AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

5-19-82
Vol. 47 No. 97
Pages 21529-21754

federal register

Wednesday
May 19, 1982

Selected Subjects

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Environmental Protection Agency

Authority Delegations (Government Agencies)
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Civil Rights
Small Business Administration

Flood Insurance
Federal Emergency Management Agency

Government Procurement
Energy Department

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Agricultural Marketing Service

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Environmental Protection Agency

Trade Practices
Federal Trade Commission

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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

Selected Subjects

Editor's Note:

The list of subjects on the cover is designed to assist those users who review the **Federal Register** for broad subject areas. The list is compiled from subject terms supplied by agencies for certain of their rule and proposed rule documents as required by 1 CFR 18.20. Subject terms in the list may refer to more than one document. To locate the documents in the **Federal Register** covered by the subject terms in the list, users should consult the Table of Contents under the appropriate agency. We remind users that the list is a selective supplement to the Table of Contents and should not be construed as comprehensive.

This list is an experiment. We hope it will prove useful to those users inconvenienced by the discontinuation of the "Highlights" in February because of reduced personnel resources at the Office of the Federal Register. For this new list our editors simply select subject terms from those appearing in the edition's rule and proposed rule documents rather than perform the detailed analytical work which was needed to produce the "Highlights".

Comments on this list may be sent to Martha Girard, Director, Executive Agencies Division (NFE), Office of the Federal Register, NARS/GSA, Washington, D.C. 20408. Phone (202) 523–5240 (not a toll free number).

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Rules and Regulations

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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 month.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 82-023]

Importation of Certain Animals; Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document makes final the interim rule concerning the issuance of special authorization to be drawn on a lottery basis for the allotment of quarantine space for animals to be imported through the Harry S Truman Animal Import Center (HSTAIC). This action provides an alternative use of the HSTAIC when the total number of animals for which special authorizations are granted for use of the HSTAIC is less than 50. This action provides individuals the opportunity to apply for exclusive use of the HSTAIC on a first-come, first-served basis. The intended effect of this action is to provide an additional means by which the HSTAIC may be efficiently used.

EFFECTIVE DATE: May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, USDA, APHIS, VS, Room 821, Federal Building, Hyattsville, MD 20782, 301-436-8530.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will result in no significant effect on the economy; will result in no increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will have no adverse effects on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Certification Under the Regulatory Flexibility Act

Dr. Harry C. Mussman, 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. This document provides a method by which a single entity may have exclusive use of the HSTAIC for the quarantine of 50 or more cattle, when, under the present regulations the facility would otherwise remain unused. Although any entity which wishes to import animals may apply for exclusive use of the HSTAIC, there will only be an economic impact on one entity for each quarantine period. Further, this action imposes no new additional requirements or costs on small entities.

Alternatives Considered

Under the present regulations (9 CFR 92.41) if the total number of animals for which special authorization is requested is not at least 50 no lottery or importation is held because it has been found that it is not economical to use the HSTAIC with less than 50 animals. However, if no lottery is held then HSTAIC remains unused. This document provides a method of utilizing the HSTAIC when the total number of animals for which special authorizations are requested in a lottery is not at least 50, namely, by allowing an individual's application for exclusive use of the HSTAIC. The Department found that interest was shown by importers to use HSTAIC (for 50 or more animals) if they could use it exclusively for their animals, rather than risk the danger of infection from animals of other importers. This amendment was developed in reponse to this interest shown by importers who would like to use the HSTAIC, but only if it can be used exclusively for their animals. The only alternative considered was not to amend the regulations, and this would mean the HSTAIC would remain unused at the expense of the public. The following amendment was found to be less costly and more beneficial to the public than the alternative of not amending the regulations, and was, therefore, adopted.

Background

In a document published in the **Federal Register** on September 22, 1981 (46 FR 46784-46787), the Department issued an interim rule amending the regulations (9 CFR 92.41 (a), (b), (c), (d), and (e)) pertaining to importation of animals through the HSTAIC which set forth procedures for the issuance of special authorization for exclusive use of the HSTAIC for between 50 and 400 animals.

