'BANNIONS, INC	RF321-13892
OAK GROVE TEXACO	RF321-20431
PILGRIM FEED MILL DIVISION	RF272-92829
REBEL ACRES STOP "N" SHOP	RF321-19472
SAXON'S TEXACO	RF321-19466
SWAN TEXACO	RF321-19474
TURKEY EXPRESS, INC	RF321-16319
VASUT TEXACO	RF321-17430
WAGNER GAS	RF340-141
WYLIE'S TEXACO	RF321-18261

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: August 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94-19300 Filed 8-5-94; 8:45 am]

BILLING CODE 6450-01-P

Issuance of Decisions and Orders; Week of June 13 through June 17, 1994

During the Week of June 13 through June 17, 1994 the decisions and orders summarized with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Cowles Publishing Company, 6/14/94, LFA-0381

Cowles Publishing Company (Cowles) filed an Appeal from a determination issued by the Office of Communications of the Department of Energy's Richland Operations Office (DOE/RL), in response to a request for information filed under the Freedom of Information Act (FOIA). Cowles sought records containing the names of the subjects of a radiation study conducted under a contract between the University of Washington and the Atomic Energy Commission (AEC), a predecessor agency to the DOE. In considering the Appeal, the DOE found that the University of Washington, who possessed the records sought by Cowles, is not an "agency" as defined in the FOIA. In addition, the DOE found that the records in question were not created by the AEC, were not obtained by the AEC or DOE, and are not the property of the DOE. Therefore, these records were found not to be "agency records" subject to the FOIA. Accordingly, the Appeal was denied.

Marlene Flor, 6/14/94, LFA-0378

Marlene Flor (Flor) filed an Appeal from a determination issued to her on May 4, 1994 by the Chief of the FOI and Privacy Branch, Reference and Information Management Division who denied a request for information, Flor had filed under the Freedom of Information Act (FOIA). The request sought information concerning "any documentation that may exist on me elsewhere in the Department of Energy of a security or personnel security nature not already furnished to me since January 1, 1993." The FOI and Privacy Branch stated that a search was made of the files in the Office of Civil Rights and that no documents existed responsive to Flor's request. The Appeal challenged the adequacy of the search. In considering the Appeal, the DOE found that the initial searches conducted by the Office of Civil Rights were inadequate. Accordingly, Flor's Appeal was granted and the matter was remanded to the Office of Civil Rights to identify and release responsive documents it located in a subsequent search.

Refund Applications

Texaco Inc./Bill Burns Oil Co., 6/15/94, RF321-16330

The DOE issued a Decision and Order granting an Application for Refund filed by Bill Burns Oil Co. (Burns) in the Texaco Inc. special refund proceeding. Burns sought a refund equal to its full allocable share based on its purchases of Texaco motor gasoline and middle distillates. In support of its claim of injury above the medium-range presumption level, the firm submitted information showing the status of its cumulative banked gasoline and middle distillate costs at the end of the respective "banking" regulation periods and a competitive disadvantage analysis for its Texaco purchases of each grade of motor gasoline and for middle distillates. The data submitted showed that Burns had accumulated sufficient banks to justify a full volumetric refund, and that the firm may have been experienced a substantial competitive disadvantage as a result of its purchases. The total refund amount granted was $25,755 ($18,411 principal and $7,344 interest).

Texaco Inc./D.E. Newman Oil Co., Inc. Commercial Lubricants Corp. D.E. Newman Oil Co., Inc., 6/16/94, RF321-9230, RF321-20665, RF321-20666

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding on behalf of D.E. Newman Oil Co., Inc. (Newman Oil). One application (RF321-9230) was filed by the former owner of the corporation, Mrs. D.E. Newman. The other application (RF321-20666) was filed on behalf of the Newman Oil Corporation by its current vice president. In September 1986, Mrs. Newman and her husband sold the Newman Oil stock to John Beasley. Since the sellers did not specifically retain the right to any refund in the sales agreement, the DOE found that the right to the refund was transferred to John Beasley, the current stockholder of the corporation. Accordingly, the DOE awarded the refund to D.E. Newman Oil Co., Inc. and denied the application filed by Mrs. Newman. The DOE also approved the Application for Refund filed by Commercial Lubricants Corp., an affiliate of D.E. Newman Oil Co., Inc. The purchase volumes of Newman Oil

and Commercial Lubricants Corp. were combined to calculate one allocable share under the medium-range presumption of injury.

Texas Inc./State of Missouri, 6/15/94, RF321-14215

The DOE issued a Decision and Order concerning an Application for Refund filed by the State of Missouri in the Texaco refund proceeding. The State of Missouri claimed that it had purchased 26,817,969 gallons of Texaco product during the refund period, but did not document these purchases. Instead, its purchases were estimated by multiplying the total amount of petroleum purchases made by the State of Missouri during the refund period by Texaco's market share in Missouri during the refund period. The DOE found that without any supporting data, this estimation methodology was not reasonable. Accordingly, the DOE granted the State of Missouri a refund based on the purchases that were actively documented in Texaco's records.

Texaco Inc./Texaco Self Serve, Inc., 6/14/94, RF321-7909

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. Subpart V special refund proceeding filed by Mr. Bill Guss on the basis of the sales of Texaco Self Serve, Inc., a motor gasoline retail sales outlet. While Mr. Guss requested that any refund check be made payable to him, the DOE found that Mr. J.W. Bird, the owner of the outlet, instead of Mr. Guss, was the proper applicant for a refund in this case. The DOE also found, however, that Mr. Bird had previously received a $10,000 mid-range presumption refund in the Texaco proceeding on the basis of the sales of Bird Oil Co., a firm in which he was the majority owner. As in previous proceedings, the DOE found that in the case of firms under common ownership and control, such as Bird Oil and the Self Serve outlet, the sales of the two should be combined in calculating any refunds to be granted. In any case, the DOE also found that the Texaco purchases of the outlet had been made from Bird Oil, and that consequently a further, duplicative refund was not warranted. Therefore, the Texaco Self Serve Application was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Carl's ARCO *et al*	RF304-14047	06/14/94
Atlantic Richfield Company/CFW Construction Co., Inc. *et al*	RF304-14371	06/17/94
Atlantic Richfield Company/Williams ARCO	RF304-14574	06/14/94
Williams ARCO	RF304-14575	
Enron Corp./Gas Service, Inc.	RF340-166	06/17/94
Midlothian Butane Gas Co., Inc	RF340-174	
Schneider L. P. Gas	RF340-194	
Gulf Oil Corporation/B & B Gulf *et al*	RF300-20311	06/14/94
Gulf Oil Corporation/G.J. Creel & Sons, Inc.	RF300-5757	06/17/94
Gulf Oil Corporation/Hubert C. Poling	RF300-18714	06/17/94
Courtesy Gulf #1	RF300-19618	
Wayne Wilkinson's Gulf	RF300-19654	
Gulf Oil Corporation/Watson's Gulf Service	RF300-13682	06/17/94
Bob Carlson Gulf Service	RF300-18801	
Gulf Oil Corporation/William C. Eaton, Inc.	RF300-14384	06/15/94
Texaco Inc./Beach Expressway Texaco	RF321-21000	06/14/94
Texaco Inc./Northwood Texaco Service *et al*	RF321-19330	06/16/94

Dismissals

The following submissions were dismissed:

Name	Case No.
Bob & Jack's Texaco	RF321-19792
Bob & Jack's Texaco	RF321-14282
Bob and Jack's Goodyear Tire	RF321-20938
Bob's Sycamore Texaco	RF321-14283
Buick's Texaco	RF321-8397
Early's Mail Service	RF272-91611
Edward S. Kelton Contracting Co., Inc..	RF321-20059
Floyd's Texaco	RF321-8391
Ken's Gulf	RF300-15822
Kenneth H. Besecker	LFA-0377
Lei Lani, Inc. #2	RF321-608
Moore's Texaco #1	RF321-19475
Moore's Texaco #2	RF321-19476
National Car Rental, Inc.	RF300-20051
PPG Industries, Inc.	RF321-20069
Rich-Mar Maintenance, Inc.	RF272-92109
Svoboda Texaco Service	RF321-1315
Wilhelm Company	RF272-91640

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: August 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94-19299 Filed 8-5-94; 8:45 am]

BILLING CODE 6450-01-P

Western Area Power Administration

Replacement Resource Methods Report; Grand Canyon Protection Act of 1992

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Initiation of Public Consultation, Grand Canyon Protection Act Replacement Resource Methods Report.

SUMMARY: The Western Area Power Administration (Western) is initiating a public consultation process to identify methods of replacing lost Glen Canyon Dam power and to report the findings to Congress, as required by the Grand Canyon Protection (GCP) Act of 1992, Title XVIII (P.L. 102-575), referred to

hereafter as the GCP Act, enacted October 30, 1992. Section 1809 of the GCP Act states that the Secretary of Energy.

In consultation with the Secretary of the Interior and with representatives of the Colorado River Storage Project power customers, environmental organizations and the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall identify economically and technically feasible methods of replacing any power generation that is lost through adoption of long-term operational criteria for Glen Canyon Dam***

This section further states that—

The Secretary shall present a report of the findings, and implementing draft legislation, if necessary, not later than two years after adoption of long-term operating criteria.

Western is beginning the process of identifying methods to replace lost Glen Canyon Dam hydropower at this time in order to effectively evaluate customer needs and implement necessary contract modifications as soon as possible. Section 1809 also requires that the Secretary shall

* * * Include an investigation of the feasibility of adjusting operations at Hoover Dam to replace all or part of such lost generation.

In addition, the Secretary shall

Include an investigation of the modifications or additions to the transmission system that may be required to acquire and deliver replacement power.

The Secretary of Energy, acting by and through Western, has the responsibility of marketing power generated at Glen Canyon Dam, including power sold in place of any lost Glen Canyon Dam marketable resource, which necessitates the Replacement Resource Methods Report to Congress.

Western's approach to identifying methods and acquiring long-term replacement resources for Glen Canyon Dam will be to consider cost-effectiveness while incorporating principles of integrated resource planning. Western will consider a variety of resource options, both supply-side and demand-side, as well as renewable resource options, which would enable it to provide reliable service to its customers at the lowest possible system cost.

Western has been formulating a plan (1) to prepare, through consultation, the report on the economically and technically feasible methods of replacing lost Glen Canyon Dam power, and draft legislation if necessary; and (2) to identify the range of replacement resources needed and the necessary revisions to existing wholesale firm power contracts to accommodate replacement resource obligations. Western will implement the acquisition of any replacement resources later, through a separate process.

As part of this planning, Western has had several meetings since April 1993 with firm power customers to discuss informally the range of customer replacement resources needed. Western has discussed limitations of, and needed modifications to, existing long-term wholesale firm power contracts, as well as assumed timing of decisions by the U.S. Bureau of Reclamation (Reclamation) and Western in certain ongoing environmental impact statements (EIS) and related decision processes. Reclamation's Glen Canyon Dam EIS will ultimately influence the magnitude and timing of available hydroelectric power from the Glen Canyon Dam. Western's Salt Lake City Area/Integrated Projects (SLCA/IP) electric power marketing (EPM) EIS will determine Western's commitment level for the near-term and may affect its long-term obligations in wholesale firm electric service contracts. Both short-term and long-term obligations may influence and be influenced by eventual costs to customers.

Future consultation meetings and informational mailings on replacing lost power from Glen Canyon Dam will focus on a reasonable range of future SLCA/IP firm power contract obligations and potential methods to acquire the most cost-effective alternative sources of replacement firm resources needed to meet those obligations. The SLCA/IP consists of resources from the Rio Grande Project, Collbran Project, and Colorado River Storage Project (CRSP), which includes Glen Canyon Dam. Cost-effectiveness will be an integral component of the selection criteria for replacement resources.

PROCEDURES: The consultation period for identifying the methods of replacing the marketable resource lost at Glen Canyon Dam has begun and will end prior to submission of the report to Congress. Following publication of this notice, the next step will be the preparation of a brochure, which will address, among other items, the scope and schedule of the entire process envisioned by Western to identify the required replacement resource methods. Formal consultation will be initiated with representatives of CRSP power customers, environmental organizations and the Colorado River Basin States, Native Americans, the Secretary of the Interior, and other interested parties in late 1994 or early 1995. Notices of dates and locations of future meetings regarding identification of GCP Act replacement resource methods will be provided in **Federal Register** notices. In addition, the brochure and notices will be mailed to interested parties, including those identified in the GCP Act.

Western and the Colorado River Energy Distributors Association have cosponsored several informal regional customer meetings in Phoenix (June 23), Salt Lake City (July 1), Albuquerque (July 6), and Denver (July 7) to discuss contract-related issues regarding near-term and long-term firm power obligations and replacement resource needs. Discussions between Western and existing wholesale firm power customers concerning events, possible outcomes, and necessary contract modifications are expected to continue throughout 1994.

Western's Salt Lake City Area Office is developing an initial list of individuals and organizations interested in the replacement resource process. Parties interested in receiving information or adding their names to the mailing list may contact the sources listed below.

FOR FURTHER INFORMATION CONTACT: Replacement Resource—Jeffrey J. McCoy, Resources and Marketing Studies, Western Area Power Administration, P.O. Box 11606, Salt Lake City, Utah 84147–0606. Telephone: (801) 524–5399 or (801) 524–5493. Contract Modifications—Burt Hawkes, Contracts and Customer Services, Western Area Power Administration, P.O. Box 11606, Salt Lake City, Utah 84147–0606. Telephone: (801) 524–3344 or (801) 524–5493.

SUPPLEMENTARY INFORMATION: The GCP Act states that the Secretary of the Interior:

Shall operate Glen Canyon Dam in accordance with the additional criteria and operating plans * * * and exercise other authorities under existing law *in such a manner as to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area* were established,... (GCP Act, Section 1802) (emphasis added)

The GCP Act was enacted to address resource management problems in Grand Canyon National Park and Glen Canyon National Recreation Area attributed to the operation of Glen Canyon Dam. Operations of Glen Canyon Dam have been modified during the interim period prior to completion of the Glen Canyon Dam EIS. It is anticipated that compliance with the GCP Act to reduce operations-related impacts to the downstream environment

will result in further long-term modifications following the Glen Canyon Dam EIS Record of Decision.

The Glen Canyon Dam EIS was initiated in 1989 to evaluate impacts of Glen Canyon Dam operations on downstream resources of the Colorado River. The draft Glen Canyon Dam EIS, published by Reclamation in January 1994, presents a range of long-term operational alternatives for the dam. Reclamation published a notice of availability of such draft EIS on January 7, 1994; (59 FR 1023). The Glen Canyon Dam EIS is mandated by the GCP Act to be completed no later than 2 years after the date of enactment of the Act, or October 1994.

Long-term operating criteria will be established based on the findings, conclusions, and recommendations made in the Glen Canyon Dam EIS and the audit performed by the Comptroller General on the costs and benefits of management policies. A Reasonable and Prudent Alternative, presented in a U.S. Fish and Wildlife Service Biological Opinion on operations of Glen Canyon Dam, may also be incorporated into the long-term operating criteria.

The amount of marketable resource lost at Glen Canyon Dam will be a function of the long-term operating criteria selected and operational changes made in response to conclusions emerging from research and the long-term monitoring results. Estimates of the amount of hydropower resource available at Glen Canyon Dam will become better defined as the dam operations are revised.

Identifying feasible methods of replacing the power will require assessment by existing firm power customers of both the magnitude and timing of the lost resource at Glen Canyon Dam. Western's firm power customers will influence whether Western will replace any or all of the lost Glen Canyon Dam resource. Customers' decisions concerning replacement resource needs will depend in large part on the availability and costs of alternative resources. Such acquisitions might be made by Western on behalf of firm power customers on a pass-through-cost basis, incorporating all associated costs.

Since neither lost marketable resources nor customer replacement resource demand may be known for some time, and may vary as more scientific knowledge of the effects of dam operations becomes available, the Replacement Resource Methods Report to Congress is expected to address both changes in hydropower generation under several possible long-term operational alternatives at Glen Canyon Dam and a range of customer-defined firm replacement resource needs.

The final SLCA/IP EPM EIS is expected to be released in November 1994. The Record of Decision which follows may establish new firm power resource commitment levels for the SLCA/IP. The timing of the implementation of Western's SLCA/IP EPM EIS Record of Decision, relative to Reclamation's Glen Canyon Dam EIS Record of Decision, is uncertain at this time.

The Replacement Resource Methods Report to Congress is to be completed no later than 2 years after implementation of long-term operational criteria at Glen Canyon Dam. Contract amendments to replace the lost resource will need to take effect at the time of implementation of Reclamation's Glen Canyon Dam EIS Record of Decision, or other accommodations will need to be made to satisfy contractual commitments. Western and its firm power customers have been working to develop a mutual understanding of principles for revising existing wholesale firm power contracts to address the possible range of outcomes.

Formal consultation with representatives of environmental organizations, Native Americans, the Colorado River Basin States, the Secretary of the Interior, as well as CRSP power customers and other interested parties, for identifying GCP Act replacement resource methods and any necessary legislation begins with publication of this notice in the **Federal Register**. Meetings are planned for late 1994 or early 1995, and their dates and locations will be published in subsequent **Federal Register** notices. A brochure will be prepared to provide more information on a range of subjects including (1) the quantification of lost marketable resources from Glen Canyon Dam and other CRSP sites, (2) the range of replacement resource needs, (3) the relation of resource replacement to Western's other EISs, (4) the proposed schedule for related replacement resource and Glen Canyon Dam EIS and SLCA/IP EPM EIS events, and (5) a list of common questions and answers related to these topics. It will be distributed to representatives of organizations specified in the GCP Act and other interested parties in the summer of 1994.

ENVIRONMENTAL COMPLIANCE: Western will comply with the National Environmental Policy Act of 1969 through an appropriate level of environmental analysis on the impacts of any proposed replacement resource methods. Western is just beginning the process of identifying methods to replace lost Glen Canyon Dam hydropower. Those processes will address environmental concerns.

DETERMINATION UNDER EXECUTIVE ORDER 12866: DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Issued in Golden, Colorado, July 27, 1994.

William H. Clagett,

Administrator.

[FR Doc. 94–19297 Filed 8–5–94; 8:45 am]

BILLING CODE 6450–01–P

Mutual Assistance Program, Notice of Proposed Grant

AGENCY: Western Area Power Administration, DOE.

ACTION: The Western Area Power Administration (Western)/Washington State Energy Office (WSEO), Olympia, Washington, Mutual Assistance Program Notice of Proposed Grant.

SUMMARY: The Department of Energy announces that, pursuant to 10 Code of Federal Regulations 600.6, eligibility for a grant to develop and disseminate cofunded electronic bulletin board technical information to Western's customer base has been restricted to WSEO.

ADDRESSES: Requests for further information should be submitted to the following address: Ms. Mary Prebble, Contract Specialist, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 275–1507, Purchase Requisition Number: AA–PR–12111.

SUPPLEMENTARY INFORMATION: Western's Energy Services Program is designed to ensure wise stewardship of the Federal hydropower resources and to encourage energy efficiency and the development of renewable energy resources in accordance with the National Energy Policy Act of 1992, which requires the development of integrated resource planning (IRP) by all Western long-term firm power customers. To meet these ends, Western offers a number of Energy Services Program activities to its customers, including educational workshops and seminars, equipment loan programs, cost sharing of energy efficiency projects, and IRP methods that Western uses to effectively deliver its energy services activities to

customers within the 15–State marketing area via an electronic bulletin board. Western has cosponsored this bulletin board with WSEO, Bonneville Power Administration, and the Department of Energy since 1993. Such joint participation mutually benefits the State, the Federal Government, and Western customers through the pooling of resources to provide cost-effective energy services activities.

The WSEO, even though it is located outside the Western Service Area, is committed to promoting energy efficiency and renewable energy development and providing technical assistance of use to Western throughout Western's service territory through the bulletin board. Its resources, technical ability, and nationwide credibility put it in the best position of all potential grantees wherever they may be situated to manage this grant.

Solicitation number: DE–RP65–94WA12131.

Scope of Project: The Western/WSEO Mutual Assistance Program is designed to allow joint sponsorship of energy services and IRP activities within Western's 15-State marketing area. The grant will provide cost-shared funding for the bulletin board development, implementation of energy services, and IRP activities primarily through technical assistance and technology information transfer and peer networking, especially in demand-side management, renewable energy, and IRP.

Activities funded under this program may include, but are not limited to: educational workshops and seminar, development and management of a resource library and hotline, development and management of the electronic bulletin board, and coordination with other Government and private agencies.

Issued at Golden, Colorado, July 25, 1994.

William H. Clagett,

Administrator.

[FR Doc. 94–19296 Filed 8–5–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5027–6]

Acid Rain Program: Draft Nitrogen Oxides Compliance Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft compliance plans and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment 5-year nitrogen oxides (NO_X) compliance plans, which amend previously issued draft or final Phase I Acid Rain Permits, for 57 units at 26 utility plants, in accordance with the Acid Rain Program regulations (40 CFR part 76).

DATES: Comments on draft NO_X compliance plans must be received no later than September 7, 1994 or 30 days after the publication date of a similar notice in local newspapers.

ADDRESSES: *Administrative Records.* The administrative record for draft NO_X compliance plans, except information protected as confidential, may be viewed during normal operating hours at EPA Region 5, Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to EPA Region 5 (A–18J), Air and Radiation Division, Attn: David Kee, Director (address above).

Submit all comments in duplicate and identify the NO_X compliance plan to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the plan. All timely comments will be considered, except comments on aspects of the permit other than the NO_X compliance plan and comments not relevant to the compliance plan.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a NO_X compliance plan.

FOR FURTHER INFORMATION CONTACT: Contact the following persons for more information about a permit listed in this notice: For plants in Illinois, Cecilia Mijares, (312) 886–0968; in Indiana, Genevieve Nearmyer, (312) 353–4761; in Michigan and Wisconsin, Beth Valenziano, (312) 886–2703; in Minnesota and Conesville and Picway in Ohio, Allan Batka, (312) 353–7316; all other plants in Ohio, Franklin Echevarria, (312) 886–9653.

SUPPLEMENTARY INFORMATION: EPA proposes to approve compliance plans for 1995–1999 under which units will comply with the applicable emission limitations for NO_X under 40 CFR 76.5 (referred to as "standard emission limitation") or other indicated compliance options for the following utility plants:

Baldwin in Illinois: five averaging plans, one for each calendar year 1995–1999 for unit 3; for each plan, this unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.40 lbs/MMBtu, and this unit's actual annual heat input shall not be less than the annual heat input limit of 19,970,000 MMBtu. The other units designated in the plans are Hennepin unit 2 and Vermilion unit 2. The designated representative is Jene L. Robinson.

Grand Tower in Illinois: averaging plan for 1995–1999 for units 07, 08, and 09; for each year, the actual annual average emission rates for NO_X shall not exceed the alternative contemporaneous annual emission limitations of 0.75 lbs/MMBtu for units 07 and 08 and 0.70 lbs/MMBtu for unit 09, and the actual annual heat inputs shall not be greater than the annual heat input limits of 345,000 MMBtu for units 07 and 08 and 3,220,000 MMBtu for unit 09. The other units designated in the plan are Hutsonville units 05 and 06, Meredosia units 01, 02, 03, 04, and 05, and Newton units 1 and 2. The designated representative is Gilbert W. Moorman.

Hennepin in Illinois: five averaging plans, one for each calendar year 1995–1999 for unit 2; for each plan, this unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.51 lbs/MMBtu, and this unit's actual annual heat input shall not be greater than the annual heat input limit of 15,750,000 MMBtu. The other units designated in the plans are Baldwin unit 3 and Vermilion unit 2. The designated representative is Jene L. Robinson.

Hutsonville in Illinois: averaging plan for 1995–1999 for units 05 and 06; for each year, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.65 lbs/MMBtu, and each unit's actual annual heat input shall not be greater than the annual heat input limit of 1,100,000 MMBtu. The other units designated in the plan are Grand Tower 07, 08, and 09, Meredosia units 01, 02, 03, 04, and 05, and Newton units 1 and 2. The designated representative is Gilbert W. Moorman.

Joppa Steam in Illinois: standard emission limitation of 0.45 lbs/MMBtu for units 1, 2, 3, 4, 5, and 6. The designated representative is Terence H. Larbes.

Meredosia in Illinois: averaging plan for 1995–1999 for units 01, 02, 03, 04, and 05; for each year, the actual annual average emission rates for NO_X shall not

exceed the alternative contemporaneous annual emission limitations of 0.70 lbs/MMBtu for units 01, 02, 03, and 04 and 0.65 lbs/MMBtu for unit 05, and the actual annual heat inputs shall not be greater that the annual heat input limits of 339,000 MMBtu for units 01, 02, 03, and 04 and 11,872,000 for unit 05. The other units designated in the plan are Grand Tower units 07, 08, and 09, Hutsonville units 05 and 06, and Newton units 1 and 2. The designated representative is Gilbert W. Moorman.

Newton in Illinois: averaging plan for 1995–1999 for units 1 and 2; for each year, the actual annual average emission rates for NO_X shall not exceed the alternative contemporaneous annual emission limitations of 0.33 lbs/MMBtu for unit 1 and 0.43 lbs/MMBtu for unit 2, and the actual annual heat inputs shall not be less than the annual heat input limits of 29,900,000 MMBtu for unit 1 and 24,640,000 MMBtu for unit 2. The other units designated in the plan are Grand Tower 07, 08, and 09, Hutsonville units 05 and 06, and Meredosia units 01, 02, 03, 04, and 05. The designated representative is Gilbert W. Moorman.

Vermilion in Illinois: five averaging plans, one for each calendar year 1995–1999 for unit 2; for each plan, this unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.44 lbs/MMBtu, and this unit's actual annual heat input shall not be less than the annual heat input limit of 1,300,000 MMBtu. The other units designated in the plans are Baldwin unit 3 and Hennepin unit 2. The designated representative is Jene L. Robinson.

Elmer W Stout in Indiana: five averaging plans, one for each calendar year 1995–1999 for units 50, 60, and 70; for each plan, the actual annual average emission rates for NO_X shall not exceed the alternative contemporaneous annual emission limitations of 0.43 lbs/MMBtu for unit 50 and 0.44 lbs/MMBtu for units 60 and 70, and the actual annual heat inputs shall not be less than the annual heat input limits of 5,538,000 MMBtu for unit 50, 4,390,000 MMBtu for unit 60, and 17,075,000 MMBtu for unit 70. The other units designated in the plans are H T Pritchard units 3, 4, 5, and 6, and Petersburg units 1, 2, 3, and 4. Approval of the averaging plans is contingent on approval of the substitution plans for Petersburg units 1 and 2 that designate H T Pritchard units 3 and 4 as substitution units. The designated representative is Robert A. McKnight.

J H Campbell in Michigan: standard emission limitation of 0.45 lbs/MMBtu for unit 1. The designated representative is Robert J. Nicholson.

High Bridge in Minnesota: averaging plan for 1995–1999 for units 3, 4, 5, and 6; for each year, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.67 lbs/MMBtu, and the actual annual heat inputs shall not be greater that the annual heat input limits of 3,000,000 MMBtu for units 3 and 4, 6,400,000 MMBtu for unit 5, and 12,100,000 MMBtu for unit 6. The other units designated in the plan are Sherburne County units 1 and 2. The designated representative is Martin F. Dinville.

Sherburne County in Minnesota: averaging plan for 1995–1999 for units 1 and 2; for each year, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.40 lbs/MMBtu, and each unit's actual annual heat input shall not be less than the annual heat input limit of 42,000,000 MMBtu. The other units designated in the plan are High Bridge units 3, 4, 5, and 6. The designated representative is Martin F. Dinville.

Ashtabula in Ohio: standard emission limitation of 0.45 lbs/MMBtu for unit 7. The designated representative is Fred J. Lange.

Conesville in Ohio: standard emission limitations of 0.50 lbs/MMBtu for unit 3 and 0.45 lbs/MMBtu for unit 4. The designated representative is Fred J. Lange.

Eastlake in Ohio: standard emission limitation of 0.45 lbs/MMBtu for units 1, 2, 3, and 4. The designated representative is Fred J. Lange.

Edgewater Ohio: averaging plan for 1995 and standard emission limitation of 0.50 lbs/MMBtu for 1996–1999 for unit 13; under the averaging plan, this unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu, and there is no annual heat input limit. The other units designated in the averaging plan are Bruce Mansfield units 1 and 2, New Castle units 1 and 2, Gorge units 25 and 26, Toronto units 10 and 11, and W H Sammis units 5 and 6. The designated representative is Howard C. Couch, Jr.

Gorge in Ohio: averaging plan for 1995 and standard emission limitation of 0.50 lbs/MMBtu for 1996–1999 for units 25 and 26; under the averaging plan, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu, and there are no annual heat input limits. The other units designated in the averaging plan are Bruce Mansfield units 1 and 2, New Castle units 1 and 2, Edgewater unit 13, Toronto units 10 and 11, and W H Sammis units 5 and 6. The designated representative is Howard C. Couch, Jr.

Miami Fort in Ohio: averaging plan for 1995 and standard emission limitation of 0.45 lbs/MMBtu for 1996–1999 for unit 6; under the averaging plan, this unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.75 lbs/MMBtu, and this unit's actual annual heat input shall not be greater than the annual heat input limit of 11,600,000 MMBtu. The other units designated in the averaging plan are East Bend unit 2 and Walter C Beckjord units 5 and 6. The designated representative is Gregory C. Ficke.

Picway in Ohio: standard emission limitation of 0.50 lbs/MMBtu for unit 9. The designated representative is John M. McManus.

R E Burger in Ohio: standard emission limitation of 0.50 lbs/MMBtu for units 7 and 8 beginning in 1997 pursuant to 40 CFR 72.42. The designated representative is Howard C. Couch, Jr.

Toronto in Ohio: averaging plan for 1995 and standard emission limit of 0.50 lbs/MMBtu for 1996–1999 for units 10 and 11; under the averaging plan, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu, and there are no annual heat input limits. The other units designated in the averaging plan are Bruce Mansfield units 1 and 2, New Castle units 1 and 2, Edgewater unit 13, Gorge units 25 and 26, and W H Sammis units 5 and 6. The designated representative is Howard C. Couch, Jr.

W H Sammis in Ohio: averaging plan for 1995 and standard emission limitation of 0.50 lbs/MMBtu for 1996–1999 for units 5 and 6; under the averaging plan, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu, and there are no annual heat input limits. The other units designated in the averaging plan are Bruce Mansfield units 1 and 2, New Castle units 1 and 2, Edgewater unit 13, Gorge units 25 and 26, and Toronto units 10 and 11. The designated representative is Howard C. Couch, Jr.

Walter C Beckjord in Ohio: averaging plan for 1995 and standard emission limitation of 0.45 lbs/MMBtu for 1996–1999 for units 5 and 6; under the averaging plan, the actual annual average emission rates for NO_X shall not

exceed the alternative contemporaneous annual emission limitations of 0.45 lbs/MMBtu for unit 5 and 0.41 lbs/MMBtu for unit 6, and there is no annual heat input limit for unit 5, and the actual annual heat input for unit 6 shall not be less than the annual heat input limit of 27,100,000 MMBtu. The other units designated in the averaging plan are East Bend unit 2 and Miami Fort unit 6. The designated representative is Gregory C. Ficke.

Genoa in Wisconsin: standard emission limitation of 0.45 lbs/MMBtu for unit 1. The designated representative is John P. Leifer.

Pulliam in Wisconsin: standard emission limitation of 0.45 lbs/MMBtu for unit 8. The designated representative is Gary T. Van Helvoirt.

South Oak Creek in Wisconsin: five averaging plans, one for each calendar year 1995–1999 for units 5, 6, 7, and 8; for each plan, the actual annual average emission rates for NO_X shall not exceed the alternative contemporaneous annual emission limitations of 0.32 lbs/MMBtu for units 5 and 6 and 0.52 lbs/MMBtu for units 7 and 8, the actual annual heat inputs for units 5 and 6 shall not be less than the annual heat input limits of 7,709,501 MMBtu for unit 5 and 7,870,115 MMBtu for unit 6, and the actual annual heat inputs shall not be greater than the annual heat input limit of 19,106,060 MMBtu for units 7 and 8. The designated representative is Paul D. Schumacher.

Dated: July 26, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–19061 Filed 8–5–94; 8:45 am]

BILLING CODE 6560–50–P

[OPPT–00161; FRL–4906–3]

Chemical Use Inventory (TRI Phase 3); Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a one-half day public meeting to further explore issues related to the possible creation of a "Chemical Use Inventory" (CUI) through the addition of chemical "use" data to existing information collection requirements. This meeting will focus specifically on the addition of such requirements to the Toxics Release Inventory (TRI).

DATES: The meeting will take place on Wednesday, September 28, 1994, at 12:30 p.m. and will adjourn at 5 p.m.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Auditorium, Education Center, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mike McDonell, Environmental Assistance Division, Office of Pollution Prevention and Toxics, U.S Environmental Protection Agency, (7408), 401 M St., SW., Washington, DC 20460 or phone (202) 260–1477. Attention Administrative Record No. AR 128.

SUPPLEMENTARY INFORMATION: The EPA Office of Pollution Prevention and Toxics (OPPT) is currently reviewing the concept of a "Chemical Use Inventory" (CUI) which would collect information on the use of toxic chemicals. OPPT believes that use information holds promise for providing insight on a range of pollution prevention issues, and would also be helpful in screening and evaluating chemicals in commerce.

OPPT held a multi-stakeholders meeting to discuss CUI issues in January of 1994, and the meeting revealed that several stakeholder groups were interested in the addition of use information to the Toxics Release Inventory. TRI is a publicly available database that informs the public and government agencies about facility-specific toxic chemical data such as the amount of releases. It is also widely used by companies to benchmark their own pollution prevention and reduction efforts. The Agency is currently expanding TRI to include more chemicals (TRI expansion phase 1) and more industry sectors (TRI expansion phase 2), and is exploring use issues as a possible TRI expansion phase 3.

TRI reporting requirements currently address facility identification information, plus a range of chemical-specific information such as activities and uses of the chemical at the facility, releases of the chemical to the environment on-site, transfers of chemicals in wastes off-site, and a summary of source reduction and recycling activities. The type of information under discussion for possible TRI-phase 3 expansion is generally known as "materials accounting" information and includes input data such as the quantity of chemical brought on-site, and output data such as the quantity consumed and the quantity sent off site in product.

In addition, OPPT is exploring the issue of adding occupational demographics data elements to TRI. These would address the number of workers potentially exposed to a chemical, and whether or not occupational exposure monitoring has been performed.

EPA is interested in understanding more about the utility of this type of data, and how various groups might use it, whether in looking at a single facility, or in looking at aggregated statistics. EPA is also interested in understanding the perspective of facilities that would be covered by this type of TRI expansion. EPA is interested in hearing about how these data are used in the states that currently collect such data, along with plans for using such data in the future.

EPA has developed an issues paper that provides an overview of these issues in further detail, and that includes questions for consideration by those planning to attend the public meeting. Copies of this paper will be available on Friday, September 2, 1994, from the address and telephone number listed under FOR FURTHER INFORMATION CONTACT. Oral statements will be scheduled on a first-come, first-served basis by calling the telephone number listed under FOR FURTHER INFORMATION CONTACT. EPA encourages meeting participants to provide written statements, and to submit the statements in advance of the meeting.

List of Subjects

Environmental protection.

Dated: August 2, 1994.

Samuel Sasnett,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–19292 Filed 8–5–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5028–3]

Proposed Settlements Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act; in the Matter of St. Louis River Site, Duluth, MN

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: Notice of Settlement for recovery of past costs: In accordance with Section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the response actions at the St. Louis River Superfund Site, Duluth,

Minnesota. The Agreement was proposed by the U.S. Environmental Protection Agency, Region V, (U.S. EPA) on September 14, 1993. Subject to review by the public pursuant to this Notice, the agreement was approved by the United States Department of Justice on May 15, 1994.

DATES: Comments must be provided on or before September 7, 1994.

ADDRESSES: Comments should be addressed to the Docket Clerk, Mail Code MFA–10J, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In the Matter of: St. Louis River Superfund Site in Duluth, Minnesota, Docket No. V–W–'94–C–240.

FOR FURTHER INFORMATION CONTACT: Thomas J. Kenney, U.S. Environmental Protection Agency, Office of Regional Counsel, CS–29A, 77 W. Jackson Blvd., Chicago, Illinois 60604, (312) 886–0708.

SUPPLEMENTARY INFORMATION: Below are listed the parties who have executed binding certification of their consent to participate in the settlement:

List of Settling Parties

Allied-Signal, Inc.; Domtar, Inc.; and The Interlake Corporation.

These parties will pay a total of $726,396.75, plus interest in settlement payments for past response costs under the agreement, subject to the contingency that U.S. EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice. This amount represents seventy-five percent of past response costs U.S. EPA and the Agency for Toxic Substances and Disease Registry have expended at the St. Louis River Superfund Site through September 30, 1991, plus interest accrued thereon starting September 1, 1992.

U.S. EPA is authorized to enter into this agreement under the authority of Section 122(h) and 107 of CERCLA. Section 122(h) authorizes settlements with potentially responsible parties for the recovery of past costs expended by the Agency where these claims have not been referred to the U.S. Department of Justice for further action. The proposed settlement reflects, and was agreed to based on, conditions as known to the parties as of September 14, 1993.

The U.S. Environmental Protection Agency will receive written comments relating to this agreement for thirty days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement and additional background information relating to the settlement are available for review and may be obtained in person or by mail from Thomas J. Kenney, Office of the Regional Counsel, U.S. Environmental Protection Agency, Region V., 77 W. Jackson, Mail Code CS–29A, Chicago, Illinois 60604.

Authority: The Comprehensive Environmental Response, compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–19185 Filed 8–5–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0614.

Title: Expanded Interconnection with Local Telephone Company Facilities; Commission Requirements for Cost Support Material to be Filed with Virtual Collocation Tariffs for Special Access and Switched Transport.

Expiration Date: 10/31/94.

Estimated Annual Burden: 6240 total hours; 390 hours per response; 16 respondents.

Description: In a Memorandum Opinion and Order in CC Docket 91–141, the Commission required all Tier 1 local exchange carriers (LECs) other than participants in National Exchange Carrier Association (NECA) pools to offer virtual collocation. Those tariffs must be filed on or before September 1, 1994, to become effective on December 15, 1994. The Commission exempted LECs from the mandatory virtual collocation requirement in central offices at which they choose to provide physical collocation as a regulated communications common carrier service. The Common Carrier Bureau issued an Order under delegated authority establishing specific requirements for the cost support information that must accompany the local exchange carriers' virtual collocation tariffs. The information required is necessary to ensure the provision of expanded interconnection services in a manner consistent with the requirements of the Communications Act of 1934, as amended.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–19246 Filed 8–5–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 94–04]

Cancellation of Tariffs for Failure To Comply With Automated Tariff Filing and Information System ("ATFI") Filing Requirements

On July 25, 1994, the Commission served an Order in this proceeding that directed the cancellation of certain tariffs published by common carriers because of their failure to comply with the Commission's Automated Tariff Filing and Information system's ("ATFI") filing requirements. The Order specified that the tariffs identified in the Order would be canceled five days after the publication of the Commission's Order.[1] Included among the tariffs to be canceled was a tariff published by the Equipment Interchange Discussion Agreement ("EIDA"). This tariff, which is a general reference tariff, contains the terms and conditions including free time and detention charges for the carriers participating in EIDA's tariff.

EIDA requests that the Commission grant it 28 days, i.e., until August 31, 1994, to convert its tariff into ATFI format.[2] In so doing, it submits that this relief would be fair in light of its "good faith belief" that the Commission's rules did not require it to convert its tariff to ATFI format.

The Commission will grant EIDA's request. EIDA will be given until August 31, 1994, to file its tariff in ATFI. Failure to file its tariff in ATFI by that date will result in the cancellation of EIDA's tariff effective August 31, 1994.

Therefore, *it is ordered* That EIDA's request be granted.

[1] The Order was published in the **Federal Register** on July 29, 1994. Thus, the tariffs will be canceled effective August 3, 1994.

[2] EIDA, in its response to the Order initiating this proceeding, requested 60 days to convert its tariff into ATFI in the event the Commission disagreed with its assertion that its tariff should be exempted from ATFI. The Commission's July 25 Order inadvertently did not address this request.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–19219 Filed 8–5–94; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Ambank Company Inc.; 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 September 1, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Ambank Company Inc.*, Sioux Center, Iowa; to acquire Ambank Insurance Services, Sioux Center, Iowa, and thereby continue to engage in its insurance agency activities in Sioux Center, Iowa, pursuant to Section 225.25(b)(8)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 2, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-19225 Filed 8-5-94; 8:45 am]

BILLING CODE 6210-01-F

Ames National Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed 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 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

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 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 September 1, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Ames National Corporation*, Ames, Iowa; to acquire 80 percent of the voting shares of Randall-Story State Bank, Story City, Iowa.

Board of Governors of the Federal Reserve System, August 2, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-19226 Filed 8-5-94; 8:45 am]

BILLING CODE 6210-01-F

James Hubert Hollis, Jr.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 29, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *James Hubert Hollis, Jr.*, Brantley, Alabama; to acquire 5.06 percent of the voting shares of Brantley Bancorp, Inc., Brantley, Alabama, and thereby indirectly acquire Brantley Bank & Trust Co., Brantley, Alabama.

Board of Governors of the Federal Reserve System, August 2, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-19227 Filed 8-5-94; 8:45 am]

BILLING CODE 6210-01-F

FARM CREDIT SYSTEM INSURANCE CORPORATION

Privacy Act of 1974; Establishment of New System of Records; Correction

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Correction.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) published an advance notice with request for comments on a proposed system notice for new systems of records (59 FR 25053, May 13, 1994) as one of the required steps in establishing the new systems. This document corrects a typographical error in the system notice.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Paralegal Specialist, Farm Credit System Insurance Corporation, McLean, VA

22102–0826, (703) 883–4125, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In preparing the system notice for publication in the **Federal Register**, a typographical error was inadvertently made in system record FCSIC–7. Accordingly, FR Doc. 94–11444, published May 13, 1994, is amended as follows:

FCSIC–7

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT: [CORRECTED]

1. On page 25060, first column, third paragraph, of FCSIC–7 is corrected by removing the reference "5 U.S.C. 552a(k)(2)" and adding in its place, the reference "5 U.S.C. 552a(k)(5)".