This amendment retains the present lottery found in § 92.41(a). However, it amends present § 92.41 (b), (c), and (d), and the references thereto by redesignating them § 92.41 (c), (d), and (e), respectively, and by adding a new paragraph (b).

The document of September 22, 1981, invited interested persons to submit written comments concerning the amendments on or before November 23, 1981. No written comments were received. Based on the reasons set forth in the document of September 22, 1981, the provisions in the interim rule have been adopted as published on September 22, 1981.

The factual situations which were set forth in the document of September 22, 1981, still provide a basis for the amendments. Accordingly, it has been determined that the amendments should remain effective as published in the **Federal Register** on September 22, 1981.

List of Subjects in 9 CFR Part 92

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

(Sec. 2, 32 Stat. 792, as amended, sec. 1, 84 Stat. 202, (21 U.S.C. 111 and 135); 37 FR 28464, 28477; 38 FR 19141)

Done at Washington, D.C., this 14th day of May, 1982.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 82-13827 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3088]

General Electric Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement requires a Fairfield, Conn. diversified, industrial company, among other things, to divest its stock in Applicon, a major producer of stand-alone, turnkey, interactive graphics computer aided design/computer aided manufacturing ("CAD/CAM") systems, under a two-part divestiture plan to be completed by March 31, 1982. Pending divestiture, GE is prohibited from exerting any influence over Applicon's operations; voting its stock in a manner which would be contrary to that in which it votes all other shares; and obtaining, from Applicon, confidential information of any kind. Additionally, for a five-year period, any GE employee who was in any way affiliated with Applicon is barred from serving in any position in Calma Company, a Sunnyvale, Calif. subsidiary of United Telecommunications, Inc., including its board of directors; prohibited from disclosing confidential information received during their tenure with Applicon, and barred from intervening in any of Calma's business operations. GE is also prevented from discriminating against Applicon, when purchasing CAD/CAM systems and products and restricted, for a ten-year period, from acquiring any interest in any firm in the manufacture and sale of CAD/CAM products without prior Commission approval.

DATES: Complaint and order issued May 4, 1982.[1]

FOR FURTHER INFORMATION CONTACT: FTC/CS-2, James C. Egan, Washington, D.C. 20580. (202) 254-6024.

SUPPLEMENTARY INFORMATION: On Friday, Oct. 16, 1981, there was published in the **Federal Register**, 46 FR 50977, a proposed consent agreement with analysis In the Matter of General Electric Company, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; 13.5-20 Federal Trade Commission Act.

List of Subjects in 16 CFR Part 13

Computer technology, Computer hardware/software.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Carol M. Thomas,

Secretary.

[FR Doc. 82-13619 Filed 5-18-82; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order filed with the original document.

16 CFR Part 13

[Docket C-3087]

Vinyl Improvement Products Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement requires Vinyl Improvement Products Company (VIPCO), a manufacturer and seller of residential vinyl siding products, among other things, to cease paying for or disseminating any advertisement for vinyl siding that contains an energy-related claim. The order requires the firm to distribute a copy of the order to all personnel engaged in the promotion of vinyl siding. Further, VIPCO is required to mail to each business entity which had sold or distributed its products during the previous year, a letter advising that vinyl siding by itself does not save energy.

DATES: Complaint and order issued April 30, 1982.[1]

FOR FURTHER INFORMATION CONTACT: FTC/PE, Michael Dershowitz, Washington, D.C. 20580. (202) 724-0726.

SUPPLEMENTARY INFORMATION: On Monday, February 1, 1982, there was published in the **Federal Register**, 47 FR 4532, a proposed consent agreement with analysis In the Matter of Vinyl Improvement Products Company, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments have been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements. Supart—Disseminating Advertisements, Etc.: § 13.1043 Disseminating advertisements, etc.

List of Subjects in 16 CFR Part 13

Advertising, Trade practices, Vinyl siding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended (15 U.S.C. 45))

Carol M. Thomas,

Secretary.

[FR Doc 82-13620 Filed 5-18-82; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order filed with the original document.

16 CFR Part 13

[Docket C-3089]

Western General Dairies, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement requires a Utah dairy cooperative to cease engaging in price discrimination in the sale and distribution of raw milk and dairy products, or communicating in any manner disparaging or derogatory information or opinions concerning competing firms. Commencing one year from its effective date, the order bars

the cooperative from restricting, for more than six months, the sale or transfer of "base" by any of its members to any bona fide Grade A milk producer. ("Base" is a member's right to receive from the cooperative the going rate for raw milk.)

DATE: Complaint and order issued May 4, 1982.[1]

FOR FURTHER INFORMATION CONTACT: Judith D. Ford, Director, 9R, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, CA 94102. (415) 556–1270.

SUPPLEMENTARY INFORMATION: On Tuesday, February 23, 1982, there was published in the **Federal Register** 47 FR 7853, a proposed consent agreement with analysis in the matter of Western General Dairies, Inc., an incorporated cooperative association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Corrective actions and/or Requirements: § 13.533 Corrective actions and/or Requirements; § 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints. Subpart—Discriminating Between Customers: § 13.685 Discriminating between customers; 13.685–10 Federal Trade Commission Act. Subpart—Discrimination in Price Under Section 5—Federal Trade Commission Act: § 13.870 Charges and prices. Subpart—Disparaging Competitors and Their Products—Competitors: § 13.950 Reliability, history and financial condition; § 13.953 Reputation or standing.

List of Subjects in 16 CFR Part 13

Milk, Price controls, Trade practices.

[1] Copies of the Complaint and the Decision and Order filed with the original document.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Carol M. Thomas,

Secretary.

[FR Doc. 82–13621 Filed 5–18–82; 8:45 am]

BILLING CODE 6750–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 9H5214, 0H5247/R97; PH FRL 2125–7]

Tolerances for Pesticides in Food Administered by the Environmental Protection Agency; Hexakis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food additive regulation to permit the combined residues of the insecticide hexakis and its organotin metabolites in or on raisins and dried prunes. This regulation to permit the maximum permissible level for the combined residues of the herbicide hexakis and its metabolites in or on the commodities was requested by Shell Chemical Co.

EFFECTIVE DATE: Effective on May 19, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2368).

SUPPLEMENTARY INFORMATION: EPA issued notices in the **Federal Register** of January 16, 1980 (45 FR 3109) (0H5247) and October 21, 1981 (46 FR 51644) (9H5214) which announced that Shell Chemical Co., 1025 Connecticut Ave., NW., Washington, DC 20036, had submitted food additive petitions to the EPA proposing that 21 CFR 193 be amended by the establishment of a regulation permitting the combined residues of the insecticide hexakis (2-methyl-2-phenylpropyl) distannoxane and its organotin metabolites calculated as hexakis (2-methyl-2-phenylpropyl) distannoxane in or on raisins (9H5214) at 20 parts per million (ppm) and dried prunes at 8 ppm and dried peaches at 80.0 ppm (0H5247).

FAP 0H5247 was subsequently amended deleting the proposed tolerance in or on dried peaches.

No comments were received in response to these notices of filing.

The data submitted in the petitions and other relevant material have been evaluated. The toxicology data considered in support of the regulation are included in a related document (PP 0F2302, 0F2406/R351) which establishes tolerances for the combined residues of hexakis and its organotin metabolites in or on cherries, peaches, plums, prunes, and strawberries which appears elsewhere in this issue of the **Federal Register.**

The metabolism of hexakis in plants is adequately understood and there are no actions currently pending against the continued registration of the subject insecticide, nor are there any other relevant considerations involved in establishing this regulation.

The insecticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the insecticide may be safely used in accordance with the prescribed manner when such use is in accordance with the label and labeling registered pursuant to FIFRA as amended, (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq.*). Therefore, the regulation is established in 21 CFR Part 193 as set forth below.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

Effective on: May 19, 1982.