Dated: August 3, 1994.

James M. Morris,

Acting Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 94–19301 Filed 8–5–94;8:45am]

BILLING CODE 6710–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Meeting of the National Advisory Council for Human Genome Research

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, September 22 and 23, 1994, Embassy Suites Chevy Chase Pavilion, Chevy Chase I and II, 4300 Military Road, NW., Washington, DC.

This meeting will be open to the public on September 22, 1994, from 8:30 a.m. to 10:30 a.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec.10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 22 at 10:30 a.m. to recess and on September 23 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 605, Bethesda, Maryland 20892, (301) 496–0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jane Ades, (301) 402–2205, two weeks in advance of the meeting.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: August 1, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–19220 Filed 8–5–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meetings: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on September 22–23, 1994. Meetings of the Council, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be held at the National Institutes of Health, Building 31C, Bethesda, Maryland. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be held at the Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland.

The meeting of the full Council will be open to the public on September 22 in Conference Room 6 from approximately 1 p.m. until 4: 30 p.m. for opening remarks of the Institute Director, discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include remarks by the Director, NIH, an overview of reorganization plans within the Division of Microbiology and Infectious Diseases as well as reports on the Division of Intramural Research, the Grants Policy Issues Working Group, and clinical trials issues.

On September 23 the meetings of the NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public from 8:30 a.m. until adjournment. The subcommittees will meet in conference rooms 7 and 6 respectively. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be open to the public from 8 a.m. until adjournment on September 23. The subcommittee will meet at the Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:30 a.m. until approximately 1 p.m. on September 22, in conference rooms 6, 7 and 8 respectively. The meeting of the full Council will be closed from 4:30 p.m. until recess on September 22 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. John J. McGowan, Director, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 3C20, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone 301–496–7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855 Immunology, Allergic and Immunologic Diseases Research, 93.856,

Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 1, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–19221 Filed 8–5–94; 8:45 am]

BILLING CODE 4140–01–M

Opportunity for Exclusive or Non-Exclusive Licensing: Prostratin, a Novel Anti-viral Compound Useful in the Treatment of Acquired Immunodeficiency Syndrome (AIDS)

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH), Department of Health and Human Services (DHHS), seeks exclusive or non-exclusive licensee(s) who can effectively pursue the preclinical, clinical and commercial development of prostratin for the treatment of human immunodeficiency virus (HIV) infection. Scientists at the National Cancer Institute have identified a new composition comprising the 12-deoxyphorbol ester derivative, prostratin, and a pharmaceutically acceptable carrier that has been found to have strong antiviral activity against HIV–1. These compounds may have advantageous pharmacologic, toxicologic, and/or antiviral properties, especially in the treatment of AIDS. NIH intends to grant the selected firm(s) world-wide royalty-bearing license(s) to practice the inventions embodied in U.S. Patent Application SN 07/530,562 entitled "Antiviral Composition" and related foreign patent applications for this field of use. The patent rights in these inventions have been assigned to the United States of America.

SUPPLEMENTARY INFORMATION: The NIH seeks exclusive or non-exclusive licensee(s), who in accordance with requirements and regulations governing the licensing of government-owned inventions (37 CFR part 404), have the most meritorious plan for the development of prostratin to a marketable status to meet the needs of the public and with the best terms for the NIH. Specifically, firm(s) are sought who directly or indirectly, will be able to:

(1) Isolate or synthesize and provide sufficient amounts (e.g. multi-kilogram amounts) of compounds for preclinical drug development;

(2) Carry out preclinical toxicology and pharmacology studies and testing, without guaranteed assistance from the government, to complement preclinical toxicology and pharmacology currently being performed to the Investigational New Drug (IND) stage by NCI.

(3) Perform formulation for oral and intravenous use, vialing, quality control testing, bioavailability testing and distribution of the drug for Phase I and Phase II and, if appropriate, Phase III clinical trials both in the NIH intramural program and in the extramural AIDS Clinical Trials Groups (ACTGs) established by the National Institute of Allergy and Infectious Diseases (NIAID). The clinical trials may be performed under the sponsorship of an IND to be held by NCI or NIAID. Prior to being released for commercial distribution, the drug will have to be granted a product license by the Food and Drug Administration (FDA);

(4) Synthesize bulk pharmaceutical product necessary for the treatment of 500–1,500 patients with HIV infection in Phase I, II and III developmental studies;

(5) Perform clinical studies. NCI and NIAID may conduct studies of prostratin in the ACTGs and the NIH Clinical Center, and the company will be expected to provide the drug free of charge to NIH for studies conducted in the ACTGs and in the NIH intramural program; the company will be expected to cooperate with NCI and NIAID in providing the drug and supporting distribution of the drug under a treatment IND when appropriate;

(6) Provide data management support for both the intramural NIH and extramural studies of prostratin necessary for the timely submission of a NDA to the FDA;

(7) Share the cost with NIH of intramural and extramural clinical monitoring studies (pharmacokinetics, patient immune profiles and viral outgrowth studies) necessary for the demonstration of clinical efficacy of prostratin for the treatment of AIDS;

(8) Since prostratin and its anti-HIV properties were discovered through Samoan healers' knowledge of flora indigenous to the primary forests of Samoa, the NIH is concerned that the collection and utilization of the natural plant material comport with all applicable Federal and Samoan policies related to biodiversity. In order to comport with such policies, the successful applicant will be required to negotiate and enter into agreements with the appropriate Samoan government agencies. The original collector of the source plant which was tested for anti-HIV activity on the basis of interviews with Samoan healers, may be willing to facilitate such negotiations. In the event that these negotiations with the Samoan authorities are unsuccessful, the licensee must agree to consent to binding arbitration.

The criteria that NIH will use to evaluate exclusive or non-exclusive license applications will include, but not be limited to those set forth by 37 CFR 404.7(a)(1)(ii)–(iv), as well as:

(1) Manufacturing capabilities for antiviral compounds and a plan for production of prostratin;

(2) Experience in preclinical and clinical drug development with special emphasis on the development of antiviral compounds;

(3) Experience in the evaluation, monitoring and interpretation of data for investigational biologic and virologic assays under an IND;

(4) Experience in the evaluation, monitoring and interpretation of data from Phase I and Phase II clinical studies for an IND;

(5) Demonstrated expertise in monitoring drug levels using state-of-the-art methods for measuring drugs in blood, urine and CSF;

(6) A willingness to cooperate with NCI in the collection, evaluation, publication and maintenance of data from animal studies and from clinical trials and tests of investigational biologic assays;

(7) Demonstrated competence in developing oral formulation and sustained-release oral formulations;

(8) Ability to produce, package, market and distribute pharmaceutical products in the United States and to provide the product at a reasonable price;

(9) Willingness to sustain the cost of prostratin drug development as outlined above (i.e., bulk drug synthesis, data management, animal studies, clinical studies, etc.);

(10) Agreement to be bound by DHHS regulations and guidelines involving human and animal subjects;

(11) An aggressive developmental plan that includes appropriate milestones and deadlines for preclinical and clinical development and for marketing approval.

(12) Agreement to negotiate and enter into agreements with the appropriate Samoan authorities on terms acceptable to all parties.

EFFECTIVE DATE: In view of the high priority for developing new drugs for the treatment of HIV infection, all proposals must be received on or before October 7, 1994.

ADDRESSES: Requests for a summary of the anti-HIV activity of prostratin or other questions and comments concerning the clinical aspects of this technology should be directed to: Kate Duffy Mazan, J.D., Office of Technology

Development, National Cancer Institute, Building 31, Room 4A34, 9000 Rockville Pike, Bethesda, MD 20892. Telephone: (301) 496–0477; Fax: (301) 402–2117.

Requests for a copy of the patent application, license application form, or other questions and comments concerning the licensing of this technology should be directed to: Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852. Telephone: (301) 496–7735 extension 266; E-mail: Steve—Ferguson@NIHOD601; Fax: (301) 402–0220. A signed confidentiality agreement will be required to receive a copy of the patent application.

Dated: July 30, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–19222 Filed 8–5–94; 8:45 am]

BILLING CODE 4140–01–P

Public Health Service

Announcement From the National Vaccine Program Office (NVPO); Communication With Private Sector Vaccine Developers

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: To facilitate gathering and dissemination of information on issues considered by the NVPO and the National Vaccine Advisory Committee (NVAC), NVPO is establishing a list of private sector vaccine developers, with whom it will routinely communicate.

All private sector entities engaged in development of vaccines against infectious diseases are encouraged to notify NVPO of their interest, specifically indicating contact person, address, phone and fax numbers, and, if available, INTERNET e-mail address.

The above information should be sent to: Roy Widdus, National Vaccine Program Office, 5600 Fishers Lane, Rockwall II Building, Suite 1075, Rockville, MD 20857, Phone: (301) 594–6350, Fax: (301) 594–2999.

Dated: July 27, 1994.

Chester A. Robinson,

Acting Director, National Vaccine Program Office.

[FR Doc. 94–19193 Filed 8–5–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1520–02; GP4–253]

Washington; Closure of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Notice of closure.

SUMMARY: This notice announces the regulated fire closure of Bureau of Land Management (BLM) lands in Spokane District for the following activities until further notice.

1. Building, maintaining, attending, or using a fire, campfire, or stove fire, including a charcoal briquette fire (43 CFR 9212.2)(a).

Note: Liquified or bottled gas stoves and heaters are permitted provided that they are used within an area at least ten (10) feet in diameter that is clear of all flammable material.

2. Smoking while traveling in timber, brush, or grass areas, except in vehicles on roads, or cleared areas at least three feet in diameter, or in boats on rivers or lakes (43 CFR 9212.2)(a).

3. Operating any type of motorized vehicle off developed roadways. Parking of a vehicle off roadways must be done in an area clear of flammable materials (43 CFR 9212.2(a)).

Note: Use of roads developed for automobile use which are clear of flammable materials is permitted.

The following exemptions are allowed:

1. Persons with a permit specifically authorizing the otherwise prohibited act or omission.

2. Any federal, state, county, or local officer or a member of an organized rescue or firefighting force in the performance of an official duty.

3. Employees of the Bureau of Land Management, while engaged in official duties.

Penalties are as follows:

Violation of these prohibitions is punishable by a fine of not more than $1,000 or imprisonment of not more than 12 months, or both (43 CFR 9212.4).

FOR FURTHER INFORMATION CONTACT: Richard E. Hubbard, Acting District Manager, Bureau of Land Management, Spokane District Office, 1103 N. Fancher, Spokane, Washington, 99212–1275; 509–536–1200.

SUPPLEMENTARY INFORMATION: The very high and extreme rated fire conditions in the State of Washington, together with drought conditions and limited firefighting resources due to their commitment to large numbers of active wildfires, necessitate prevention measures designed to limit additional ignitions on public lands. This closure parallels those taken by other federal and state agencies on adjacent and intermingled lands with the Spokane District boundaries.

Dated: August 2, 1994.

Richard E. Hubbard,

Acting District Manager.

[FR Doc. 94–19253 Filed 8–5–94; 8:45 am]

BILLING CODE 4310–33–M

[WY–930–4210–06; WYW 130940]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Correction of Legal Description; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of legal description.

SUMMARY: This notice corrects the legal description previously published in the **Federal Register** Notice of February 1, 1994 (59 FR 4721) for a proposed withdrawal of land and minerals to protect important scenic, recreation, and cultural resource values in the Devil Canyon Area near Lovell, Wyoming. The description is corrected as follows: On page 4721, column 3, the last line, which reads "Sec. 14, NE¼SE¼, N½NE¼, NW¼;" is hereby corrected to read "Sec. 14, N½, SE¼;". On page 4722, column 1, line 1, which reads "Sec. 15, N½, SE¼.", is hereby corrected to read "Sec. 15, N½NE¼, SE¼NE¼."

Dated: July 28, 1994.

Avis D. Rostron,

Acting Associate State Director.

[FR Doc. 94–19230 Filed 8–5–94; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Gauley River National Recreation Area Draft General Management Plan/ Environmental Impact Statement

AGENCY: National Park Service; Interior.

ACTION: Notice of extension of comment period.

SUMMARY: The National Park Service is extending the public review period for the Gauley River National Recreation Area draft General Management Plan/ Environmental Impact Statement/Land Protection Plan (DGMP/EIS/LPP).

DATES: The public review period for the DGMP/EIS/LPP is being extended through November 7, 1994. All review

comments must be postmarked no later than November 7, 1994.

SUPPLEMENTARY INFORMATION: The DGMP/EIS/LPP presents four alternatives for future management and use of Gauley River National Recreational Area.

FOR FURTHER INFORMATION CONTACT: Superintendent, Gauley River National Recreation Area, 104 Main Street, P.O. Box 246, Glen Jean, West Virginia 25846, Telephone (304) 465–0508.

For copies of the DGMP/EIS/LPP, please contact the Superintendent at the above address.

Robert F. Gift,

Regional Environmental Coordinator, Mid-Atlantic Region.

[FR Doc. 94–19186 Filed 8–5–94; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0103), Washington, D.C. 20503, telephone 202–395–7340.

Title: Noncoal Reclamation—30 CFR 875

OMB Number: 1029–0103

Abstract: This Part establishes the procedures and requirements for States and Indian Tribes to conduct noncoal reclamation under Abandoned Mine Land funding. The information is needed to assure compliance with the Surface Mining Control and Reclamation Act

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: State and Indian Tribes

Estimated Completion Time: 140 hours

Annual Responses: 3

Annual Burden Hours: 420

Bureau Clearance Officer: John A. Trelease (202) 343–1475

Dated: May 17, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–19279 Filed 8–5–94; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a request from Covington & Burling for permission to use certain data from the Commission's 1991 and 1992 ICC Waybill Samples. A copy of the request (WB447—7/29/94) may be obtained from the ICC Office of Economic and Environmental Analysis.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–19232 Filed 8–5–94; 8:45 am]

BILLING CODE 7035–01–P

Release of Waybill Data

The Commission has received a request from Association of American Railroads, Economics and Finance Department for permission to use certain data from the Commission's 1986 through 1993 ICC Waybill Samples. A copy of the request (WB448—7/22/94) may be obtained from the ICC Office of Economic and Environmental Analysis.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–19233 Filed 8–5–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32546]

Wisconsin & Southern Railroad Co.—Purchase, Lease and Operation Exemption—Canadian Pacific Rail Services

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343 the purchase, lease, and operation by Wisconsin & Southern Railroad (WSOR) of approximately 20 miles of Canadian Pacific Rail Services' (CPRS)[1] rail lines. WSOR seeks to: (1) Purchase and operate an 8.86-mile line of railroad between mileposts 167.6 in Madison and milepost 146.72[2] in Middleton, WI, and a diverging 0.21-mile line between milepost 138.79 and 138.58 in Madison, WI; (2) lease and operate 6.82 miles of additional CPRS railroad trackage between milepost 94.49 and milepost 11.02 (including a "Wye" track to milepost 46.28)[3] located in and around Janesville, WI; and (3) lease and operate an additional 5513.1 feet (3.66 miles in the aggregate) of yard track constituting CPRS' "West Yard" at Janesville, WI, subject to standard labor protective conditions.

DATES: This exemption will be effective on August 18, 1994. Petitions to stay must be filed by August 15, 1994. Petitions to reopen must be filed by August 28, 1994.

ADDRESSES: Send pleadings, referring to Finance Docket No. 32546 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423; and (2) Robert A. Wimbish, Rea, Cross & Auchincloss, Suite 420, 1920 N Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, D.C. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available

[1] CPRS was formerly known as Soo Line Railroad Company.

[2] The mileposts do not indicate actual mileage differentials.

[3] Milepost designations do not represent points on a single line of railroad, but instead are mileposts from two separately identified, but connecting, lines of railroad.

through TDD services at (202) 927–5721].

Decided: August 1, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–19234 Filed 8–5–94; 8:45 am]

BILLING CODE 7035–01–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States.

ACTION: Notice of Open Meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a three-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m.

DATES: October 27–29, 1994.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Fourth Floor Agency Conference Room, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC. 20544, telephone (202) 273–1820.

Dated: August 1, 1994.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 94–19254 Filed 8–5–94; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States.

ACTION: Notice of Open Meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:45 a.m.

DATES: September 22-23, 1994.

ADDRESSES: Association of the Bar of the City of New York, 42 West 44th Street, New York, New York.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273-1820.

Dated: August 1, 1994.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 94–19255 Filed 8–5–94; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States.

ACTION: Notice of Open Meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a three-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m.

DATES: October 20–22, 1994.

ADDRESSES: The Westin La Paloma, 3800 East Sunrise Drive, Tucson, Arizona.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: August 1, 1994.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 94–19256 Filed 8–5–94; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States.

ACTION: Notice of Open Meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m.

DATES: October 6–7, 1994.

ADDRESSES: Supreme Court of New Mexico, 237 Don Gaspar Avenue, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: August 1, 1994.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 94–19257 Filed 8–5–94; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States.

ACTION: Notice of Open Meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a two-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m.

DATES: October 17–18, 1994.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Fourth Floor Agency Conference Room, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: August 1, 1994.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 94–19258 Filed 8–5–94; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,929]

AFL–CIO–N.M.U.; Port Arthur, TX; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 31, 1994 in response to a worker petition which was filed on May 9, 1994 on behalf of workers at AFL–CIO–N.M.U., Port Arthur, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 25th day of July, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–19237 Filed 8–5–94; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents

summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must 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 for Worker Adjustment Assistance

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–29,775; Airfoil Textron, Fostoria, OH

TA–W–29,904; J&G Shake, Forks, WA

TA–W–29,770; Santa Fe Mineral, Inc., Dallas, TX

TA–W–29,922; Cinch Connector, New Hope, MN

TA–W–29,798; Permian Tank & Manufacturing, Inc., Odessa, TX

TA–W–29,915; Sportswear Associates, Inc., Lafayette, TN

TA–W–29,911; Swiss Precision Products, Inc., Lake Havasu City, AZ

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,800; Allied Signal Corp., South Montrose, PA

U.S. imports of aeronautical and space navigation instruments and controls decreased in 1993 compared to 1992 and also in the twelve month period ending March 1994 compared to the same period the previous year.

TA–W–29,896; General Electric Co., Linton, IN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,807; Pennant Service Co., Sidney, MT

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,773; James Rivercorp, Old Town, ME

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–29,971; First Inertia Switch, Grand Blanc, MI

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–29,736; Circle L. Drilling Co., Vernal, UT

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–29,846; Moore Business Forms & Systems Div., Lewisburg, PA

The investigation revealed that criterion (2) and (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–29,825; Washington Energy Resources Co., Seattle, WA

The investigation revealed that criterion (2) and (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–29,726; Penkota Wireline Service, Inc., Williston, ND

A certification was issued covering all workers separated on or after March 28, 1993.

TA–W–29,891; August F. Nielsen Co., Inc., Allentown, PA

A certification was issued covering all workers separated on or after May 11, 1993.

TA–W–29,892; Trico Products Corp., Buffalo, NY

A certification was issued covering all workers separated on or after April 10, 1994.

TA–W–29,933; Howes Leather Co., Inc., Ashland Hide Co., Ashland, KY

A certification was issued covering all workers separated on or after February 1, 1994.

TA–W–29,843; Davis Great Guns Logging Co., Victoria, TX

A certification was issued covering all workers separated on or after April 19, 1993.

TA–W–29,541; Zurn Industries, Inc., Zurn Energy Div., Erie, PA

A certification was issued covering all workers separated on or after February 18, 1993.

W–29,690; Reuter Mfg., Hopkins, MN

A certification was issued covering all workers separated on or after March 17, 1993.

TA–W–29,930; Lou Levy & Son/Jersey Fashion, Jersey City, NJ TA–W–29, 932; Lou Levy & Son, New York, NY

A certification was issued covering all workers separated on or after May 13, 1993.

TA–W–29,947; Portland Glove Co., Wells Lamont Corp., Carlton, OR

A certification was issued covering all workers separated on or after May 20, 1993.

TA–W–29,519; Steward, Inc., East Ridge, TN

A certification was issued covering all workers separated on or after January 27, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of July, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(b) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(c) That the increase in imports contributed importantly to such workers' separations or

threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-000140; Moore Business Forms, Buckhannon, WV

The investigation revealed that criteria (3) and criteria (4) were not met. A Departmental survey was conducted with firms to whom the subject plant submitted bids but did not receive contracts for the production of business forms. The survey also revealed that the subject contracts were awarded during the first quarter of 1994 to domestic firms for production in the US.

NAFTA-TAA-00143; Gordon County Farm, Bryan Foods Div., Calhoun, GA

The investigation revealed that criteria (3) & criterion (4) were not met. There was no shift in production workers' firm to Mexico or Canada. Production is being transferred from the subject plant to other domestic plants of the Bryan Foods Div. Sales did not decline in the relevant period. A survey of major customers revealed that they did not purchase processed meats from Mexico or Canada.

NAFTA-TAA-00142; Avery Dennison, Soabar Systems Div., Gastonia, NC

The investigation revealed that criterion (1) has not been met in conjunction with the requirements of section 506 (b)(2) of the Act. Workers at the subject firm were not separated from employment on or after December 8, 1993, the earliest date for which certification under NAFTA-TAA applies.

NAFTA-TAA-00144; USA Classic, Inc., Counce, TN and Stantonville, TN

The investigation revealed that criteria (3) and (4) were not met. There was no shift in production from the workers' firm to Mexico or Canada. The investigation further revealed that USA Classic's imports were not from Canada or Mexico. A survey revealed that major customers did not import activewear from Mexico or Canada in the period relevant to this investigation.

NAFTA-TAA-00162; Technology Marketing Group, Inc., Longwood, FL

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services did not constitute production of an article as required by the Trade Act of 1974.

NAFTA-TAA-00157; Martin Marietta Corp., Government Electronic Systems, Moorestown, NJ

The investigation revealed that criteria (3) and (4) were not met.

A survey was conducted with firms to whom Martin Marietta submitted bids for large contracts which it did not receive. The survey revealed that the contracts under investigation were awarded to domestic firms which utilized only domestic production facilities to fulfill the terms of the contracts.

NAFTA-TAA-00128; Washington Energy Resources Co (WERCO), Seattle, WA

The investigation revealed that criteria (3) and (4) were not met. U.S. imports of dry natural gas from Canada and Mexico declined in the March 1993 through February 1994 period compared to the same period one year earlier. Sales of crude oil and natural gas at Washington Energy Resources Co (WERCO) increased in FY 1993 compared to FY 1992 and in the first six months of FY 1994 compared to the same period in FY 1993.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00146; Theel Shake, Inc., Amanda Park, WA

A certification was issued covering all workers of Theel Shake, Inc., Amanda Park, WA separated on or after December 8, 1993.

NAFTA-TAA-00141; Thomas & Betts Corp., Electronics Div., Inman, SC

A certification was issued covering all workers engaged in employment related to the production of electronic components for the personal computer industry at the two buildings in Inman, SC of Thomas & Betts Corporation, Electronics Div. separated on or after December 8, 1993.

NAFTA-TAA-00161; MagneTek, Huntington, IN

A certification was issued covering all workers engaged in employment related to the production of magnetic components at MagneTek in Huntington, IN separated on or After December 8, 1993.

NAFTA-TAA-00158; Oxford Industries, Inc., Oxford Shirtings Div., Dawson, GA

A certification was issued covering all workers of Oxford Industries, Inc., Oxford Shirtings Div., Dawson, GA separated on or After December 8, 1993.

NAFTA-TAA-00150; BAC-Pritchard Baltimore Aircoil Co., Merced, CA

A certification was issued covering all workers engaged in the production of fiberglass at BAC-Pritchard, of Baltimore Aircoil Co., Merced, CA separated on or after December 8, 1993.

NAFTA-TAA-00152; Woolrich, Inc., Avis, PA

NAFTA-TAA-00153; Woolrich, Inc., Blanchard, PA

NAFTA-TAA-00154; Woolrich, Inc., Woolrich, PA

NAFTA-TAA-00155; Woolrich, Inc., Broomfield, CO

A certification was issued covering all workers engaged in employment related to the production of men's & women's outerwear & sportswear at the above mentioned facilities of Woolrich, Inc., separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of July, 1994. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 29, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-19238 Filed 8-5-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than August 18, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 18, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 18th day of July, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Bryan's Gordon County Farm Co(Co).	Calhoun, GA	07/18/94	06/09/94	30,107	Processed meats.
VistaLite(Wkrs)	Lancaster, PA	07/18/94	06/30/94	30,108	Bicycle headlight systems.
USA Classic, Inc(Wkrs)	Corinth, MS	07/18/94	07/05/94	30,109	Men's ladies, & children's sportwear.
Texaco Chemical Co(Wkrs)	Houston, TX	07/18/94	07/08/94	30,110	Chemicals.
Southland Corp(Wkrs)	Willow Grove, PA	07/18/94	07/06/94	30,111	Maintenance workers.
Atlas Building Systems, Inc(CGLU).	Voorhees, NJ	07/18/94	06/28/94	30,112	Mold concrete.
Philips Lighting Co(Wkrs)	Richmond, KY	07/18/94	07/08/94	30,113	Lamps.
Pet Connection(Co)	Gun Barrel City, TX	07/18/94	07/07/94	30,114	Pet products.
Parker Seal Co(Wkrs)	Berea, KY	07/18/94	06/24/94	30,115	O-rings/seals.
Miller Redwood Plywood(Co)	Grants Pass, OR	07/18/94	07/11/94	30,116	Hardboard panels.
Information Handling Services(Wkrs).	Englewood, CO	07/18/94	07/08/94	30,117	Microfilm databases.
H&W Service Co(Wkrs)	Crane, TX	07/18/94	07/05/94	30,118	Hot oil services.
Apparel Belt Resource(Wkrs)	New York, NY	07/18/94	07/09/94	30,119	Apparel belts.
Mobil Exploration & Producing (Co).	Dallas, TX	07/18/94	07/07/94	30,120	Oil, gas exploration and production—(MEPUS).
Mobil Exploration & Producing (Co).	Dallas, TX	07/18/94	07/07/94	30,121	Technical support—(MEPSI).
Mobil Exploration & Producing (Co).	Dallas, TX	07/18/94	07/07/94	30,122	Technical support—(MEPTEC).
Envirogas, Inc(Wkrs)	Hamburg, NY	07/18/94	07/14/94	30,123	Natural gas.

[FR Doc. 94–19240 Filed 8–5–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,735]

Himont Inc., East Brunswick, New Jersey; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 11, 1994 in response to a worker petition which was filed on November 9, 1993 on behalf of workers at Himont Inc., East Brunswick, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 28th day of July, 1994

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–19241 Filed 8–5–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement—Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called NAFTA–TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than August 18, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than August 18, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 28th day of July, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Anchor Advance Products; Cosmetics (Wkrs).	Morristown, TN	07/18/94	NAFTA–00181	Cosmetic containers ie. lipstick tubes, eyeshadow compacts.
Sola Group Ltd., dba; Sola Optical USA, Inc. (Wkrs).	Petaluma, CA	07/18/94	NAFTA–00182	Single vision glass lenses.
TMC-Reman; Motor Coach Industry (Wkrs).	Schenectady, NY	07/15/94	NAFTA–00183	Body parts for commercial buses and wheel chairlifts.
Highland Yarn; Textile Div. (ACTTWO)	Highpoint, NC	07/21/94	NAFTA–00184	Socks, shirts garments of cotton and yarn.
Alaska Pulp Corporation; Rowan Bay Logging (Co.).	Sitra, AK	07/21/94	NAFTA–00185	Pulp and lumber.
A&W Brands, Inc. (TEAMSTERS)	Modesto, CA	07/21/94	NAFTA–00186	Beverage flavor concentrates and fountain syrups.

[FR Doc. 94–19239 Filed 8–5–94; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–56; Exemption Application No. L–9412, et al.]

Grant of Individual Exemptions; Beaumont Area Pipefitters Joint Apprenticeship Committee, 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, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption 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 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Beaumont Area Pipefitters Joint Apprenticeship Committee (the Plan) Located in Beaumont, Texas

[Prohibited Transaction Exemption 94–56; Exemption Application No. L–9412]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act shall not apply to the purchase of certain real property (the Property) by the Plan from Pipefitters Local 195 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (the Union), a party in interest with respect to the Plan, provided that the following conditions are met:

1. An independent fiduciary determines that the proposed transaction is in the best interests of the Plan;

2. The fair market value of the Property is established by an appraiser unrelated to the Plan or the Union;

3. The Plan pays no more than the lesser of $462,800 or the fair market value of the Property as determined at the time of purchase;

4. The purchase is a one-time transaction for cash; and

5. The Plan pays no fees or commissions in regard to the transaction.

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 May 12, 1994, at 59 FR 24730.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Western Capital Investment Corporation Employees' Retirement Fund (the Plan) Located in Denver, CO

[Prohibited Exemption 94–59; Exemption Application No. D–9489]

Exemption

The restrictions of sections 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 cash sale by the Plan, on December 27, 1990, of certain of its assets (the Assets) to Bank Western, a Federal Savings Bank, the principal subsidiary of the Plan's former sponsor and a party in interest with respect to the Plan.

This exemption is conditioned on the following requirements: (1) The sale represented a one-time transaction for cash; (2) the sales price for each Asset was based upon its fair market value as determined by a qualified, independent appraisal; (3) the Plan did not pay any fees or commissions in connection with

the sale; and (4) Colorado National Bankshares, Inc. files a Form 5330 with the Internal Revenue Service and pays any applicable excise taxes that may be due on any of the Assets within 90 days of the publication in the **Federal Register** of the notice granting the exemptive relief herein.

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 May 25, 1994 at 59 FR 27037.

Effective Date: This exemption is effective December 27, 1990.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

B&B Securities, Inc. Money Purchase Pension Plan (the Plan) Located in Seaford, New York

[Prohibited Transaction Exemption 94–60; Exemption Application No. D–9705]

Exemption

The restrictions of sections 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 purchase by the individual accounts in the Plan of Barry Reich and Robert McGrath of a condominium (the Property) from Mr. Reich, a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The purchase will be a one-time cash transaction;

(b) The price paid by the Accounts will be the lesser of $121,600 [1] or the fair market value of the Property at the time of the purchase as determined by an independent, qualified appraiser less a sales commission, which may have otherwise been paid by Mr. Reich in a sale of the Property to an unrelated party;

(c) The Accounts will pay no expenses associated with the transaction;

(d) The transaction will enable the Accounts to acquire the Property which is expected to yield rental income;

(e) the fair market value of the Property will at no time exceed 25% of either Account's total assets or the Plan's total assets; and

(f) Mr. Reich and Mr. McGrath are the only participants of the Plan that would be affected by the proposed transaction.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 29, 1994 at 59 FR 33547/33548.

For Further Information Contact: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (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 exemptions 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 are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 2nd day of August, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–19209 Filed 8–5–94; 8:45 am]

BILLING CODE 4510–29–P

[1] This figure represents the fair market value of the Property determined by an independent qualified appraiser as of November 10, 1993 less a 5% sales commission, which it is represented is the standard sales commission in the state of Pennsylvania.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [94–050]

NASA Advisory Council (NAC), Earth Systems Science and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Earth Systems Science and Applications Advisory Committee.

DATES: September 8, 1994, 8:30 a.m. to 5:30 p.m.; and September 9, 1994, 8:30 a.m. to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, MIC–7 Conference Room, 300 E Street, S.W., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Robert A. Schiffer, Code YS, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0258.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Committee Introductions
—NASA Charge to the Committee
—NASA Program Office Presentations
—Committee Discussion
—Findings, Conclusions, and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 2, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 94–19235 Filed 8–5–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by September 2, 1994. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1031.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. *Applicant* Permit Application No. 95–003

Gerald L. Kooyman
Center for Marine Biotechnology and Biomedicine
Scripps Institution of Oceanography
University of California, San Diego
La Jolla, CA 92093

Activity for Which Permit Is Requested

Taking. Enter Site of Special Scientific Interest.

Ground counts will be made at three major colonies and the smallest and most southern colony bordering the Ross Sea. This is the continuation of the longest series of censuses of emperor penguins in Antarctica. Two adult emperors each from Coulman Island and Bartlett Island and two fledglings from Cape Washington will be fitted with satellite transmitters and released. Blood and muscle samples will be taken from 50–60 chicks collected over the course of the season from various locations and later released. Experiments on twenty captured adults will be conducted over two months to explore and comprehend the physiological responses that support the great diving capacities of these birds. In addition, 15 chicks that fail to fledge will be collected, moved to the vicinity of McMurdo Station, hand-fed and fattened while studying the development of their diving abilities. Afterwards they will be released.

Location

Coulman Island, Bartlett Inlet, Cape Washington, and Cape Crozier (SSSI #4).

Dates

October 1, 1994—March 1, 1995.

2. *Applicant* Permit Application No. 95–004

Wayne Z. Trivelpiece
Department of Biology
Montana State University
Bozeman, MT 59717

Activity for Which Permit Is Requested

Taking. Import into the U.S. Enter Site of Special Scientific Interest.

Between 500–2,000 chicks of each penguin species will be banded, plus adults as needed, to fulfill research goals in the continuing study of the behavioral ecology and population biology of the Adelie, Gentoo, and Chinstrap penguins and the interactions among these species and their principal avian predators: Skuas, gulls, sheathbills, and Giant Fulmars. Up to a maximum of 50 adults of each penguin species will be fitted with radio transmitters and time-depth recorders to continue studying penguin foraging habits. All captured birds will be released unharmed. Carcasses and skeletons of penguins and other antarctic flying birds salvaged at the study site will be imported into the U.S. for educational and scientific study. In addition, fish samples, frozen or parts of skeletons, from work on penguin and skua diets, will also be imported for identification.

Location

SSSI #48—Western Shore of Admiralty Bay, King George Island, South Shetland Islands, Antarctica.

Dates

October 1, 1994–April 1, 1995.

3. *Applicant* Permit Application No. 95–005

Diana W. Freckman
College of Natural Resources
Colorado State University
Ft. Collins, CO 80523

Activity for Which Permit Is Requested

Enter Sites of Special Scientific Interest. Import into the U.S.

The applicant proposes to enter five (5) Sites of Special Scientific Interest to collect soil samples to examine the distribution and trophic structure of nematode communities. Site access will be by helicopter to the landing pad designated for each site and the duration of visit to the site will be limited to several hours with a group of no more than 4–5 people. Soil sampling protocols have been selected to minimize site disturbance. Manner of taking: Soil and/or rock samples will be placed in sterile plastic bags and returned to McMurdo where the nematodes will be immediately extracted. Remaining soil samples will be shipped to the U.S. for further biological and chemical analysis.

Location

Barwick Valley, Victoria Land (SSSI #3); Cape Crozier, Ross Island (SSSI #4); Caughley Beach, Cape Bird, Ross Island (SSSI #10); Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land (SSSI #12); and, Linnaeus Terrace, Asgaard Range, Victoria Land (SSSI #19).

Dates

November 9, 1994–January 21, 1995.

4. *Applicant* Permit Application No. 95–006

Arthur L. DeVries
Physiology Department
University of Illinois
524 Burrill Hall
407 South Goodwin
Urbana, Illinois 61801

Activity for Which Permit Is Requested

Introduction of Non-indigenous Species into Antarctica. Fifteen specimens of adult male and female wetas, *Hemideina maori* (flightless insects), will be transported from New Zealand to the Crary Science and Engineering Center at McMurdo Station, Antarctica. The wetas are a freeze tolerant insect which will be used in

experiments to determine if small amounts of fish antifreeze glycopeptides can enhance freezing tolerance. The wetas are the only freeze-tolerant insects large enough (2 to 3 inches) for implanting a cannula for removal of hemolymph and injection of AFGPs, which makes the proposed experiments feasible. The insects will be maintained in a temperature controlled walk-in-freezer. Upon completion of experiments, the wetas or their remains will be returned to New Zealand or preserved in formalin.

Location

McMurdo Station, Ross Island, Antarctica.

Dates

October 1, 1994–February 27, 1995.

5. *Applicant* Permit Application No. 95–007
Arthur L. DeVries
Physiology Department
University of Illinois
524 Burrill Hall
407 South Goodwin
Urbana, Illinois 61801

Activity for Which Permit Is Requested

Introductin of Non-indigenous Species into Antarctica. Fifteen (15) specimens of New Zealand black cod, *Notothenia angustata* (Family Nototheniidae), will be cold acclimated in a closed seawater system in the aquarium at McMurdo Station. The cold acclimated specimens will be used in experiments to determine the role of the antifreeze glycopeptides in freezing avoidance, and for isolating DNA. The DNA will be screened for the presence of an "unexpressed" antifreeze glycopeptide gene. Upon completion of experiments, the black cod will be sacrificed and preserved in formalin.

Location

McMurdo Station, Ross Island, Antarctica.

Dates

October 1, 1994–February 27, 1995.

6. *Applicant* Permit Application No. 95–013
Ron Naveen
Oceanities, Inc.
2378 Rt. 97
Cooksville, MD 21723

Activity for Which Permit Is Requested

Taking. Enter Site of Special Scientific Interest. The applicant proposes over the next two seasons to catalogue the physical and biological characteristics of more than 60 locations that are visited in the Antarctic Peninsula region. The efforts to inventory, mark, or photograph such sites or to demarcate discrete groups, colonies, or plots of penguins, flying seabirds, or terrestrial plants may involve very slight disturbance to these animals. Access to the sites will be via tourist vessels, national research and supply vessels, and perhaps yachts and aircraft. The researchers may be required to occasionally hold over for short periods at either national research stations or at specific research field sites, including the study site on the Western Shore of Admiralty Bay, King George Island (SSSI #8), to meet the next available vessel in order to effectively cover the maximum number of sites during the summer season.

Location

Various visitor sites in the Antarctic Peninsula Region, including a possible stop over at the research site at Admiralty Bay (SSSI #8).

Dates

November 1, 1994–March 1, 1996.

Nadene G. Kennedy,
Permit Office, Office of Polar Programs.

[FR Doc. 94–19190 Filed 8–5–94; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353]

Philadelphia Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–39 and NPF–85 issued to the Philadelphia Electric Company (PECO or the licensee) for operation of the Limerick Generating Station, Units 1 and 2, located in Montgomery County, Pennsylvania.

The proposed amendment request of January 14, 1994, would increase the storage capacity in each spent fuel pool (SFP) from their current 2040 fuel assemblies to 4117 fuel assemblies. In addition, the proposed amendment would extend the "full core reserve" capability from year 1998 to 2013.

On May 6, 1994, PECO submitted another application requesting an interim increase in the capacity of the Unit 1 SFP, from 2040 to 2500 fuel assemblies. PECO's submittal of June 3, 1994 supplemented their submittal of May 6, 1994. The Commission granted approval of the May 6, 1994 application by Amendment No. 72 to Facility Operating License No. NPF–39 for the Limerick Generating Station, Unit 1, on June 30, 1994.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Increasing the spent fuel storage capacity in each Spent Fuel Pool (SFP) to 4117 fuel assemblies does not increase the probability of occurrence of an accident. Since all fuel handling activities will be performed using approved procedures and compatible equipment, the probability of a fuel handling accident occurring is unchanged.

The intermediate configuration involving the installation of the new maximum density racks in the Unit 2 SEP and placement of additional existing racks in the Unit 1 SFP will not prevent the ability of the Fuel Pool Cooling and Cleanup (FPCC) systems from adequately cooling their respective SFP. The backup cooling and makeup systems (i.e., Residual Heat Removal (RHR), Emergency Service Water (ESW), and Residual Heat Removal Service Water (RHRSW) systems) will continue to function as designed to provide an alternate source of cooling and makeup water to ensure SFP cooling is maintained. Increasing the spent fuel storage capacity in each SFP will result in a slight increase in the maximum normal decay heat load from 16.32×10^6 Btu/hr to 18.05×10^6 Btu/hr. This increase is due to 1) the heat load associated with a maximum storage capacity of 4117 fuel assemblies, 2) a 5% power rerate consideration (i.e., the effects of increasing the rated core thermal power from 3293 MWt to 3458 MWt), 3) a reduction in the minimum decay time until fuel movements begin, and 4) the effects of increasing our refueling cycles from 18-months to 24 months. Section 9.1.3, "Spent Fuel Pool Cooling and Cleanup," of NUREG–

0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," recommends that the SFP temperature be maintained at or below 140°F. However, due to the increase in the maximum normal decay heat load, and with two (2) trains of fuel pool cooling operating, the temperature that the SFP can be maintained will increase from 140°F to 143°F. The time period that two (2) trains of fuel pool cooling can not maintain the pool temperature below 140°F is 2.5 days and the SFP temperature will exceed 140°F approximately 160 hours after plant shutdown. The slight increase in SFP temperature (i.e., 140°F to 143°F) is considered acceptable since the increase is small (i.e., 3°F), and the duration in which the temperature exceeds 140°F is short (i.e., 2.5 days). In addition, during this period the RHR system will be available for operation to maintain the desired SFP temperature. The maximum decay heat load, assuming full core discharge and remaining cells filled, will increase from 36.4 x 10^6 Btu/hr to 37.6 x 10^6 Btu hr; however, the RHR system is still be [sic] capable of maintaining SFP temperature less than 140°F as described in LGS Updated Final Safety Analysis Report (UFSAR) and supporting Safety Analysis Report provided in Attachment 2 [See application dated January 14, 1994 for Attachment 2]. This increase in temperature will not increase the probability of a loss of fuel pool cooling accident or adversely affect the Refuel Floor ventilation system.

The proposed piping modifications to the RHR system piping inside the Unit 2 SFP will not interfere with the RHR system's ability to adequately cool the SFP or to prevent siphoning of the SFP water.

Movement of the Unit 2 SFP gates to the new storage location and installation of the new fuel storage racks will be accomplished in accordance with the guidance specified in NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants." Approved procedures, safe load paths, and single failure proof rigging will be used. Therefore, the probability of a heavy load drop is unchanged.

The consequences of a Fuel Handling Accident as described in the LGS UFSAR is not increased since the number of fuel assemblies stored in a SFP is not an input to the initial conditions of the accident evaluation. This accident evaluates the dropping of a spent fuel assembly and the fuel grapple assembly into the reactor core during refueling operations. A drop height of 32 feet for the spent fuel assembly and 47 feet for the fuel grapple assembly are assumed and will produce the largest number of failed fuel rods. The tops of the new spent fuel racks are at the same level as the existing spent fuel racks. Since the maximum possible height a fuel assembly can be dropped over the SFP does not exceed 32 feet, the consequences of a Fuel Handling Accident will not be increased by increasing the number of fuel storage cells. The increase in dose estimates presented in the Safety Analysis Report are within 10 CFR 100 limits and are the result of increased fuel enrichment for power rerate and 24-month refueling cycles, and not as a result of an increase in the number of fuel storage cells. These other changes are the subject of separate TS Change Requests that have already been submitted to the NRC for approval.

The consequence of a loss of fuel pool cooling as described in Section 9.1.3.6 of the LGS UFSAR will not be increased. The event described in the UFSAR assumes that the iodine in the fuel from past refuelings is negligible, due to long decay time. Iodine is the major contributor to thyroid dose. Since the iodine in the fuel from past refuelings is negligible, due to the long decay time, increasing the number of fuel storage cells will not increase the dose due to the release of iodine in the SFP water resulting from boiling and therefore, the consequences are not increased. The time to boil of 13.5 hours currently specified in UFSAR bounds the time to boil of 9.15 hrs presented in the supporting Safety Analysis Report since the 13.5 hrs is for 21 days after reactor shutdown and the 9.15 hrs is for 7.25 days after reactor shutdown, and the decay heat from the newly discharged fuel decreases exponentially with time after plant shutdown.

The new maximum density storage racks have been designed and analyzed to maintain K_{eff} less than or equal to 0.95. The supporting Safety Analysis Report includes the effects of various anomalies such as a fuel assembly drop event, manufacturing tolerance variations, and abnormal location of a fuel assembly. Since a K_{eff} of less than or equal to 0.95 with a confidence factor of 95% is maintained, the consequences of an event that would affect criticality control will not increase. The planned interim configuration of the Unit 1 pool is bounded by the current analyses in the UFSAR, since the rack design is unchanged.

The new maximum density storage racks have been designed and analyzed to seismic Category 1 criteria and are capable of remaining functional during the event of a fuel assembly and fuel grapple assembly impacting the rack from a height of 36 inches, as described in the attached Safety Analysis Report [See application dated January 14, 1994 for Attachment 2]. Since the new maximum density storage racks are capable of withstanding an impact from a height of 36 inches, the consequences of the events described in the LGS UFSAR which use a drop height of 16 inches, are not increased.

Increasing the on-site storage capacity by installing additional storage cells will not increase the probability of a malfunction of the stored spent fuel based on the thermal-hydraulic analysis presented in the supporting Safety Analysis Report [See application dated January 14, 1994 for Attachment 2] which concludes that sufficient cooling exists with 4117 fuel assemblies in a SFP. As for fuel criticality, the determination is based on the criticality analysis documented in the supporting Safety Analysis Report which confirms that the stored fuel assemblies will remain sub-critical under normal and abnormal conditions.

Increasing the on-site storage capacity by installing additional storage cells will not increase the probability of a malfunction of the SFP liner based upon the SFP structural analysis as documented in the supporting Safety Analysis Report which indicates that adequate margin exists to prevent overstressing of the SFP liner.

Increasing the on-site capacity by installing additionlal] storage cells will not increase the probability of a malfunction of the SFP structure. This is based upon the SFP structural analysis as documented in the supporting Safety Analysis Report which confirms that the SFP structure still has adequate margin to prevent overstressing and meets the code requirements for the LGS.

Increasing the on-site storage capacity by installing additional storage cells will not increase the probability of a malfunction of the spent fuel storage racks based on the seismic/structural analysis documented in the supporting Safety Analysis Report which concludes that interaction of racks during a seismic event will not result in loss of spent fuel storage racks' ability to function. The planned relocating the storage location of the SFP gates will not increase the probability of a malfunction of the SFP gates since, while being store, the SFP gates do not perform a safety function. The hangers used to secure the SFP gates will be designed/installed to the same requirements as the existing hangers.

Increasing the on-site spent fuel storage capacity will not increase the probability of a malfunction of the Fuel Pool Cooling and Cleanup (FPCC) system. The only impact on the FPCC system of increasing the spent fuel storage capacity will be a slight increase in fluid temperature (i.e., 140°F to 143°F) which is within the design temperature of the system (i.e., 150°F) as described in the LGS UFSAR.

Modifying the RHR piping in the Unit 2 SFP such that it will not interfere with increased fuel storage will not increase the probability of a malfunction of the RHR system since the RHR system's ability to cool the SFP and to prevent siphoning of the SFP water will remain unchanged. Only the RHR discharge piping inside the SFP will be modified. the proper flow pattern will be maintained and net postivie suction head requirements will be unaffected.

The probability of a malfunction of fuel handling equipment will not be increased since increasing the on-site storage capacity does not affect fuel handling equipment.

Increasing the on-site spent fuel storage capacity does not increase the consequences of a spent fuel assembly failure since the failure of one assembly will not result in additional spent fuel assembly failures.

Increasing the on-site spent fuel storage capacity does not increase the consequences of a loss of fuel pool cooling as described in Section 9.1.3.6 of the LGS UFSAR which evaluated the radiological affects due to thyroid dose. Iodine is the major contributor to thyroid dose. The iodine in the fuel from past refuelings is negligible, due to the long decay time. Since the release of iodine resulting from the SFP water boiling is entirely due to the freshly discharged fuel, the consequences of reracking the SFPs are unchanged from that previously evaluated. The evaporation rate will increase due to

higher decay heat load. However, since the time to boil is 9.15 hours, as discussed previously, adequate time exists to align the alternate makeup water sources (e.g., RHR, Emergency Service Water (ESW), and Residual Heat Removal Service Water (RHRSW) systems) to maintain SFP water level and therefore, the consequences are not increased.

Increasing the on-site storage capacity will not increase the consequences of spent fuel storage rack failure, since both the new maximum density racks and the existing racks have been designed/qualified to limit the consequences of a failure. A failure of or damage to one (1) storage rack will not result in failure or damage to another storage rack.

Increasing the on-site storage capacity will not increase the consequences of a failure of the SFP gates or SFP liner since the design of the SFP to maintain adequate water level and the available makeup capacity are unaffected.

Increasing the on-site storage capacity will not increase the consequences of the failure of fuel handling equipment since the maximum expected number of fuel rods damaged by a fuel handling equipment failure remains as evaluated in the LGS UFSAR.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Increasing the spent fuel storage capacity in each of the SFPs at LGS to a maximum of 4117 fuel assemblies as analyzed in the attached Safety Analysis Report [See application dated January 14, 1994 for Attachment 2] will not create the possibility of an accident of a different type. The SFP configurations have been analyzed for reactivity/criticality effects, thermal/seismic-structural effects, radiological effects, and thermal-hydraulic effects. Sine the increase in storage capacity is achieved by installation of additional storage racks which are passive components, the possibility of creating a new accident does not exist.

No new operating schemes or active equipment types will be required to store additional fuel bundles in the SFP. Therefore, the possibility of a different type of malfunction occurring is not created.

Therefore, the proposed TS changes do not create [the] possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

Since the existing TS limits for fuel handling interlocks, heavy loads restrictions, water coverage over irradiated fuel, and fuel sub-criticality will be maintained, the margin of safety will not be reduced.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 7, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participates as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the

petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Charles L. Miller: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J.W. Durham, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under Section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in Section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of Section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, October 15, 1985) to 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, and 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer shall grant an untimely request for oral argument only upon showing of good cause by the requesting part for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. if no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G, apply.

For further details with respect to this action, see the application for amendment dated January 14, 1994, which is available for public inspection at the Commission's Public document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 1st day of August 1994.

For the Nuclear Regulatory Commission.

Frank Rinaldi,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–19266 Filed 8–5–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2); Exemption

I

The Commonwealth Edison Company (the licensee), is the holder of Facility Operating License Nos. DPR–39 and DPR–48 which authorize operation of the Zion Nuclear Power Station, Units 1 and 2 (the facility), at a steady-state power level not in excess of 3250 megawatts thermal. The facility consists of two pressurized water reactors located at the licensee's site in Lake County, Illinois. The licenses provide, among other things, that they are subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

II

In a letter dated June 16, 1994, the licensee requested an exemption from

the requirement in 10 CFR 50, Appendix J, to perform Type C leak rate testing of 1(9992) MOV–CC685 during each refueling outage, but at an interval not to exceed 2 years. This scheduler exemption will defer the Type C leak rate testing requirements to refueling outage Z1R14 for 1MOV–CC685 and to Z2R13 for 2MOV–CC685.

III

Appendix J of 10 CFR Part 50, requires that a program consisting of a schedule for conducting Type A, B, and C tests be developed for leak testing the primary reactor containment, and related systems and components penetrating the primary containment pressure boundary. In addition, prior to any reactor operating period, periodic leak rate tests are required to be conducted in accordance with the schedule specified by 10 CFR Part 50, Appendix J, Section III.D.3. Type C tests are intended to measure containment isolation valve leakage rates and are performed by local pressurization in the accident direction, using either air or nitrogen. The acceptance criterion for the tests is that the combined leakage rate for all penetrations and valves subject to Type B and C tests shall be less than 0.60 L_a, where L_a is the maximum allowable leakage rate. Type C tests are required to be performed during each reactor refueling outage, but in no case at an interval greater than 2 years.

The licensee requested that Type C leak rate testing in accordance with 10 CFR Part 50, Appendix J, for valves 1(2)MOV–CC685 be deferred until the next scheduled refueling outage for each unit. Valve IMOV–CC685 would be Type C tested in accordance with 10 CFR Part 50, Appendix J, during refueling outage Z1R14 which is scheduled to begin on September 9, 1995, and valve 2MOV–CC685 would be Type C tested in accordance with 10 CFR Part 50, Appendix J, during refueling outage Z2R13 which is scheduled to begin on January 5, 1995.

One of the conditions of all operating licenses is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR Part 50, Appendix J. These test requirements provide for preoperational and periodic verification tests of the leak tight integrity of the primary reactor containment, and systems and components which penetrate containment and established the acceptance criteria for such tests. The purposes of the tests are to ensure that (a) leakage through the primary reactor containment, and systems and components penetrating primary containment, does not exceed allowable leakage rate values as specified in the Technical Specifications (TS) or associated bases, and (b) periodic surveillance of reactor containment penetrations and isolation valves is performed so that proper maintenance and repairs are made during the service lives of the containment and systems and components penetrating the containment. Type C tests are tests intended to measure containment isolation valve leakage rates.

All remaining leak rate tests, including those on the valves in series with 1(2)MOV–CC685 have been performed in full compliance with TS requirements and 10 CFR Part 50, Appendix J. To provide an additional margin of safety and to account for possible leakage through the subject valves, Zion will impose an administrative limit for maximum pathway leakage of 0.4L_a for the remaining operating cycle for both units. In addition, periodic visual inspections of the piping from the containment wall to the subject valves will provide further assurance that no external leakage exists from 1(2)MOV–CC685. The self-imposed limit for maximum pathway leakage along with the visual inspection of 1(2) MOV–CC685 and its piping provide a basis for showing that the probability of exceeding off-site dose rates established in 10 CFR Part 100 will not be increased by deferring completion of the Type C leak rate testing of the subject valves to the next refueling outage. Accordingly, the staff finds, for the reasons set forth above, that the subject exemption request will not present an undue risk to the public health and safety [10 CFR 50.12(a)(1)].

Special circumstances are present or required by 10 CFR 50.12(a)(2) in that the requested exemption is temporary and schedular in nature and would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Type C testing of the valve will only be deferred until the next refueling outage. This delay will be 15 months for 1MOV–CC685 and 6 months for 2MOV–CC685. Following completion of the testing of the valves during the next refueling outage, subsequent testing will be performed in accordance with the schedule prescribed in 10 CFR Part 50, Appendix J. The licensee made a good faith effort to comply with the regulations in that in 1991, valves that had never been tested per the regulations were identified and modifications and testing scheduled. The licensee is conducting a root cause investigation to determine the systematic breakdown that resulted in the modifications and testing of these valves being missed. On this basis, the staff finds that the licensee has demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2)(v).

The staff has reviewed the licensee's exemption request and finds that it meets the underlying purpose of the rule, special circumstances exist, and it will not present an undue risk to the public health and safety. Since the licensee has justified the integrity of the containment based on previous leakage test results, the staff concludes that a one-time deferral of the Type C leak rate testing of 1(2)MOV–CC685 will not have a significant safety impact.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), this exemption is authorized by law and will not endanger life or property and is consistent with the common defense and security and is otherwise in the public interest and hereby grants the following exemption with respect to requirements of 10 CFR Part 50, Appendix J, Section III.D.3:

For the Zion Nuclear Power Station, Unit 1, the leak rate testing of 1MOV–CC685 may be deferred until refueling outage Z1R14 and for Zion Nuclear Power Station, Unit 2, the leak rate testing of 2MOV–CC685 may be deferred until refueling outage Z2R13.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (59 FR 38646).

Dated at Rockville, Maryland, this 1st day of August 1994.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–19264 Filed 8–5–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

General Public Utilities Nuclear Corp., (Three Mile Island Nuclear Station, Unit 2); Exemption

I

GPU Nuclear Corporation (GPUN or the licensee), is the holder of Facility Operating (Possession Only) License No. DPR–73 which authorizes possession and maintenance of the Three Mile Island Nuclear Station, Unit 2 (TMI–2 or the plant). The license provides, among other things, that the plant is subject to

all rules, regulations, and orders of the Commission now or hereafter in effect.

The plant is a permanently shut down pressurized light water reactor, currently in Post-Defueling Monitored Storage (PDMS), and is located at a site in Dauphin County, Pennsylvania. TMI-2 is co-located with Three Mile Island Nuclear Station, Unit 1, which remains operational.

II

TMI-2 permanently ceased power operations in March 1979, and fuel has been removed from the reactor [1] and the site. License No. DPR-73 was modified by Amendment No. 48 (December 28, 1993) which extensively altered TMI-2 Technical Specifications to be consistent with post-defueling monitored storage.

Title 10 of the *Code of Federal Regulations*, Section 140.11(a)(4) (10 CFR 140.11(a)(4)), requires each licensee to have and maintain primary nuclear liability insurance in an amount equal to $200 million. In addition, each licensee is required to maintain secondary financial protection in the form of private liability insurance under an industry retrospective plan. However, 10 CFR 140.8 allows that the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of Part 140 as it determines are authorized by the law and are otherwise in the public interest.

By letter dated October 28, 1993, the licensee requested the elimination of the current requirement for TMI-2 to participate in the industry retrospective rating plan for secondary level coverage as required in 10 CFR 140.11(a)(4).

III

The justification presented by the licensee for the request is that the Commission decision, as presented in the July 13, 1993, Staff Requirements Memorandum (SRM) on SECY-93-127, "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," allows withdrawal from participation in the secondary financial protection layer.

The NRC staff independently evaluated the legal and technical issues associated with the application of the Price-Anderson Act to permanently shut down reactors in SECY-93-127. In this evaluation, the staff concluded that the Commission has the discretionary authority to respond to licensee requests for a reduction in the level of primary financial protection and withdrawal from participation in the industry retrospective rating plan. Depending on the plant-specific configuration and the time since permanent shutdown, the staff also concluded that potential hazards may exist at permanently shutdown reactors for which continued financial protection is warranted. The staff further concluded that accidents and hazards insured against under Price-Anderson Act go beyond design basis accidents and beyond those considered "credible" as that term is used in 10 CFR Part 100 and cases interpreting the application of that regulation. The Commission issued an SRM addressing SECY-93-127 on July 13, 1993, and among other things, approved the staff recommendation to allow the withdrawal of the secondary financial protection layer.

In the exercise of its discretionary authority, the Commission may, as long as a potential hazard exists at a permanently shutdown reactor, require the full amount of primary financial protection and full participation in the industry retrospective rating plan. At such time as the hazard is determined to no longer exist, the Commission may reduce the amount of primary financial protection and permit the licensee to withdraw from participation in the industry retrospective rating plan.

Since the legislative history of the Price-Anderson Act does not explicitly consider the potential hazards that might exist after termination of operation, the staff generically evaluated the offsite consequences associated with normal and abnormal operations, design basis accidents, and beyond design basis accidents for reactors that have been permanently defueled and shut down. With regard to TMI-2, the staff has concluded that, in view of the time that has elapsed since plant shutdown, aside from the handling, storage, and transportation of the remaining core debris and radioactive materials, no reasonably conceivable potential accident exists that could cause significant offsite damage.

Typically, the most significant accident sequence for a permanently defueled and shutdown reactor involves the complete loss of water from a light water reactor spend fuel pool. This accident scenario is not credible at TMI-2 since the spend fuel pool is drained and no spent fuel is stored in the pool.

The staff considered liability coverage needs associated with decommissioning activities and transportation of radioactive materials. The staff recognizes that the potential hazards and consequences associated with a permanently shutdown reactor with no spent fuel are greatly reduced, and that the permanently shutdown reactor does not contribute a level of risk to the participants in the secondary pool proportionate to that of an operating reactor; therefore, relief from financial protection requirements would be warranted. The results of our evaluation, as endorsed in the July 13, 1993, SRM on SECY-93-127, allow a reduction in the amount of financial protection required of licensees of large nuclear plants that have been prematurely shut down. GPUN meets the criterion established in SECY-93-127 for relief from secondary financial protection requirements since the staff issued an order on July 20, 1979, suspending the authority of the licensee to operate the facility, no TMI-2 spend fuel is stored onsite, and the TMI-2 license was amended on September 14, 1993, allowing the licensee to possess, but not operate the facility.

IV

The staff, based on its independent evaluation consistent with the Commission July 13, 1993 SRM, and based on SECY-93-127, has concluded that sufficient bases exist for our approval of relief from the financial protection requirements for the Three Mile Island Nuclear Station, Unit 2. The staff has also concluded that granting the proposed exemption does not increase the probability or consequences of any accidents or reduce the margin of safety at this facility.

V

Based on the discussion presented in Sections III and IV above, the Commission has determined, that pursuant to 10 CFR 140.8, this exemption is authorized by law and is otherwise in the public interest. Therefore, the Commission grants an exemption from the requirement of 10 CFR 140.11(a)(4) to participate in the industry retrospective rating plan (secondary level financial protection) for Three Mile Island Nuclear Station, Unit 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (59 FR 38648 dated July 29, 1994).

This exemption is effective upon issuance.

[1] To the extent reasonably achievable, all fuel has been removed from the reactor vessel, less than 1 percent of the original core inventory remains; therefore, the term defueled will be used to describe TMC-2. An estimated 2040 lbs and 385 lbs of residual fuel (core debris) remain in the reactor vessel and balance of the facility external to the reactor vessel, respectively. Independent evaluations performed by the NRC and its consultants confirmed the licensee analysis that the fuel debris could not sustain criticality.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 29th day of July 1994.

Brain K. Grimes,

Director, Division of Operating Reactor Support Office of Nuclear Reactor Regulation.

[FR Doc. 94–19265 Filed 8–5–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–4477; International Series Release No. 695]

List of Foreign Issuers Which Have Submitted Information Required by the Exemption Relating to Certain Foreign Securities

August 2, 1994.

Foreign private issuers with total assets in excess of $5,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more shareholders reside in the United States, are subject to the registration and reporting provisions of the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq. (the "Act").[1]

Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) provides an exemption from registration under Section 12(g) of the Act for a foreign private issuer which submits on a current basis material specified in the Rule to the Commission. Such required material includes that information about which investors ought reasonably to be informed with respect to the issuer and its subsidiaries and which the issuer (1) has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (2) has filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange and/or (3) has distributed or is required to distribute to its security holders.

On October 6, 1983, the Commission revised Rule 12g3–2(b) by terminating the availability of the exemptive rule for certain foreign issuers with securities quoted on an automated inter-dealer quotation system (which includes the NASDAQ stock market).[2] The Commission grandfathered indefinitely securities of non-Canadian issuers in compliance with the information-supplying exemption as of October 6, 1983 and quoted in NASDAQ on that date.[3] The Commission extended the exemption to Canadian securities only until January, 1986.

When it adopted Rule 12g3–2 and other rules relating to foreign securities,[4] the Commission indicated that from time to time it would issue lists showing those foreign issuers that have claimed exemptions from the registration provisions of Section 12(g) of the Act.[5] The purpose of the present release is to call to the attention of brokers, dealers and investors that some form of relatively current information concerning the foreign issuers included on the following list is available in the public files of the Commission.[6] The Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning foreign issuers may not necessarily be available in the United States.[7] The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending these securities to their customers.[8] Any questions regarding Rule 12g3–2 or the list included herein should be directed to Walter Van Dorn, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549 ((202) 942–990). Requests for copies of the documents in the files should be directed to the Public Reference Room, Securities and Exchange Commission, Washington, D.C. 20549 ((202) 942–090).

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Company	Country	File No.
A.C.T. Industrial Corp.	Canada	82–1071
AAPC Ltd	Australia	82–3688
AB Astra	Sweden	82–3299
ABN AMRO Holding N.V	Netherlands	82–3246
ADI Technologies	Canada	82–3438
AQM Automotive Corp	Canada	82–3734
Aaron Oil Corp	Canada	82–3473
Abaco Grupo Financiero	Mexico	82–3724
Abbey National PLC	U.K.	82–2898
Ace Developments Ltd	Canada	82–2383
Acheron Resources Ltd	Canada	82–3025
Adasral Resources Ltd	Canada	82–2124
Adex Mining	Canada	82–2796
Advanced Info Services Ltd	Thailand	82–3236
Advent Communications Corp	Canada	82–3675
Aerovias de Mexico S.A	Mexico	82–3195
Afikander Lease Ltd	South Africa	82–245
Agen Ltd	Australia	82–2330
Agrogasy Mining Corp	Canada	82–3849

[1] Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements by reason of having registered securities under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*

[2] Exchange Act Release No. 20264 (Oct. 6, 1983).

[3] If, however, the securities are delisted from an automated inter-dealer quotation system or the issuer fails to maintain or otherwise meet the requirements of the exemption, the grandfather provision will cease to apply.

[4] Exchange Act Release No. 8066 (Apr. 28, 1967).

[5] Exchange Act Release No. 32741 (Aug. 12, 1993) contained the last such list.

[6] Inclusion of an issuer on the following list is not an affirmation by the Commission that the issuer has complied or is complying with all the conditions of the exemption provided by Rule 12g3–2(b). The list does identify those issuers that both have claimed the exemption and have submitted relatively current information to the Commission as of July 29, 1994.

[7] Paragraph (a)(4) of Rule 15c2–11 [17 CFR 240.15c2–11] requires a broker-dealer initiating a quotation for securities of a foreign private issuer to maintain in its files, and to make reasonably available upon request, the information furnished to the Commission pursuant to Rule 12g3–2(b) since the beginning of the issuer's last fiscal year.

[8] *See, e.g., Hanly* v. *SEC*, 415 F.2d 589 (2nd Cir. 1969) (broker-dealer cannot recommend a security unless an adequate and reasonable basis exists for such recommendation).

Company	Country	File No.
Air Canada	Canada	82–2548
Airboss Ltd	Australia	82–3104
Airpro Industries Inc	Canada	82–3288
Albert Fisher Group PLC	U.K.	82–1020
All Nipon Airways Co	Japan	82–1569
All North Resources Ltd	Canada	82–1646
Allegheny Mines Corp	Canada	82–3340
Allied Lyons PLC	U.K.	82–878
Almaden Resources Corp	Canada	82–2118
Alpha Airports Group PLC	U.K.	82–3694
Alpine Exploration Corp	Canada	82–1856
Altai Resources Inc	Canada	82–2950
Amalgamated Steel Mills Berhad	Malaysia	82–3318
Amcorp Industies Inc	Canada	82–2991
Amer Group Ltd	Finland	82–1544
America West Capital Corp	Canada	82–3435
American Power & Waste Ltd	Canada	82–3365
Amoy Proprieties Ltd	Hong Kong	82–3410
Ampolex Ltd	Australia	82–3078
Andhra Valley Power Supply Co	India	82–3732
Angkasa Marketing Berhad	Malaysia	82–3319
Anglo American Corp. of S. Africa	South Africa	82–97
Anglo American Gold Investment Co	South Africa	82–146
Anvil Resources Ltd	Canada	82–1244
Apasco S.A. de C.V	Mexico	82–3130
Apex Resorts Corp	Canada	82–3530
Apollo Development Inc	Canada	82–3171
Applied Int'l Holding Ltd	Hong Kong	82–1867
Applied Inventories Management Inc	Canada	82–3763
Approach Resources Inc	Canada	82–2406
Aquiline Resources Inc	Canada	82–2857
Arapahoe Mining Corp	Canada	82–842
Arbor Resources Inc	Canada	82–3017
Argenta Systems Inc	Canada	82–1320
Arjo AB	Sweden	82–3660
Asea AB	Sweden	82–736
Ashgrove Resources Ltd	Canada	82–2535
Ashton Mining Ltd	Australia	82–3577
Asia Fiber Co	Thailand	82–2842
Athabaska Gold Res. Ltd	Canada	82–1906
Atena Gold Corp	Canada	82–2226
Atlas Copco AB	Sweden	82–812
Atlas Pacific Ltd	Australia	82–1852
Atna Resources Ltd	Canada	82–1556
Auridiam Consolidated N.L	Australia	82–3452
Aurigo Resources Ltd	Canada	82–3683
Auspex Gold Ltd	Canada	82–2778
Australian Consolidated Press Group Ltd	Australia	82–3278
Australian Hydrocarbons	Australia	82–856
Australian National Industries Ltd	Australia	82–3351
B.A.T. Industries	U.K.	82–33
B.Y.G. Natural Resources Inc	Canada	82–2038
BAA PLC	U.K.	82–3372
BBC Brown Boveri Ltd	Switzerland	82–2871
BHF Bank	Germany	82–3404
BMD Enterprises Ltd	Canada	82–1994
BMR Gold Corp	Canada	82–2246
BTR PLC	U.K	82–898
BWI Resources Ltd	Canada	82–2914
BY & G Ventures Corp	Canada	82–1342
Bahia Sul Celulose S.A	Brazil	82–3793
Banca Comerciale Italiana	Italy	82–3707
Banco Espanol de Credito S.A	Spain	82–2814
Banco Ganadero S.A	Colombia	82–3614
Banco Mexicano	Mexico	82–3508
Bank of East Asia	Hong Kong	82–3443
Bank of Fukuoka	Japan	82–1117
Bank of Montreal	Canada	82–126
Bank of Nova Scotia	Canada	82–132
Bank of Scotland	U.K.	82–3240
Banque Nationale de Paris	France	82–3757
Bar Resources Ltd	Canada	82–1047
Beatrix Mines Ltd	South Africa	82–1054
Beaufield Resources Inc	Canada	82–1557

Company	Country	File No.
Belmont Resources Inc	Canada	82–686
Bergesen d.y. A/S	Norway	82–1697
Berjaya Group Berhad	Malaysia	82–2677
Berjaya Industrial Berhad	Malaysia	82–2580
Bespak PLC	U.K.	82–3349
Big I Developments Ltd	Canada	82–1094
Big Valley Resources Inc	Canada	82–1600
Biopac Industries Inc	Canada	82–3089
Biota Holdings Ltd	Australia	82–3570
Blue Circle Industries PLC	U.K.	82–927
Blue Range Resource Corp	Canada	82–3302
Blyvooruitzicht Gold Mining Co	South Africa	82–69
Body Shop International PLC	U.K.	82–3534
Bombardier	Canada	82–2123
Bombril S.A	Brazil	82–3651
Booker PLC	U.K.	82–1531
Boots Company PLC	U.K.	82–788
Borealis Exploration Ltd	Canada	82–1656
Boron Chemicals International Ltd	Canada	82–3496
Boswell International Technologies	Canada	82–863
Bougainville Copper Ltd	New Guinea	82–1133
Bowater Industries PLC	U.K.	82–3
Bracken Mines Ltd	South Africa	82–219
Braiden Resources Ltd	Canada	82–2121
Brascan Ltd	Canada	82–4
Bravo Resources Inc	Canada	82–2560
Bre-x Minerals Ltd	Canada	82–2750
Breckenridge Resources Ltd	Canada	82–1647
Bresea Resources Ltd	Canada	82–1377
Briana Bio-Tech Inc	Canada	82–3073
Bridge Oil Ltd	Australia	82–2167
Bridgestone Corp	Japan	82–1264
Broadwater Development Ltd	Canada	82–2631
Brunswick Mining and Smelting Corp	Canada	82–2827
Buffelsfontein Gold Mining Co	South Africa	82–302
Burmah Castrol PLC	U.K.	82–5
Burmeister and Wain Holding AS	Denmark	82–3731
Burns Philip & Co	Australia	82–1565
C.A. Venezolana de Pulpa y Papel	Venezuela	82–3202
C.E.L. Industries Ltd	Canada	82–3421
C.P. Pokphand Co	Bermuda	82–3260
CCL Industries Inc	Canada	82–2549
CDL Hotels International Ltd	Cayman Island	82–3667
CIBA–GEIGY Ltd	Switzerland	82–2918
CML Microsystems PLC	U.K.	82–3176
CS Holdings	Switzerland	82–3477
CSK Corp	Japan	82–781
CSL Ltd	Australia	82–3785
CSR Ltd	Australia	82–2693
CTM Citras S.A	Brazil	82–3555
Cabo Ventures Inc	Canada	82–1401
Cabre Exploration Ltd	Canada	82–3665
Cactus West Explorations Ltd	Canada	82–3268
Cadipsa S.A	Argentina	82–3547
Calais Resources Inc	Canada	82–3525
Call 900 Inc	Canada	82–3663
Callina N.L	Australia	82–3582
Carnas PLC	U.K.	82–3802
Cambridge Environmental Systems	Canada	82–3474
Cambridge Softeck Inc	Canada	82–3307
Canadian Conquest Explorations Inc	Canada	82–2473
Canadian Frobischer Resources	Canada	82–3254
Canadian Imperial Bank of Commerce	Canada	82–103
Canal Plus	France	82–2270
Canguard Health Technologies Inc	Canada	82–1184
Canmark International Resources Inc	Canada	82–2752
Canstar Ventures Corp	Canada	82–3796
Capilano International Inc	Canada	82–3094
Captive Air International Inc	Canada	82–2367
Caribbean Cement Company Ltd	Jamaica	82–3715
Carlin Gold Co	Canada	82–1770
Casamiro Resources Corp	Canada	82–1431
Cascadia Technologies Ltd	Canada	82–3738
Cash Canada Pawn Corp	Canada	82–2728

Company	Country	File No.
Cathay Pacific Airlines Ltd	Hong Kong	82–1390
Cathedral Gold Corp	Canada	82–1990
Celanese Canada Ltd	Canada	82–171
Cenco Petroleum Ltd	Canada	82–3679
Centrais Electricas de Santa Caterina S.A	Brazil	82–3795
Central Crude Ltd	Canada	82–1933
Central Pacific Minerals N.L	Australia	82–354
Ceramica Carabobo C.A	Venezuela	82–3097
Challenger Minerals Ltd	Canada	82–3666
Champion Technology Holdings Ltd	Cayman Islands	82–3442
Chandeleur Bay Production Co	Canada	82–2897
Chapleau Resources Ltd	Canada	82–1687
Charter Consolidated PLC	U.K.	82–233
Chase Resource Corp	Canada	82–1976
Chauvco Resources Ltd	Canada	82–3316
China Light & Power Co	Hong Kong	82–1197
China Strategic Investment Ltd	Hong Kong	82–3596
China Steel Corp	Taiwan	82–3296
Chocolate Pix Corp	Canada	82–3522
Christiana Bank OG Kredithasso	Norway	82–3018
Christies International PLC	U.K.	82–1180
Ciadea S.A	Argentina	82–3746
Ciments Francais	France	82–3336
Cimtek Integrated Manufacturing Tech	Canada	82–1680
Circa Telecommunications Inc	Canada	82–3128
City Developments Ltd	Singapore	82–3672
Clarins	France	82–2960
Clarion Environmental Technologies Inc	Canada	82–3533
Claude Resources Inc	Canada	82–1742
Coca-Cola Amatil Ltd	Australia	82–2994
Cogenix Power Corp	Canada	82–2990
Colony Pacific Explorations Ltd	Canada	82–1115
Colossal Resources Corp	Canada	82–3659
Comac Food Group Inc	Canada	82–2456
Cominco Ltd	Canada	82–107
Commerzbank AG	Germany	82–2523
Commonwealth Bank of Australia	Australia	82–3612
Compagnie Generale des Eaux	France	82–3814
Compagnie Generale des Est. Michelin	France	82–3354
Compagnie de Suez	France	82–2946
Companhia Energica de Sao Paulo	Brazil	82–3691
Companhia Paranaense de Energica-Copel	Brazil	82–3730
Companhia Siderurgica Belgo-Mineirc	Brazil	82–3771
Companhia Suzano De Papel E Celulose	Brazil	82–3550
Compass Resources Ltd	Canada	82–2041
Con-Space Communications Ltd	Canada	82–3378
Concert Industries Ltd	Canada	82–1003
Cong Industries Inc	Canada	82–2445
Connecticut Development Corp	Canada	82–3238
Companhia Acos Especiais Itabira Acesita	Brazil	82–3769
Consolidated Electric Power Asia Ltd	Bermuda	82–3693
Consolidated Eurocan Ventures Ltd	Canada	82–2948
Consolidated Magna Ventures Ltd	Canada	82–1370
Consolidated Pine Channel Gold Corp	Canada	82–2583
Consolidated First Northern Dev. Inc	Canada	82–3788
Continental AG	Germany	82–1357
Continental Caretech Corp	Canada	82–3056
Continental Precious Minerals Inc	Canada	82–3358
Controladora Comercial Mexicana	Mexico	82–3177
Copene Petroquimica do Nordeste S.A	Brazil	82–3367
Corporacion Industrial Sanluis S.A	Mexico	82–2867
Costello Resources	Canada	82–1918
Credit Bank A.E	Greece	82–3399
Credit Lyonnais	France	82–3662
Crestar Energy Inc	Canada	82–3641
Cross Lake Minerals Ltd	Canada	82–2636
Cryocon-Pacific Containers Inc	Canada	82–3799
Cuda Consolidated Inc	Canada	82–1572
Cultor Ltd	Finland	82–1643
Curion Venture Corp	Canada	82–3602
Curlew Lake Resources Inc	Canada	82–1978
Cyclone Capital Corp	Canada	82–2459
Cyn Tech Ventures Ltd	Canada	82–2675
Czar Resources Ltd	Canada	82–3136

Company	Country	File No.
DBA Telecom Corp	Canada	82–3736
DSM N.V	Netherlands	82–3120
Dai'ei Inc	Japan	82–230
Dairy Farm International Holdings Ltd	Hong Kong	82–2962
Daiwa Danchi Co	Japan	82–1218
Dakota Resources Ltd	Canada	82–3678
Darius Technology Ltd	Canada	82–1267
Datawave Vending Inc	Canada	82–1901
De Beers Centenary AG	Switzerland	82–3069
De Beers Consolidated Mines, Ltd	South Africa	82–91
Deelkraal Gold Mining Co	South Africa	82–246
Deep Basin Petroleum Corp	Canada	82–2811
Delmay Mining Corp	Canada	82–3412
Delpet Resources Ltd	Canada	82–1535
Delta Gold N.L	Australia	82–1221
Demand Technologies Ltd	Canada	82–2033
Den Danske Bank of 1871 Aktieselskab	Denmark	82–1263
Denehurst Ltd	Australia	82–2334
Dentonia Resources Ltd	Canada	82–627
Derlan Industries Ltd	Canada	82–2959
Deutsche Bank AG	Germany	82–334
Development Bank of Singapore	Singapore	82–3172
Dia Met Minerals Ltd	Canada	82–3234
Diamond International Industries Inc	Canada	82–1314
Diasyn Technologies Ltd	Canada	82–2295
Discovery Distribution Corp	Canada	82–3148
Discovery West Corp	Canada	82–1046
Dixons Group PLC	U.K	82–3331
Dofasco Ltd	Canada	82–3226
Dominguez & Cia Caracas S.A	Venezuela	82–3429
Dominion Textile Inc	Canada	82–3460
Dominion Mining Ltd	Australia	82–433
Domtar Ltd	Canada	82–18
Doornfontein Gold Mining Co	South Africa	82–213
Dorel Industrial Inc	Canada	82–2800
Dresdner Bank AG	Germany	82–229
Driefontein Consolidated Ltd	South Africa	82–124
Dupont Canada Inc	Canada	82–19
Durban Roodeporte Deep Ltd	South Africa	82–156
EI Environment Engineering Concepts	Canada	82–1598
EPA Enterprises Inc	Canada	82–3825
Eaglecrest Explorations Ltd	Canada	82–603
East Daggafontein Mines Ltd	South Africa	82–42
East Midlands Electricity PLC	U.K	82–3029
East Rand Gold & Uranium Co	South Africa	82–289
East Rand Proprietary Mines Ltd	U.K	82–239
Eastern Electricity PLC	U.K	82–3040
Eastfield Resources Ltd	Canada	82–1929
Egoli Consolidated Mines	South Africa	82–909
El Bravo Gold Mining Ltd	Canada	82–1888
Elandsrand Gold Mining Co	South Africa	82–266
Eldon Resources Ltd	Canada	82–3191
Eldorado Corp	Canada	82–3578
Elite Industries Ltd	Israel	82–2958
Email Ltd	Australia	82–2951
Emerald Isle Resources Inc	Canada	82–1479
Emerging Growth Technologies Inc	Canada	82–3725
Empaques Ponderosa S.A	Mexico	82–2880
Emperor Mines Ltd	Australia	82–696
Empire Alliance Properties Inc	Canada	82–2215
Enerwaste Minerals Corp	Canada	82–828
Engen Ltd	South Africa	82–3807
Enterprise Gold Mines N.L	Australia	82–1807
Envases Venezolanos S.A.C.A	Venezuela	82–3294
Epic Resources B.C. Ltd	Canada	82–1010
Equus Petroleum Corp	Canada	82–1302
Eros Entertainment Inc	Canada	82–1931
Esselte AB	Sweden	82–1355
Eucatex S.A. Industria y Commercio	Brazil	82–3618
European Technologies International Inc	Canada	82–3571
European Ventures Ltd	Canada	82–3491
Exall Resources Ltd	Canada	82–3535
F.H. Faulding & Company Ltd	Australia	82–2882
FCA International Ltd	Canada	82–1310

Company	Country	File No.
Faber Group Berhad	Malaysia	82–3505
Fairfield Minerals Ltd	Canada	82–1784
Fairhaven International Ltd	Bermuda	82–650
Fairmont Resources Inc	Canada	82–3492
Fairway Industries Ltd	Canada	82–1962
Faith Mines Ltd	Canada	82–3597
Falcon Point Resources Ltd	Canada	82–1713
Falcon Ventures International Corp	Canada	82–1748
Far-Ben S.A. de C.V	Mexico	82–3600
Farm Energy Corp	Canada	82–3188
Farmile Acquisitions	Canada	82–3717
Fastlane International Enterprises Inc	Canada	82–1334
Fedsure Holdings Ltd	South Africa	82–3839
Fenway Resources Ltd	Canada	82–2303
Finance One Public Co	Thailand	82–3536
First Australian Resources N.L	Australia	82–3494
First Pacific Co	Hong Kong	82–836
Fisons PLC	U.K	82–202
Fletcher Challenge Canada Ltd	Canada	82–668
Flotek Industries Inc	Canada	82–3514
Foch Consumer Electronics Corp	Canada	82–2435
Fokker N.V	Netherlands	82–3014
Fomento Economics Mexicana	Mexico	82–3009
Fomento de Construciones y Contractos S.A	Spain	82–3743
Footwall Explorations Ltd	Canada	82–2177
Foresthill Resources Inc	Canada	82–3500
Formation Capital Corp	Canada	82–2783
Foster's Brewing Co	U.K	82–1711
Fotex Elso Amerikai Magyar Fotosz	Hungary	82–3286
Founder Resources Inc	Canada	82–3264
Francisco Gold Corp	Canada	82–3752
Frankie Dominion International Ltd	Bermuda	82–3649
Franz Capital Corp	Canada	82–2574
Fraserfund Venture Capital	Canada	82–3588
Free State Consolidated Gold Mines	South Africa	82–44
Freeport Resources Inc	Canada	82–1131
Fuji Photo Film Co	Japan	82–78
G.B. Holdings Ltd	Singapore	82–2192
GKN PLC	U.K	82–1042
GLS Global Listing Service Ltd	Canada	82–1644
Gala-Bari International Inc	Canada	82–2511
Galleon Mining Ltd	Canada	82–3258
Gallery Resources Ltd	Canada	82–2877
Garden Lake Resources Ltd	Canada	82–3489
Genbel Investment Ltd	South Africa	82–235
Gencor Ltd	South Africa	82–311
General Diamond Corp	Canada	82–3800
Gerle Gold Ltd	Canada	82–1209
Giordanio Holdings Ltd	Hong Kong	82–3780
Glen Auden Resources Ltd	Canada	82–3650
Glencar Explorations PLC	Ireland	82–1421
Glendale Resources Inc	Canada	82–2353
Glimmer Resources Inc	Canada	82–1970
Global Teleworks Corp	Canada	82–3375
Globe Group S.A	Greece	82–3199
Globe Resources Inc	Australia	82–849
Gold Fields Property Co	South Africa	82–214
Gold Fields of South Africa Ltd	South Africa	82–204
Gold Mines of Kalgoorlie Ltd	Australia	82–2076
Gold Peak Industries (Holdings) Ltd	Canada	82–3604
Goldbank Ventures Ltd	Canada	82–2843
goldcliff Resources Corp	Canada	82–2748
GoldCorp Inc	Canada	82–1106
Golden Arch Resources Ltd	Canada	82–659
Golden Knight Resources Inc	Canada	82–811
Golden Kootenay Resources Inc	Canada	82–2546
Golden Trump Resources Ltd	Canada	82–797
Golden Unicorn Mining Corp	Canada	82–3532
Goldnev Resources	Canada	82–1080
Goldpac Investments Ltd	Canada	82–1167
Goodman Fielder Wattie Ltd	Australia	82–2009
Graffoto Industries Corp.	Canada	82–3579
Grand Hotel Holdings Ltd	Hong Kong	82–3408
Grand National Resources Inc	Canada	82–1100