(Sec. 409(c)(1), 72 Stat. 1786, (21 U.S.C. 348(c)(1)))

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: May 6, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 193—TOLERANCES FOR PESTICIDES IN FOOD ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR Part 193 is amended by establishing a new § 193.236 to read as follows:

§ 193.236 Hexakis.

A regulation is established permitting the combined residues of the insecticide hexakis (2-methyl-2-phenylpropyl) distannoxane and its organotin metabolites calculated as hexakis (2-methyl-2-phenylpropyl) distannoxane in or on the following food items:

Food	Parts per million
Prunes, dried	8
Raisins	20

[FR Doc. 82-13344 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 58

[Docket No. R-82-969]

Environmental Review Procedures for Title I Community Development Block Grant Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of effective date for interim rule.

SUMMARY: This document announces the effective date for the interim rule published in the **Federal Register** on April 12, 1982 (47 FR 15750) which sets forth the environmental regulations applicable to the Title I block grant programs of the Department as authorized and amended under the Housing and Community Development (HCD) Amendments of 1979 and 1981. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register.**

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the interim rule published April 12, 1982, at 47 FR 15750, is May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Lasner, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 5218, 451 7th Street, S.W., Washington, D.C. 20410, Telephone No. (202) 755-6207. This is not a toll-free number.

Dated: May 13, 1982.

Richard Lasner,

Assistant General Counsel for Regulations.

[FR Doc. 82-13547 Filed 5-18-82; 8:45am]

BILLING CODE 4210-01-M

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-82-940]

Community Development Block Grants: States' Program

AGENCY: Office of Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of effective date for final rule.

SUMMARY: This document announces the effective date for the final rule published in the **Federal Register** on April 8, 1982 (47 FR 15290) which established policies and procedures for State administration of Community Development Block Grants for nonentitlement areas. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register.**

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the interim rule published April 8, 1982, at 47 FR 15290, is May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Lasner, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 5218, 451 7th Street, SW., Washington, D.C. 20410, Telephone No. (202) 755-6207. This is not a toll-free number.

Dated: May 13, 1982.

Richard Lasner,

Assistant General Counsel for Regulations.

[FR Doc. 82-13548 Filed 5-18-82; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Civil Division Directive No. 151-92]

Revision of Civil Division Directive No. 145-81

AGENCY: Justice Department.

ACTION: Final rule.

SUMMARY: This document amends Civil Division Directive No. 145-81 regarding delegations of authority in Civil cases. These changes clarify certain points in the presently published version and correct certain typographical errors. The revisions clarify the authority of U.S. Attorneys to compromise or settle routine collections cases even after judgment in the trial courts, while preserving the Solicitor General's authority over appeals. In addition, the Directive has been clarified to limit the authority of Civil Division Branch Directors and the other officials enumerated therein to close cases or claims on behalf of the government.

EFFECTIVE DATE: May 7, 1982.

FOR FURTHER INFORMATION CONTACT: Robert N. Ford, Civil Division, Room 3137, 9th & Pennsylvania Avenue NW., Washington, D.C. 20530 (202-633-3309).

SUPPLEMENTARY INFORMATION: The requirements of Executive Order No. 12291 (Federal Regulation) do not apply to this directive because it deals with agency management and is therefore exempt under section 1(a)(3) of that Order. Additionally, the requirements of the Regulatory Flexibility Act, 5 U.S.C. section 601 *et seq.*, do not apply because this directive is not a "rule" under section 601(2).

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Claims, Government employees organization and functions (Government agencies).

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Accordingly, by the authority vested in me as Assistant Attorney General, Civil Division, by 28 CFR section 0.168, Civil Division Directive No. 145-81 (Appendix to Subpart Y of Part 0, Title 28, Code of Federal Regulations) is revised as follows:

1. In Section 1, paragraphs (b) and (c) are revised.
2. In Section 4, paragraphs (b) and (c)(2) are revised.
3. Section 5 is revised.