Company	Country	File No.
Grande Portage Resources Ltd	Canada	82–1767
Granduc Mines Ltd	Canada	82–3124
Granisko Resources Inc	Canada	82–3861
Grasim Industries Ltd	India	82–3322
Greater Lenora Resources Corp	Canada	82–837
Greenwood Environmental Inc	Canada	82–2195
Gregor Goldfields Corp	Canada	82–3762
Grootvlei Proprietary Mines Ltd.	South Africa	82–222
Groupe Danone	France	82–3001
Groupe Videotron Ltee	Canada	82–3269
Grupo Carso S.A. de C.V.	Mexico	82–3175
Grupo Financiero Inverlat S.A. de C.V	Mexico	82–3610
Grupo Financiero InverMexico S.A.de C.V	Mexico	82–3447
Grupo Financiero Prime Internacional	Mexico	82–3548
Grupo Financiero Probusa S.A. de C.V	Mexico	82–3623
Grupo Gigante S.A. de C.V	Mexico	82–3142
Grupo Situr S.A. de C.V	Mexico	82–3187
Grupo Synkro S.A. de C.V	Mexico	82–2847
Grupo Video Visa S.A. de C.V	Mexico	82–3193
Guardian Communication Industries Inc.	Canada	82–857
Guinness PLC	U.K	82–1478
Guongdong Investment Ltd	Hong Kong	82–3772
Gwalia Resources Ltd	Australia	82–126
H. Jager Developments Inc	Canada	82–2818
HSBC Holdings PLC	U.K.	82–683
Haddington Resources Ltd	Canada	82–2024
Hai Sun Hup Group Ltd	Singapore	82–3575
Halitec Industries Corp	Canada	82–8711
Halo Gaming Corp	Canada	82–3689
Hana Microelectronics Co	Thailand	82–3633
Hang Lung Development Co	Hong Kong	82–1439
Hang Seng Bank Ltd	Hong Kong	82–1747
Hanng Magnetics Holding Ltd	Bermuda	82–3638
Hansol Paper Company	Korea	82–3451
Harbour Petroleum Company	Canada	82–3427
Hardman Resources N.L	Australia	82–3472
Harmony Gold Mining Co	South Africa	82–238
Hars Systems Inc	Canada	82–1870
Hartstone Group PLC	U.K.	82–3022
Havas	France	82–2879
Hawkwood Industries Inc	Canada	82–2981
Hedley Pacific Ventures Ltd	Canada	82–3687
Helikopter Service A.S	Norway	82–3135
Hemlo Goldmines Inc	Canada	82–2828
Henderson Land Development Co	Hong Kong	82–1561
Hera Resources Inc	Canada	82–3656
Heritage Petroleums Inc.	Canada	82–1624
Hidroelectrica Alicura S.A	Argentina	82–3749
Highgrade Ventures Ltd	Canada	82–2257
Highveld Steel & Vanadium Corp	South Africa	82–596
Hillsdown Holdings PLC	U.K.	82–1407
Hindalco Industries Ltd	India	82–3428
Hino Motors Ltd	Japan	82–1388
Hoganas AB	Sweden	82–3754
Hokuriku Bank Ltd	Japan	82–1045
Hot-Lac Gold Mines Ltd	Canada	82–3529
Hong Kong & China Gas Co.	Hong Kong	82–1543
Hong Kong Land Holdings Ltd	Hong Kong	82–2964
Hopewell Holdings Ltd.	Hong Kong	82–1547
Horace Small Apparrel PLC	U.K.	82–3341
Hovik Medical Corp	Canada	82–2132
Hudson Resources Ltd.	Canada	82–2093
Huhtamaki OY	Finland	82–2925
Hunter Douglas N.V	Netherlands	82–3741
Huntington Resources Inc	Canada	82–1374
Hydromet Corp	Australia	82–3543
Hysan Development Co	Hong Kong	82–1617
Hyundai Motor Company	Korea	82–3423
I.T.C. Ltd	India	82–3470
INVESCO MIM PLC	U.K.	82–3440
IRSA Inversiones Y Representaciones S.A	Argentina	82–3537
Iatco Industries Inc	Canada	82–2793
Imasco Ltd	U.K	82–118
Impala Platinum Holdings Ltd	South Africa	82–359

Company	Country	File No.
Imperial Metals Corp	Canada	82–1032
Industrias Klabin De Papel E Celulose S.A	Brazil	82–3797
Iner-citic Envirotec Inc	Canada	82–2345
Inflazyme Pharmaceuticals Ltd	Canada	82–2317
Insulpro Industries Inc	Canada	82–3281
Integrated Media Communications Inc	Canada	82–2263
Interactive Communications Corp	Canada	82–3054
Interactive Video Systems Inc	Canada	82–3580
Interfirst Resources Inc	Canada	82–2302
Interlock Consolidated Enterprises	Canada	82–3359
Intermin Resource Corp	Canada	82–1528
Internacional de Ceramica S.A. de C.V	Mexico	82–2873
International Biormediation Services	Canada	82–328
International Container Terminal Service	Philippines	82–3453
International Curator Resources Ltd	Canada	82–1540
International Gemini Technology	Canada	82–1149
International Health + Beauty Inc	Canada	82–2805
International Helix Biotechnology Inc	Canada	82–1044
International Hi Tech Industries Inc	Canada	82–2179
International Homestead Resources Inc	Canada	82–3822
International Kaaba Gold Corp	Canada	82–1049
International Kengate Ventures Inc	Canada	82–3113
International Mahogany Corp	Canada	82–2375
International Mining Jack Resources Ltd	Canada	82–2109
International Nederlanden Groep N.V	Netherlands	82–3458
International Onword Learning Systems Inc	Canada	82–2930
International Panorama Resource Corp	Canada	82–1965
International Resources Ltd	Canada	82–705
International Topaz Business Dev. Corp	Canada	82–2276
International Tower Hill Mines Ltd	Canada	82–3248
International UNP Holdings Ltd	Canada	82–2731
Internova Resources Ltd	Canada	82–3499
Interstar Mining Group Inc	Canada	82–3759
Int'l Republic Aircraft Manufacturing	Canada	82–2633
Iochpe-Maxion S.A	Brazil	82–3722
Irish Life PLC	Ireland	82–3134
Iscor Ltd	South Africa	82–3826
Isras Investment Company Ltd	Israel	82–3243
J. Sainsbury PLC	U.K.	82–913
JG Summit Holdings Inc	Philippines	82–3572
Jackson Hole Holdings Corp	Canada	82–1998
Jacqueline Gold Corp	Canada	82–2374
Jamaica Broilers Group Ltd	Jamaica	82–3720
Jamaica Flour Mills Ltd	Jamaica	82–3705
James Hardie Industries Ltd	Australia	82–972
Japan Airlines Company Ltd	Japan	82–122
Jardine Matheson Holdings	Hong Kong	82–2963
Jardine Strategic Holdings Ltd	Bermuda	82–3085
Jarvis Resources Ltd	Canada	82–962
Jascan Resources Inc	Canada	82–2123
Jason Mining Ltd	Australia	82–1257
Jefferson Smurfit Group PLC	Ireland	82–1311
Jilbey Exploration Ltd	Canada	82–1629
Jinhui Holdings Co	Hong Kong	82–3765
John Labatt Ltd	Canada	82–1103
Johnson Electric Holdings Ltd	Canada	82–2416
Joutel Resources Ltd	Canada	82–502
Julia Mines N.L	Australia	82–1666
K. Wah International Holdings Ltd	Bermuda	82–3853
Kansallis-Osake-Pankki	Finland	82–3798
Kaufhof AG	Germany	82–3592
Kawasaki Steel Corp	Japan	82–3389
Kelso Resources Ltd.	Canada	82–2441
Kenrich Mining Corp.	Canada	82–2809
Kensbrook Development Corp.	Canada	82–3390
Keppel Corp.	Singapore	82–2564
Kepphil Shipyard Inc.	Philippines	82–3634
Kettle River Resources Ltd.	Canada	82–666
Key Anacon Mines Ltd.	Canada	82–23
Keylock Resources Inc.	Canada	82–3271
Kia Motors Corp.	Korea	82–3205
Kidston Gold Mines Ltd.	Canada	82–2351
Kimberly Clark De Mexico	Mexico	82–3308
Kingfisher PLC	U.K.	82–968

Company	Country	File No.
Kingsfield Capital Corp.	Canada	82–3617
Kinova Holdings Corp.	Canada	82–3558
Kinross Mines Ltd.	South Africa	82–220
Kirin Brewery Co.	Japan	82–188
Kloof Gold Mining Co., Ltd.	South Africa	82–205
Knowledge Plus Multimedia Publishing Ltd.	Canada	82–3774
Kobe Steel Ltd.	Japan	82–3371
Koninklijke Wessanen N.V.	Netherlands	82–1306
Kookaburra Resources Ltd.	Canada	82–2740
Krones AG	Germany	82–3871
Kvaerner AS	Norway	82–3745
LMX Resources Ltd.	Canada	82–2139
La Rock Mining Corp.	Canada	82–1496
Ladbroke Group PLC	U.K.	82–1571
Lafarge Coppee	France	82–3369
Land Lease Corp.	Australia	82–3498
Laura Ashley Holdings PLC	U.K.	82–1356
Leeward Capital Corp.	Canada	82–3640
Legal and General Group PLC	U.K.	82–3664
Lenzing AG	Austria	82–3207
Leslie Gold Mines Ltd.	South Africa	82–223
Levelland Energy and Resources Ltd.	Canada	82–3590
Lighting Jack Film Trust	Australia	82–3584
Lion Land Berhad	Malaysia	82–3342
Lippo Ltd.	Hong Kong	82–3552
Listed Ventures Inc.	Canada	82–3230
London Electricity PLC	U.K.	82–3037
Lonrho PLC	U.K.	82–191
Lorica Resources Ltd.	Canada	82–3601
Loumic Resources Ltd.	Canada	82–2670
Lucas Gold Resources Corp.	Canada	82–2297
Lucero Resource Corp.	Canada	82–1756
Lydenburg Platinum Ltd.	South Africa	82–312
Lyndex Exploration Ltd.	Canada	82–3595
Lytton Minerals Ltd.	Canada	82–3627
MBf Holdings Berhad	Malaysia	82–3469
MIM Holdings Ltd.	Australia	82–173
MIS Multimedia Interactive Services Inc.	Canada	82–1985
Maesa Petroleum Inc.	Canada	82–1208
Mai PLC	U.K.	82–1940
Major General Resources Ltd.	Canada	82–2996
Malbak Ltd.	South Africa	82–3751
Mandarin Oriental International Ltd.	Hong Kong	82–2955
Manhattan Minerals Corp.	Canada	82–3328
Manweb PLC	U.K.	82–3036
Maple Leaf Springs Water Corp.	Canada	82–3432
Marishell Products Ltd.	Canada	82–3766
Marks and Spencer PLC	U.K.	82–1961
Marubeni Corp.	Japan	82–616
Mass Transit Railway Corp.	Hong Kong	82–3626
Matrix Energy	Canada	82–1214
Matrix Telecommunications Ltd.	Australia	82–1189
Mavesa S.A.	Venezuela	82–3397
Maxwell Energy Corp.	Canada	82–3061
McCulloch's Canadian Beverages Inc.	Canada	82–3512
Medya Holdings AS	Turkey	82–3515
Mega Star Ventures	Canada	82–2553
Menika Mining Company Ltd.	Canada	82–1248
Metall Mining Corp.	Canada	82–3481
Metana Minerals N.L.	Australia	82–2175
Metra Corp.	Finland	82–933
Metsa Serla OY	Finland	82–3696
Micrologix Biotech Inc.	Canada	82–3179
Midlands Electricity PLC	U.K.	82–3035
Mikado Resources Ltd	Canada	82–1298
Mill City Gold Mining Corp	Canada	82–3076
Mindflight Corp	Canada	82–3639
Minefinders Corp	Canada	82–2227
Minera Rayrock Inc	Canada	82–3471
Minorco	Bermuda	82–206
Minotaur Explorations Ltd	Canada	82–2448
Minvita Enterprises Ltd	Canada	82–2161
Mirage Resource Corp	Canada	82–1838
Mirror Group Newspapers PLC	U.K.	82–3114

Company	Country	File No.
Mishibishu Gold Corp	Canada	82–2682
Mitsubishi Kasei Corp	Japan	82–1191
Mitsubishi Corp	Japan	82–3784
Modatech Systems Inc	Canada	82–2006
Molson Companies Ltd	Canada	82–2954
Morgan Crucible Company	U.K.	82–3387
Motion Works Corp	Canada	82–3250
Mount Burgess Gold Mining Co. N.L	Australia	82–1235
Mountain Province Mining Corp	Canada	82–2540
Mountain West Resources Inc	Canada	82–1201
Multinational Resources Inc	Canada	82–1095
Multiplex Technologies Inc	Canada	82–2937
Mutual Resources Ltd	Canada	82–1171
N.V. Amev	Netherlands	82–3118
NAV Master Technologies Inc	Canada	82–3150
NDU Resources Ltd	Canada	82–2292
NV Verenigd Bezit VNU	Netherlands	82–2876
Nampak Ltd	South Africa	82–3714
Naneco Minerals Ltd	Canada	82–2618
Nassey Mercantile Ltd	Canada	82–3568
National Power PLC	U.K.	82–3060
National and Provincial Building Society	U.K.	82–3753
Naturally Niagara Inc	Canada	82–3621
Nestle S.A	Switzerland	82–1252
Nevada North Resources Inc	Canada	82–1665
Nevada Star Resources Corp	Canada	82–3088
New Aegis Resources Ltd	Canada	82–1405
New Age Ventures Inc	Canada	82–3344
New Claymore Resources Ltd	Canada	82–3433
New Concept Technologies International	Canada	82–3786
New World Developments Co	Hong Kong	82–2971
Newera Capital Corp	Canada	82–2993
Nintendo Co	Japan	82–2544
Nippon Shokubai Kagaku Kagyo Co	Japan	82–1484
Nissan Motor Co	Japan	82–207
Nora Exploration Inc	Canada	82–3329
Normandy Poseidon Ltd	Australia	82–1975
Noront Resources Ltd	Canada	82–2304
North American Fire Guardian	Canada	82–1921
North American Nippon Technologies Corp	Canada	82–3048
North West Water Group PLC	U.K.	82–2813
Northern Electric PLC	U.K.	82–3039
Northern Reef Exploration Ltd	Canada	82–2961
Norweb PLC	U.K.	82–3038
Nu Lite Resources Industries Ltd	Canada	82–3643
Nucore Resources Ltd	Canada	82–2537
Ocean Marine Technologies Inc	Canada	82–2622
Octagon Industries Inc	Canada	82–3310
Oil City Lubricants Ltd	Canada	82–1260
Olds Industries Inc	Canada	82–3461
Olympus Optical Company Ltd	Japan	82–3326
Omron Corp	Japan	82–1170
Onfern Holdings Ltd	Bermuda	82–3735
Ontex Resources Ltd	Canada	82–2100
Opact Resources Ltd	Canada	82–2003
Orange Free State Investments Ltd	South Africa	82–1220
Orbit Oil and Gas Ltd	Canada	82–3107
Osito Ventures Ltd	Canada	82–2238
Otis J. Explorations Corp	Canada	82–3587
Outokumpu OY	Finland	82–3680
PBX Resources Ltd	Canada	82–2635
PIC Prospectors International Corp	Canada	82–2039
PTT Exploration and Production	Thailand	82–3827
Pacific Century Explorations Ltd	Canada	82–2120
Pacific Concord Holding Ltd	Hong Kong	82–3819
Pacific Insight Electronics Corp	Canada	82–3360
Pacific Mariner Explorations Ltd	Canada	82–3586
Pacific Northern Ventures Ltd	Canada	82–3333
Pacific Rim Mining	Canada	82–3611
Pact Resources N.L	Australia	82–1386
Pan Australian Mining Ltd	Canada	82–1753
PanGlobal Enterprises Inc	Canada	82–3223
Parallax Development Corp	Canada	82–1854
Pechiney International	France	82–3350

Company	Country	File No.
Pelsart Resources N.L	Australia	82–484
Pentland Industries PLC	U.K.	82–1219
Peregrine Investments Holdings Ltd	Hong Kong	82–3466
Pernod Ricard S.A	France	82–3361
Petro Plus Inc	Canada	82–2432
Peugeot S.A	France	82–3531
Pinewood Resources Ltd	Canada	82–3644
Pioneer International Ltd	Australia	82–2701
Placer Pacific Ltd	Australia	82–1952
Playmates International Holdings Ltd	Hong Kong	82–2979
Plentech Electronics Inc	Canada	82–2479
Polyair Tires Inc	Canada	82–3756
Poplar Resources Ltd	Canada	82–1489
Poseidon Gold Ltd	Australia	82–2875
Power Corp. of Canada	Canada	82–137
Power Financial Corp	Canada	82–1716
PowerGen PLC	U.K.	82–3066
Premier Consolidated Oilfields PLC	U.K.	82–2617
President Enterprises Corp	Taiwan	82–3424
Prime Resources Group Inc	Canada	82–1503
Princeton Mining Co	Canada	82–1243
Priva Inc	Canada	82–3837
Promatek Industries Ltd	Canada	82–1351
Providence Industries Inc	Canada	82–2753
Prudential Corp	U.K.	82–1477
Q Media Software Corp	Canada	82–3761
QNI Ltd	Australia	82–3834
Quattro Resources Ltd	Canada	82–2625
Quebec Sturgeon River Mines Ltd	Canada	82–186
Queenstake Resources Ltd	Canada	82–565
Quillo Technologies Inc	Canada	82–1960
Quinto Mining Corp	Canada	82–475
RJK Explorations Ltd	Canada	82–2629
Racal Electronics PLC	U.K.	82–481
Radical Advanced technologies	Canada	82–3251
Ranchmen's Resources Ltd	Canada	82–2615
Rand Mines Ltd	South Africa	82–304
Randfontein Estates Gold Mining	South Africa	82–267
Rank Organization Ltd	U.K.	82–17
Rayrock Yellowknife Resources Inc	Canada	82–378
Reako Explorations Ltd	Canada	82–1286
Redfern Resources	Canada	82–1824
Redland PLC	U.K.	82–2156
Reed Lake Exploration Ltd	Canada	82–2254
Reeflex Petroleum Technologies Inc	Canada	82–3770
Refrigeracao Parana S.A	Brazil	82–3794
Regal Gold Corp	Canada	82–2244
Rembrandt Group Ltd	South Africa	82–3760
Repola Ltd	Finland	82–3161
Resorts World Berhad	Malaysia	82–3229
Response Biomedical Corp	Canada	82–1365
Rich Mineral Corp	Canada	82–2832
Richmont Mines Inc	Canada	82–2940
Ridgeway Petroleum Corp	Canada	82–1819
Riley Resources Ltd	Canada	82–2159
Riva Petroleum Inc	Canada	82–2945
Roche Holdings Ltd	Switzerland	82–3315
Rockford Technology Corp	Canada	82–2223
Rockwealth International Resource Corp	Canada	82–2723
Rocraven Resources Ltd	Canada	82–493
Rolls-Royce PLC	U.K.	82–2821
Roper Resources Inc	Canada	82–2020
Rosenthal AG	Germany	82–1648
Ross Mining N.L	Australia	82–3609
Rothmans International Ltd	U.K.	82–84
Roussel Uclaf	France	82–3574
Roxbury Capital Corp	Canada	82–3616
Royal Bank of Canada	Canada	82–796
Royal Bay Gold Corp	Canada	82–3831
Royal Concorde Capital Inc	Canada	82–3674
Royal Nedlloyd Group N.V	Netherlands	82–1056
Rustenburg Platinum Holdings Ltd	South Africa	82–241
Ryde Industries Inc	Canada	82–2326
Safari International Resources Inc	Canada	82–2995

Company	Country	File No.
Sage Resources Ltd	Canada	82–3670
Sakura Bank Ltd	Japan	82–3055
Sales Initiatives International	Canada	82–2985
Samantha Explorations N.L	Australia	82–323
Samson Exploration	Australia	92–401
Samsung Electronics Co	Korea	82–3109
San Fernando Mining Company Ltd	Canada	82–2171
San Miguel Corp	Philippines	82–306
Sandoz Ltd	Switzerland	82–3156
Sandvik AB	Sweden	82–1463
Santos Ltd	Australia	82–34
Sanyo Electric Co	Japan	82–264
Sanyo Securities Co	Japan	82–1857
Sao Paulo Alpargatas S.A	Brazil	82–3692
Sappi Ltd	South Africa	82–3835
Sasol Ltd	South Africa	82–631
Scantronic Holdings PLC	U.K	82–2584
Schmitt Industries Inc	Canada	82–1872
Schneider S.A	France	82–3706
Score Athletic Products Inc	Canada	82–3051
Scottish Hydro-Electric PLC	U.K	82–3099
Scottish Power PLC	U.K	82–3100
Sechura Inc	Canada	82–1278
Sedona Industries	Canada	82–2299
Sedgwick Group PLC	U.K	82–1529
Seeboard PLC	U.K	82–3033
Sega Enterprises Ltd	Japan	82–3439
Selkirk Springs International	Canada	82–2526
Sementes Agroceres S.A	Brazil	82–3709
Semi-Tech (Global) Company Ltd	Bermuda	82–3337
Senetek PLC	U.K	82–875
Serenpet Inc	Canada	82–3362
Seval Alimentos S.A	Brazil	82–3855
Shanghai Chlor-Alkali Chem. Co	China	82–3657
Shanghai Erfangji Co	China	82–3613
Shanghai Tyre and Rubber Co	China	82–3606
Sharp Corp	Japan	82–1116
Shinawatra Computer Co	Thailand	82–3140
Shiseido Company Ltd	Japan	82–3311
Shomega Ltd	Australia	82–3815
Shun Tak Holdings	Hong Kong	82–3357
Siebe PLC	U.K	82–2142
Siemens AG	Germany	82–73
Sierra Nevada Gold Ltd	Canada	82–894
Sikaman Gold Resources Ltd	Canada	82–1651
Silent Witness Enterprises Inc	Canada	82–3464
Silver Standard Resources Inc	Canada	82–3190
Silver Tusk Mines Ltd	Canada	82–723
Silverspar Energy Corp	Canada	82–478
Singapore Telecommunications Ltd	Singapore	82–3622
Sirius Resource Corp	Canada	82–1575
Skondinaviska Enegkidc Banken	Sweden	82–3637
Slumber Magic Adjustable Bed	Canada	82–2057
Smedvig A.S	Norway	82–3551
Smedvig Tankships Ltd	Bermuda	82–3591
Societe Generale	France	82–3501
Sol Petroleo S.A	Argentina	82–3448
Solvay & Cie S.A	Belgium	82–2691
Sons of Gwalia N.L	Australia	82–1039
South African Breweries Ltd	South Africa	82–303
South African Land & Expl. Co	South Africa	82–59
South China Morning Post	Hong Kong	82–3327
South Roodepoort Main Reefs Area Ltd	South Africa	82–930
South Wales Electricity PLC	U.K	82–3031
South Western Electricity PLC	U.K	82–3030
Southcorp Holdings Ltd	Australia	82–2692
Southern Electric PLC	U.K.	82–3032
Southern Era Resources Ltd	Canada	82–3658
Southern Pacific Petroleum N.L	Australia	82–353
Southern Water PLC	U.K.	82–2797
Southvaal Holdings Ltd	South Africa	82–197
Southward Energy Ltd	Canada	82–3005
Southwestern Petrochemical Indus	India	82–3581
Spargos Mining N.L	Australia	82–1441

Company	Country	File No.
Spectrum Games Corp	Canada	82–3599
Sport Specific International Inc	Canada	82–3695
St. Barbara Mines Ltd	Australia	82–3747
St. George Bank Ltd	Australia	82–3809
St. Lukes Group Ltd	New Zealand	82–3645
Stampede Oil Inc	Canada	82–3605
Stanford Energy Corp	Canada	82–2321
Star Paging International Holdings Ltd	Bermuda	82–3654
Starlight International Holdings Ltd	Bermuda	82–3594
Statoil	Norway	82–3444
Stilfontein Gold Mining Co	South Africa	82–301
Stina Resources Ltd	Canada	82–2062
Stralak Resources Ltd	Canada	82–976
Stratabound Minerals Corp	Canada	82–3284
Stratcomm Media Ltd	Canada	82–1778
Stressgen Biotechnologies Corp	Canada	82–3776
Striker Resources N.L	Australia	82–3585
Stryker Resources Ltd	Canada	82–883
Sub Nigel Gold Mining Company	South Africa	82–1798
Sudamtex de Venezuela C.H. S.A.C.A	Venezuela	82–3653
Sumitomo Metal Industries Ltd	Japan	82–3507
Summit Resources Ltd	Canada	82–2922
Sun Free Enterprises Ltd	Canada	82–2822
Sun Hung Kai Properties Ltd	Hong Kong	82–1755
Sungold Gaming Inc	Canada	82–2157
Suntree Investments International Corp	Canada	82–2031
Svedala Industri A.B	Sweden	82–3593
Swire Pacific Ltd	Hong Kong	82–2184
Swiss Bank Corp	Switzerland	82–3567
Synapse Software Inc	Canada	82–3642
Synex International Inc	Canada	82–862
T&H Resources Ltd	Canada	82–2669
T.E.N. Private Cable Systems Inc	Canada	82–1563
TI Group PLC	U.K.	82–2697
Tai Cheung Holdings Ltd	Bermuda	82–3528
Talisman Energy Inc	Canada	82–3710
Tappit Resources Ltd	Canada	82–3813
Tarron Industries Ltd	Canada	82–1881
Tata Engineering and Locomotive Co	India	82–3768
Tata Hydro-Electric Power Supply Co	India	82–3704
Tata Power Company	India	82–3733
Tate & Lyle PLC	U.K.	82–905
Taylor Rand Inc	Canada	82–3635
Techtronic Industries Co	Hong Kong	82–3648
Teijin Ltd	Japan	82–1266
Teijin Seiki Co	Japan	82–1493
Teka Tecelagem Kuerrichg S.A	Brazil	82–3620
Telecom Argentina—Stet France Telecom	Argentina	82–3259
Telesoft Moble Data Inc	Canada	82–3727
Television Broadcasts Ltd	Hong Kong	82–1072
Telstra Corp	Australia	82–3562
Tenaga Nasional Berhad	Malaysia	82–3677
Tenga Laboratories Inc	Canada	82–3631
Teollisuuden Voima OY	Finland	82–2973
Teranet IA Inc	Canada	82–3244
Terra Health Corp	Canada	82–3356
Tesco PLC	U.K.	82–3277
Teuton Resources Corp	Canada	82–1394
Thai Telephone and Telecommunications	Thailand	82–3744
The Wharf (Holdings) Ltd	Hong Kong	82–3291
Thorn EMI Ltd	U.K.	82–373
Tiger Oats Ltd	South Africa	82–3719
Toba Gold Resources	Canada	82–2966
Tofas Turk Otomobil	Turkey	82–3699
Tombstone Explorations Co	Canada	82–3624
Topaz Resources International	Canada	82–1285
Topper Gold Corp	Canada	82–2694
Toronto Dominion Bank	Canada	82–142
Toyobo Co., Ltd	Japan	82–1172
Toyota Motor Co., Ltd	Japan	82–208
Trafalgar House PLC	U.K.	82–1894
Trans Atlantic Enterprises	Canada	82–1692
Transportadora de Gas del Norte S.A	Argentina	82–3845
Transtech Industries Inc	Canada	82–2437

Company	Country	File No.
Treminco Resources Ltd	Canada	82–1384
Triad Technologies	Canada	82–2785
Trillion Resources Ltd	Canada	82–3630
Trimin Resources Inc	Canada	82–1833
Trio Gold Corp	Canada	82–2127
Trove Investment Corp	Canada	82–2476
Troymin Resources Ltd	Canada	82–3503
Truly International Holdings Ltd	Cayman Islands	82–3700
Trust Company of Australia Ltd	Australia	82–1443
Turkiye Garanti Bankasi	Turkey	82–3636
Tusk Minerals Inc	Canada	82–3297
Twin Star Energy Corp	Canada	82–2213
Tycoon Ventures Inc	Canada	82–3468
USA Video Corp	Canada	82–1601
Unibanco Uniao de Bancos Brasileiros S.A	Brazil	82–3353
Unicomm Signal Inc	Canada	82–2787
Unidex Communications Corp	Canada	82–3130
Union Bank of Switzerland	Switzerland	82–3804
Unique Force Enterprises Inc	Canada	82–1927
Unisel Gold Mines Ltd	South Africa	82–236
Unitec International Controls Corp	Canada	82–2551
Unitech PLC	U.K.	82–2412
United Biscuits PLC	U.K.	82–3079
United Engineers (Malaysia)	Malaysia	82–3816
United Overseas Land Ltd	Singapore	82–2180
United Rayore Gas Ltd	Canada	82–747
Unitor Ship Service AS	Norway	82–3020
Univa Inc	Canada	82–2570
Universal Trident Industries Ltd	Canada	82–3026
Upton Resources Inc	Canada	82–3290
Vaal Reefs Exploration & Mining Co	South Africa	82–56
Valeo S.A	France	82–3668
Valerie Gold Resources	Canada	82–3339
Valley Oil & Gas Corp	Canada	82–1991
Vanguard Petroleum Ltd	Australia	82–3478
Veitsch-Radex AG	Austria	82–1573
Velcro Industries N.V	Neth. Ant.	82–145
Venoro Gold Corp	Canada	82–2178
Venture Pacific Development Corp	Canada	82–2596
Verdstone Gold Corp	Canada	82–1735
Vexco Laboratores Inc	Canada	82–3486
Viceroy Resources Corp	Canada	82–1193
Vickers PLC	U.K.	82–1359
Virtuality Group PLC	U.K.	82–3684
VitaMed Biopharmaceuticals Ltd	Canada	82–3096
Volkswagen AG	Germany	82–2188
Vortex Energy & Minerals Ltd	Canada	82–3462
Vtech Holdings Ltd	Bermuda	82–3565
Wace Group PLC	U.K.	82–2369
Walker Corp	Australia	82–3782
War Eagle Mining Co	Canada	82–2008
Wayburn Oil and Natural Gas	Canada	82–3740
Wedgewood Resources Ltd	Canada	82–2191
Welback Holdings Ltd	Bermuda	82–3556
Welkom Gold Holdings Ltd	South Africa	82–57
West Rand Consolidated Mines Ltd	South Africa	82–314
West-Mar Resources Ltd	Canada	82–751
Western Areas Gold Mining Co	South Africa	82–268
Western Canadian Land Corp	Canada	82–1446
Western Copper Holdings Ltd	Canada	82–3422
Western Deep Levels Ltd	South Africa	82–58
Western Garnet Company	Canada	82–2637
Westgroup Corp	Canada	82–2833
Westley Technologies	Canada	82–1088
Westpine Metals Ltd	Canada	82–3116
Wheelock and Co	Hong Kong	82–3789
White Knight Resources Ltd	Canada	82–2850
White Plains Resources Corp	Canada	82–2887
Williams Creek Explorations Ltd	Canada	82–3146
Willow Resources Ltd	Canada	82–3843
Windarra Minerals Ltd	Canada	82–561
Windsor Court Holdings Inc	Canada	82–3495
Wing Hong Bank Ltd	Hong Kong	82–3629
Winkelhaak Mines Ltd	South Africa	82–221

Company	Country	File No.
Wolters Kluwer N.V	Netherlands	82–2683
Woodside Petroleum Ltd	Austria	82–2280
Woolworths Ltd	Austria	82–3544
World Wide Minerals Ltd	Canada	82–2444
Worthing Industries Inc	Canada	82–3253
Wrightson NMA Ltd	New Zealand	82–3646
Yellow Point Mining Corp	Canada	82–1349
Yellowjack Resources Ltd	Canada	82–1765
Yiu Wing International Holdings Ltd	Bermuda	82–3655
York Centre Corp	Canada	82–2816
Yorkshire Electricity Group PLC	U.K.	82–3034
Young-Shannon Gold Mines Ltd	Canada	82–2928
Your Host Foods Inc	Canada	82–2042
Yukon Revenue Mines Ltd	Canada	82–3779
Zanex N.L	Australia	82–932
Zapopan N.L	Australia	82–2997
Zodiac Hurricane Marine Inc	Canada	82–1281

[FR Doc. 94–19249 Filed 8–5–94; 8:45 am]

BILLING CODE 8010–01–P

[Release No. 34–34470; File No. SR–NSCC–94–12]

Self Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Seeking Permanent Approval for the New York Window Service

August 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on July 15, 1994, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–94–12) as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to NSCC's Rules and Procedures for NSCC's New York Window service and seeks permanent approval of the service. The proposal will permit NSCC to replace the participating members' record keeping systems with NSCC's proprietary record keeping system. The proposal also sets forth the New York Window fee schedule.

[1] 15 U.S.C. 78s(b)(1) (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The New York Window is a service that provides for the processing of receives and deliveries of physical securities. The New York Window also provides facilities for the custody of physical securities and custodial related services for physical securities. Currently, the New York Window service is being offered on a pilot basis utilizing each member's own record keeping system.[2] This proposal will permit NSCC to offer the New York Window service utilizing NSCC's proprietary record keeping system. This system will enable NSCC and members to electronically communicate with each other throughout the day. The New York Window pilot program also offers a money settlement service to a limited number of members. This proposal will enable NSCC to offer the money settlement service to all New York Window members.

The New York Window service is offered to members under several conditions. First, at all times, NSCC acts as an agent for members using the New York Window service and not as principal for its own account. Second, each New York Window member agrees that it will not be entitled to reimbursement from NSCC for any losses suffered or liabilities incurred as a result of the New York Window service. Third, all actions taken by NSCC in connection with the New York Window service will be based on instructions from members. Members will have the ability to change instructions or add instructions throughout the day. NSCC will have the ability to interactively communicate with members with respect to instructions being processed. Each day, NSCC will report to members the results of that day's processing (*i.e.*, items received and delivered) and will provide members with an updated stock record indicating the items being held in custody for the member under the New York Window service.

The proposal also sets forth the fees that NSCC will charge for the New York Window service.

*IV. Other Service Fees:**

U. New York Window

1. Over The Window—. Receives/Deliveries.	*$12.00 per item*
2. Envelope Settlement Service/Receives	
a. 1–100 daily	*6.00 per item*
b. 101–150 daily	*5.00 per item*
c. 151–and up daily.	*4.00 per item*

[2] For a complete description of the New York Window pilot program, refer to Securities Exchange Act Release Nos. 32221 (April 26, 1993), 58 FR 36570 [File No. SR–NSCC–93–03] (order temporarily approving proposed rule change until April 30, 1994) and 33558 (January 31, 1994), 59 FR 5807 [File No. SR–NSCC–93–14] (order temporarily approving proposal rule change until January 31, 1995).

3. Envelope Settlement Services/Deliveries.	*6.00 per item*
4. FOSS/DSS—Receives/Deliveries (Money Only).	*3.50 per item*
5. Transfers	*15.00 per item*
6. Reorganizations.	
a. One-Way	*15.00 per item*
b. Two-Way	*18.00 per item*
7. Underwritings (Coordinating Distribution).	*35.00 per item*
8. Special Handling	*35.00 per hour*
9. Custody (Per Position Per Issue).	*.10 per day*
10. Return to Firm (Securities).	*.10 per item*
11. Internal Cross Receives/Deliveries.	*7.00 per item*
12. Messenger Service (Accommodation).	*7.50 per hour*
13. Accommodation Handling.	*3.50 per item*
14. Settlement Reconciliation.	*25.00 per day*

Italic indicates additions.
**Indicates previously underlined text.*

The New York Window service will afford members with the opportunity to centralize their processing of physical securities. Therefore, the proposed rule change is consistent with NSCC's obligation under Section 17A of the Act to promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason 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 approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written 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 filings will also be available for inspection and copying at the principal offices of NSCC. All submissions should refer to File No. SR–NSCC–94–12 and should be submitted by August 29, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19210 Filed 8–5–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34472; File No. SR–PTC–94–04]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Designating Mortgage-Based Securities Guaranteed by the Federal Home Loan Mortgage Corporation as Depository Eligible Securities

August 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 15, 1994, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–PTC–94–04) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change allows PTC to designate mortgage-backed securities ("MBS") guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC") as depository eligible securities as permitted by Article I, Rule 2 of PTC's Rules.

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

PTC currently acts as depository for single-class GNMA I and GNMA II MBS guaranteed by the Government National Mortgage Association ("GNMA") and multiclass REMIC securities guaranteed by the Department of Veterans Affairs ("VA") and GNMA.[2] The proposed rule change now allows PTC to designate mortgage-backed securities guaranteed by FHLMC as depository eligible securities.

Background

FHLMC is a federally chartered corporation under Title III of the Emergency Home Finance Act of 1970, as amended. Through its security programs, FHLMC guarantees the timely payment of interest and the ultimate payment of principal on FHLMC securities.[3] FHLMC currently creates and guarantees mortgage-backed securities through several existing programs.

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[3] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] As of July 1, 1994, PTC had approximately 271,000 pools of GNMA singe-class securities on deposit, representing $921 billion in original par value, and approximately $7 billion in par value of VA and GNMA REMIC securities.

[3] The FHLMC guarantee is an obligation of FHLMC only and is not a debt or an obligation of the United States or any agency or instrumentality of the United States other than FHLMC.

The FHLMC multiclass securities to be issued will receive principal and interest and interest from the cash flows provided by GNMA guaranteed mortgage-backed securities, which will be held on deposit in limited purpose accounts at PTC. As is the case with the VA and GNMA REMICs currently on deposit at PTC, all classes of the FHLMC multiclass securities except the residual interests will be deposited in certificated form at PTC and will be maintained in book-entry form in PTC's book-entry system. It is anticipated that withdrawals of physical certificates will be prohibited. PTC's current custody agreement with Chemical Bank, its custodian, accommodates the deposit of the FHLMC multiclass securities without change.

PTC Processing of FHLMC Multiclass Securities

PTC's current processing system accommodates the FHLMC multiclass securities, and no substantive changes to PTC's computer processing system are necessary for FHLMC multiclass securities transaction processing. While FHLMC has not yet determined the specific characteristics of the FHLMC multiclass securities tranches, for processing purposes it is anticipated that the FHLMC tranches will have the same basic processing requirements as the VA and GNMA REMICs.

The volume of the FHLMC multiclass securities initially deposited at PTC will be modes compared to the total face amount of GNMA securities now on deposit at PTC and is expected to have a comparably small impact on PTC's overall transaction volume. GNMA MBS that collateralize the FHLMC multiclass securities will remain immobilized at PTC and therefore will be removed from PTC's transaction volume after the creation of the FHLMC multiclass securities. In addition, the FHLMC multiclass securities will have settlement days different from the PSA designated settlement days for GNMA Is and IIs that currently settle at PTC. Because PTC's computer installation and resources are geared to handle the peak transaction volumes that occur on the PSA designated GNMA settlement days, PTC will be able to process the FHLMC transaction volume on the FHLMC settlement days by utilizing its present resources. Also REMIC tranches historically have been less actively traded than single-class mortgage-backed securities. Accordingly, the FHLMC multiclass securities will initially have no meaningful impact on the capacity of PTC's transaction processing.

It is expected that PTC will utilize the pricing sources and methodology employed for the VA and GNMA REMIC pricing for the FHLMC multiclass securities. PTC's end-of-day loan agreement also currently accommodates the pledge of the FHLMC multiclass securities as collateral to finance settlement without change.

Disbursement of Principal and Interest on FHLMC Multiclass Securities

PTC will disburse the principal and interest on the GNMA securities to the limited purpose account holding the GNMA collateral on the GNMA disbursement day which is generally the 16th calendar day of the month. FHLMC or its agent then will be responsible for making payment of principal and interest on the FHLMC multiclass securities to PTC on the FHLMC security disbursement day which is generally the seventeenth calendar day of the month in immediately available funds early enough in the day to permit PTC to disburse principal and interest to the FHLMC security holders on the same day. PTC will not borrow to fund disbursement of principal and interest on the FHLMC multiclass securities. Accordingly, the disbursement of principal and interest on the FHLMC multiclass securities will have no meaningful impact on the current principal and interest disbursement facilities.

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[4] and the rules and regulations thereunder in that it is designed to promote the prompt and accurate settlement of securities transactions and to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate settlement of securities transactions.

(B) Self-Regulatory Organization's Statements on Burden on Competition

PTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

PTC has not solicited comments with respect to the propose rule change, and none have been received.

[4] 15 U.S.C. 78q–1(b)(3)(F) (1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[5] and subparagraph (e)(1) of Rule 19b–4[6] thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR–PTC–94–04 and should be submitted by August 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19211 Filed 8–5–94; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(3)(A)(i) (1988).

[6] 17 CFR 240.19b–4(e)(1) (1993).

[7] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC-20437; No. 812-8990]

American United Life Insurance Company, et al.

August 2, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: American United Life Insurance Company ("AUL"), AUL American Individual Unit Trust ("Variable Account") and any other investment accounts ("Other Accounts") established by AUL in the future to support certain individual variable annuity contracts ("Contracts") as described herein, or that may in the future be issued by AUL that are substantially similar to the Contracts but are issued through other separate accounts ("Future Contracts) (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemption from the provisions of Sections 26(a)(2) (C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Variable Account of a mortality and expense risk charge in connection with the offer and sale of the Contracts or Future Contracts.

FILING DATE: The application was filed on May 13, 1994. An Amended and Restated Application was filed on July 27, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 29, 1994, 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 the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Richard A. Wacker, Esq., Associate General Counsel, American United Life Insurance Company, One American Square, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, or Michael V. Wible, Special Counsel, at (202) 942-0670, Office of insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. AUL is a mutual life insurance company principally engaged in offering life and health insurance and annuities. AUL is licensed to do business in 45 states and the District of Columbia.

2. The Variable Account was established by AUL as a separate account to fund variable annuity contracts. The Variable Account will be registered with the Commission as a unit investment trust under the 1940 Act and the Contracts will be registered as securities under the Securities Act of 1933 ("1933 Act").

The Variable Account currently is divided into eleven subaccounts ("Subaccounts"), each investing in shares of a corresponding portfolio of the following funds: (a) AUL American Series Fund, Inc. ("Series Fund"), offering the Equity, Bond, Money Market, and Managed Portfolios; (b) the Variable Insurance Products Fund ("VIP"), offering the High Income, Growth, and Overseas Portfolios; (c) the Variable Insurance Products Fund II ("VIP II"), offering the Asset Manager and Index 500 Portfolios; and (d) TCI Portfolios, Inc., offer Growth Investors and TCI International Portfolios (individually, "Fund" or collectively, "Funds"). Each of the Funds is registered with the Commission as an open-end management investment company.

AUL may, at a later date, determine to divide the Variable Account into additional subaccounts to invest in other portfolios of the Funds or in other securities, mutual funds, or investment vehicles. Shares of each Fund are purchased by AUL for the corresponding Subaccount at the Fund's net asset value per share. All dividends and capital gain distributions received from a Fund will be automatically reinvested in such Fund at net asset value, unless otherwise instructed by AUL.

3. The Series Fund is managed by AUL. Fidelity Management & Research Company is the investment adviser to VIP and VIP II and Investors Research Corporation is the investment adviser to TCI Portfolios, Inc. AUL will be the principal underwriter and distributor of the Contracts. AUL, Fidelity Management and Investors Research are registered investment advisers under the Investment Advisers Act of 1940. AUL is a broker-dealer registered under the Securities Exchange Act of 1934.

4. The Contracts are variable annuity contracts used in connection with retirement plans ("Plans") that are either non-tax qualified Plans or Plans that qualify for favorable tax-deferred treatment under Sections 401, 403(b) or 408(b) of the Internal Revenue Code of 1986, as amended. Applicants state that exemptive relief is sought with respect to two variations of the Contracts—Flexibile Premium Contracts and One Year Flexible Premium Contracts, as well as for any Future Contracts that are issued through Other Accounts. These Contracts permit premiums to vary in amount and frequency but require certain minimum premium payments and restrict maximum payments and additional payments. These Contracts further provide for several fixed annuity options under which payments will be fixed and guaranteed by AUL, and for accumulation of values on either a variable or a fixed basis, or both. Premiums allocated to the Fixed Account, a general account of AUL, will earn interest at a minimum guaranteed effective annual rate of 3 percent. Premiums allocated to the Variable Account will be credited with the investment experience of the selected Subaccount; these amounts are not guaranteed. Prior to the Annuity Date and during the Contract Owner's lifetime all or a portion of the Contract Value may be surrendered, subject to certain minimums and constraints on withdrawals or full surrenders under Contracts issued in connection with certain retirement programs.

5. The Contracts also will provide for a death benefit equal to the Contract Value if the Contract Owner dies at or after age 76. If the Contract Owner dies prior to age 76, the death benefit is equal to the greater of: (a) the Contract Value at the end of the applicable Valuation Period, or (b) the value of net premiums less any amounts withdrawn (including withdrawal charges) prior to death, less annual fees assessed prior to death, plus interest earned on net premiums (less amounts withdrawn and annual fees described above) credited at an annual effective rate of 4 % until the date of death.

6. Various fees and expenses are deducted under the Contracts and the Variable Account. An administrative fee equal to the lesser of 2% of Contract Value or $30 per year will be deducted proportionately from Contract Value allocated among the Subaccounts and the Fixed Account. This fee will be deducted annually during the

Accumulation Period and may be deducted on a pro-rata basis if the Contract is surrendered or annuitized on a date other than a Contract Anniversary. The administrative fee, which may be waived under certain circumstances, is to compensate AUL for the expenses associated with administration of the Contracts and operation of the Variable Account. AUL may increase the administrative fee, but only to the extent necessary to recover the expenses associated with administration of the Contracts and operations of the Variable Account.

7. AUL will assess a charge to reimburse itself for premium taxes that it incurs on behalf of a particular Contract, usually when an annuity is effected. Premium taxes currently range from 0% to 3.5%, subject to change. No charges currently are made for federal, state or local income taxes. No charges currently are imposed for transfers among the Subaccounts or to or from the Fixed Account; however, AUL reserves the right to assess transfer charges at a future date. Each subaccount of the Variable Account purchases shares of the corresponding Fund at net asset value, which reflects the investment advisory fee and other expenses deducted from Fund assets.

8. No sales charges are deducted from premium payments under the Contracts. A contingent deferred sales charge ("CDSC"), described below, is assessed for cash withdrawals and surrenders. The amount of the CDSC that applies to both variations of the Contracts, based on the number of years that the Contract has been in existence (and the number of years that a premium has been creditd to Contract Value), is as follows:

Contract year	1	2	3	4	5	6	7	8	9	10	11+
	(Percent)	(Percent)	(Percent)	(Percent)	(Percent)	(Percent)	(Percent)	(Percent)	(Percent)	(Percent)	(Percent)
Flexible premium	10	9	8	7	6	5	4	3	2	1	0
Single premium	7	6	5	4	3	2	1	0	0	0	0

No CDSC will be assessed: (a) on up to 12% of Contract Value at the time of the first withdrawal in any Contract Year in which the withdrawal is being made; any transfer for Contract Value from the Fixed Account to the Variable Account will reduce the free withdrawal amount by the amount transferred; (b) premiums paid more than 10 years ago for Flexible Premium Contracts and 8 years ago for Single Premium Contracts; (c) on or after the Annuity Date; or (d) upon payment of a death benefit. In no event will the CDSC, when added to any withdrawal charges previously assessed against any amount withdrawn from a Contract, exceed 8.5% or 8%, respectively, of total premiums paid under a Flexible Premium Contract or a One Year Flexible Premium Contract. The CDSC will compensate AUL for certain expenses related to the sale of the Contracts. AUL reserves the right to increase or decrease the withdrawal charge for any Contracts established on or after the effective date of the change.

9. A daily charge equal to an annual rate of 1.25% of the average daily net assets of each Subaccount will be imposed to compensate AUL for bearing certain mortality and expense risks it assumes in offering and administering the Contracts and in operating the Variable Account. Of this amount, .80% is attributable to mortality risks, and .40% is attributable to expense risks. The proportion of these charges may change but the aggregate charge is guaranteed by AUL not to increase. The charge may be a source of profit for AUL which will be added to its surplus and may be used for, among other things, the payment of distribution expenses not covered by the CDSC.

10. The mortality risk arises from AUL's contractual obligation to make Annuity Payments (determined in accordance with AUL's actuarial tables) regardless of how long all Annuitants as a group may live, or that an individual Contract Owner or Annuitant may die before the end of the CDSC period, in which case the CDSC will not be assessed on payment of death benefit proceeds and AUL may not recover its distribution expenses. A mortality risk also is assumed in connection with payment of the death benefit because it could exceed the Account Value.

11. The expense risk assumed by AUL is that its actual expenses in issuing and administering the Contracts and operating the Variable Account will exceed the amount recovered through the administrative charges.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants state that the Commission has taken the position that Sections 27(c)(2) and 26(a)(2)(C) of the 1940 Act, in effect, preclude assessing a mortality and expense risk charge against the Variable Account in the absence of exemptive relief. Consequently, Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of the Variable Account of a maximum charge of 1.25% for the assumption of mortality and expense risks. Applicants believe that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Applicants submit that AUL is entitled to reasonable compensation for its assumption of mortality and expense risks. The mortality and expense risk charge is a reasonable charge to compensate AUL for the risks that: (a) Annuitants under the Contract will live longer individually or as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; (b) the Account Value will be less than the Death Benefit; and (c) administrative expenses will be greater than amounts derived from the administrative charges. Applicants represent that the mortality and expense risk charge under the Contracts is within the range of industry practicer

for comparable annuity products. This representation is based upon Applicants' analysis of publicly available information about similar industry products, taking into consideration such factors as annuity purchase rate guarantees, death benefit guarantees, other contract charge, the frequency of charges, the administrative services performed by the companies with respect to the contracts, distribution methods, the market for the contracts, and the tax status of the contracts. Applicants represent that they will maintain at their Home Office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and result of, Applicants' comparative review.

5. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. Applicants have concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Contract Owners. The basis for that conclusion is set forth in a memorandum which will be maintained by Banner Life at its administered offices and will be available to the Commission.

6. AUL also represents that the Variable Account will invest only in open-end management investment companies that undertake, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons" of the company, formulate and approve any such plan.

7. Applicants believe that the terms of the relief requested with respect to any Future Contracts funded by Other Accounts are consistent with the standards of Section 6(c) of the 1940 Act. Applicants assert that, without the requested relief, AUL would have to request and obtain exemptive relief for each new Other Account it establishes to fund any Future Contract. Applicants submit that such additional requests for exemptive relief would present no issues under the 1940 Act that have not already been addressed in this Application.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Accordingly, Applicants request relief from Sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the assessment and deduction of the mortality and expense risk charge with respect to the Contracts and any Future Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19250 Filed 8–5–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20436; 811–4829]

Treasury First Inc.; Notice of Application

August 2, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Treasury First Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 19, 1994 and amended on July 27, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 29, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Edward S. Gelfand, Special Officer, Friedman & Phillips, 10920 Wilshire Boulevard, Suite 650, Los Angeles, CA 90024.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (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.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Maryland corporation. On September 4, 1986, applicant registered under the Act as an investment company. On May 19, 1987, applicant filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on June 1, 1987, and the initial public offering commenced on the same day.

2. On November 1, 1991, the SEC filed a civil suit against applicant, applicant's adviser, Cheshire Hall Advisors, Inc., (the "Adviser"), and an affiliate of the Adviser, John T. Hall, in the United States District Court, Central District of California alleging various violations of the federal securities laws. The SEC alleged, among other things, that Hall, through the Adviser, misappropriated approximately $2.1 million from applicant. This amount represented approximately 75% of applicant's assets at the time of the alleged misappropriation.

3. On November 14, 1991, the Court issued an order that authorized the appointment of Edward S. Gelfand as Special Officer of applicant and the Adviser for the purpose of supervising and directing the liquidation of applicant and the Adviser as well as the deregistration of applicant under the Act.[1]

4. As a result of the above action, applicant and the Adviser ceased doing business. In November 1991, the Special Officer had control of $2,814,674.78 of applicant's assets. Of this amount, $2,664,674.78 was distributed to applicant's five shareholders *pro rata*. The remaining $150,000 was placed in a bank account maintained by the Special Officer to be used for expenses incurred on applicant's behalf in connection with the winding up of applicant's affairs. These expenses are expected to total approximately $95,570. Compensation and expenses of the Special Officer is expected to be approximately $35,019 and compensation and expenses of applicant's accountant is expected to be approximately $60,551. Any funds remaining in the account after payment

[1] On the same date, the Court entered an injunction against the Adviser and Hall permanently enjoining them from future violations of the securities laws.

of applicant's expenses will be distributed *pro rata* among applicant's shareholders. The money held in the bank account has not been and will not be invested in securities.

5. On March 24, 1992, the Special Officer submitted a claim against a bond issued by Reliance Insurance Company to applicant.[2] In the event of a recovery, the proceeds will be distributed to applicant's shareholders *pro rata*.

6. The Special Officer is not aware of any liabilities other than the amounts to be paid to the Special Officer and applicant's accountants and those set forth in an audited financial statement prepared in 1991 by applicant's accountants.

7. Applicant will file certificates of dissolution with Maryland authorities after winding up its affairs.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19212 Filed 8–5–94; 8:45 am]

BILLING CODE 8010–01–M

[2] The bond was issued by Reliance in the amount of $300,000 to cover losses resulting from, among other things, dishonest or fraudulent acts committed by an employee of applicant. By letter dated December 9, 1992, Reliance denied the claim but, nonetheless, requested additional information to evaluate the claim. The Special Officer is further evaluating the bond and the merits of a claim.

DEPARTMENT OF TRANSPORTATION

Coast Guard

Privacy Act of 1974: System of Records; Joint Maritime Information Element (JMIE) Support System (JSS)

The Department of Transportation (DOT), on behalf of the U.S. Coast Guard, herewith publishes a proposal to establish a system of records to consolidate selected worldwide maritime vessel information maintained by numerous federal agencies.

Any person or agency may submit written comments on the proposed system to: Commandant (G–OIN), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC. 20593–0001, Attn: Mr. Richard Harding. He may be contacted at (202) 267–6356 Room 3305. Written comments to be considered must be received by September 6, 1994.

If no comments are received, the proposal will become effective on the above-mentioned date. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, DC, July 28, 1994.

Jon Seymour,

Assistant Secretary for Administration.

DOT/CG 642

SYSTEM NAME:

Joint Maritime Information Element (JMIE) Support System (JSS).

SYSTEM LOCATION:

U.S. Coast Guard, Operations Systems Center, Martinsburg, WV 25401

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with established relationship(s) / association(s) to maritime vessels that are included in the Joint Maritime Information Element (JMIE) Support System (JSS). Specifically, information on ship owners, passengers and crew will be stored in the JSS.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Records containing information on maritime vessels and vessel characteristics including: Performance data, vessel identification data, registration data, movements, reported locations, activity and associate information (data pertaining to people or organizations associated with vessels) for owners, passengers, and crew members.

b. Copies of reports submitted by Coast Guard crews relating to boardings and/or overflights, as well as any violations of U.S. law, along with enforcement actions taken during boarding. Such reports could contain names of passengers on vessels, as well as owners and crew members.

c. Records involving vessels and associates which are known, suspected or alleged to be involved in contraband trafficking. Within the JMIE Support System, contraband is meant to refer to any item that is illegally imported/exported to/from the United States via maritime activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system has been established in order for various United States Government agencies or military services/commands from the Law Enforcement and Intelligence Communities, that require timely sharing of multi-source maritime information, to perform their mission. The consortium members empowered to perform law enforcement, the only ones that will have access to information covered by the Privacy Act, and their authority, are:

a. U.S. Coast Guard, 14 USC 89

b. U.S. Customs Service, 19 USC 1589a

c. Drug Enforcement Administration, 21 USC 878

d. Immigration and Naturalization Service, 8 USC 1324

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. With the single exception that the Intelligence Community will not have access to Privacy Act data, records may be disclosed to JMIE consortium member agencies through remote terminal access for purposes such as maintaining suspect lists, enforcing U.S. laws dealing with items such as counternarcotics, fisheries, and boating safety.

On behalf of the JMIE consortium, the U.S. Coast Guard serves as the executive agent for this system. The agencies currently comprising the JMIE consortium are as follows:

(1) U.S. Coast Guard
(2) U.S. Customs Service
(3) Maritime Administration
(4) Drug Enforcement Administration
(5) Office of Naval Intelligence
(6) Military Sealift Command
(7) Central Intelligence Agency
(8) Defense Intelligence Agency
(9) National Security Agency
(10) Department of State
(11) Department of Energy
(12) Office of National Drug Control Policy
(13) Bureau of Census
(14) Immigration and Naturalization Service
(15) U.S. National Central Bureau—INTERPOL

Consortium members gain access to the JSS data and records via remote computer terminals operating on a secure communications network.

In addition to the data access granted to each of the JMIE consortium members and their respective agencies or offices, JMIE data (except for Privacy Act data or where authorized by appropriate statute) is also available, through the same secure communications network and remote computer terminals, to the following U.S. Government entities:

Commander, Joint Task Force 4, Key West, FL
Commander, Joint Task Force 5, Alameda, CA
U.S. European Command
Commander-in Chief, U.S. Forces Atlantic
Navy and Marine Corps Intelligence Training Center

Joint Intelligence Center, Pacific
Authorized U.S. Government contractors involved in system development.

b. See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage of all records is in an ADP data base operated and maintained by the U.S. Coast Guard. Privacy Act data are stored and controlled separately from other information in the data base. Classified and non-classified information from consortium members and other sources is merged into a classified data base.

Dynamic information on vessel location and movements is obtained daily and stored on-line (disk resident) for a period of two (2) years. Other information such as characteristics, identification status and associate records is updated at prescribed intervals of three (3) months to one year to remain current and is retained indefinitely.

Classified information, downloaded from the host and then extracted from the PC workstations and recorded on paper (or magnetic media), may be stored at user sites in classified storage containers or on secured magnetic media.

Unclassified information will be stored in accordance with each user sites' handling procedures. All records provided to a JSS subscriber in response to a "specific name" query, will be kept in an audit record and retained for a minimum of five (5) years or the life of the system, whichever is longer.

RETRIEVABILITY:

a. Although records are retrievable by requesting a match on any of the 500+ information items retained within the system, normal matching will be by "vessel name" or "vessel location".

b. Specifically, information on individuals may be retrieved by matching individual name, Social Security Number, passport number, or the individual's relationship to the vessel (e.g., owner, shipper, consignee, crew member, passenger, etc.). Controls have been installed to ensure that information on individuals is not retrievable or accessed by members of the intelligence community.

SAFEGUARDS:

The JMIE Support System (JSS) has its own approved System Security Plan which provides that:

a. All classified JSS equipment, records and storage devices are located within facilities or stored in containers approved for the storage of SECRET level information.

b. All statutory and regulatory requirements pertinent to classified and unclassified information have been identified in the JMIE System Security Plan and have been implemented, and

c. Access to records is limited strictly to personnel with SECRET level clearances, who have been determined to have the appropriate "need to know".

The U.S. Coast Guard will operate the JMIE Support System in consonance with Federal security regulations, policy, procedures, standards and guidance for implementing the Automated Information Systems Security Program. Specific operating rules to ensure compliance with national policy are reflected in each site's Standard Operating Procedures. These rules include specifications that access to records containing information on U.S. persons are as follows:

a. Only authorized personnel may access such records.

b. Each access to such records must specify a "purpose" before access will be granted.

c. Each access to such records will be entered into audit records which are maintained for five (5) years or the life of the system, whichever is longer.

RETENTION AND DISPOSAL:

Records relating to ship characteristics are retained indefinitely. Records of a transitory nature (relative to ship locations, and individuals identified as passengers or crew, etc.) are maintained on line for a minimum of two (2) years, then purged per General Records Schedule 23. Audit records, maintained to document JSS user access to information relating to specific individuals, are maintained for five (5) years, or the life of the system, whichever is longer. Access to audit records will only be granted to authorized personnel approved by the Executive Agent. Information retrieved from the host and stored at user sites will be disposed of in accordance with the requirements for classified and sensitive information.

SYSTEM MANAGER(S) AND ADDRESS:

JMIE Executive Agent, United States Coast Guard Intelligence Division (G–OIN–3), 2100 Second Street, SW., Washington, DC. 20593–0001.

NOTIFICATION PROCEDURE:

Submit a written request noting the information desired. The request must be signed by the individual, or his/her legal representative, and must be notarized to certify the identity of the requesting individual. Send the request to: Commanding Officer, U.S. Coast Guard, Operations Systems Center, Martinsburg, WV 25401.

RECORD ACCESS PROCEDURE:

Write the Commanding Officer at the address given above in accordance with the "Notification Procedure".

CONTESTING RECORD PROCEDURES:

Same as record access procedure.

RECORD SOURCE CATEGORIES:

Federal, State and local law enforcement agencies, other Federal agencies, commercial sources.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under subsection (j)(2) of the Privacy Act (5 USC 552a), portions of the system of records that consist of

a. Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

b. Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

c. Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision, are exempt from all parts of 5 USC 552a except subsections: (b) (Conditions of disclosure); (c)(1) and (2) (Accounting of certain disclosures); (e)(4)(A) through (F) (Publication of existence and character of system); (e)(6) (Ensure records are accurate, relevant, timely, and complete before disclosure to persons other than an agency and other than pursuant to a Freedom of Information Act request), (e)(7) (Restrict recordkeeping on First Amendment rights), (e)(9) (Rules of conduct), (e)(10) Safeguards), (e)(11) (Routine use publication); and (i) (Criminal penalties).

Portions of this system may be exempt from disclosure under 5 U.S.C. 552a(k)(1) as being subject to the provisions of 5 U.S.C. 552(b)(1), matters that are "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order."

With regard to material meeting the provisions of 5 U.S.C. 552a(k)(1), the

JSS Data Base system of records is exempted from the following provisions: 5 U.S.C. 552a (c)(3); 5 U.S.C. 552a (d)(1), (2), (3) and (4); 5 U.S.C. 552a (e)(1), (4)(G), (4)(H), and (4)(I); and 5 U.S.C. 552a (f).

Under the provisions of 5 U.S.C. 552a(k)(2), portions of this system may be exempt from disclosure. Section (k)(2) provides for exemption of records which include: Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided however, that if any individual is denied any right, privilege, or benefit that he/she would otherwise be entitled by Federal law, or for which he/she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Among these provisions are the requirements in subsection (c)(3) to maintain an accounting of disclosures of information from a system of records and make that accounting available on request to the record subject, and subsection (d) to grant to a record subject access to information maintained on him/her under the Act.

To the extent that the system of records may contain information which meets the criteria for exemption under 5 U.S.C.a (k)(2), the JSS Data Base system of records is exempted from the following provisions of 5 U.S.C.: 5 U.S.C. 552a (c)(3); 5 U.S.C. 552a (d)(1), (2), (3), and (4); 5 U.S.C. 552a (e)(1), (4)(G), (4)(H), and (4)(I); and 5 U.S.C. 552a (f).

Narrative Statement for the Department of Transportation Office of the Secretary On Behalf of the United States Coast Guard

The Office of the Secretary, on behalf of the U.S. Coast Guard, proposes to establish the Joint Maritime Information Element (JMIE) Support System (JSS), DOT/CG 642, to consolidate selected worldwide maritime vessel information.

The purpose of this notice is to establish a system of records to collect the data and records needed to monitor maritime vessel movements, and to obtain vessel descriptions and associations in order to ascertain the vessel's vulnerability to becoming a transportation vehicle for illegal contraband. The data will be used for the purpose described under the appropriate headings in the attached copy of the system notice prepared for publication in the **Federal Register**.

Although the proposal establishes a system of records, the probable effects on the privacy interests of the general public will be minimal. Information will be focused primarily on the vessels themselves, e.g. physical characteristics such as length, width, color, and vessel movements. However, information will also be maintained on vessel ownership, registration, passengers, and crew members. This information is comparable to information maintained on boat registrations by all state governments.

A description of the steps taken to safeguard these records is given under the appropriate heading of the **Federal Register** system of records notice.

The Routine Uses described in the record system notice satisfy the compatibility requirement of subsection (a)(7) of the Privacy Act. The information collected will allow JMIE consortium members to improve the execution of their missions by policing maritime traffic to increase the success of contraband detection and interdiction activities.

With the exception that the Intelligence Community will not have access to Privacy Act data, the JMIE Executive Agent will approve or deny access to records containing individual names on a case-by-case basis for consortium members external to the Law Enforcement Community, e.g. Intelligence Community. This list will be reviewed regularly (at least annually) to ensure that each organization on the "approved" list retains law enforcement responsibilities. Currently, denial of access to Intelligence Community organizations is accomplished through software by precluding query capability to records containing names of U.S. persons.

The purpose of the report is to comply with Office of Management and Budget Circular, A–130, Appendix I, dated June 25, 1993.

[FR Doc. 94–19245 Filed 8–5–94; 8:45am]
BILLING CODE 4910–62–P

Federal Highway Administration

Environmental Impact Statement: Idaho County, ID

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway construction project on the Salmon River Road in Idaho County, Idaho.

FOR FURTHER INFORMATION CONTACT: Michael J. Edgerly, Project Manager, or Ross Widener, Staff Environmental Engineer, Federal Highway Administration, Western Federal Lands Highway Division, 610 East Fifth Street, Vancouver, Washington 98661. Telephone: (206) 696–7750.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the US Forest Service, the Idaho Transportation Department, and Idaho County, will prepare an Environmental Impact Statement (EIS) for a proposal to reconstruct a 16.73-kilometer (10.4-mile) section of the Salmon River Road. The section proposed for improvements is located just south of Riggins in the Nezperce National Forest and stretches east from the junction with US 95 to Spring Bar.

The proposed improvements will address the existing narrow road, the deteriorated roadway foundation, the substandard horizontal alignment, the overly steep side slopes, the inadequate roadway drainage, and other roadside safety problems such as a lack of guardrail and shoulders. Under this proposal the road may be upgraded to a two-lane paved standard either on its existing alignment, on a new alignment, or a combination of both. Bridges along the route may be replaced or rehabilitated.

The highway improvements are considered necessary to provide users with a modern, safe road that can accommodate the existing and future volume of traffic using it. The road is mainly a multi-purpose recreational route in an environmentally sensitive river canyon and is used heavily by rafters who need to access landing areas and pick-up points (over seven thousand rafters use this route annually during the rafting season). The road is functionally classified as a minor rural collector and is only 4.88 to 5.49 meters (16 to 18 feet) wide, which is very substandard for the amount and type of traffic using it. The road's deteriorated condition and substandard features create operational deficiencies and safety hazards that put all who use the route at risk.

At this early stage we are considering four preliminary alternatives for improving this road: (A) Upgrade the existing road along its present alignment to a two-lane road that is 7.32 meters (24 feet) wide. The horizontal alignment

would be corrected where necessary, drainage would be improved, the structure over the Little Salmon River (MP 0.1) would be upgraded from one to two lanes, and the structure over the Salmon River (MP 6.4) would remain a one-lane bridge. (B) relocate the road to the north side of the canyon, widen it to 7.32 meters (24 feet) with two lanes, provide adequate drainage, provide guardrail where needed, and construct a new structure across the Salmon River near Riggins. (C) upgrade the existing road to a two-lane road partially along a new alignment and partially on the existing alignment. A 7.32-meter (24-foot) paved surface would be provided, new bridges would be built over the Salmon River, the bridge over the Little Salmon River would be upgraded to two lanes, the horizontal alignment would be corrected, guardrail would be installed where necessary, and adequate drainage would be provided. (D) the No Action alternative. The road would remain in its present deteriorated condition with only normal maintenance being done to it. The major maintenance problems and operational and safety deficiencies would not be addressed.

Announcements describing the proposed action and soliciting comments will be sent to the appropriate federal, state, and local agencies. These also will be sent to private organizations and citizens who have expressed an interest in the project or who are known to have an interest in the area. Public scoping meeting have been tentatively scheduled for the week of September 26, 1994, in the Idaho communities of Riggins, Grangeville, and McCall. Public notices announcing the times and places of these meetings will be sent to interested individuals and to various newspapers in the communities of Riggins, Grangeville, and McCall. A separate meeting will be held with all interested resource agencies prior to the public meetings. Additional public meetings may be held if it is determined to be necessary based on public input.

It is important that the full range of issues related to this proposed action be addressed and that all significant issues be identified. To ensure that this happens, comments and suggestions are invited from all parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address and phone number provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program

Issued on: July 26, 1994.

James N. Hall,

Division Engineer, Vancouver, Washington.

[FR Doc. 94-19191 Filed 8-5-94; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement To Foster the Development, Evaluation, and Deployment of a Heavy Vehicle Intelligent Dynamic Stability Enhancement System(s)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: NHTSA announces this discretionary cooperative agreement program to foster the development, evaluation, and deployment of a heavy vehicle intelligent dynamic stability enhancement system(s) and solicits application for projects under this program.

DATES: Applications must be received on or before September 19, 1994.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), ATTN: Janice Tyson, 400 Seventh Street, SW., room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22-95-R-07002. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: Janice Tyson, Office of Contracts and Procurement, (202) 366-9562, for general administrative questions; and Jeffrey M. Woods, Office of Crash Avoidance Research (NRD-53), (202) 366-6826, for programmatic questions; at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 6220, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background and Objectives

NHTSA has the responsibility to devise strategies to reduce the number of motor vehicle collisions and to save lives and reduce injuries and property damage through the prevention and reduction in severity of motor vehicle collisions. NHTSA's Office of Crash Avoidance Research conducts and manages research intended to: Analyze driver-vehicle interaction, identify specific vehicle designs, components, or parameters associated with driver performance errors and resulting collisions, and develop and evaluate vehicle-based collision avoidance countermeasure concepts and devices.

Rollovers are the principal manifestation of the limited vehicle dynamics/handling capabilities of heavy trucks. Understeer, high speed offtracking, and transient rearward amplification are other traits which are more difficult to directly link to crashes, but which, nevertheless, are likely to be causal factors in some number of crashes.

The frequent occurrence of rollover in heavy vehicle accidents has been well documented. For example, rollover was found to occur in 55 percent of the crashes for a sample of 186 fatal heavy truck crashes investigated by the National Transportation Safety Board. State accident data from Maryland and Pennsylvania, for 1988-90, show that rollover occurred in 9 percent of all medium/heavy truck crashes. Seventy-one (71) percent of the crashes involving rollover resulted in injuries or fatalities to truck or other vehicle occupants, compared with 52 percent injuries/fatalities for non-rollover crashes. The occurrence of rollover in heavy truck crashes increases the likelihood of injury or fatality. While the annual number of truck occupant fatalities has been decreasing, primarily due to increased seat belt usage, rollover continues to be a major factor in injury- or fatality-producing truck crashes.

Over the past 15-20 years, both industry (the former Motor Vehicle Manufacturers Association) and the federal government (NHTSA, FHWA, U.S. Army Tank Automotive Command) have provided extensive support to a number of academic institutions to develop a wide array of mathematical models which predict vehicle dynamic responses and stability limits as a function of physical attributes of the vehicle and the conditions under which the vehicle is operated. These models can be applied in cases involving either braking or steering maneuvers or combined braking and steering maneuvers. To date, the primary uses of these models have been to perform post-accident vehicle trajectory/dynamic stability analyses, to evaluate the dynamic stability performance implications of various design options during new vehicle or component product development efforts, and to consider the vehicle performance ramifications of various alternative vehicle weights and dimensions public policy alternatives.

The advent of lower cost sensors and processors offers the potential to utilize existing modeling/predictive capability in a new, real-time application; namely, on-board sensing and response to incipient dynamic instability conditions. These conditions are created by a combination of fixed vehicle attributes, driving maneuvers, vehicle loading conditions, and highway conditions.

The purpose of this research project is to develop a vehicle-based intelligent dynamic stability enhancement system which senses a number of key vehicle variables, processes that information in real-time, and uses inferred properties of the roadway and stored data describing the fixed vehicle physical attributes in an algorithm which ultimately activates a warning, directs or prompts control actions, or initiates control actions. Thus, the system determines the likelihood of an unstable condition at any instant and takes appropriate actions, such as warnings, control prompts, or partial or full executions of control inputs or maneuvers, that can be recognized and successfully executed in time to restabilize the vehicle. The system "intelligence" is used to determine the vehicle loading condition, including any peculiar characteristics of the cargo, during vehicle operation. System performance would be judged by the amount of advance warning provided or by the reaction time of the control system, as well as its characteristic false alarm rate. The goal of this project is to build on the existing research and develop working prototype systems to demonstrate the state-of-the-art in sensor/actuator technology and control algorithms.

NHTSA believes that a teaming approach may be necessary to conduct this research. A consortium of organizations with expertise in vehicle dynamics modeling, vehicle manufacturing (i.e., tractor or trailer manufacturers), suspension system manufacturing, closed loop control system development, vehicle testing and evaluation, and motor carriers (in the case of an in-service demonstration project) appears ideally suited to pursue this program.

Because of the potential for cost sharing, the performing organization(s) may retain the rights to any proprietary product or technology developed under the agreement, subject to a government use license. The organization would be free to pursue commercial development and marketing for the products. NHTSA will require deliverables, however, which could include reports suitable for publishing in the public domain to document such items as the research methods and system evaluation results. Certain proprietary information, such as algorithms, need not be released in the public domain.

It is anticipated that one or more cooperative agreements may be awarded under this program. Projects will be funded incrementally, with up to a three-year support period. The maximum funding level anticipated for the entire program is $650,000, excluding any cost sharing provided by the performing organization(s). The maximum incremental funding available in any one year is anticipated to be $300,000.

NHTSA Involvement

The NHTSA, Office of Crash Avoidance Research, will be involved in all activities undertaken as part of this cooperative agreement program and will:

1. Provide, on an as-available basis, one professional staff person, to be designated as the Contracting Officer's Technical Representative (COTR), to participate in the planning and management of the cooperative agreement, and to coordinate activities between the organization and NHTSA;

2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR. This shall include data from state and national accident databases, human factors data, or any other resources within the government that may be of use in supporting research efforts;

3. Provide liaison with other government agencies and organizations as appropriate; and

4. Help expand the knowledge base of collision avoidance systems and enabling technologies by publishing nonproprietary information developed at Government expense in the scientific literature, thus making it available to all organizations involved in research and product development in this area.

Period of Support

The research and development effort described in this notice may be supported through the award of a cooperative agreement. NHTSA reserves the right to make multiple cooperative agreement awards for the effort described in this notice depending on the merits of the applications received and the amount of Federal funding available.

Contingent on the availability of funds and satisfactory performance, cooperative agreement(s) will be awarded to eligible organization(s) for project periods of up to three years.

Eligibility Requirements

To be eligible to participate in this cooperative agreement program, an applicant must be a for-profit business organization (small or large), a non-profit organization, or an educational institution. Regardless of the type of organization applying for Federal funding assistance, no fee or profit will be allowed. While the proposed research effort may require extensive collaboration among several organizations, it is envisioned that during the pre-application process, these various organizations will designate one organization to prepare and submit the formal application.

Application Procedure

Each applicant must submit one original and two copies of its application package to: National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Janice Tyson, 400 Seventh Street, SW., Room 5301, Washington, DC 20590. Only complete application packages received on or before September 19, 1994 shall be considered. Submission of three additional copies will expedite processing, but is not required. The applicant shall specifically identify any information in the application which is to be treated as proprietary, in accordance with the procedures of 49 CFR Part 512, Confidential Business Information.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), with the required information filled in and the certified assurances included. While the Form 424–A deals with budget information, and Section B identifies budget categories, the available space does not permit a level of detail which is sufficient for a meaningful evaluation of proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs, as well as the costs which the applicant proposes to contribute in support of this effort, or any additional financial commitment made by other sources. The budget detail shall include all cost components of the project. Labor categories, hourly labor rates, and projected labor hours for each category should be included, as well as all materials, computer time, test facility fees, etc. For planning purposes, the required briefings during the agreement performance period will be conducted at NHTSA in Washington, DC.

2. Applicants shall include a program narrative statement which includes the following:

a. A statement of work describing the development of the prototype heavy vehicle dynamic stability enhancement system. All phases of the system development should be described in sufficient detail to demonstrate technical and administrative proficiency in each area of the project (e.g., vehicle dynamics modelling, assessing system performance, obtaining test vehicles, assembling the system hardware, etc.). Specific details on product development should be included; for example, a system requiring sensors should include information on whether those sensors are off-the-shelf or are to be developed as part of the research effort.

b. The proposed program director and other key personnel identified for participation in the proposed research effort, including a description of the project team and individual qualifications and their respective organizational responsibilities.

c. A description of the test facilities and equipment currently available or to be obtained for use in conducting the proposed research effort.

d. A description of the applicant's previous experience or on-going research programs that are related to this proposed research effort.

e. A detailed schedule and management plan for the proposed research effort, to include:

1. A detailed task schedule, Gantt, or PERT chart to show the duration, relationship and sequencing of proposed tasks, sub tasks, project milestones, and project deliverables.

2. A management plan that reflects the capability to direct and coordinate the project tasks and administrative activities among the team member organizations.

f. A description of deliverables that will be provided to NHTSA during the project and upon completion of the research effort. This could include written reports, video tapes of computer simulations and/or full-scale vehicle tests, test data, etc. Each deliverable should be identified as to whether it will be proprietary information or suitable for release in the public domain.

g. A detailed statement of any technical assistance which the applicant may require of NHTSA in order to successfully complete the proposed research effort.

Application Review Process and Criteria

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all the information require by the Application Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated using the following criteria:

1. The technical merit of the proposal, including the applicant's understanding of the purpose and unique problems represented by the research objectives of this cooperative agreement program as evidenced in the description of their proposed project. The impact the proposed research effort will have on fostering development of commercially viable dynamic stability enhancement systems for heavy vehicles will be evaluated. The technical merit of the proposed research effort, including the feasibility of approach, practicality, planned methodology, and anticipated results, will have the most weight of all evaluation factors. The proposal will be evaluated for demonstrated proficiency in each technical subject included in the proposal.

2. The adequacy and availability of relevant test facilities and equipment identified to accomplish the proposed research effort.

3. The applicant's previous and current organizational experience and personnel qualifications as related to this effort.

4. The completeness and clarity of the applicant's management plans for accomplishing the proposed research will be evaluated. This includes the task schedule and proposed management plan needed to direct and coordinate identified project tasks.

Terms and Conditions of the Award

1. Procedures for the protection of the rights and welfare of human subjects in NHTSA-sponsored experiments are set forth in NHTSA Orders 700–1 and 700–3. Any recipient proposing the use of human subjects must satisfy the requirements and guidelines of the NHTSA Orders 700 series prior to award of the cooperative agreement. It is not anticipated that non-human subjects will be used in any testing performed under this cooperative agreement. A copy of the NHTSA Orders 700 series may be obtained from the administrative information contact designated in this notice.

2. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 20—Department of Transportation New Restrictions on Lobbying and 49 CFR 29—Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

3. Each cooperative agreement will be negotiated to include provisions appropriate to organization conflicts of interest, patent rights, rights in data, and copyright retention by the applicant. At the time of negotiation, applicants may be required to disclose all actual or apparent conflicts of interest.

4. During the effective period of the cooperative agreement(s) awarded as a result of this notice, the agreement(s) shall be subject to NHTSA's General Provisions for Assistance Agreements, the cost principles of OMB Circular A–21, A–122, or FAR 31.2, as applicable to the recipient, and the requirements of 49 CFR Part 20 and Part 29. The agreement(s) shall also be subject to the general administrative requirements of 49 CFR Part 19—Department of Transportation Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

5. Reporting Requirements:

a. *Research Progress Reports:* The recipient shall provide bimonthly research progress reports which shall be due 15 days after the reporting period, and a final research report within 45 days after the completion of the research effort. An original and two copies of each of these research reports shall be submitted to the COTR.

b. *Oral Briefings:* There shall be a startup briefing held at the NHTSA Office of Crash Avoidance Research, Washington, DC within 15 days of initiation of the cooperative agreement. The recipient shall conduct semiannual oral presentations of research results for the COTR and other interested NHTSA personnel. An original and at least two copies of briefing materials shall be submitted to the COTR at the time of each briefing.

Issued on:

W.A. Walsh,

George L. Parker,

Acting Associate Administrator for Research and Development.

[FR Doc. 94–19215 Filed 8–5–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–34; Notice 4]

American Honda Motor Co., Inc.; Grant of Appeal of Denial of Petition for Determination of Inconsequential Noncompliance

American Honda Motor Co., Inc. (Honda) of Torrance, California

appealed a decision by the National Highway Traffic Safety Administration (NHTSA) that denied its petition that a noncompliance with Federal Motor Vehicle Safety Standard No. 209 be deemed inconsequential as it relates to motor vehicle safety.

Notice of receipt of the original petition was published in the **Federal Register** on May 21, 1993 (Notice 1, 58 FR 29689), the notice of denial on January 6, 1994 (Notice 2, 59 FR 795), and notice of appeal of the denial on April 1, 1994 (Notice 3, 59 FR 15496). The reader is referred to the notices for further information. No comments were received in response to Notice 3.

Honda determined that some seat belt assemblies installed in certain 1990–93 Accords failed to comply with Standard No. 209, "Seat Belt Assemblies," and filed an appropriate report pursuant to 49 CFR part 573. Honda then petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance was inconsequential as it relates to motor vehicle safety.

The noncompliance is with paragraph S4.3(j)(3) of Standard No. 209 which requires that "an emergency locking retractor of a Type 1 or Type 2 seat belt assembly * * * shall not lock, if the retractor is sensitive to vehicle acceleration, when the retractor is rotated in any direction to any angle of 15 degrees or less from its orientation in the vehicle * * *" In its original petition, Honda stated that the retractors on some of its assemblies lock up when they are rotated to an angle of approximately ten degrees or more. The affected assemblies involve the rear outside seating positions on approximately 1.2 million model year 1990 to early 1993 two-door and four-door Accords. When the vehicle in which the noncomplying belt is installed is in certain parking positions such as on a steep uphill grade, the rear seat occupants are sometimes unable to pull the belt out of the retractor, and thus cannot fasten their belts. The vehicle must be moved to a more level position for the rear seat occupant to be able to put on the seat belt. The petition was denied for the reasons stated in Notice 2.