As revised, the paragraphs read as follows:

Redelegation of Authority to Branch Directors, Heads of Offices and United States Attorneys in Civil Division Cases

[Directive No. 145–81]

Section 1. Authority to compromise or close cases.

(a) * * *

(b) Delegation to Branch Directors, the Director of the Appellate Staff, the Chief of the Judgment Enforcement Unit and the Director of the Office of Foreign Litigation. Subject to the limitations imposed by paragraph (d) of this section, Branch Directors, the Director of the Apellate Staff, the Chief of the Judgment Enforcement Unit and the Director of the Office of Foreign Litigation are hereby authorized, with respect to matters assigned to their respective components, to reject any offer in compromise and to accept offers in compromise and close claims or cases in the manner and to the same extent as Deputy Assistant Attorneys General, except that Branch Directors, the Director of the Appellate Staff, the Chief of the Judgment Enforcement Unit and the Director of the Office of Foreign Litigation cannot accept or reject any offers in compromise of, or settle administratively any claim or case against the United States where the principal amount to be paid by the United States exceeds $150,000. Nor can these Civil Division officials close (other than by compromise or by entry of judgment), any claim or case on behalf of the United States where the gross amount involved exceeds $150,000, or accept or reject any offers in compromise of any such claim or case in which the difference between the gross amount of the original claim and the proposed settlement exceeds $150,000 or 10 percent of the original claim, whichever is greater. Branch Directors, the Chief of the Judgment Enforcement Unit and the Director of the Office of Foreign Litigation are further authorized to file suits, counterclaims, and cross-claims, or to take any other action necessary to protect the interests of the United States in all nonmonetary cases, in all routine loan collection and foreclosure cases, and in other monetary claims or cases where the gross amount of the claim does not exceed $150,000.

(c) Delegation to U.S. Attorneys and Attorneys-in-Charge of Field Offices. Subject to the limitations imposed by paragraph (d) of this section, and the authority of the Solicitor General set forth in 28 CFR 0.163, United States Attorneys and Attorneys-in-Charge of field offices are authorized to:

(1) Reject any offer to settle a monetary claim on behalf of the United States where the amount offered is below $100,000 or below an amount previously indicated by the appropriate Civil Division official to be an acceptable minimum, in any case for which they have primary responsibility.

(2) Accept or reject offers to compromise cases and close claims which have been directly referred or delegated to them by the Civil Division, as set forth in sections 4 (a) and (b) of this directive, in the same manner and to the same extent as Branch Directors, except that United States Attorneys and Attorneys-in-Charge of field offices cannot accept or reject any offers in compromise of any claim or case against the United States where the principal amount of the proposed settlement exceeds $100,000. Nor can United States Attorneys or Attorneys-in Charge of field offices close (other than by compromise or by entry of judgment), any claim or case on behalf of the United States where the gross amount involved exceeds $100,000, or accept or reject any offers in compromise of any such claim or case in which the difference between the gross amount of the original claim and the proposed settlement exceeds $100,000 or 10 percent of the original claim, whichever is greater. United States Attorneys may redelegate this authority to Assistant United States Attorneys who supervise other Assistant United States Attorneys who handle civil litigation.

(d) * * *

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Section 2. * * *

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Section 3. * * *

Section 4. Authority for direct reference and delegation of Civil Division cases to United States Attorneys.

(a) * * *

* * * * *

(b) Delegation to United States Attorneys. Branch and office directors and unit chiefs of the Civil Division may delegate to United States Attorneys any nonmonetary claims or suits, and monetary claims or suits involving amounts up to $150,000, where the circumstances warrant such delegations. Upon the recommendation of branch and office directors and unit chiefs, the Assistant Attorney General, Civil Division, may delegate to United States Attorneys any claims or suits involving amounts up to $750,000, where the circumstances warrant such delegations. All delegations pursuant to this subsection shall be in writing and no United States Attorney shall have authority to compromise or close any such delegated case or claim except as is specified in the required written delegation or in section 1(c) of this directive. The limitations of section 1(d) of this directive also remain applicable in any case or claim delegated hereunder.