In its appeal, Honda stated that it had failed to provide the agency with information which it believed will justify reconsideration of its petition. In its request Honda better defined what occurs in particular vehicle orientations. When a noncompliant vehicle is parked pointing downhill, the retractors fully comply with the standard. When a vehicle is parked pointing uphill, the retractors lock up at angles between 11 and 16 degrees, and thus do not comply with the requirement. When the vehicle is parked such that one side is substantially higher than the other, the retractor located on the downhill side complies with the requirement, but the retractor on the uphill side locks up at angles between seven and 11 degrees, a noncompliance with the requirement.

The agency's denial of Honda's petition was based on several considerations. The first was that the number of complaints received by Honda indicated that the noncompliance was not an isolated occurrence, and was sufficient to cause Honda to initiate a Product Improvement Campaign on the Accord sedan and coupe. A second basis was that the noncompliance could discourage seat belt use. Finally, in NHTSA's view, the noncompliance could present problems to parents attempting to install a child safety seat.

Honda presented new arguments concerning the effect of the noncompliance in an attempt to persuade the agency that field experience with the cars had not demonstrated the existence of real world problems. Honda learns of consumer concerns through complaints and warranty claims. In its investigation of the relevant universe of complaints, it found only one concerning the rear belt, a problem that the dealer had corrected during other service on the vehicle. With respect to warranty claims, Honda compared the complaint rates of the noncompliant Accord sedan and coupe models with those of complying Honda Civic and (Honda) Acura Legend four door sedan models, and found that there was no significant statistical difference. Warranty claims were received for 0.03 to 0.05 percent of both the noncompliant and compliant vehicles.

After considering these arguments, NHTSA felt assured that the effect of the noncompliance in actual vehicle use seems to be small because customer complaints are nearly nonexistent and the warranty rate for rear seat belts installed in the noncompliant vehicles is essentially the same as the rate for other comparable complying models.

Honda also sought to persuade NHTSA that the noncompliance would not discourage seat belt use. In addition to the few real-world problems that have been uncovered, the actual parking situations in which the noncompliance occurs at steep angles are rare. They occur only when the vehicle is facing uphill at angles of between 11 and 16 degrees, and when the vehicle is parked so that the uphill side is substantially higher than the downhill side, the uphill retractor locking at angles between 7 and 11 degrees.

These conditions of inoperability are substantially narrower than those which Honda described in its initial petition, and because of the relative infrequency in which they will be encountered, NHTSA's concerns that the noncompliance might reduce seat belt use have been satisfactorily addressed.

There remained NHTSA's concern about problems in installing child safety seats. Honda believes that, on an uphill incline or when the vehicle is parked with one side substantially higher than the other, it would be difficult for a parent to lean downward into the car to install a child seat. Further, even where the lateral attitude affects the retractor, the retractor on the lower, downhill side will always operate properly. Honda believes that the noncompliance occurring on the uphill side should pose no problem in installing a child safety seat in the rear seat. When the noncompliant vehicle is parked on a lateral incline, there are two compliant rear seating positions to install the seat: the center and lower outboard position, both of which can be accessed from the lower, downhill side. Because the downhill side is nearest the curb, out of traffic, and therefore safer than the higher, uphill side, it is the most convenient and the most likely to be used by the parent. Honda has recommended the rear center position for infant and toddler child seating in its owner's manuals, starting with the 1992 models, which reduces the likelihood that the seat would be installed in a rear seat position that might, under the conditions described, be noncompliant.

Given the physical constraints on placing child safety seats in vehicles when they are not on level ground, NHTSA's earlier concerns about child safety have been met by petitioner's argument.

In consideration of the foregoing, it is hereby found that Honda has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its appeal to reverse the denial of its petition is granted. NHTSA notes that Honda is continuing its product campaign in vehicles that may contain the noncompliant retractors.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: August 2, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–19277 Filed 8–5–94; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–2; Notice 2]

Ford Motor Company; Grant of Petition for Determination of Inconsequential Noncompliance

Ford Motor Company (Ford) of Dearborn, Michigan determined that some of its vehicles failed to comply with the labeling requirements of 49 CFR 571.101, Motor Vehicle Safety Standard No. 101, "Controls and Displays," and 49 CFR 571.105, Motor Vehicle Safety Standard No. 105, "Hydraulic Brake Systems," and filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Ford also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) (now 49 U.S.C. 30118 and 30120) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on January 13, 1994, and an opportunity afforded for comment (59 FR 1988).

Paragraph S5.2 and Table 2 of Standard No. 101 specify that the brake system display telltale shall be identified with the word "brake" and provide that additional words or symbols may be used at the manufacturer's discretion for the purpose of clarity. In addition, paragraph S5.3.5(c)(1) of Standard No. 105 specifies that brake system indicator lamps shall display the word "brake."

From July 19, 1993 to August 19, 1993, Ford manufactured approximately 40,300 Ranger and Explorer vehicles up to 49 of which, instead of having the brake system telltale identified by the word "brake," have it identified by the International Standards Organization (ISO) symbol. These vehicles were manufactured with instrument panel clusters built by Ford's supplier mistakenly using tachometer assemblies intended for use only on vehicles to be exported to Europe where the ISO symbol is the required telltale identifier. Ford submitted diagrams of the U.S. and European tachometer assemblies which are contained in its petition on file in NHTSA's Docket Section.

Ford supported its petition for inconsequential noncompliance with the following:

In Ford's judgement, the condition is inconsequential to motor vehicle safety. The affected Ranger and Explorer brake display telltales illuminate red as required, and except for the missing identifier word "Brake," the vehicles comply with all other applicable FMVSS requirements. Even though "Brake" is not used, Ford believes that the likelihood is remote that a driver of one of the affected vehicles would not recognize illumination of the red-colored brake telltales as an indication of a possible brake system malfunction, principally for three reasons:

(1) * * * [T]he brake system ISO symbol and the parking brake ISO symbol are part of the same brake warning jewel; both are simultaneously illuminated by the same light source. Both identifications illuminate simultaneously every time the parking brake is applied, during the cluster warning lamp function check, and if a brake system malfunction occurs. Because this telltale is illuminated during parking brake engagement and during lamp function checks, an operator is conditioned to associate these two identifiers with "brakes," and therefore their illumination would alert that operator to a possible brake system malfunction (or that the parking brake is applied).

(2) Ford believes that the brake ISO symbol is more widely recognized at present than in the past; use of this symbol in combination with the word "Brake" is common in the majority of vehicles manufactured by Ford Motor Company, and also in many vehicles of other manufacturers, so that the telltale design will satisfy both U.S. and Canadian standards. (Corresponding Canadian standards require the symbol rather than the word "Brake," but also permit both the symbol and word identification.)

(3) The function of the brake warning jewel is fully explained as "a warning light for brakes" in the Owner Guide furnished with each vehicle.

In summary, while the absence of the brake system telltale "Brake" identification on the affected vehicles is a "technical" noncompliance, [Ford believes] that the condition is not a risk to motor vehicle safety because even without the identifier word "Brake," an operator would recognize the illumination of the red brake jewel to be a warning of possible brake system problems. [Ford is] aware of no complaints, accidents, or injuries related to this condition.

One comment was received on the petition, from Volkswagen of America (VW), which supported it. According to VW, many vehicles in the United States market use both the word "brake" and the ISO symbol. In addition, the telltale is red, and VW argued that this is generally accepted as warning of an unsafe condition.

In reviewing Ford's petition, NHTSA has realized that Notice 1 mistakenly gave the impression that all 40,300 vehicles produced between July 19 and August 19, 1993 were noncompliant. In fact, the noncompliance affects a minimal number of trucks, at the most only slightly more than 1 in 1,000. Ford "has accounted for all but 49 tachometer assemblies intended for export vehicles", and, on this basis, concluded that "[a]ny number, from zero to 49, may have been installed in vehicles intended for sale in the U.S." Although NHTSA rarely considers the number of affected units as of primary relevance in its inconsequentiality determinations, the small number of vehicles involved in this petition, from as many as 49 to as few as none, ensures that there is little chance that a safety problem will arise if the petition is granted. The brake warning is of critical importance if an actual brake system malfunction occurs. NHTSA believes that such a malfunction is unlikely to occur during the early life of a vehicle when a driver is becoming familiar with the brake warning light system. The failure to use the word "brake" might be more important several years hence when one of these 1993-manufactured trucks is older and in the hands of a subsequent owner who may not be as familiar with the vehicle's systems as its previous owner(s). At that point in the future, Ford's argument that the brake ISO symbol is more widely recognized than in the past is likely to have greater validity than at present when use of the ISO symbol is not so widespread.

Accordingly, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: *49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.*

Issued on August 1, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–19278 Filed 8–5–94; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–67; Notice 1]

RIN: 2127–AE92

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document publishes, for review and comment, data on passenger motor vehicle thefts that occurred in calendar year (CY) 1992. Also published in this document are the theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 1992. The theft data preliminarily indicate

that the overall vehicle theft rate in 1992 (4.31 thefts per thousand vehicles) decreased by 5.7 percent from the theft rate in 1990/91 (4.57 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment. The data were calculated for informational purposes only. They will not be used to determine whether vehicle lines are subject to selection for coverage under the Theft Prevention Standard.

DATES: All comments on this document must be received by NHTSA not later than October 7, 1994.

ADDRESSES: All comments should refer to the docket number and notice number cited in the heading of this document and be submitted, preferably with ten copies to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are from 9:30 am to 4 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Gray's telephone number is: (202) 366–1740.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the information for review and comment. To fulfill this statutory mandate, NHTSA has published, for review and comment, theft data for every year since 1983/84. The yearly publication of data under Section 33104(b) is for informational purposes only.

Continuing to fulfill the section 33104(b)(4) mandate, this document reports the preliminary theft data for CY 1992, the most recent calendar year for which data are available. The data for 1992, as for other years, are published for informational purposes only, and will not be used to determine whether vehicle lines are subject to selection for coverage under the Theft Prevention Standard.

In calculating the 1992 theft rates, NHTSA followed the same procedures it used in calculating the MYs 1990 and 1991 theft rates. (For 1990/91 theft data calculations, see 59 FR 12400, March 16, 1994.) As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 1992 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 1992 vehicles of that line stolen during calendar year 1992, by the sum of the production volumes for that vehicle line for MY 1992, as reported to the Environmental Protection Agency.

The preliminary 1992 theft data show a small decrease in the overall vehicle theft rate when compared to the overall theft rate experienced in MYs 1990 and 1991. The preliminary overall theft rate for MY 1992 passenger motor vehicles stolen in calendar year 1992 decreased to 4.31 thefts per thousand vehicles produced. For MY 1992 vehicles, out of a total of 215 vehicle lines, 108 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/91. (See 59 FR 12400, March 16, 1994.) Of the 108 vehicle lines with a theft rate higher than 3.5826, 80 are passenger car lines, 22 are MPV lines, and 6 are LDT lines.

In Table I, NHTSA has tentatively ranked each of the MY 1992 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, especially production volumes of individual vehicle lines.

All comments must not exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business regulation. (49 CFR part 512.)

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

Issued on: August 3, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

TABLE I. THEFT RATES OF MODEL YEAR 1992 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1992

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1992	PRODUCTION (MFGR'S) 1992	THEFT RATE (1992 THEFTS PER 1,000 VEHICLES PRODUCED)
1	GENERAL MOTORS	OLDSMOBILE BRAVADA	282	11,865	23.7674
2	FORD MOTOR CO	MUSTANG	1,634	73,229	22.3136
3	GENERAL MOTORS	GMC JIMMY S–15	746	34,104	21.8743
4	VOLKSWAGEN	GOLF/GTI	218	10,775	20.2320
5	GENERAL MOTORS	CHEVROLET BLAZER S–10	1,895	118,257	16.0244
6	TOYOTA	LAND CRUISER	122	8,300	14.6988
7	NISSAN	PATHFINDER	494	34,905	14.1527
8	MITSUBISHI	3000GT	105	7,620	13.7795
9	CHRYSLER CORP	LEBARON COUPE/CONVERTIBLE	536	40,297	13.3012
10	VOLKSWAGEN	CABRIOLET	112	8,627	12.9825
11	FORD MOTOR CO	LINCOLN MARK VII	67	5,443	12.3094
12	CHRYSLER CORP	JEEP CHEROKEE	1,432	125,544	11.4064
13	MITSUBISHI	DIAMANTE	269	24,607	10.9318
14	GENERAL MOTORS	CADILLAC BROUGHAM	127	11,884	10.6866
15	TOYOTA	4–RUNNER	395	38,900	10.1542
16	GENERAL MOTORS	GMC SIERRA C–1500	731	73,265	9.9775
17	GENERAL MOTORS	CHEVROLET C–1500	2,217	234,446	9.4563
18	CHRYSLER CORP	NEW YORKER 5TH AVE/IMPERIAL	386	41,463	9.3095
19	NISSAN	300ZX	64	6,959	9.1967
20	CHRYSLER CORP	JEEP WRANGLER	443	48,278	9.1760
21	GENERAL MOTORS	PONTIAC LEMANS	172	19,500	8.8205
22	CHRYSLER CORP	DODGE RAMCHARGER	25	2,925	8.5470
23	VOLKSWAGEN	CORRADO	30	3,549	8.4531
24	CHRYSLER CORP	DODGE DYNASTY	717	85,218	8.4137
25	FORD MOTOR CO	PROBE	281	33,421	8.4079
26	SUZUKI	SAMURAI	29	3,599	8.0578
27	MITSUBISHI	MONTERO	141	18,340	7.6881
28	GENERAL MOTORS	PONTIAC TRANS SPORT APV	237	30,924	7.6640
29	BMW	8	5	688	7.2674
30	GENERAL MOTORS	OLDSMOBILE CUTLASS CIERA	870	120,327	7.2303
31	NISSAN	SENTRA	949	133,275	7.1206
32	GENERAL MOTORS	CHEVROLET CORVETTE	134	18,938	7.0757
33	GENERAL MOTORS	CHEVROLET LUMINA APV	334	47,332	7.0565
34	AUDI	V8 QUATTRO SEDAN	1	142	7.0423
35	CHRYSLER CORP	DODGE STEALTH	115	16,458	6.9875
36	GENERAL MOTORS	BUICK CENTURY	824	118,487	6.9543
37	GENERAL MOTORS	PONTIAC SUNBIRD	502	73,953	6.7881
38	GENERAL MOTORS	CHEVROLET CORSICA	825	122,987	6.7080
39	BMW	7	37	5,540	6.6787
40	GENERAL MOTORS	GEO PRIZM	564	84,602	6.6665
41	VOLKSWAGEN	JETTA	250	37,547	6.6583
42	MITSUBISHI	EXPO	109	16,586	6.5718
43	FORD MOTOR CO	LINCOLN TOWN CAR	712	109,062	6.5284
44	GENERAL MOTORS	OLDSMOBILE SILHOUETTE APV	101	15,498	6.5170
45	CHRYSLER CORP	DODGE SPIRIT	429	66,927	6.4100
46	GENERAL MOTORS	CHEVROLET BERETTA	300	47,598	6.3028
47	NISSAN	MAXIMA	542	86,448	6.2697
48	GENERAL MOTORS	CHEVROLET CAMARO	422	67,709	6.2326
49	GENERAL MOTORS	GEO TRACKER	224	36,230	6.1827
50	FORD MOTOR CO	MERCURY TRACER	145	24,385	5.9463
51	NISSAN	PICKUP TRUCK	396	66,873	5.9217
52	MITSUBISHI	GALANT/SIGMA	251	42,392	5.9209
53	HONDA/ACURA	VIGOR	174	30,000	5.8000
54	GENERAL MOTORS	CHEVROLET ASTRO	708	122,483	5.7804
55	GENERAL MOTORS	GMC SONOMA	254	44,010	5.7714
56	CHRYSLER CORP	PLYMOUTH ACCLAIM	427	74,118	5.7611
57	TOYOTA	SUPRA	5	900	5.5556
58	CHRYSLER CORP	PLYMOUTH SUNDANCE	348	62,645	5.5551
59	GENERAL MOTORS	PONTIAC FIREBIRD	134	25,181	5.3215
60	FORD MOTOR CO	THUNDERBIRD	386	73,032	5.2854
61	MITSUBISHI	MIRAGE	277	52,845	5.2417
62	TOYOTA	MR2	22	4,200	5.2381
63	MITSUBISHI	PRECIS	11	2,102	5.2331
64	GENERAL MOTORS	CADILLAC ALLANTE	10	1,915	5.2219
65	GENERAL MOTORS	GEO METRO	497	95,840	5.1857

TABLE I. THEFT RATES OF MODEL YEAR 1992 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1992—Continued

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1992	PRODUCTION (MFGR'S) 1992	THEFT RATE (1992 THEFTS PER 1,000 VEHICLES PRODUCED)
66	MERCEDES-BENZ	129	39	7,532	5.1779
67	TOYOTA	COROLLA/COROLLA SPORT	1,034	199,700	5.1778
68	SUZUKI	SIDEKICK	66	12,862	5.1314
69	CHRYSLER CORP	DODGE SHADOW	390	76,286	5.1123
70	CHRYSLER CORP	DODGE MONACO	10	1,960	5.1020
71	FORD MOTOR CO	ESCORT	784	156,029	5.0247
72	ISUZU	AMIGO	50	10,000	5.0000
73	NISSAN	240SX	135	27,033	4.9939
74	MAZDA	626/MX-6	170	34,207	4.9697
75	PORSCHE	911	9	1,811	4.9696
76	GENERAL MOTORS	CADILLAC FLEETWOOD/DEVILLE	667	136,263	4.8949
77	GENERAL MOTORS	GEO STORM	335	69,004	4.8548
78	FORD MOTOR CO	MERCURY COUGAR	228	47,001	4.8510
79	GENERAL MOTORS	PONTIAC GRAND PRIX	514	106,564	4.8234
80	BMW	3	229	47,500	4.8211
81	HONDA	ACCORD	2,195	459,000	4.7821
82	MERCEDES-BENZ	140	72	15,183	4.7421
83	HONDA	PRELUDE	280	59,700	4.6901
84	CHRYSLER CORP	DODGE DAYTONA	50	10,943	4.5691
85	TOYOTA	CRESSIDA	17	3,800	4.4737
86	NISSAN	STANZA	272	61,040	4.4561
87	GENERAL MOTORS	GMC SAFARI	178	40,227	4.4249
88	CHRYSLER CORP	LEBARON SEDAN	174	39,553	4.3992
89	FORD MOTOR CO	TEMPO	912	207,356	4.3982
90	CHRYSLER CORP	EAGLE TALON	121	28,246	4.2838
91	SUZUKI	SWIFT	35	8,220	4.2579
92	FORD MOTOR CO	MERCURY TOPAZ	326	76,788	4.2455
93	GENERAL MOTORS	OLDSMOBILE CUTLASS SUPREME	338	82,255	4.1092
94	GENERAL MOTORS	BUICK SKYLARK	223	55,651	4.0071
95	GENERAL MOTORS	CHEVROLET S-10 PICKUP	725	183,124	3.9591
96	ROVER GROUP	RANGE ROVER MPV	21	5,350	3.9252
97	TOYOTA	CELICA	109	28,000	3.8929
98	MAZDA	NAVAJO	17	4,404	3.8601
99	GENERAL MOTORS	CHEVROLET SPORTVAN G-10	11	2,851	3.8583
100	GENERAL MOTORS	GMC RALLY SPORTVAN	5	1,307	3.8256
101	GENERAL MOTORS	CHEVROLET CAVALIER	804	213,695	3.7624
102	MAZDA	MX-3	104	27,674	3.7580
103	FORD MOTOR CO	LINCOLN CONTINENTAL	149	39,763	3.7472
104	BMW	5	82	21,984	3.7300
105	TOYOTA	PASEO	220	59,200	3.7162
106	NISSAN	INFINITI Q45	48	13,126	3.6569
107	HONDA/ACURA	LEGEND	273	75,000	3.6400
108	GENERAL MOTORS	CHEVROLET CAPRICE	258	71,404	3.6132
109	GENERAL MOTORS	PONTIAC GRAND AM	670	189,802	3.5300
110	NISSAN	NX COUPE	32	9,202	3.4775
111	MITSUBISHI	ECLIPSE	210	61,005	3.4423
112	CHRYSLER CORP	EAGLE PREMIER	16	4,730	3.3827
113	FORD MOTOR CO	FESTIVA	72	21,350	3.3724
114	HYUNDAI	SONATA	98	29,152	3.3617
115	FORD MOTOR CO	MERCURY SABLE	398	118,487	3.3590
116	MAZDA	B SERIES PICKUP	142	44,943	3.1596
117	TOYOTA	TERCEL	312	99,200	3.1452
118	ALFA ROMEO	164	2	668	2.9940
119	MAZDA	323/PROTEGE	276	95,583	2.8875
120	GENERAL MOTORS	OLDSMOBILE CUTLASS CRUISER	20	7,025	2.8470
121	GENERAL MOTORS	BUICK REGAL	276	97,697	2.8251
122	MAZDA	MX-5 MIATA	78	27,749	2.8109
123	SUBARU	LOYALE	56	20,046	2.7936
124	FORD MOTOR CO	TAURUS	927	337,215	2.7490
125	GENERAL MOTORS	CHEVROLET LUMINA	642	236,285	2.7171
126	NISSAN	INFINITI M30	9	3,319	2.7117
127	MAZDA	929	76	28,704	2.6477
128	TOYOTA	CAMRY	760	287,200	2.6462
129	ALFA ROMEO	SPIDER	2	757	2.6420
130	NISSAN	INFINITI G20	38	14,398	2.6393

TABLE I. THEFT RATES OF MODEL YEAR 1992 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1992—Continued

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1992	PRODUCTION (MFGR'S) 1992	THEFT RATE (1992 THEFTS PER 1,000 VEHICLES PRODUCED)
131	GENERAL MOTORS	OLDSMOBILE 98/TOURING	117	44,510	2.6286
132	TOYOTA	LEXUS SC	74	28,800	2.5694
133	ISUZU	RODEO	154	60,000	2.5667
134	CHRYSLER CORP	PLYMOUTH VOYAGER/GRAND	485	189,043	2.5656
135	HYUNDAI	EXCEL	189	74,802	2.5267
136	VOLKSWAGEN	PASSAT	36	14,758	2.4394
137	TOYOTA	LEXUS LS	80	32,800	2.4390
138	CHRYSLER CORP	DODGE CARAVAN/GRAND	660	271,572	2.4303
139	CHRYSLER CORP	TOWN & COUNTRY MPV	32	13,207	2.4230
140	FORD MOTOR CO	EXPLORER	737	308,259	2.3908
141	MERCEDES-BENZ	201	35	14,677	2.3847
142	GENERAL MOTORS	PONTIAC BONNEVILLE	272	115,952	2.3458
143	CHRYSLER CORP	JEEP COMANCHE	7	3,008	2.3271
144	TOYOTA	PICKUP TRUCK	397	171,500	2.3149
145	GENERAL MOTORS	BUICK ROADMASTER	137	59,699	2.2948
146	MERCEDES-BENZ	124	64	28,082	2.2790
147	GENERAL MOTORS	CADILLAC ELDORADO	68	29,852	2.2779
148	FORD MOTOR CO	RANGER PICKUP	553	249,476	2.2166
149	HONDA	CIVIC	447	203,772	2.1936
150	FORD MOTOR CO	CROWN VICTORIA	241	110,691	2.1772
151	HYUNDAI	ELANTRA	139	64,146	2.1669
152	VOLVO	240	45	20,875	2.1557
153	HONDA/ACURA	INTEGRA	176	82,668	2.1290
154	GENERAL MOTORS	OLDSMOBILE TORONADO/TROFEO	13	6,141	2.1169
155	FORD MOTOR CO	MERCURY GRAND MARQUIS	292	146,395	1.9946
156	JAGUAR	XJS	4	2,029	1.9714
157	VOLVO	960	14	7,139	1.9611
158	DAIHATSU	ROCKY MPV	7	3,600	1.9444
159	ISUZU	PICKUP	94	48,900	1.9223
160	TOYOTA	LEXUS ES	74	38,500	1.9221
161	FORD MOTOR CO	MERCURY CAPRI	16	8,332	1.9203
162	MITSUBISHI	PICKUP TRUCK	47	24,650	1.9067
163	HONDA/ACURA	NSX	4	2,100	1.9048
164	AUDI	80/90	1	541	1.8484
165	CHRYSLER CORP	PLYMOUTH LASER	39	21,808	1.7883
166	JAGUAR	XJ6	10	5,656	1.7680
167	SAAB	900	30	17,200	1.7442
168	HYUNDAI	SCOUPE	70	40,420	1.7318
169	SUBARU	LEGACY	113	66,424	1.7012
170	FORD MOTOR CO	F150 PICKUP TRUCK	420	248,087	1.6930
171	TOYOTA	PREVIA	76	44,900	1.6927
172	MAZDA	MPV WAGON	73	45,934	1.5892
173	CHRYSLER CORP	DODGE DAKOTA PICKUP	197	125,804	1.5659
174	VOLVO	740	16	10,718	1.4928
175	GENERAL MOTORS	BUICK RIVIERA	18	12,324	1.4606
176	CHRYSLER CORP	EAGLE SUMMIT	51	35,535	1.4352
177	GENERAL MOTORS	OLDSMOBILE ACHIEVA	123	87,668	1.4030
178	GENERAL MOTORS	SATURN SC	37	26,924	1.3742
179	GENERAL MOTORS	OLDSMOBILE 88 ROYALE	127	106,073	1.1973
180	GENERAL MOTORS	BUICK PARK AVENUE	70	63,364	1.1047
181	GENERAL MOTORS	SATURN SL	127	128,052	0.9918
182	SUBARU	SVX	9	9,288	0.9690
183	GENERAL MOTORS	CADILLAC SEVILLE	39	40,314	0.9674
184	AUDI	100/200	10	10,514	0.9511
185	DAIHATSU	CHARADE	17	18,200	0.9341
186	FORD MOTOR CO	AEROSTAR	144	155,319	0.9271
187	GENERAL MOTORS	BUICK ESTATE/ROADMAST WAGON	9	11,018	0.8168
188	ISUZU	TROOPER/TROOPER II	22	27,000	0.8148
189	CHRYSLER CORP	PLYMOUTH COLT/COLT VISTA	24	29,971	0.8008
190	PORSCHE	968	1	1,384	0.7225
191	GENERAL MOTORS	OLDSMOBILE CUSTOM CRUISER	3	4,347	0.6901
192	GENERAL MOTORS	BUICK LESABRE	104	161,683	0.6432
193	CHRYSLER CORP	DODGE COLT/COLT VISTA	19	32,372	0.5869
194	VOLKSWAGEN	FOX	1	2,043	0.4895
195	SAAB	9000	5	10,650	0.4695

TABLE I. THEFT RATES OF MODEL YEAR 1992 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1992—Continued

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1992	PRODUCTION (MFGR'S) 1992	THEFT RATE (1992 THEFTS PER 1,000 VEHICLES PRODUCED)
196	ISUZU	IMPULSE	3	11,299	0.2655
197	FORD MOTOR CO	E150 VAN	10	61,064	0.1638
198	CHRYSLER CORP	DODGE RAM PICKUP	10	83,090	0.1204
199	ISUZU	STYLUS	2	22,275	0.0898
200	CHRYSLER CORP	DODGE RAM WAGON/VAN B150	4	50,618	0.0790
201	VOLVO	940	0	17,750	0.0000
202	SUBARU	JUSTY	0	1,213	0.0000
203	ROLLS-ROYCE	TURBO R	0	37	0.0000
204	ROLLS-ROYCE	SIL SPIRIT/SPUR/MULS/EIGHT	0	44	0.0000
205	ROLLS-ROYCE	CORNICHE/CONTINENTAL	0	15	0.0000
206	PEUGEOT	405	0	218	0.0000
207	PEUGEOT	505	0	224	0.0000
208	MAZDA	RX-7	0	1	0.0000
209	LAMBORGHINI	DIABLO	0	52	0.0000
210	FERRARI	TESTAROSSA	0	240	0.0000
211	FERRARI	F40	0	60	0.0000
212	FERRARI	348	0	161	0.0000
213	FERRARI	MONDIAL	0	49	0.0000
214	CHRYSLER CORP	DODGE VIPER	0	285	0.0000
215	ASTON MARTIN	SALOON/VANTAGE/VOLANTE	0	40	0.0000

[FR Doc. 94-19276 Filed 8-5-94; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

August 1, 1994.

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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545-0098.

Form Number: IRS Form 1045.

Type of Review: Revision.

Title: Application for Tentative Refund.

Description: Form 1045 is used by individuals, estates, and trusts to apply for a quick refund of taxes due to carryback of a net operating loss, unused general business credit, or claim of right adjustment under section 1341(b). The information obtained is used to determine the validity of the application.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 65,220.

Estimated Burden Hours Per Respondent/Recordkeeper: Recordkeeping: *26 min.; Learning about the law or the form: 31 min.; Preparing the form: 6 hrs., 56 min.; Copying, assembling, and sending the form to the IRS: 56 min.*

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 574,588 hours.

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 94-19217 Filed 8-5-94; 8:45 am]

BILLING CODE 4830-01-P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 151
Monday, August 8, 1994

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).

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-28; Emergency Notice]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 39017—dated August 1, 1994.

ORIGINAL TIME: August 3, 1994 at 2:30 p.m.

NEW TIME: August 5, 1994 at 10:00 a.m.

Notice is given that at a Commission meeting on August 3, 1994 at 2:30 p.m., the Commission voted to move agenda item 5 to a meeting on August 5, 1994, at 10:00 a.m.

Commissioners Watson, Nuzum, Rohr, Crawford, and Bragg determined that Commission business requires this meeting to be called with less than seven (7) days notice and that no earlier announcement of this meeting was possible. The meeting will be held on Friday, August 5, 1994 beginning at 10:00 a.m. in Room 101 of the United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The Commission plans to consider the following agenda item in open session:

1. Inv. No. 701-TA-312 (Third Remand) (Softwood Lumber from Canada)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Dated: August 3, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-19355 Filed 8-4-94; 11:21 am]

BILLING CODE 7020-02-P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on August 1, 1994, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for August 29, 1994, in St. Louis, Missouri. The members will have an informational briefing on funding for Multiline Optical Character Readers (MLOCR).

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Mackie, Pace, Setrakian and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information, the premature disclosure of which would significantly frustrate proposed procurement actions. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of Title 5, United States Code and section 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 94-19388 Filed 8-4-94; 2:59 pm]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

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 meetings during the week of August 8, 1994.

A closed meeting will be held on Tuesday, August 9, 1994, at 11:00 a.m. An open meeting will be held on Wednesday, August 10, 1994, at 2:00 p.m., in Room 1C30.

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 Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 9, 1994, at 11:00 a.m., will be:

Settlement of injunctive actions.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Opinions.

The subject matter of the open meeting scheduled for Wednesday, August 10, 1994, at 2:00 p.m., will be:

1. Consideration of whether to propose for public comment amendments to the rules and forms regarding the filing of ownership reports by officers, directors, and ten percent shareholders, and the exemption by those persons from the short-swing profit recovery provisions of Section 16 of the Securities Exchange Act of 1934 and related provisions of the Investment Company Act of 1940 and the Public Utility Holding Company Act of 1935. The proposed rules are intended to streamline the Section 16 regulatory scheme, particularly with respect to employee benefit plans, and codify several staff interpretive positions.

The Commission also will consider whether to extend the phase-in date for compliance with current Rule 16b-3.

For further information, please contact Anne Krauskopf at (202) 942-2834.

2. Consideration of whether to propose for public comment amendments to Regulation S–X and investment company registration forms that would require an investment company to reflect in its financial statements, fee table, and financial highlights table and in the calculation of its yield the cost of fund services paid for by brokers in exchange for the direction of fund commissions to the broker.

For further information, please contact Eric C. Freed at (202) 942–0726.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brian Lane (202) 942–0600.

Dated: August 4, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–19356 Filed 8–4–94; 11:21 am]

BILLING CODE 8010–01–M

federal register

Monday
August 8, 1994

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1001, et al.

Milk in the New England and Other Marketing Areas; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139

[Docket No. AO–14–A66, etc.; DA–92–11]

RIN 0581–AA57

Milk in the New England and Other Marketing Areas; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1001 ..	New England	AO–14–A66
1002 ..	New York-New Jersey.	AO–71–A81
1004 ..	Middle Atlantic	AO–160–A69
1005 ..	Carolina	AO–388–A6
1006 ..	Upper Florida	AO–356–A30
1007 ..	Georgia	AO–366–A35
1011 ..	Tennessee Valley	AO–251–A37
1012 ..	Tampa Bay	AO–347–A33
1013 ..	Southeastern Florida	AO–286–A40
1030 ..	Chicago Regional	AO–361–A30
1032 ..	Southern Illinois-Eastern Missouri.	AO–313–A40
1033 ..	Ohio Valley	AO–166–A63
1036 ..	Eastern Ohio-Western Pennsylvania.	AO–179–A58
1040 ..	Southern Michigan ..	AO–225–A44
1044 ..	Michigan Upper Peninsula.	AO–299–A28
1046 ..	Louisville-Lexington-Evansville.	AO–123–A64
1049 ..	Indiana	AO–319–A41
1050 ..	Central Illinois	AO–355–A28
1064 ..	Greater Kansas City	AO–23–A61
1065 ..	Nebraska-Western Iowa.	AO–86–A49
1068 ..	Upper Midwest	AO–178–A47
1075 ..	Black Hills, South Dakota.	AO–248–A22
1076 ..	Eastern South Dakota.	AO–260–A31
1079 ..	Iowa	AO–295–A43
1093 ..	Alabama-West Florida.	AO–386–A13
1094 ..	New Orleans-Mississippi.	AO–103–A55
1096 ..	Greater Louisiana	AO–257–A42
1097[1]	Memphis, Tennessee.	AO–219–A48
1098[1]	Nashville, Tennessee.	AO–184–A57
1099 ..	Paducah, Kentucky .	AO–183–A47
1106 ..	Southwest Plains	AO–210–A54
1108 ..	Central Arkansas	AO–243–A45
1124 ..	Pacific Northwest	AO–368–A22
1126 ..	Texas	AO–231–A62
1131 ..	Central Arizona	AO–271–A31
1134 ..	Western Colorado ...	AO–301–A23
1135 ..	Southwestern Idaho-Eastern Oregon.	AO–380–A12
1137 ..	Eastern Colorado	AO–326–A27
1138 ..	New Mexico-West Texas.	AO–335–A38
1139 ..	Great Basin	AO–309–A32

[1] The Memphis, Tennessee, and Nashville, Tennessee, orders were terminated, effective July 31, 1993.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This recommended decision adopts the base month Minnesota-Wisconsin (M-W) price updated with a butter/powder/cheese formula as the replacement for the Minnesota-Wisconsin price series, which establishes minimum prices for milk under all Federal milk orders. The recommendations in this decision are based on industry proposals considered at a public hearing held June 15–19, 1992.

DATES: Comments are due on or before October 7, 1994.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

SUPPLEMENTARY INFORMATION: This administrative rule 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 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued May 12, 1992; published May 15, 1992 (57 FR 20790).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the New England and other marketing areas. This notice is issued pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this recommended decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, on or before October 7, 1994. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments and findings and conclusions are based on the record of a public hearing held at Alexandria, Virginia, on June 15–19, 1992, pursuant to a notice of hearing issued May 15, 1992 (57 FR 20790). The material issue on the record of the hearing relates to:

Replacement of the Minnesota-Wisconsin price series used to establish minimum prices under the Federal orders.

Findings and Conclusions

The following findings and conclusions on the material issues are

based on evidence presented at the hearing and the record thereof:

Background Statement

This proceeding was initiated in response to concerns expressed regarding the reliability of the Minnesota-Wisconsin price series (M–W price) as an accurate indicator of the average price of milk used in manufactured products because of a continuing decline in manufacturing grade (Grade B) milk production and the number of plants that compete for the Grade B milk supply. Prior to the announcement of this hearing, a study of possible alternative pricing mechanisms was undertaken by the Department and was released in November 1991. A study was also mandated by Congress in the 1990 Farm Bill, which further required that a public hearing be held on the issue and that the statistical information developed in the study be made available to the public.

A Notice of Hearing issued on May 15, 1992, listed ten proposals to be considered during the M–W price replacement hearing. The proposals fell into four main categories: (1) competitive pay prices, (2) product price formulas, (3) cost-of-production formulas, and (4) the price support level. Several of the competitive pay prices were also proposed in conjunction with product price formulas for price-updating purposes. The hearing was specifically limited to a replacement for the M–W price. The hearing notice also specified that any proposals that would change the price level would have to be justified under the supply and demand pricing standards of the Act (7 U.S.C. 608c(18)).

Replacement for the Minnesota-Wisconsin Price Series

All Federal milk orders should be amended to provide for a new price series that will establish minimum prices under Federal milk orders utilizing the base month M–W competitive pay price updated with a butter/powder/cheese product price formula. Adoption of the updated base month M–W price will result in a basic formula price that adequately reflects the value of milk used in manufactured products and will allow for the continued use of an unregulated, competitive market price. Hence, supply and demand conditions will continue to be directly reflected in the basic formula price that serves as a basis for minimum pricing of regulated milk.

Since the M–W price was first adopted in 1961 in the Chicago Regional marketing area, it has been used as a basis for setting minimum prices paid by regulated handlers. The M–W price is the mover of all Class I and Class II prices and is essentially the Class III price under all orders. Using the M–W price as the Class III price maintains price coordination between Grade B and Grade A milk supplies used for manufacturing purposes.

The M–W price is a competitive price that represents an estimate of the average of prices paid for Grade B milk in Minnesota and Wisconsin by plants that manufacture butter, nonfat dry milk, and cheese. These products are sold in a national market in competition with such products made from Grade A milk that is in excess of fluid milk needs. Month-to-month changes in the M–W price reflect changes in overall supply and demand conditions for milk and its products nationally.

The M–W price is currently computed by the National Agricultural Statistics Service (NASS). It is announced on or before the 5th day of every month and applies to Grade B milk delivered during the previous month. For example, the M–W price for February is announced on March 5 (in 1994 it was announced on March 4). The M–W price determination is a two-step process. It involves (1) determining the average of actual pay prices at a large number of plants purchasing Grade B milk for the base month (in the above example, January), and (2) based on a sample of these plants, determining what the expected change in pay prices will be from the base month (January) to the following month (February), the month for which the M–W price is being determined. The reason for the updating procedure is that actual pay prices for a month are not available until late in the following month. Thus, updating the base month M–W price results in an M–W price that better reflects current marketing conditions.

To calculate the base month M–W price, NASS collects actual data for the entire previous month from approximately 160–170 plants located in Minnesota and Wisconsin. The plants report the total pounds of Grade B milk received from producers and the total dollars paid to producers for the entire month. These plants represent approximately two-thirds of all Grade B milk sold in the two States.

NASS derives the estimated portion of the M–W price series based on reports of a sample of approximately 67 of the base-month plants. These plants account for about 35 percent of the total manufacturing grade milk sold in the two States. These plants provide actual pay price data for the first half of the month and estimate prices for the second half of the month to which the M–W price relates. NASS then calculates the estimated change in price between the base month and the current month and applies this estimated change to the base month M–W price to determine the M–W price. According to the NASS witness who testified at the hearing, some plants in the estimate survey are unable to provide actual price data and can only estimate purchases for the first half of the month. Thus, the plants in the estimate survey that report actual price information account for about 25 percent of the Grade B milk in the two States.

When the price series was first adopted in 1961, Grade B milk production accounted for 68 percent, or 18 billion pounds, of the total milk production in the two States. This production was purchased by about 1,200 plants. By 1992, Grade B production had declined to five billion pounds or 14 percent of the total milk production in the two States, with 272 plants purchasing the milk. Due to the decline in Grade B production and the number of plants purchasing the milk, along with the number of plants which can provide actual pay price data for the first half of the month, the statistical reliability of the M–W price has been questioned.

Several proposals considered during this proceeding were based on competitive pay prices. There was support by a large majority of the witnesses who testified during the hearing and in post-hearing briefs for the adoption of a competitive pay price series. Most witnesses testified in opposition to the use of product price formulas, the support price, and cost-of-production formulas as replacements for the M–W price. Three main competitive pay price series were considered during the hearing: the A/B price series, the base month M–W (which is currently used to calculate the M–W price), and the Agricultural Prices M–W. These competitive pay price series were proposed in combination with a product price formula to be used to update the previous month's price to the current month with one exception which will be addressed later.

An A/B manufacturing price series (A/B price) was developed based on industry proposals and comments submitted in connection with the Department's study. NASS developed this new competitive pay price series that represents prices paid for milk used in the manufacturing of dairy products, regardless of grade. NASS collects data from 150 plants in Minnesota and Wisconsin that receive Grade B and/or Grade A milk used primarily to

manufacture cheese, butter, and nonfat dry milk. The sample represents 78 percent of Minnesota's total milk production, of which approximately 75 percent is Grade A, and 65 percent of Wisconsin's total milk production, of which about 84 percent is Grade A.

The calculation of the A/B price requires the deduction of the "pool draw," which is money that the Grade A plants receive from the Federal order pool as part of their share of the Class I market. This information is obtained by NASS from the Chicago Regional and Upper Midwest market administrators. The A/B prices are reported routinely in "Dairy Market News." As currently calculated, the A/B price that is available on or before the 5th day of the month is the price for the second preceding month.

Proponents of proposals one and two, as listed in the hearing notice, were the main supporters of the adoption of an A/B price to replace the current M–W price. The National Farmers Organization (NFO), a cooperative association that proposed proposal one, advocated the usage of an A/B price updated by 50 percent of a product price formula. In connection with the A/B price, NFO recommended the adoption of a floor price for the basic formula price equal to the cost of production.

Two witnesses testified on behalf of NFO. The first witness primarily focused on the cost-of-production floor price. He stated that a fundamental purpose of NFO is to seek the cost of production plus a reasonable profit for dairy farmers. To meet this organizational purpose, NFO proposed using the national average economic (full ownership) costs, as calculated by the Economic Research Service for the most recently reported calendar year, as the floor price. The floor price would be utilized as the basic formula price whenever the competitive A/B price fell below the cost of production. The witness contended that establishing a floor price for the basic formula price would provide dairy farmers with stability in their milk price. The witness further stated that NFO did not believe that establishing a floor price at the cost-of-production level would have any impact on stimulating production.

The second witness for NFO testified regarding the need to adopt an A/B price with a product price updater as a replacement for the M–W price. This witness asserted that a competitive pay price based solely on Grade B milk does not represent the true farm value of milk because of the decline in competition among plants purchasing Grade B milk. He contended that this lack of competition allows plants to shift money from Grade B milk producers and use this extra money to attract Grade A producers. Accordingly the witness stated that the A/B price series needed to be adopted to better reflect the true value of milk used in manufacturing.

The witness addressed the concern of regulated prices being reported within the A/B price calculation that may create an upward price bias. NFO recognizes that this is a major factor; however, they do not propose to deregulate any plants in the A/B survey since a majority of the reporting plants are cooperative plants. The witness stated that the "blend down" of the Grade A price by the Grade B price and the non-inclusion of hauling subsidies would provide room above federal order minimum prices for flexibility in both upward and downward price movements. The witness asserted that this would negate any concern about an upward price bias in the A/B price series.

Because the A/B price announced on or before the 5th of each month would apply to milk marketed in the second preceding month, NFO proposed the use of a product price updating formula in conjunction with the A/B price. NFO advanced the use of 50 percent of a product price formula which included all primary products and by-products of milk. NFO maintains that all products should be used in a product price formula to reflect the full value of producer milk. The witness stated that NFO chose to use only 50 percent of the updater because producer prices are not as volatile as prices in the product markets and because NFO believes this would lend a further degree of stability to producer prices.

The Trade Association of Proprietary Plants (TAPP) and Farmers Union Milk Marketing Cooperative (FUMMC) also supported the adoption of the A/B price series to replace the M–W price. The TAPP and FUMMC's proposal (number two) would utilize an A/B price series updated by a weekly butter/powder/cheese product price formula. To this value a competitive premium would be added and 20 cents deducted yielding a tentative weekly M–W price. The final M–W price would be announced on or before the 5th of the following month and would be the weighted average of the tentative weekly M–W prices for the current month.

The witness representing these two groups testified that the current M–W price, which is based solely on Grade B milk, underrepresents the true competitive value of milk for manufacturing purposes by 45 to 60 cents per hundredweight. According to the witness, this difference is paid to producers in the form of premiums and hauling subsidies. The witness said that because these are not consistent between plants, this situation is creating chaotic marketing conditions. The witness stated that incorporating Grade A milk into the Minnesota and Wisconsin price survey would result in a price series which would reflect the true competitive value of milk and promote orderly marketing conditions.

The witness further testified that the industry is in need of current, or weekly, pricing to assist in marketing decisions. Using the A/B price in conjunction with a weekly updater to establish a tentative weekly M–W price would provide the industry with current information to be used as a pricing guide for the following week. The witness claimed that the dairy industry needs this information for buying, selling, and determining the value of milk in manufactured products.

Two additional proposals noticed were based on the A/B price series. One proponent of proposal three, the Northeast Ad Hoc Federal Order Committee, withdrew its support for this proposal. This proposal would have expanded the amount of milk surveyed and/or expanded the states included in the survey. No other proponents of an expanded survey testified in support of this proposal. Thus, it is considered abandoned.

Land O'Lakes (LOL) was the proponent of proposal four, the A/B price updated with a product price formula. At the hearing the witness for LOL offered a modification to the proposal as noticed. This modification was ruled to be beyond the limited scope of the hearing. As a result, LOL removed their support for this proposal. Thus, it is considered abandoned.

One additional proposal, proposal number seven, utilizes the A/B price series in conjunction with a product price formula as a replacement alternative for the M–W price. This proposal will be addressed later in this decision.

Opposition to the adoption of the A/B price series was expressed specifically by two witnesses during the hearing and subsequently in several briefs. A witness for the Milk Industry Foundation and the International Ice Cream Association (MIF/IICA), trade associations representing a substantial number of dairy processors, stated that the adoption of an A/B price survey provides a broader sample of milk, but would enhance the basic formula price. This, according to MIF/IICA, does not meet the criteria set forth in the hearing

notice that the M–W replacement alternative be revenue-neutral. The witness cited statistics which indicated that during the period of September 1990 through March 1992, the A/B price averaged 65 cents higher than the M–W price. The witness further expressed concern regarding an upward bias that is built into the A/B price because some of the milk included in the survey is regulated.

A second witness representing Kraft General Foods (Kraft), opposed the adoption of the A/B price and further addressed the question of the upward bias in the A/B price. The witness stated that the A/B price uses regulated Grade A prices in the survey which are not competitively determined and therefore cannot truly reflect the value of milk used in manufacturing. The witness further explained that the A/B price also incorporates the highly competitive premium price structures that exist in the Midwest. Together these two factors, according to the Kraft witness, result in the upward price bias. The witness stated that this higher price level cannot be justified based on current supply and demand conditions as a replacement for the M–W price.

Briefs filed on behalf of Anderson-Erickson and Southern Foods Group (AE/SFG), Kraft, Southern Coalition of Dairy Farmers (SCDF), United Dairymen of Arizona (UDA), Wisconsin Farm Bureau Federation and Minnesota Milk Producers Association (WFBF/MMPA), and the United States Department of Justice reiterated that the nature of the A/B price survey results in an upward bias in the reported price because of the inclusion of the regulated Grade A milk and the lack of adjustment for some price premiums. The briefs also maintained that adopting the A/B price as a replacement for the M–W price would result in higher prices under the Federal order program, an outcome which has no economic justification based on current supply and demand conditions.

Substantial opposition to the adoption of a cost-of-production floor price was expressed by numerous witnesses at the hearing and subsequently in post-hearing briefs. The brief filed by AE/SFG specifically addressed the concept of establishing floor prices. The brief stated that "establishing floor prices would disassociate prices from the market needs." Official Notice is taken of the Final Decision (58 FR 12634, published March 5, 1993) from the 1990 National Hearing. The brief also pointed out that in the 1990 National Hearing final decision floor prices for Class I and Class II milk were rejected. The AE/SFG brief alleged that the proponents failed to provide supply and demand evidence which demonstrates that marketing conditions have changed substantially within the last two years to warrant a change from the Department's earlier decision. Additional opposition to proposals replacing the M–W price with cost-of-production formulas is addressed later in this decision.

The second competitive pay price series considered as a replacement for the M–W price is the base month M–W price. As explained previously, the base month M–W price is one component currently used by NASS to compute the M–W price. Adoption of the base month M–W price was advanced by five proponents in the notice of hearing. The MIF/IICA and AE/SFG proposed the use of the base month M–W price in conjunction with a product price formula updater. This price would be available on or before the 5th day of the month and would be based on the price for the second preceding month updated by the change in a product price formula for the preceding month.

The witness representing the MIF/IICA testified that a basic formula price, based on an expanded, unregulated competitive pay price for Grade B milk in Minnesota and Wisconsin, would best reflect the supply and demand conditions for all major uses of manufactured dairy products and would provide the industry with a reliable price series. The witness stated that the base month M–W price survey represents about 60 percent of all Grade B milk in Minnesota and Wisconsin and incorporates a representative sample of both twice-a-month pay plants, as in the current M–W price, and once-a-month pay plants. Because the base month M–W price available on or before the 5th day of the month is for the second preceding month, the witness stated the need for a product price formula to update the base month M–W price. The MIF/IICA proposed adopting a butter/powder/cheese formula using annual product yields and Minnesota and Wisconsin product weights to update the base month M–W price. This formula was utilized in the Department's study to update the Agricultural Prices M–W. For example, the use of an updating formula would result in the price announced on March 5th being based on January pay prices updated by changes in product prices between January and February.

The witness testified that this proposal would be essentially revenue-neutral when compared to the current M–W price. Their comparison of these two price series from January 1988 through April 1992 resulted in an updated base month M–W price that averaged only five cents per hundredweight higher than the current M–W price.

A witness representing Country Fresh, Inc., the Morningstar Group, Inc., and Oak Farms Dairy (Country Fresh, et al.) also testified in support of the adoption of the updated base month M–W price as a replacement for the current M–W price. The witness supported this proposal for four main reasons: (1) it uses actual Grade B milk prices in Minnesota and Wisconsin, thus linking Federal order prices to the competitive markets; (2) it expands the Grade B survey to alleviate NASS' statistical concerns; (3) prices remain relatively equal to current M–W prices; and (4) the proposal provides the same amount of advance pricing currently available under the Federal order program.

Kraft also supported the adoption of the base month M–W price as the replacement for the current M–W price. However, Kraft's proposal does not include an updater. Thus, the price announced on the 5th of each month would be the price for the second preceding month. For example, the price announced on March 5th would represent January pay prices. The witness representing Kraft testified that the adoption of the base month M–W without an updating adjuster would accomplish the following objectives: (1) Eliminate the use of estimated prices; (2) Keep the M–W price determined in a non-regulated market; (3) Reflect competitive conditions for milk rather than products; (4) Result in a more competitively determined price; and (5) Remain free from fine tuning.

The Kraft witness testified in opposition to the use of an updater in conjunction with the base month M–W price for two reasons. First, although he agreed that product prices and milk prices are related, he stated that changes in competitive milk prices do not correspond exactly with changes in product prices. Secondly, the witness asserted that product price formulas are subject to controversy based on which product prices, product yields, and weight factors are used.

The Kraft witness acknowledged that the additional lag created by Kraft's proposal may affect the way the industry conducts business, as the lag may create month-to-month differences in processor margins. However, the witness contended that over time this proposal does not change the competitive value of milk to either producers or processors.

Opposition to the adoption of the base month M–W price was presented by witnesses representing NFO, TAPP/FUMMC, and the United States Cheese

Makers Association, the American Producers of Italian Type Cheese Association, the Ohio Swiss Cheese Association, and the Wisconsin Cheese Makers Association (Cheese Makers) and in briefs filed on behalf of these organizations and WFBF/MMPA. The witnesses for these organizations objected to the adoption of the base month M–W price for two primary reasons. First, the decline in the amount of Grade B milk production raises uncertainty about the statistical reliability of any survey based only on Grade B milk. Secondly, a Grade B only survey does not reflect the true value of milk used for manufacturing purposes.

The opposition recited statistics regarding the decline in Grade B milk producers and processors that they claim has resulted in a lack of competition for the Grade B milk supply and an increased competition for the Grade A milk supply. The opposition further contended that as manufacturers shift money away from the Grade B supply, they can use this money to attract the Grade A milk supply. This results in Grade B prices which do not truly reflect the value of milk used for manufacturing purposes. The opponents argued that merely enlarging the sample size would neither affect the amount of competition nor the value of the milk.

The Cheese Makers also argued that the continued use of a Grade B survey results in the extended use of an untimely price announcement, announcing the price for the milk after it has been manufactured into products. The witness stated that the dairy industry is one of the last industries to engage in the receipt of a raw commodity, manufacture it into finished products, and price and sell these products before knowing the cost of the raw ingredient. This, according to the witness, is resulting in an unstable market.

To follow through on the argument presented by the Cheese Makers regarding the untimeliness of a Grade B survey, several witnesses opposed the additional lag in pricing created by Kraft's proposal. In fact, most witnesses who supported the adoption of a competitive pay price series advocated the use of a product formula for updating purposes. One witness for the Central Milk Producers Cooperative (CMPC) stated that the industry has long recognized one problem with the current M–W price being the time lag between changes in product markets and milk prices both on the upside and downside of the market. The combination of the M–W price lag and the forward pricing used in the Federal order program further complicates the timing problem and any additional lag would be unacceptable. In its brief, CMPC further asserted that an additional lag could create an opportunity for exploitation of the market by manufacturers.

The witness for Country Fresh, et al., stated that these organizations strongly oppose any reduction in the amount of forward notice the industry currently receives on its raw milk costs. This point of view was further addressed by the National Milk Producers Federation witness who stated that Federal order prices should, to the maximum extent possible, reflect current market conditions. The brief filed on behalf of AE/SFG stated that although we "understand Kraft's proposal * * * less current pricing does not benefit anyone in the industry."

The third competitive pay price series advanced as an alternative to the current M–W price is the Agricultural Prices M–W (Ag Prices M–W), which was developed for the study in response to an industry request to make the least amount of change necessary to replace the current M–W price. The Ag Prices M–W is an approximation of the base month M–W price and is calculated from NASS' "Prices Received" series, which includes estimates of manufacturing grade milk prices for Minnesota and Wisconsin. The "Prices Received" estimates are computed approximately two weeks prior to the tabulation of the base month M–W price. These estimates are published around the end of each month in "Agricultural Prices", a NASS publication.

The "Prices Received" estimates are derived from reports of plants that are part of the base month sample. These prices for Minnesota and Wisconsin are weighted together using the same weights as in the M–W price to determine the Ag Prices M–W. Thus, the Ag Prices M–W available on the 5th day of the month would be the price for the second preceding month. The price announced March 5th would represent January pay prices. The volume of Grade B milk represented in the "Prices Received" sample represents about 30 percent of all Grade B milk sold in Minnesota and Wisconsin.

The adoption of the Ag Prices M–W updated with a product price formula was supported by numerous producer organizations during the hearing. One proponent of this replacement option, proposal number six, was the National Milk Producers Federation (NMPF), a federation that represents a substantial number of dairy cooperative marketing associations. A witness speaking on behalf of NMPF testified that there are currently sufficient quantities of Grade B milk being marketed in Minnesota and Wisconsin to allow NASS to collect reliable price information received by dairy producers for Grade B milk in those States.

The NMPF witness further stated that the Ag Prices M–W "will reflect a price level determined by competitive conditions which are affected by supply and demand in all the major uses of manufactured dairy products. It is a free market pay price resulting from competitive bidding among unregulated processors for milk for various manufacturing uses and is a good measure of changes in the value of milk for manufacturing." The witness also testified to the need for updating the Ag Prices M–W because Federal order prices should reflect current market conditions as much as possible and the one-month lag created by this formula would be unacceptable. The proponents of the Ag Prices M–W recommended the use of the same product price updating formula that is currently used to update Class II prices. Use of the Ag Prices M–W was also supported by Darigold, Farmers Cooperative Creamery, Northwest Independent Milk Producers Association, and Tillamook Cooperative Creamery Association (Darigold, et al.), all of whom are additional proponents of the Ag Prices M–W. A witness representing Darigold, et al., concluded that an important element of this price series is its relative price stability compared with the current M–W price.

Opposition to the use of the Ag Prices M–W was advanced by the same organizations who opposed the adoption of the base month M–W price. The opposition cited the identical arguments for opposing the Ag Prices M–W as for the base month M–W price.

In post-hearing briefs, all of the proponents of the base month M–W price and the Ag Prices M–W reiterated the need for the adoption of a competitive pay price series as a replacement for the current M–W price. Most of the proponents of these two proposals, with the exception of Kraft, stated that the primary difference between the updated base month M–W price and the updated Ag Prices M–W was the sample size. Most of these proponents expressed a willingness to support either competitive pay price series based on the amount of milk the Department determined would be necessary to obtain an accurate estimate of the price paid for Grade B milk in Minnesota and Wisconsin.

Three other types of proposals were considered at the hearing: product price formulas, the support price, and cost-of-production formulas. All three types of

proposals received substantial opposition. One other proposal listed in the hearing notice, proposal number eight, would have established the basic formula price on wholesale prices of manufactured products. Two proponents, Lamers Dairy, Inc., and Empire Cheese, Inc., withdrew their support for this proposal. There was no other support for proposal eight during the hearing. Thus, it is considered abandoned.

The Cheese Makers proposed the adoption of a product price formula updated by a competitive pay price factor as a replacement for the M–W price, listed as proposal number seven in the hearing notice. This proposal is based on a current competitive pricing mechanism designed to reflect the current true value for milk. This proposal would require the announcement of weekly prices based on a butter/powder/cheese formula using the most recent weekly product prices. This weekly basic formula price would be announced on Friday and would apply to the following Monday through Sunday. The weekly prices would then be used to compute a monthly average product price formula value. A competitive differential, the difference between the monthly A/B price and the average product price value, would be multiplied by 50 percent to yield a preliminary adjustor. The preliminary adjustor would be added to the monthly product price formula value to determine the calculated basic formula price. The final industry price would then be computed based on 75 percent of the difference between the competitive A/B price and the calculated basic formula price plus the blend price for the second preceding month. The intended result is a price to producers which would be more representative of the value of manufacturing grade milk.

The witness testifying on behalf of the Cheese Makers stated that their proposal would determine the true manufacturing value of milk by using a product price formula updated with a competitive pay price. The witness also testified to the need within the industry for current pricing or announcing a price on Friday of each week that could be used as a guideline for pricing milk the following week. According to the witness, current pricing is crucial to the dairy industry because the price of the raw milk used in manufacturing is unpriced when the finished product is sold.

Opposition to the Cheese Makers use of a product price formula as the basis for the basic formula price was presented by several organizations during the hearing and in post-hearing briefs. The witness representing Country Fresh, et al., stated that although product prices reflect supply and demand conditions in the marketplace, translating these into raw milk prices presents problems. According to the Country Fresh, et al., witness a product formula price has three key components: product prices, yield factors, and manufacturing allowances. Selecting the appropriate product prices, yield factors and manufacturing allowance to be used in the formula is difficult. The witness explained that there are several products and by-products of milk which can be used in a product price formula. Determining which products, and to a lesser extent which by-products, are included directly influences the value represented by the formula. Selecting appropriate yield factors is also difficult because these vary both seasonally and annually. Finally, establishing appropriate manufacturing allowances that vary with each plant based on the modernness of the facility, management practices, milk supplies, and product yields further complicates a product price formula. Factors that may be appropriate at one time can quickly become unacceptable, said the Country Fresh, et al., witness. Kraft's witness reiterated the points set forth by the Country Fresh, et al., witness, stating that changes in competitive milk prices do not correspond exactly with changes in product prices.

In the post-hearing brief filed by AE/SFG, three supplementary reasons for opposing the Cheese Makers proposal were presented. According to the brief, product price formulas are unable to properly fulfill market-clearing functions. In addition to the assumptions concerning which products, yield factors, and manufacturing allowances are included in the formula, the AE/SFG brief contended that product price formulas will not send producers the needed production signals to increase or decrease production as quickly as would competitive pay prices. A second issue raised by AE/SFG related to the effect of the final price adjustor. According to the AE/SFG brief, the final price adjustor provides for more current pricing for cheese manufacturers at the expense of less current pricing for fluid processors. The final issue addressed in this brief concerned the price enhancement that AE/SFG projected would occur for which they believe there is no supporting economic analysis under current supply and demand conditions. The brief filed by Country Fresh, et al., also addressed the concern that this proposal would eliminate advance pricing, a result the brief considered unacceptable.

A brief filed by Alto Dairy Cooperative (Alto) stated that the Cheese Makers proposal attempts to set the stage for a long-run solution because it moves the industry toward a pricing system that reflects the value of milk products and their milk components. Alto felt that with some simplification and revisions, this proposal could form the basis for a long-term solution. However, Alto further stated that in this proceeding the revisions needed are not possible because the proceeding does not allow for consideration of the relationship between the Class I and Class III prices.

The Minnesota Milk Producers Association and the Wisconsin Farm Bureau Federation (MMPA/WFBF) proposed replacing the M–W price with the support price (proposal number nine in the hearing notice). Four witnesses testified in support of this proposal. In addition, Lamers Dairy, Inc., and Hansen's Dairy, Inc., stated support for this proposal during the hearing.

The first witness for MMPA/WFBF testified that the adoption of the support price as the basic formula price would establish consistency between the price support program and the Federal milk order program. The witness stated that this proposal would establish easily determined minimum prices for all classes of milk and would not set an effective, or market, price. According to the witness, this proposal would allow local market over-order pricing and over-order premiums to set the price for milk, resulting in a more market-driven system.

The second witness for MMPA/WFBF elaborated on the benefit created by this proposal, as perceived by the witness, because it would decouple classified pricing from the Upper Midwest. He contended that the supply and demand situation in this area is unique because competition for manufacturing milk is driving producer pay prices year round. He described the effect of adopting the support price as a decrease in class prices where the order prices are the effective prices, and little change in markets where competition is determining the effective prices. A third witness for MMPA/WFBF reiterated these points and testified that the adoption of this proposal would guarantee that minimum order prices were not leading to disparate regional profitability levels.

The final witness for MMPA/WFBF testifying in favor of adopting the support price as the basic formula price

expounded on the points advanced by the previous witnesses. The witness also reiterated that this proposal would make the Federal milk order program consistent with the price support program in pursuing the objective of minimum prices. He observed that the minimum prices in all Federal orders are linked to the M–W price, not local supply and demand conditions. Thus, he stated, these prices are impacted by supply and demand conditions in Minnesota and Wisconsin regardless of what local marketing conditions may warrant. According to the witness, minimum prices established without regard to local supply and demand conditions result in disparate regional profitability. This witness testified that the adoption of the support price may or may not have an impact on the producer prices. If the competitive conditions of the market warrant the current price then this price would remain. If not, it would decline to the support level. He argued that adoption of the support price as the basic formula price would succeed in establishing minimum prices and thus would allow the Federal order program to establish true minimum prices.

The witness stated that Federal order prices are intended to be minimum prices. However, he stated that the extent to which the Federal order prices represent minimum prices instead of effective prices varies among the orders as is evident by the cooperative pay prices. He asserted that if the cooperative pay price is above the order minimum blend price, then local marketing conditions are establishing the effective price. However, the witness concluded, if the cooperative pay price is below the order minimum blend price, the minimum prices are too high.

Besides the brief filed by the proponents, two additional briefs were filed in support of this proposal, one by the U.S. Department of Justice (DOJ) and the second on behalf of Lamers Dairy, Inc., and Hansen's Dairy, Inc. The DOJ brief stated that the adoption of the support price as the basic formula price would establish a low minimum price which would allow market forces to play the greatest possible role in determining milk production and price. The DOJ contended that a low minimum price would not result in inadequate milk supplies or harm efficient producers, but would facilitate the transition towards a free market; would provide for more efficient industry performance; and would result in lower prices to consumers.

Substantial opposition to the adoption of the support price as the basic formula price was presented during the hearing and in post-hearing briefs. A witness representing Pennmarva Dairymen's Federation and its member cooperatives and Milk Marketing, Inc. (Pennmarva, et al.), offered extensive testimony in opposition to adopting the support price. First, the witness stated that the milk value established under the Federal order program should be based on the competitive value of milk used to produce manufactured dairy products. Since 1990, he observed, the support price of $10.10, adjusted to 3.5 percent butterfat, has yielded a price between $9.88 and $9.97 per hundredweight, depending on the support price calculation. He stated that during the same period, the M–W price at 3.5 percent butterfat has ranged from $10.02 to $13.94 per hundredweight. The witness contended that these price fluctuations have provided the necessary signals to Federal order producers to make adjustments in supply according to demand.

The next point of objection by the Pennmarva, et al., witness focused on the disruption of orderly marketing conditions which he feared would be created by the adoption of the support price. According to the witness, this disruption would result because the Federal order price would be below the competitive value of milk. During the period between April 1988 through April 1992, the M–W price has exceeded the support price by amounts ranging from $.12 to $4.58.

The Pennmarva, et al., witness then explained that the Federal order program and the price support program have different objectives. He described the order program objective as maintaining an adequate supply of milk to meet the fluid needs of the market, while the support program provides a price floor for milk used to manufacture dairy products. Another point of opposition addressed by the witness was the fact that Federal order class prices would no longer be influenced by seasonal and other supply and demand factors.

Further objection by the Pennmarva, et al., witness addressed the fact that milk not regulated under the Federal order program would still be priced on a competitive basis, creating differences in price levels and further resulting in disorderly marketing. A substantial increase in over-order prices would become the means of improving the competitiveness of regulated handlers, resulting in greater inequities between producers and handlers. The witness projected that this would lead to increased instability between producers and handlers because of the increase in risks by both parties.

Several other witnesses, including but not limited to MIF/IICA, NMPF, CMPC, AE/SFG, Darigold, et al., SCDF, Dairylea and its affiliated cooperatives, and Country Fresh, et al., expounded on the points of opposition addressed by the Pennmarva, et al., witness during the hearing and in post-hearing briefs. The consensus of those opposing the adoption of the support price was that it would result in disorderly marketing conditions with the price received by dairy farmers being lowered. They contended that Federal order prices would no longer reflect supply and demand conditions but would be based on a politically determined price.

The final M–W price replacement alternative considered at the hearing, proposal number ten, was the use of a cost-of-production formula to determine the basic formula price. Several independent dairy farmers and dairy farmer organizations proposed this alternative. Proposal number ten in the hearing notice listed a formula that might be utilized to determine the cost of production although none of the witnesses testifying in support of this proposal discussed the listed formula. The witness testifying on behalf of the Progressive Agriculture Organization and several other groups (PAO) and the witness representing the National Farmers Union (NFU) proposed using the national average cost of production published by USDA, adjusted annually, as the basic formula price.

The PAO witness stated that all dairy farmers should be treated equally and that the current basic formula price results in an inadequate pay price for producer milk. The witness contended that due to the inadequacy of this price, several dairy farmers have been either forced out of business or forced to increase production to maintain a constant cash flow. According to the witness, the PAO proposal would benefit producers, processors, and consumers because it would result in long-term price stability by eliminating the volatile price swings the industry currently experiences. Although the witness stated that this proposal would increase prices, he maintained that it would not stimulate production. Basically, these viewpoints were expressed by other witnesses representing the American Dairy Farmer Campaign and several other groups, Empire State Family Farm Alliance and several other groups, and the NFU. As mentioned previously, NFO also supported the adoption of the cost of production as a floor price for the basic formula price.

A witness from the University of Wisconsin—River Falls, testified

exclusively in opposition to the cost of production as a replacement for the M–W price. The witness based his opposition on the theory that the price received for milk determines the cost of production. He cited historical data which he maintained proved that dairy farmers do adjust their inputs in response to milk prices. He further reiterated the point that the adoption of a cost-of-production formula would not monitor changes in national supply and demand conditions.

In addition to this witness, an overwhelming amount of opposition to the adoption of a cost-of-production formula was presented during the hearing and in post-hearing briefs. The general consensus of the opposition is that a cost-of-production formula accounts for only factors affecting supply conditions; it does not factor demand conditions into the calculation. Also, the opposition argued that basing the cost of production on the national average would not account for the regional variations in production costs and would tend to advantage the larger, more efficient producers. It was further agreed by the opponents that the ultimate result of adopting a cost-of-production formula as the basic formula price would be an increase in production. Another problem cited with this proposal is the availability of data; USDA cost-of-production numbers tend to lag current production costs by two years.

The Agricultural Marketing Agreement Act of 1937, as amended (the Act), authorizes the Federal milk order program. 7 U.S.C. section 602 sets forth the declaration of policy and 7 U.S.C. section 608c(18) sets forth certain milk pricing requirements. Part of the policy of the Federal milk order program is to

> establish and maintain such orderly marketing conditions * * * as will provide, in the interests of producers and consumers, an orderly flow of the supply, thereof * * * to avoid unreasonable fluctuations in supplies and prices. * * *

The pricing provisions state in part, that

> Whenever the Secretary finds, upon the basis of evidence adduced at the hearing * * *, that the parity prices of such commodities are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area * * * he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk to meet current needs and further to assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs, and be in the public interest.

The hearing notice stated that any change in price levels must be justified under the supply and demand pricing standards mentioned above. The hearing record indicates that current price levels are achieving a reasonable balance between supply and demand for milk. Present price levels are ensuring consumers of an adequate supply of milk while maintaining sufficient reserve supplies. The record conclusively demonstrates that three types of the proposals considered—product price formulas (except for updating purposes), the support price, and cost-of-production formulas—would change current price levels and do not have sufficient justification in the evidentiary record for such changes. In addition, the latter two proposals do not comply with the criteria specified in the Act. Consequently, such proposals are denied.

A host of economic conditions affect both supply and demand. The interaction of supply and demand results in a "market" price. Thus, the M–W price, as a competitive pay price, reflects all of the economic conditions that affect both supply and demand and is automatically responsive to any changes that affect economic conditions.

The cost-of-production formulas and the price support level, as replacements for the M–W price, would ignore these economic factors and would establish price levels on a limited and different basis. While the cost of milk production is an economic factor that affects supply, it is not a price indicator that reflects all economic supply and demand factors. Likewise, the price support level is a price floor that is designed to prevent further price reductions that might otherwise be warranted by supply and demand conditions. As a result of not encompassing all economic supply and demand factors, these two types of proposals would establish prices on factors that are not in conformance with the requirements of the Act.

The use of cost-of-production formulas also would substantially enhance price levels, a result which was not justified on the basis of the evidentiary record of this proceeding. During the five-year period 1988–1992, the economic (full ownership) costs of producing a hundredweight of milk, as published by the Economic Research Service (ERS), annually averaged $1.77 greater than the current M–W price, ranging from $0.27 to $3.04 more. The cost of production exceeded the M–W price during these five years in all but seven months, September 1989 through January 1990, and May and June 1990. This was an atypical period within the dairy industry that resulted in record level prices as milk production declined and demand in both the domestic and foreign markets increased. Official Notice is taken of "Economic Indicators of the Farm Sector, Costs of Production—Major Field Crops & Livestock and Dairy, 1991," February 1994, Economic Research Service.

The same five-year comparison of NFO's proposal, which is based on an A/B updated price with a cost-of-production floor price as the basic formula price, disclosed that the cost-of-production value would have been in effect for all but 14 months during this 60-month period. NFO's proposal results in a basic formula price that would have exceeded the current M–W price by an annual average of $2.01, ranging from $0.93 to $3.04.

The opposite of the price enhancement generated by the cost-of-production formula as the basic formula price could occur if the support price were adopted as a replacement. The support price as the basic formula price would result in a significant decrease in Federal order minimum prices, an outcome which was not justified on the basis of the evidentiary record of this proceeding. The same five-year comparison (1988–1992) of the support price to the current M–W price shows that the M–W price on a yearly basis averaged $1.60 greater than the support price, ranging from a low in 1988 of $0.70 to a high in 1990 of $2.32. On a monthly basis, the M–W price equalled the support price only once during this period and exceeded the support price by as much as $4.58. Official notice is taken of "Dairy Market News", Volume 60, Report 31, Agricultural Marketing Service. As a result, Federal order minimum prices would be static and would be virtually meaningless as indicators of supply and demand conditions and changes in such conditions. Minimum prices established on such a basis would not be consistent with the requirements of the Act.

As was indicated in the brief filed by Alto, the Cheese Makers formula needs to be further developed to be considered as a viable alternative for replacing the M–W price. The formula as presented during the hearing would still require the use of a competitive pay price series to be utilized in computing the final adjustor. The Cheese Makers proposed the use of the A/B price but stated that any competitive pay price could be utilized in their proposal. However, they provided no analysis as to what impact other competitive pay prices may have on the formula.

The Cheese Makers proposal, as presented, is also likely to be revenue-

enhancing and such enhancement is not justified on the basis of the evidentiary record of this proceeding. The proponents contend that the proposal does not change current price levels. However, the proponents are comparing their proposal to the A/B price series, which increases price levels from the current M–W price, as previously discussed. The calculated basic formula price advanced by the Cheese Makers results in a moderate price increase over the M–W price. In 1989 the calculated basic formula price averaged $0.29 above the M–W price and in 1990 averaged $0.33 greater than the M–W price. A substantial increase in the M–W price is evident when the final adjustor is included in the comparison. This computation resulted in a 1989 price $0.54 greater than the M–W price and $0.62 greater in 1990. The use of the final adjustor, which adjusts the price after wholesale prices for fluid milk products have been determined, would effectively eliminate the advance Class I pricing feature that currently exists under the orders. The proposal also does not specify a clear procedure for the computation of minimum Class II prices. As a result of all the changes that would need to be adopted to make this a workable replacement, the Cheese Makers proposal goes beyond the scope of the hearing to consider a replacement for the M–W price as the basic formula price under all Federal milk orders.

As demonstrated throughout the hearing record, the obvious problem with the current M–W price survey is the declining amount of Grade B milk and the declining number of plants that purchase such milk. These trends have resulted in concern about the validity of the M–W price as a measure of the competitive value of milk for manufacturing purposes. However, this was not an immediate concern of a large number of the parties that participated in this proceeding. The immediate concern expressed was the reliability of the procedure to update the base month M–W price to compute the current month's M–W price. The NASS witness testified that the number of plants available for updating the base month has been declining as fewer plants pay twice a month. However, the NASS witness did not express any reservations about the reliability of the base month M–W price.

When the M–W price was first adopted in 1961 as the basic formula price in the Chicago order, the Secretary determined that a competitive pay price was superior to product formulas or the support price in establishing the basic formula price. That decision states:

The use of the competitive pay price method of pricing milk is based upon the premise that in a highly competitive economy dairy concerns will tend to purchase milk at prices commensurate with the more efficient concerns' ability to pay for the product. As shifts occur in the relationship between finished products prices, one group of processors may be able to pay higher prices. The other processors must meet or approximate these prices or lose their supplies. If a dairy concern fails to make the necessary adjustments, it will in time be forced out of business. Increasing labor and other costs will tend to reduce prices paid for milk. On the other hand, the use of new assembling, processing, packaging and marketing techniques which reduce costs or increase product returns will tend to increase prices paid for milk. These upward or downward adjustments in costs would be automatically reflected in reserve prices by using the competitive pay prices method of pricing.

The economic rationale stated when the M–W price was first adopted remains sound today. Consequently, the basic formula price replacement should continue to be based on a competitive pay price series.

Of the three competitive pay price series considered at the hearing, the evidence on the record supports the adoption of either the base month M–W price or the Ag Prices M–W, both updated by a product price formula. Each price series has tracked the M–W price in the past, thus reflecting the same supply and demand conditions. The majority of participants in this proceeding indicated that either price series would be acceptable, leaving the determination of the amount of milk and number of plants included in the sample size to the discretion of the Secretary. In cross examination, the NASS witness stated that the base month M–W price is expected to outlive the Ag Prices M–W in terms of statistical reliability because it relies on a larger sample size of actual pay prices compared to the Ag Prices M–W. Thus, this decision recommends adopting the base month M–W price updated with a butter/powder/cheese formula, because this price is based on actual pay prices from a larger Grade B sample size and is projected to have greater statistical longevity than the Ag Prices M–W.

The price levels that would have resulted under the three alternative competitive pay price series, as compared to the M–W price, support the above recommendation. The degree of coordination between the current M–W price and the alternative replacements is a substantial indicator of the ability of the pricing alternatives to echo the supply and demand conditions reflected by the current M–W price. An accurate comparison of these prices without updaters could not be made on a monthly basis because each of these prices lags the M–W price by a month. However, a three-year comparison essentially eliminates this problem.

During both 1990 and 1991, the average A/B price per hundredweight exceeded the M–W price per hundredweight by 63 cents, and by 85 cents in 1992. The average Ag Prices M–W per hundredweight exceeded the M–W price per hundredweight by nine cents in 1990, equalled the M–W price per hundredweight in 1991, and was two cents greater in 1992. The base month M–W price per hundredweight yielded an average of six cents more in 1990 and resulted in the same price differences as the Ag Prices M–W per hundredweight in 1991 and 1992. Over the three-year period, the base month M–W price per hundredweight and Ag Prices M–W per hundredweight averaged nearly the same as the current M–W price per hundredweight while the A/B price per hundredweight averaged about 70 cents higher. The most recently published information indicates that this trend is continuing. Official notice is taken of "Dairy Market News", Jan. 3–7, 1994, Volume 61, Report 1, Agricultural Marketing Service; "Agricultural Prices, 1992 Summary", July 1993, National Agricultural Statistics Service; "Minnesota-Wisconsin Manufacturing Grade Milk Price", monthly release, June 1992–February 1994, Wisconsin Agricultural Statistics Service; "Prices Received—Minnesota-Wisconsin Manufacturing Grade Milk, 1992 Summary", June 1993, National Agricultural Statistics Service.

The evidence on the record indicates that a large amount of Grade A milk is being manufactured into dairy products. However, the record does not validate the argument that this Grade A milk should be factored into the basic formula price. Additionally, there was no substantial evidence submitted regarding current supply and demand conditions that warrants price increases of the magnitude generated by the A/B price.

The A/B proponents may be correct to state that this option represents an average value for a large proportion of milk used for manufacturing purposes in the Midwest. However, it does not represent a market-clearing price for supplies of milk in excess of fluid demand. This is evident by the amount of milk that is currently sold at prices below the A/B price, that is, at the current M–W price. The hearing record indicates that adopting this price series would tend to be revenue-enhancing.

To be considered in the future as a viable alternative, the A/B price series needs to address two inherent problems. First the A/B price is based in part on a regulated price. Regulated plants included in the survey that use Grade A milk for manufacturing are subject to minimum order pricing. This factor results in an upward bias in the A/B price. The price for this milk cannot be directly reduced to pay price levels warranted by supply and demand conditions for such milk. After the first month of implementation, survey plants would be reporting a pay price which could not be less than the minimum price required to be paid for Grade A milk under the Federal order program. Consequently, after the first month of implementation, supply and demand conditions would have a limited influence on the price.

The proponents of this series maintained that the "blend down" of the Grade A price with the Grade B price will eliminate this problem. However, a review of the amount of milk included in this survey, approximately 70 percent of the total milk production in the States of Minnesota and Wisconsin, of which almost 80 percent is Grade A, indicates that it is unlikely the Grade B price would have a "blending down" impact or effect on the Grade A price.

Secondly, Grade A premiums are built into the A/B price unless specifically deducted. This too results in an upward bias as premiums are added one month into the reported price and the same premium is then added in the second month to the already existing premium.

As a result of lack of justification for price enhancement in the evidentiary record, as well as the problems associated with the upward price bias, the proposals to replace the M–W price with an A/B price are denied. Potential solutions addressing the upward bias were not considered during this proceeding.

A comparison of the survey size for May 1991 data demonstrates that the Ag Prices M–W survey included 131.6 million pounds of milk reported by 71 plants. The base month M–W price survey included 316.5 million pounds of milk reported by 168 plants. Simply waiting a few additional days results in a sample size of milk which is 140 percent greater than the Ag Prices M–W. The base month M–W price sample size of milk is over four and one-half times greater than the current M–W price estimate survey, which included actual pay price reports on only 56.8 million pounds of milk reported by 69 plants. Thus, the base month M–W price best reflects the competitive pay prices of a much larger volume of milk and sample of plants and should be the primary component in the basic formula price.

The hearing record also supports the use of a product price formula to update the base month M–W price to the current month. The base month M–W price available on the 5th day of a month would represent milk prices for the second preceding month. For example the price announced March 5th would be based on January prices. A product price formula updater would enable the base month M–W price to reflect more accurately current supply and demand conditions taking into account price changes for wholesale manufactured products during the preceding month, in this example February. Although product prices do not translate directly into milk prices, the record indicates that the industry views these as a good indicator of changes in milk prices for updating purposes.

The price delay that would be created by adopting this proposal without an updating method would result in the minimum price required to be paid by regulated plants varying significantly from what unregulated plants were actually paying for milk for manufacturing uses in the same month. Because of this inequity, adoption of the base month M–W price without a product price updater cannot be justified as a replacement for the M–W price.

An analysis of the effects of various updating formulas on the competitive pay prices resulted in minor differences. Most hearing participants advocated the use of the change in gross values yielded by a product price formula between the preceding month and the current month. Only NFO advocated using 50 percent of this change, stating that producer prices and product markets do not change at the same rate. NFO claimed that using 50 percent would not reflect the volatility of product markets on a penny-for-penny basis and further lends a degree of stability to producer prices.

All hearing participants promoted the use of a butter/powder/cheese formula with minor differences expressed regarding the inclusion of specific by-products. After reviewing the various formulas, it is concluded the best updater would include the following products and representative price series: Grade AA butter, Chicago Mercantile Exchange (AAB); Nonfat dry milk, Central States production area (NFDM); Dry buttermilk, Central States production area (DBM); Cheddar cheese, 40-pound block, National Cheese Exchange (NCE); and Grade A butter, Chicago Mercantile Exchange (AB). Dry whey is not included in the formula because not all cheese manufacturers process whey, and the disposal of it is a cost to many manufacturers. Furthermore, dry whey is no longer included in calculating the cheese purchase price under the dairy price support program.

Most hearing participants advocated the use of either support price yield factors or annual yield factors in the formula. The study released by the Department developed and used annual yield factors for each month. These annual yield factors will be used in the updating formula. Basically these yields are those used under the price support program adjusted to milk containing 3.5 percent butterfat. The yields used in the formula are: Butter—4.27 pounds per hundredweight of milk; Nonfat dry milk—8.07 pounds per hundredweight of milk; Dry buttermilk—.42 pounds per hundredweight of milk; Cheddar cheese—9.87 pounds per hundredweight of milk; and Whey cream butter—.238 pounds per hundredweight of milk.

Hearing participants also advocated the use of factors to weight the butter-nonfat dry milk and cheese components of the formula. These weights are based on the proportion of milk used in the production of butter-nonfat dry milk and in the production of American cheese in the Minnesota and Wisconsin area and in the United States. Nonfat dry milk is used to compute the butter-nonfat dry milk weighting factor because significant proportions of butter are manufactured in Minnesota and Wisconsin from the butterfat that is in excess of fluid milk operations. Cheese accounts for about 95 percent of the milk used in these products in the two States and about 75 percent in the United States. The Minnesota and Wisconsin weights are being used in the product price formula because the competitive pay price adopted is a Minnesota and Wisconsin pay price series. The milk equivalent used will be for the second preceding month.