(c) * * *

(1) * * *

(2) Cases within the jurisdiction of the commercial litigation branch involving patents, trademarks, copyrights, etc.

(3) * * *

* * * * *

Section 5. Adverse decisions. All final judicial decisions adverse to the Government involving any direct reference or delegated case must be reported promptly to the Assistant Attorney General, Civil Division, attention Director, Appellate Staff. Consult Title 2 of the United States Attorneys' Manual for procedures and time limitations.

Section 6. * * *

J. Paul McGrath,
Assistant Attorney General.

[FR Doc. 82-13612 Filed 5-18-82; 8:45 am]
BILLING CODE 4410-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FRL 2066-8]

Approval and Promulgation of Implementation Plan; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is approving the Union Carbide Corporation (UCC) Alternative Emission Reduction Plan ("Bubble") that uses emission reduction credits from a source shutdown in lieu of controls on storage tanks and loading facilities. This action trades emission reductions from the shutdown of a Low Density Polyethelyne (LDP) unit for the control of the 29 tanks and storage facilities (used for Synthetic Organic Compounds) at UCC's petrochemical plant in Texas City, Texas. The use of emission reduction credits from a source shutdown is consistent with EPA's newly expanded emissions trading policy statement.

EFFECTIVE DATE: This rule is effective on May 19, 1982.

ADDRESSES: A copy of the State's submittals and incorporation by reference materials are available for review during normal business hours at the following locations:

The Office of the Federal Register, 1100 L Street NE., Room 8401, Washington, D.C. 20460

Environmental Protection Agency, Public Information Reference Unit (PM–213), EPA Library, 401 M Street SW., Washington, D.C. 20460

Environmental Protection Agency, Air Branch, Region 6, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: John R. Hepola, Chief, State Programs Section, Air and Waste Management Division, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767–2742.

SUPPLEMENTARY INFORMATION: On August 12, 1981, EPA proposed to approve a bubble for Union Carbide Corporation's Texas City, Texas petrochemical plant. 46 FR 40774. In brief, the UCC bubble involves a trade of emission reductions resulting from the shutdown of a Low Density

Polyethylene (LDP) unit for controls on the emissions from 29 storage tanks and loading facilities. The bubble balances a reduction of 243.3 tons per year of synthetic organic compounds (SOCs) from the LDP unit against 228.8 tons per year of uncontrolled emissions from the storage tanks and loading facilities.

At the time of proposed rulemaking, EPA's bubble policy did not permit the use of source shutdowns in most bubble trades. 44 FR 71780 (December 11, 1979). The bubble policy referenced Section IV.C. of EPA's Emission Offset Interpretative Ruling (40 CFR Part 51, Appendix S) for determining the equivalence of emissions and air quality impact in a bubble trade. That Section also limits the crediting of shutdowns to units that replace the shutdown unit. Because EPA anticipated an amendment to modify this aspect of the Offset Ruling, EPA proposed to approve the UCC bubble with final promulgation contingent upon the anticipated amendment.

Since the Notice of Proposed Rulemaking, EPA has significantly amended its bubble policy. The new EPA bubble policy is now incorporated in a comprehensive Emissions Trading Policy Statement. 47 FR 15076 (April 7, 1982). Under EPA's new policy, bubble trades may use "emissions reduction credits" (ERCs) from shutdowns subject to the same restrictions as those governing other emission reduction credits. Therefore, ERCs created by a source shutdown that are surplus, enforceable, quantifiable, and permanent may be used to balance an emissions increase, regardless of whether or not the increase results from a replacement unit.

In the Notice of Proposed Rulemaking for the UCC bubble, EPA evaluated the bubble in detail and determined that, except for the shutdown issue, it was fully approvable. EPA determined that the bubble satisfies ambient air quality impact considerations and that it uses emission reductions that are surplus, enforceable, permanent, and quantifiable. Thus, for example, the UCC bubble does not interfere with reasonable further progress and attainment.