The butter/powder/cheese formula recommended in this decision was developed and tested in the Department's study. The gross value change in the product price formula from the preceding month to the current month will be used to update the base month M–W price. The gross value change for each month will be computed as follows:

(1) Determine the gross value of milk used to manufacture Cheddar cheese and butter/nonfat dry milk:

(a) The gross value of milk used to manufacture Cheddar cheese equals (9.87 × NCE) + (.238 × AB); and

(b) The gross value of milk used to manufacture butter-nonfat dry milk equals (4.27 × AAB) + (8.07 × NFDM) + (.42 × DBM).

(2) Determine the amount by which these gross values exceed or are less than the respective gross values for the preceding month.

(3) Compute weighting factors to be applied to the gross value changes. The weighting factors will be calculated as follows:

(a) Determine the milk equivalent for both American cheese and butter-nonfat dry milk by using the American cheese production in Minnesota and Wisconsin divided by 9.87 to determine the cheese milk equivalent and the nonfat dry milk production in Minnesota and Wisconsin divided by 8.07 to determine the butter-nonfat dry milk equivalent;

(b) Add the cheese milk equivalent and the butter-nonfat dry milk equivalent together to calculate the total milk equivalent; and

(c) Divide the milk equivalent for cheese by the total milk equivalent to yield the cheese weighting factor and divide the butter-nonfat dry milk equivalent by the total milk equivalent to yield the butter-nonfat dry milk weighting factor.

(4) Use these weighting factors to compute a weighted average of changes in the gross values described above.

An analysis of the base month M–W price updated by the full gross value change in the butter/powder/cheese formula, and by 50 percent of the gross value change, revealed that using the full gross value change results in an updated base month M–W price which better reflects current price levels. During 1990 the full gross value change in the butter/powder/cheese updating formula resulted in an average updated base month M–W price eight cents greater than the current M–W price, and in 1991 the updated price averaged one cent less. During 1992 and 1993, the average updated base month M–W price was greater than the current M–W price by three cents and one cent, respectively. The base month M–W price updated by 50 percent of the same formula resulted in a 1990 average price which exceeded the M–W price by 26 cents, in 1991 the average price was eight cents less, in 1992 the average price was six cents greater, and in 1993 the average price was three cents less. Official Notice is taken of "Dairy Market Statistics", 1992 and 1993 Annual Summaries, Agricultural Marketing Service; and "Dairy Products", 1992 and 1993 Annual Summaries, National Agricultural Statistic Service. From evidence in the record, and the results of this analysis, it is concluded that the full value of gross change between the preceding month and the current month using the butter/powder/cheese formula described above results in an updated price that best reflects the current value of manufacturing milk.

Although the updated base month M–W price will result in annual price levels that nearly maintain the current annual price levels, the updated base month M–W price will not track the current M–W price precisely from month-to-month. This is because the month-to-month price variability will increase as a result of the use of a product price formula that will allow the updated base month price to react quicker to marketing conditions both on the upside and downside of the market. The table below compares the monthly updated base month M–W price as proposed to the current monthly M–W price for 1993. During this period, the greatest monthly differences occurred in April when the updated base month M–W price exceeded the current M–W price by 46 cents, and in October when the updated base month M–W price was 27 cents lower than the current M–W price. However, for the entire 12 month period the updated base month M–W price exceeded the M–W price by only one cent.

MONTHLY PRICE COMPARISONS—1993

Month	Updated base month M–W (Col. 1)	Current M–W (Col. 2)	Difference (Col. 1–Col. 2)
January	$11.02	$10.89	$0.13
February	10.72	10.74	(0.02)
March	11.19	11.02	0.17
April	12.61	12.15	0.46
May	12.37	12.52	(0.15)
June	11.82	12.03	(0.21)
July	11.30	11.42	(0.12)
August	11.18	11.17	(0.01)
September	12.29	11.90	0.39
October	12.19	12.46	(0.27)
November	12.62	12.75	(0.13)
December	12.44	12.51	(0.07)
1993 Ave.	11.81	11.80	0.01

This decision recognizes that the adoption of the base month M–W price, or any Grade B milk series, is only a short-term solution since the amount of Grade B milk production is expected to continue declining. This decision agrees with the MIF/IICA witness who stated that the adoption of a Grade B survey, although it would not be a long-term solution, would provide the industry with a reliable basic formula price for a few more years allowing the industry additional time to carefully consider longer-term solutions. Adoption of the base month M–W price will provide the Department and the industry with more time to jointly develop a viable, long-term solution.

Several organizations made specific requests regarding the adoption of a M–W price replacement. National All-Jersey, Inc., a national dairy farmer organization, and the American Jersey Cattle Club, a breed registry association, requested that the Secretary continue adjusting the M–W replacement to a 3.5 percent butterfat standard, continue collecting and reporting the protein content of the milk in the survey, and adopt a price replacement which will not restrict the further implementation of multiple component pricing plans. The adoption of the base month M–W

as the replacement for the current M–W price will not change any of the adjustments and announcements that are currently reported and will not hinder adoption of multiple component pricing plans. The NFO and Cheese Makers further requested the continued collection and possible publication of the hauling subsidies paid to producers by plants in Minnesota and Wisconsin. It is expected that this information will continue to be collected by NASS and published by NASS in their "Prices Received" publication.

Conforming Changes

As proposed in the Notice of Hearing, conforming changes are provided in the butterfat differential section to allow for the use of the updated base month M–W price in the butterfat differential calculation. To calculate a butterfat differential that will reflect the most current marketing conditions, the preceding month's base month M–W price at test, updated by the current month's product formula updater, will be used in conjunction with the current month's butter price. A comparison between the above butterfat differential and the current butterfat differential results in slight differences. This method of calculating the butterfat differential was supported in the CMPC and NFO briefs.

Additional changes have been made to the Black Hills, South Dakota, Pacific Northwest, Southwestern Idaho-Eastern Oregon, and Great Basin orders. One change has been made to the Black Hills order to provide for uniform implementation and use of the basic formula price in all Federal orders. This has been accomplished by removing the butter/powder formula price. One conforming change each has been made to the Pacific Northwest, Southwestern Idaho-Eastern Oregon, and Great Basin orders to provide for more uniform location of the butterfat differential provision within these orders.

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 and Other Marketing Area orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Recommended Marketing Agreements and Orders Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following orders amending the orders, as amended, regulating the handling of milk in the New England and Other Marketing Areas are recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139

Milk marketing orders.

1. The authority citation for 7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

1. Section 1001.51 is amended by revising paragraph (a) to read as follows:

§ 1001.51 Basic formula prices.

(a) The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1001.76 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a)(1) through (a)(5) of this section.

(1) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (a)(2) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(i) 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 4.27;

(B) Multiply the nonfat dry milk price by 8.07; and

(C) Multiply the dry buttermilk price by 0.42.

(ii) 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 9.87; and

(B) Multiply the butter (from whey cream) price by 0.238.

(2) The following product prices shall be used pursuant to paragraph (a)(1) of this section:

(i) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(ii) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(iii) *Dry buttermilk price.* Dry buttermilk price means the simple

average for the month of the Central States dry buttermilk price, as reported by the Department.

(iv) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(v) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(3) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(4) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (a)(3) 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 (a)(4)(i) and (a)(4)(ii):

(i) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent reporting period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(ii) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent reporting period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(5) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (a)(3) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (a)(4) of this section.

* * * * *

2. Section 1001.76 is amended by revising paragraph (b) to read as follows:

§ 1001.76 Butterfat differential.

* * * * *

(b) Round to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1001.51(a)(1) through (a)(5), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. Section 1002.51 is amended by revising paragraph (a) to read as follows:

§ 1002.51 Basic formula prices.

(a) The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1002.81 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a)(1) through (a)(5) of this section.

(1) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (a)(2) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(i) 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 4.27;

(B) Multiply the nonfat dry milk price by 8.07; and

(C) Multiply the dry buttermilk price by 0.42.

(ii) 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 9.87; and

(B) Multiply the butter (from whey cream) price by 0.238.

(2) The following product prices shall be used pursuant to paragraph (a)(1) of this section:

(i) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(ii) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(iii) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(iv) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(v) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(3) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(4) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (a)(3) 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 (a)(4)(i) and (a)(4)(ii):

(i) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(ii) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent reporting period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese. (5) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (a)(3) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (a)(4) of this section.

* * * * *

2. Section 1002.56 is amended by revising paragraphs (a)(4), (a)(5) and

(a)(6) and by adding a new paragraph (a)(7), to read as follows:

§ 1002.56 Announcement of class prices and butterfat differential.

* * * * *

(a) * * *

(4) The basic formula price for the preceding month, pursuant to § 1002.51(a), as reported by the United States Department of Agriculture.

(5) The average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, using the base month series, for the second preceding month, as reported by the United States Department of Agriculture.

(6) The average price per pound, of Grade A (92-score) butter, at the Chicago Mercantile Exchange, for the preceding month, as reported by the United States Department of Agriculture.

(7) The average price per pound, of nonfat dry milk f.o.b. Central States Area, for the preceding month, as reported by the United States Department of Agriculture.

* * * * *

3. Section 1002.81 is revised to read as follows:

§ 1002.81 Butterfat differential.

The butterfat differential for the adjustment of prices as specified in this part shall be plus or minus for each one-tenth of one percent of butterfat above or below 3.5 percent by an amount computed as follows: Round to the nearest one-tenth cent, 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1002.51(a)(1) through (a)(5), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. Section 1004.50 is amended by revising paragraph (d)(1) to read as follows:

§ 1004.50 Class and component prices.

* * * * *

(d) * * *

(1) Compute a butterfat differential per one percent butterfat, rounded to the nearest one-tenth cent, by multiplying the current month's butter price by 1.38, and subtract from the result an amount determined by multiplying 0.028 by the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1004.51(a)(1) through (a)(5), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department

* * * * *

2. Section 1004.51 is amended by revising paragraph (a) to read as follows:

§ 1004.51 Basic formula prices.

(a) The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1004.50(d)(1) and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a)(1) through (a)(5) of this section.

(1) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (a)(2) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(i) 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 4.27;

(B) Multiply the nonfat dry milk price by 8.07; and

(C) Multiply the dry buttermilk price by 0.42.

(ii) 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 9.87; and

(B) Multiply the butter (from whey cream) price by 0.238.

(2) The following product prices shall be used pursuant to paragraph (a)(1) of this section:

(i) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(ii) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(iii) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(iv) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(v) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(3) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(4) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (a)(3) 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 (a)(4)(i) and (a)(4)(ii):

(i) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(ii) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(5) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (a)(3) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (a)(4) of this section.

* * * * *

PART 1005—MILK IN THE CAROLINA MARKETING AREA

1. Section 1005.51 is revised to read as follows:

§ 1005.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1005.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1005.74 is revised to read as follows:

§ 1005.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1005.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. Section 1006.51 is revised to read as follows:

§ 1006.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1006.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average

for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1006.74 is revised to read as follows:

§ 1006.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1006.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. Section 1007.51 is revised to read as follows:

§ 1007.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1007.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1007.74 is revised to read as follows:

§ 1007.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices for base and excess milk shall be increased or decreased, respectively, for

each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1007.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. Section 1011.51 is revised to read as follows:

§ 1011.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1011.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1011.74 is revised to read as follows:

§ 1011.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1011.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. Section 1012.51 is revised to read as follows:

§ 1012.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1012.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1012.74 is revised to read as follows:

§ 1012.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1012.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

1. Section 1013.51 is revised to read as follows:

§ 1013.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1013.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1013.74 is revised to read as follows:

§ 1013.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1013.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. Section 1030.51 is revised to read as follows:

§ 1030.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1030.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1030.74 is revised to read as follows:

§ 1030.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1030.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

1. Section 1032.51 is revised to read as follows:

§ 1032.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1032.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to

paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1032.74 is revised to read as follows:

§ 1032.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1032.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. Section 1033.51 is amended by revising paragraph (a) to read as follows:

§ 1033.51 Basic formula prices.

(a) The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1033.73 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a)(1) through (a)(5) of this section.

(1) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (a)(2) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(i) 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 4.27;

(B) Multiply the nonfat dry milk price by 8.07; and

(C) Multiply the dry buttermilk price by 0.42.

(ii) 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 9.87; and

(B) Multiply the butter (from whey cream) price by 0.238.

(2) The following product prices shall be used pursuant to paragraph (a)(1) of this section:

(i) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(ii) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(iii) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(iv) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(v) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(3) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to

manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(4) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (a)(3) 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 (a)(4)(i) and (a)(4)(ii):

(i) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(ii) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(5) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (a)(3) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (a)(4) of this section.

* * * * *

2. Section 1033.73 is revised to read as follows:

§ 1033.73 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1033.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. Section 1036.51 is revised to read as follows:

§ 1036.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1036.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1036.74 is revised to read as follows:

§ 1036.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota

and Wisconsin, using the "base month" series, adjusted pursuant to § 1036.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. Section 1040.51 is revised to read as follows:

§ 1040.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1040.51 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1040.74 is revised to read as follows:

§ 1040.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1040.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1044—MILK IN THE MICHIGAN UPPER PENINSULA MARKETING AREA

1. Section 1044.51 is amended by revising paragraph (a) to read as follows:

§ 1044.51 Basic formula price.

(a) The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1044.62 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a)(1) through (a)(5) of this section.

(1) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (a)(2) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(i) 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 4.27;

(B) Multiply the nonfat dry milk price by 8.07; and

(C) Multiply the dry buttermilk price by 0.42.

(ii) 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 9.87; and

(B) Multiply the butter (from whey cream) price by 0.238.

(2) The following product prices shall be used pursuant to paragraph (a)(1) of this section:

(i) *Butter price.* Butter price means the simple average for the month of the

Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(ii) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(iii) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(iv) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(v) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(3) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(4) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (a)(3) 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 (a)(4)(i) and (a)(4)(ii):

(i) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(ii) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(5) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (a)(3) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (a)(4) of this section.

2. Section 1044.62 is revised to read as follows:

§ 1044.62 Butterfat differential.

The applicable uniform prices to be paid pursuant to § 1044.70 shall be increased or decreased, for each one-tenth of one percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1044.51 (a)(1) through (a)(5), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. Section 1046.51 is revised to read as follows:

§ 1046.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1046.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in

hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1046.74 is revised to read as follows:

§ 1046.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1046.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.51 is revised to read as follows:

§ 1049.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1049.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1049.74 is revised to read as follows:

§ 1049.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1049.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. Section 1050.51 is revised to read as follows:

§ 1050.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1050.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual

yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1050.74 is revised to read as follows:

§ 1050.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1050.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

1. Section 1064.51 is revised to read as follows:

§ 1064.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1064.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1064.74 is revised to read as follows:

§ 1064.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1064.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.51 is revised to read as follows:

§ 1065.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1065.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1065.74 is revised to read as follows:

§ 1065.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1065.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1068.51 is revised to read as follows:

§ 1068.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1068.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1068.74 is revised to read as follows:

§ 1068.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1068.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1075—MILK IN THE BLACK HILLS, SOUTH DAKOTA MARKETING AREA

1. Section 1075.50 is amended by revising paragraph (c) to read as follows:

§ 1075.50 Class prices.

* * * * *

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

2. Section 1075.51 is amended by revising paragraph (a) to read as follows:

§ 1075.51 Basic formula prices.

(a) The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1075.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a)(1) through (a)(5) of this section.

(1) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (a)(2) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(i) 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 4.27;

(B) Multiply the nonfat dry milk price by 8.07; and

(C) Multiply the dry buttermilk price by 0.42.

(ii) 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 9.87; and

(B) Multiply the butter (from whey cream) price by 0.238.

(2) The following product prices shall be used pursuant to paragraph (a)(1) of this section:

(i) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(ii) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat

dry milk price, as reported by the Department.

(iii) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(iv) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(v) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(3) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(4) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (a)(3) 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 (a)(4)(i) and (a)(4)(ii):

(i) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(ii) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(5) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (a)(3) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (a)(4) of this section.

3. Section 1075.74 is revised to read as follows:

§ 1075.74 Butterfat differential.

The uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1075.51(a)(1) through (a)(5), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. Section 1076.51 is revised to read as follows:

§ 1076.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1076.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined

pursuant to paragraph (d) of this section.

2. Section 1076.74 is revised to read as follows:

§ 1076.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1076.51(a) through (e), as reported by the Department. The basic formula price for the month is computed pursuant to § 1076.51, as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. Section 1079.51 is revised to read as follows:

§ 1079.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1079.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1079.74 is revised to read as follows:

§ 1079.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1079.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

1. Section 1093.51 is revised to read as follows:

§ 1093.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1093.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk

shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1093.74 is revised to read as follows:

§ 1093.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1093.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. Section 1094.51 is revised to read as follows:

§ 1094.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1094.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1094.74 is revised to read as follows:

§ 1094.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1094.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. Section 1096.51 is revised to read as follows:

§ 1096.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1096.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1096.74 is revised to read as follows:

§ 1096.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1096.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

1. Section 1099.51 is revised to read as follows:

§ 1099.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department,

adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1099.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1099.74 is revised to read as follows:

§ 1099.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1099.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. Section 1106.51 is revised to read as follows:

§ 1106.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1106.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese

Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1106.74 is revised to read as follows:

§ 1106.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1106.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. Section 1108.51 is revised to read as follows:

§ 1108.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1108.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1108.74 is revised to read as follows:

§ 1108.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent

butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1108.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.19 is amended by removing paragraph (e) and revising the section heading to read as follows:

§ 1124.19 Product prices.

* * * * *

2. Section 1124.50 is amended by revising the reference in paragraph (e) and paragraph (f)(2) from "§ 1124.19(e)" to "paragraph (f)(3) of this section" and adding a new paragraph (f)(3) to read as follows:

§ 1124.50 Class and component prices.

* * * * *

(f) * * *

(3) Compute a butterfat differential rounded to the nearest one-tenth cent, by multiplying the current month's butter price by 0.138, and subtract from the result an amount determined by multiplying 0.0028 by the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1124.51(a)(1) through (a)(5), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

* * * * *

3. Section 1124.51 is amended by revising paragraph (a) to read as follows:

§ 1124.51 Basic formula prices.

(a) The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1124.50(f)(3) and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a)(1) through (a)(5) of this section.

(1) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (a)(2) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(i) 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 4.27;

(B) Multiply the nonfat dry milk price by 8.07; and

(C) Multiply the dry buttermilk price by 0.42.

(ii) 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 9.87; and

(B) Multiply the butter (from whey cream) price by 0.238.

(2) The following product prices shall be used pursuant to paragraph (a)(1) of this section:

(i) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(ii) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(iii) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(iv) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(v) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(3) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(4) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (a)(3) 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 (a)(4)(i) and (a)(4)(ii):

(i) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(ii) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(5) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (a)(3) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (a)(4) of this section.

* * * * *

4. Section 1124.75 is amended by revising the reference in paragraph (a)(2)(i) from "§ 1124.19(e)" to "§ 1124.50(f)(3)".

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. Section 1126.51 is revised to read as follows:

§ 1126.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1126.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month

and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1126.74 is revised to read as follows:

§ 1126.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1126.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. Section 1131.51 is revised to read as follows:

§ 1131.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1131.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1131.74 is revised to read as follows:

§ 1131.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1131.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

1. Section 1134.51 is revised to read as follows:

§ 1134.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1134.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1134.74 is revised to read as follows:

§ 1134.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1134.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. Section § 1135.19 is amended by removing paragraph (e) and revising the section heading to read as follows:

§ 1135.19 Product prices.

* * * * *

2. Section 1135.50 is amended by revising the reference in paragraph (e) and paragraph (f)(2) from "§ 1135.19(e)" to "paragraph (f)(3) of this section" and adding a new paragraph (f)(3) to read as follows:

§ 1135.50 Class and component prices.

* * * * *

(f) * * *

(3) Compute a butterfat differential rounded to the nearest one-tenth cent, by multiplying the current month's butter price by 0.138, and subtract from the result an amount determined by multiplying 0.0028 by the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1135.51(a)(1) through (a)(5), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

* * * * *

3. Section 1135.51 is amended by revising paragraph (a) to read as follows:

§ 1135.51 Basic formula prices.

(a) The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1135.50(f)(3) and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a)(1) through (a)(5) of this section.

(1) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (a)(2) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(i) 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 4.27;

(B) Multiply the nonfat dry milk price by 8.07; and

(C) Multiply the dry buttermilk price by 0.42.

(ii) 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 9.87; and

(B) Multiply the butter (from whey cream) price by 0.238.

(2) The following product prices shall be used pursuant to paragraph (a)(1) of this section:

(i) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(ii) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(iii) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(iv) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(v) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(3) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(4) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (a)(3) 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 (a)(4)(i) and (a)(4)(ii):

(i) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(ii) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(5) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (a)(3) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (a)(4) of this section.

* * * * *

4. Section 1135.74 is amended by revising the reference in paragraphs (b)(2)(i) and (b)(2)(ii) from "§ 1135.19(e)" to "§ 1135.50(f)(3)"

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. Section 1137.51 is revised to read as follows:

§ 1137.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1137.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27,

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1137.74 is revised to read as follows:

§ 1137.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1137.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1138—MILK IN THE NEW MEXICO-WEST TEXAS MARKETING AREA

1. Section 1138.51 is revised to read as follows:

§ 1138.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1138.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the butter (from whey cream) price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) 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 (d)(1) and (d)(2):

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the

annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1138.74 is revised to read as follows:

§ 1138.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1138.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

1. Section 1139.50 is amended by changing the reference in paragraph (d) from "§ 1139.51(a)" to "paragraph (e)(1) of this section" and by revising paragraph (e), to read as follows:

§ 1139.50 Class and component prices.

* * * * *

(e) *Butterfat price.* The butterfat price per pound shall be the total of paragraphs (e)(2) and (e)(3) computed as follows:

(1) Compute a butterfat differential rounded to the nearest one-tenth cent, by multiplying the current month's butter price by 0.138, and subtract from the result an amount determined by multiplying 0.0028 by the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1139.51 (a)(1) through (a)(5), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

(2) The skim milk value per hundredweight for the month, computed pursuant to paragraph (d) of this section, divided by 100; and

(3) The butterfat differential for the month computed pursuant to paragraph (e)(1) of this section multiplied by 10.

* * * * *

Section 1139.51 is amended by revising paragraph (a) to read as follows:

§ 1139.51 Basic formula prices.

(a) The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1139.50(e)(1) and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a)(1) through (a)(5) of this section.

(1) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (a)(2) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(i) 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 4.27;

(B) Multiply the nonfat dry milk price by 8.07; and

(C) Multiply the dry buttermilk price by 0.42.

(ii) 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 9.87; and

(B) Multiply the butter (from whey cream) price by 0.238.

(2) The following product prices shall be used pursuant to paragraph (a)(1) of this section:

(i) *Butter price.* Butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(ii) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Central States nonfat dry milk price, as reported by the Department.

(iii) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Central States dry buttermilk price, as reported by the Department.

(iv) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(v) *Butter (from whey cream) price.* Butter (from whey cream) price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(3) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(4) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (a)(3) 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 (a)(4)(i) and (a)(4)(ii):

(i) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(ii) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(5) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (a)(3) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (a)(4) of this section.

* * * * *

Dated: August 3, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–19231 Filed 8–5–94; 8:45 am]

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Monday
August 8, 1994

Part III

Environmental Protection Agency

40 CFR Part 142

National Primary Drinking Water Regulations Implementation Primary Enforcement Responsibility; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 142

[FRL-5028-8]

RIN 2040-AC19

National Primary Drinking Water Regulations Implementation Primary Enforcement Responsibility

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is giving notice that it is considering revisions to the regulation that sets forth EPA's process for initiating the withdrawal of a State's primary enforcement responsibility (primacy) for the Public Water System Supervision (PWSS) program under the Safe Drinking Water Act. The Agency proposes to revise the language of this regulation to clarify that once the Administrator has "formally determined" that a State is out of compliance with primacy requirements, EPA must initiate the primacy withdrawal process by notifying the State of why such determination was made, allowing the State 30 days to respond, and proceeding toward a final decision, including public notice and opportunity for hearing on final decisions to withdraw primacy. The Agency also proposes other minor revisions to the withdrawal regulation to simplify some of the rule language and clarify the points of EPA's discretion in determining when to initiate primacy withdrawal. The intended effect of this revision is to eliminate confusion about the Agency's primacy withdrawal policy. The Agency solicits public comment on the proposed revised language.

DATES: Written comments should be postmarked or delivered by hand by September 22, 1994.

ADDRESSES: Send written comments on the proposed rule to the Primacy Rule Comment Clerk; Water Docket MC-4101; Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460. Commenters are requested to submit any references cited in their comments. Commenters also are requested to submit an original and 3 copies of their written comments and enclosures. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. The Agency would prefer for commenters to type or print comments in ink. Commenters should use a separate paragraph for each issue discussed. Supporting documents for this proposed rulemaking are available for review at EPA's Water Docket; 401 M Street, SW. Washington, DC 20460. For access to the Docket materials, call (202) 260-3027 between 9 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free (800) 426-4791, or Judy Lebowich; Enforcement and Program Implementation Division; Office of Ground Water and Drinking Water; EPA (4604), 401 M Street, SW., Washington, DC 20460; telephone (202) 260-7595.

SUPPLEMENTARY INFORMATION:

A. Background

40 CFR part 142, subpart B, sets out requirements for States to obtain primacy for the Public Water System Supervision program, as authorized by section 1413 of the Safe Drinking Water Act (SDWA). EPA first promulgated these regulations on January 20, 1976. Prompted by subsequent changes in the operation and scope of the PWSS program, largely due to the 1986 Amendments to the SDWA, on December 20, 1989, EPA published amendments to the primacy regulations. These regulatory amendments established explicit procedures that States need to follow to revise their approved primacy programs to adopt the requirements of new or revised EPA drinking water regulations. The rule allowed primacy States to request an extension of up to two years after the effective date of new EPA drinking water regulations to adopt the regulations as State law. The National Wildlife Federation (NWF), in a petition for review filed in the U.S. Court of Appeals for the District of Columbia Circuit (*National Wildlife Federation* v. *Reilly*, No. 90-1072), contended that this extension period, during which primacy responsibility is split between the federal and State governments, is prohibited by the SDWA. NWF argued that a State's primacy for the entire drinking water program necessarily ceases whenever a State fails to adopt a new EPA regulation by its effective date. On February 15, 1991, however, the Court upheld the extensions regulation and found that EPA's approach of allowing extensions is consistent with Congressional intent that the Act primarily be a State and locally run program. *National Wildlife Federation* v. *EPA*, 925 F.2d 470 (D.C. Cir. 1991). The 1989 rulemaking also modified the language of the regulation that concerns EPA's initiation of procedures that could lead to withdrawal of primacy status for States that EPA determines are not continuing to meet the requirements for primacy (see § 142.17(a)(2)). The language of this provision is the subject of today's action.

As promulgated in December 1989, this provision reads as follows:

> When, on the basis of the Administrator's review or other available information, the Administrator determines that a State no longer meets the requirements set forth in § 142.10, and the State has failed to request or has been denied an extension under § 142.12(b)(2) of the deadlines for meeting those requirements, or has failed to take corrective actions required by the Administrator, the Administrator may initiate proceedings to withdraw primacy approval. The Administrator shall notify the State in writing of EPA's intention to initiate withdrawal proceedings and shall summarize in the notice the information available that indicates that the State no longer meets such requirements.

In the same lawsuit, NWF challenged the primacy withdrawal language, both procedurally and substantively. The procedural challenge alleged that EPA provided insufficient opportunity for the public to comment on the revision to § 142.17(a)(2), in violation of requirements of the Administrative Procedure Act (APA). Substantively, NWF alleged that EPA was without statutory authority to promulgate a revision making explicit that it is within EPA's discretion whether to initiate proceedings to withdraw a State's PWSS primacy program.

In response to NWF's procedural complaint, the Agency issued a Notice of Proposed Rulemaking to allow additional public comment and reconsideration by EPA of the language of § 142.17(a)(2) (55 FR 49398, November 28, 1990). On June 3, 1991, the Agency published a notice of final rulemaking retaining in § 142.17(a)(2) the language on initiating primacy withdrawals that was previously adopted in the December 1989 rulemaking (56 FR 25046, June 3, 1991).

The U.S. Court of Appeals for the D.C. Circuit issued an opinion on December 11, 1992, in response to NWF's substantive challenge to § 142.17(a)(2). *National Wildlife Federation* v. *EPA*, 980 F.2d 765. The Court found that EPA has broad discretion under the SDWA on when to "determine" that a State is out of compliance with primacy requirements. The Court ruled, however, that once the Administrator has made this determination, the SDWA requires EPA to initiate the primacy withdrawal process by notifying the State of why such a determination was made, allowing the State 30 days to respond, and proceeding toward a final decision, including public notice and opportunity for hearing on final

decisions to withdraw primacy. The Court found EPA's primacy withdrawal regulation to be invalid because it does not *require* the Agency to take these steps—instead, the regulation says that after "determining" that the State is out of compliance with primacy, the Administrator "may" initiate withdrawal proceedings. The Court therefore remanded the regulation to EPA for modification.

The Court emphasized that its review focused only on what EPA "may do following a formal determination of noncompliance and does not require delving into the Administrator's complex decision-making process regarding whether to make such a determination in the first instance." *Id.* at 774. The Court acknowledged that the Agency is "free to decide that technical, temporary or otherwise unimportant violations of the primacy requirements do not warrant a 'determination' of noncompliance, or that the better approach for meeting the Act's goals is to negotiate with the offending state or to permit more time for the state to come back into compliance." Thus, EPA may "negotiate with the state as long as necessary before determining that the primacy requirements are no longer met." *Id.* at 771.

The Court also noted that "even where a 'determination' of noncompliance is made, the statute does not require the Agency to immediately withdraw primacy. Rather, the EPA is directed to provide notice and a public hearing before its determination of nonconformity with the primacy standards becomes effective. As a consequence of evidence adduced at the hearing, the EPA is entitled to conclude that its original decision was in error or that the State has remedied any deficiency and to decide against withdrawal." *Id.* at 771 (citations omitted).

B. EPA Response to Court Remand and Other Conforming Changes

EPA proposes today to modify the language of § 142.17(a)(2) to respond to the Court remand by substituting the term "shall" for "may." Specifically, the existing language of § 142.17(a)(2) states that the Administrator "may" initiate primacy withdrawal proceedings once he or she determines that a State's primacy program fails to continue to meet federal requirements for primacy. Under the proposed change, the Administrator would be required to initiate primacy withdrawal proceedings once this formal determination is made. Nevertheless, EPA emphasizes that under this proposed revision, the Agency still retains full discretion to decide whether and when to reach this formal determination. For example, as explained further below, there may be no reason to formally determine that a State program is out of compliance if the State has missed a deadline for adopting new drinking water regulations but has been granted or is seeking an extension of that deadline under § 142.12. Similarly, there may be no reason to formally determine that a State program is out of compliance if the State is otherwise carrying out any corrective actions that EPA may have ordered that would eliminate the deficiency in the State program.

With the change to § 142.17(a)(2) proposed above, the primacy withdrawal process would consist of the following sequential steps.

1. EPA's receipt of information, either through its annual review of the State program (§ 142.17(a)(1)) or otherwise, that the State program may no longer be in compliance with the requirements for primacy.

2. EPA's formal determination, made at its discretion, that the State no longer complies with primacy requirements and notification to the State that primacy withdrawal is being initiated (§ 142.17(a)(2)).

3. The State's response to EPA's notice (§ 142.17(a)(3)).

4. Final EPA determination that the State is in or out of compliance and notification to the State, including a notice to the public and opportunity for a hearing when the EPA's final determination is that the States does not meet primacy requirements. (§ 142.17(a)(4)).

These provisions provide EPA broad discretion on when to "determine" that a State is out of compliance with primacy requirements. This discretion allows EPA to work with a State that is acting in good faith to rectify the deficiencies in its program without having the Agency spend needless time and resources on withdrawal proceedings when it appears that the State will soon resolve the problems with its program. The legal basis and policy considerations underlying this policy are further explained in the June 1991 rulemaking.

For reasons discussed below, EPA also is proposing several minor revisions to the language of §§ 142.17(a)(1), (a)(2), and (a)(4). The purpose of these revisions is to clarify the points of EPA's discretion in determining when to initiate primacy withdrawal and to simplify some of the rule language.

When 40 CFR part 142, subpart B, was amended in 1989, § 142.10 set forth the requirements a State must meet to obtain/retain primacy. Some National Primary Drinking Water Regulations published since that time have added additional primacy requirements in other provisions, e.g., the Special Primacy Requirements listed in § 142.16. EPA therefore proposes to replace the references to "§ 142.10" contained in §§ 142.17(a)(1), (a)(2) and (a)(4) with references to "40 CFR part 142, subpart B."

The language of § 142.17(a)(2) contains the clause, "* * *, and the State has failed to request or has been denied an extension under § 142.12(b)(2) of the deadlines for meeting those requirements, or has failed to take other corrective actions required by the Administrator, * * *." The intent of this clause is simply to indicate that, even though the State is out of compliance with primacy requirements, there are two cases when there generally is no reason to initiate primacy withdrawal. First, there generally is no reason to initiate primacy withdrawal when a State has missed the deadline for revising its drinking water regulations to incorporate new EPA regulations but has applied for, and has been granted, or is awaiting EPA's decision on, an extension of time in accordance with § 142.12(b)(2). Second, there generally is no reason to initiate primacy withdrawal when the State is out of compliance for any reason but is taking any corrective actions that may have been ordered by EPA to bring the program back into compliance.

The existing regulatory language was not addressed by the Court in its decisions, however, there could be some confusion over its meaning, as evidenced in NWF's briefs to the D.C. Circuit. NWF read this language as creating two "new" (and improper) conditions that must be met before primacy withdrawal may be initiated. For example, NWF stated, this language could be read to mean that EPA may not even consider sending a letter to the State reflecting a determination that the State is not meeting primacy requirements (and thereby initiating primacy withdrawal) unless EPA has first required the State to take certain corrective actions. NWF's interpretation is not what the language is intended to mean. EPA did not intend to create new conditions for primacy withdrawal with this language. EPA realizes there are cases in which neither extensions of time to adopt new regulations nor corrective actions will be relevant, in which case the existing regulatory language is not intended to have any effect.

EPA proposes to clarify its intent by revising the language to read as follows: "When, * * *, the Administrator determines that a State no longer meets the requirements set forth in 40 CFR part 142, subpart B, the Administrator shall initiate proceedings to withdraw primacy approval. Among the factors the Administrator intends to consider as relevant to this determination are the following, where appropriate: Whether the State has requested and has been granted, or is awaiting EPA's decision on, an extension under § 142.12(b)(2) of the deadlines for meeting those requirements; and whether the State is taking corrective actions that may have been required by the Administrator."

In developing language to clarify the Administrator's discretion, the Agency considered two other alternatives. The Agency considered replacing the clause with the more general language: "* * * and that the State is not taking steps acceptable to EPA toward meeting the requirements, * * *." EPA believes, however, that the language of this option is overly vague and unnecessary given EPA's broad discretion to determine whether and when a State is out of compliance. The Agency also considered just deleting the clause. EPA believes, however, that States might inappropriately interpret this approach as a change in EPA's policy to attempt to negotiate or order corrective actions before it formally determines that a State program is out of compliance and initiates primacy withdrawal.

EPA also proposes to replace in § 142.17(a)(2) the term "of EPA's intention to initiate" with "that EPA is initiating" to be more direct about the action being taken. The Agency believes the phrase "intention to initiate" may be confusing since it does not clearly state whether EPA is or is not initiating withdrawal as of that date. The proposed revision does not affect the primacy withdrawal process itself, which includes an opportunity for the State to respond to the initial notification that primacy withdrawal is being initiated prior to the Agency making a "final determination" on State primacy.

Finally, EPA proposes to make a minor change to the language of § 142.17(a)(4). As promulgated in December 1989, this provision reads as follows:

> After reviewing the submission of the State, if any, made pursuant to paragraph (a)(3) of this section the Administrator shall either determine that the State no longer meets the requirements of § 142.10 or that the State continues to meet those requirements, and shall notify the State of his or her determination. Any determination that the State no longer meets the requirements of § 142.10 shall not become effective except as provided in § 142.13.

EPA proposes to substitute the phrase "make a final determination either" for the phrase "either determine" and to substitute the phrase "Any final determination" for the phrase "Any determination" in § 142.17(a)(4).

The proposed change clarifies that the Administrator's "final determination" in § 142.17(a)(4) on whether the State is continuing to meet the requirements for primacy is distinct from the initial "formal determination" made under § 142.17(a)(2) and is preceded by an opportunity for public comment. Although the term "determination" is used in two sections of the current regulation, the different events that they refer to are clear in their respective contexts and this issue has not been a point of legal contention. Nevertheless, the Agency believes the minor adjustment proposed today would prevent misinterpretations in the future.

C. Request for Comments

The Agency invites all interested persons to submit comments within 45 days on all aspects of this proposal to revise the language of §§ 142.17(a)(2) and 142.17(a)(4). After carefully considering all public comments, EPA will promulgate final language for these provisions. If EPA decides to change the language today proposed, the Agency may also make minor conforming changes to other parts of Part 142 at the same time.

D. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(a) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact on entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

E. Regulatory Flexibility Act

Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely revises existing procedural requirements for initiating withdrawal of State primacy by clarifying the extent of EPA discretion in initiating the process; States are not considered small entities under this rulemaking for RFA purposes.

F. Paperwork Reduction Act

The proposed regulations contain no new or additional information collection activities and, therefore, no information collection request will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 142

Environmental protection, Administrative practices and procedures, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: July 27, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 142, chapter 1, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4 and 300j–9.

2. Section 142.17 is amended by revising paragraphs (a)(1), (a)(2) and (a)(4) to read as follows:

§ 142.17 Review of State programs and procedures for withdrawal of approved primacy programs.

(a)(1) At least annually, the Administrator shall review, with respect to each State determined to have primary enforcement responsibility, the compliance of the State with the requirements set forth in 40 CFR part 142, subpart B, and the approved State

primacy program. At the time of this review, the State shall notify the Administrator of any State-initiated program changes (i.e., changes other than those to adopt new or revised EPA regulations), and of any transfer of all or part of its program from the approved State agency to any other State agency.

(2) When, on the basis of the Administrator's review or other available information, the Administrator determines that a State no longer meets the requirements set forth in 40 CFR part 142, subpart B, the Administrator shall initiate proceedings to withdraw primacy approval. Among the factors the Administrator intends to consider as relevant to this determination are the following, where appropriate: whether the State has requested and has been granted, or is awaiting EPA's decision on, an extension under § 142.12(b)(2) of the deadlines for meeting those requirements; and whether the State is taking corrective actions that may have been required by the Administrator. The Administrator-shall notify the State in writing that EPA is initiating primacy withdrawal proceedings and shall summarize in the notice the information available that indicates that the State no longer meets such requirements.

* * * * *

(4) After reviewing the submission of the State, if any, made pursuant to paragraph (a)(3) of this section, the Administrator shall make a final determination either that the State no longer meets the requirements of 40 CFR part 142, subpart B, or that the State continues to meet those requirements, and shall notify the State of his or her determination. Any determination that the State no longer meets the requirements of 40 CFR part 142, subpart B, shall not become effective except as provided in § 142.13.

* * * * *

[FR Doc. 94–19291 Filed 8–5–94; 8:45 am]

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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§§ 1.61-1.169	(869-019-00085-2)	37.00	Apr. 1, 1993
§§ 1.170-1.300	(869-019-00086-1)	23.00	Apr. 1, 1993
§§ 1.301-1.400	(869-019-00087-9)	21.00	Apr. 1, 1993
§§ 1.401-1.440	(869-019-00088-7)	31.00	Apr. 1, 1993
§§ 1.441-1.500	(869-019-00089-5)	23.00	Apr. 1, 1993
*§§ 1.501-1.640	(869-022-00090-0)	21.00	Apr. 1, 1994
§§ 1.641-1.850	(869-022-00091-8)	24.00	Apr. 1, 1994
§§ 1.851-1.907	(869-019-00092-5)	27.00	Apr. 1, 1993
§§ 1.908-1.1000	(869-022-00093-4)	27.00	Apr. 1, 1994
§§ 1.1001-1.1400	(869-022-00094-2)	24.00	Apr. 1, 1994
§§ 1.1401-End	(869-022-00095-1)	32.00	Apr. 1, 1994
2-29	(869-022-00096-9)	24.00	Apr. 1, 1994
*30-39	(869-022-00097-7)	18.00	Apr. 1, 1994
40-49	(869-019-00098-4)	13.00	Apr. 1, 1993
50-299	(869-022-00099-3)	14.00	Apr. 1, 1994
300-499	(869-017-00100-0)	23.00	Apr. 1, 1993
500-599	(869-022-00101-9)	6.00	[4] Apr. 1, 1990

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*600-End	(869-022-00102-7)	8.00	Apr. 1, 1994
27 Parts:			
1-199	(869-019-00103-4)	37.00	Apr. 1, 1993
200-End	(869-022-00104-3)	13.00	Apr. 1, 1994
28 Parts:			
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900-1899	(869-019-00110-7)	17.00	July 1, 1993
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1910 (§§ 1910.1000 to end)	(869-019-00112-3)	21.00	July 1, 1993
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1927-End	(869-019-00115-8)	36.00	July 1, 1993
30 Parts:			
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200-699	(869-019-00117-4)	20.00	July 1, 1993
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800-End	(869-019-00126-3)	22.00	July 1, 1993
33 Parts:			
1-124	(869-019-00127-1)	20.00	July 1, 1993
125-199	(869-019-00128-0)	25.00	July 1, 1993
200-End	(869-019-00129-8)	24.00	July 1, 1993
34 Parts:			
1-299	(869-019-00130-1)	27.00	July 1, 1993
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36 Parts:			
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200-End	(869-019-00135-2)	35.00	July 1, 1993
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45 Parts:			
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47 Parts:			
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50 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

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