Several comments were submitted to EPA during the public comment period. EPA's response to these comments is set out below:

I. Final Compliance Date Under the Texas State Implementation Plan: EPA noted in the August 12, 1981, **Federal Register** (46 FR 40774) on page 40775 that the "schedule for UCC calls for final compliance by December 31, 1982." EPA agrees with the comment it received from the affected industry noting the compliance date for UCC was incorrect; the compliance date should be December 31, 1981.

II. More Stringent Controls on the LDP Unit: One commentor wanted to know what would happen to the UCC bubble if EPA, at a later date, required more stringent controls on the LDP units. EPA believes that this issue is moot since the LDP will be permanently closed (i.e. dismantled).

III. The affected industry commented that the UCC bubble could be approved through a change in the bubble policy without regard to any anticipated amendment to the Offset Ruling. EPA agrees with the commentor, and therefore has amended its bubble policy and is today approving the UCC bubble. As noted in the proposed rulemaking, EPA still intends to propose a similar change to the Offset Ruling.

Conclusion

After consideration of all relevant comments, and in accordance with EPA's Emissions Trading Policy Statement, EPA approves the UCC Alternative Emission Reduction Plan ("Bubble"), as discussed above, for incorporation into the Texas SIP. This rulemaking is being made immediately effective because it enables the affected source to promptly begin dismantling the LDP unit in order to meet the tight deadline contained in the Texas SIP.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of May 19, 1982. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because it will impose no new regulatory burden since it only approves State actions. The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Incorporation by reference of the SIP for Texas was approved by the Director of the **Federal Register** on July 1, 1981. This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: May 11, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart SS—Texas

In § 52.2270, (c) is amended by adding paragraph (30) as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(30) Revisions to the Texas SIP for the Union Carbide Corporation Bubble in Texas City, Texas were submitted by the Governor on December 15, 1981.

* * * * *

[FR Doc. 82-13589 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2115-5]

Approval and Promulgation of Implementation Plans: Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: The purpose of today's rulemaking is to approve revisions to Michigan's State Implementation Plan (SIP) regarding particulate emission reductions for the Traverse City Board of Light and Power (TCBLP) and the Monitor Sugar Company (MSC). These revisions were submitted in the form of Consent Orders. Consent Order APC No. 23-1981 for TCBLP limits the operation of its No. 1 and No. 2 coal-fired boilers after December 31, 1982, provides for additional controls on its No. 4 coal-fired boiler, and establishes a final compliance date of December 31, 1982. Consent Order APC No. 21-1981 for MSC provides for additional controls on its coal-fired boilers 1, 2, 3 and 4 and establishes a final compliance date of October 15, 1982.

EFFECTIVE DATE: These actions will be effective July 19, 1982, unless notice is received within 30 days that someone

wishes to submit critical or adverse comments.

ADDRESSES: Copies of these SIP revisions are available for review at the following addresses:

U.S. Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48917.

Written comments on these actions should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION: On April 25, 1979, the State of Michigan formally submitted its SIP revision to comply with the Clean Air Act Amendments of 1977 (Act). Part of that submittal included the commitment to develop abatement orders for sources contributing to the particulate emission problem.

On December 16, 1981 and January 7, 1982, the State of Michigan submitted Consent Order APC No. 21-1981 and APC No. 23-1981 for the MSC and TCBLP companies. Presented below is a synopsis of EPA's review of these Consent Orders submitted to meet the requirements of Michigan's Rules 336.1301 and 336.1331.

Bay County (Order 21-1981)

On December 16, 1981, the State of Michigan submitted to EPA Consent Order APC No. 21-1981 for the MSC. The MSC is located in Bay City, County of Bay in an area designated attainment for total suspended particulates (TSP). Consent Order APC No. 21-1981 for MSC contains a schedule of interim progress dates for reducing particulate emissions and provides for additional controls on its coal-fired boilers 1, 2, 3, and 4. The Consent Order also requires the replacement of the existing particulate collection equipment on the boilers with higher efficiency collectors and installing new combustion controls. A final compliance date of October 15, 1982, has been established for MSC's four boilers to achieve compliance with Michigan Rule 336.1331. Rule 331(1)(a), contained therein refers to Table 31 of the General Rules, which specified an emission limitation of 0.30 pounds particulate per 1,000 pounds exhausts gas, to be achieved as expeditiously as practical but not later than December 31, 1982.

Grand Traverse County (Order 23-1981)

On January 7, 1982, the State of Michigan submitted Consent Order No. 23-1981 for the TCBLP. The TCBLP is located in Traverse City, County of Grand Traverse in an area designated attainment for TSP. Consent Order No. 23-1981 for TCBLP contains a schedule of interim progress dates for reducing particulate emissions from its boilers. To achieve compliance by December 31, 1982, TCBLP wil retire Boiler 1 and Boiler 2 and equip Boiler 4 with a sidestream baghouse in addition to existing multiclones. By December 31, 1982, TCBLP will be in compliance with the emission limitation of 0.30 pounds particulate per 1,000 pounds exhausts gas as required in R336.1331.

EPA has reviewed Consent Orders APC No. 21-1981 and APC No. 23-1981 for the MSC and TCBLP companies. EPA believes that these orders contain enforceable emission limitations and control measures necessary to ensure attainment of the Primary National Ambient Air Quality Standards (NAAQS) by December 31, 1982. EPA, therefore, approves Consent Orders APC No. 21-1981 and APC No. 23-1981, as part of the Michigan SIP.

EPA also believes that this is a noncontroversial rulemaking action, and is taking immediate final rulemaking action. On September 4, 1981 (46 FR 44476) EPA published a general notice explaining this special rulemaking procedure. This action will be effective 60 days from the date of this Federal Register notice. However, if EPA is notified within 30 days that someone wishes to submit adverse or critical comments, the action will be withdrawn and a new rulemaking will propose this action and establish a comment period. Today's action approves a submittal by the State pursuant to the provisions of Section 110 of the Act and imposes no new requirements beyond those which the State has already imposed.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under Executive Order 12291 (46 FR 13193), EPA must also judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. Today's action does not constitute a major regulation since it merely approves the State's actions. This regulation was exempted from review by the Office of Management and Budget (OMB) under Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52:

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Note.—Incorporation by reference of the SIP for the State of Michigan was approved by the Director of Federal Register on July 1, 1981.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: May 10, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart X—Michigan

1. Section 52.1170 is amended by adding paragraphs (c)(54) and (c)(55) as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(54) On December 16, 1981, the State of Michigan submitted to EPA Consent Order APC No. 21-1981 for the Monitor Sugar Company. Consent Order APC No. 21-1981 provides for additional controls on its coal-fired boilers, 1, 2, 3, and 4 and establishes a final compliance date of October 15, 1982 for attaining the primary National Ambient Air Quality Standards.

(55) On January 7, 1982, the State of Michigan submitted to EPA Consent Order APC No. 23-1981 for the Traverse City Board of Light and Power. Consent Order APC No. 23-1981 limits the company's operation of its No. 1 and No. 2 coal-fired boilers after December 31, 1982; provides for additional controls on its No. 4 coal-fired boiler; and

establishes a final compliance date of December 31, 1982.

[FR Doc. 82-13581 Filed 5-18-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 65

[FRL-2117-4]

Approval of a Delayed Compliance Order Issued by the Puget Sound Air Pollution Control Agency to Fletcher Oil Co., Tacoma, Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Puget Sound Air Pollution Control Agency to Fletcher Oil Company, Tacoma, Washington. The Order requires the Company to bring air emissions from its gasoline terminal and tank farm at Tacoma, Washington, into compliance with certain regulations contained in the federally-approved Washington State Implementation Plan (SIP). Because of the Administrator's approval, Fletcher Oil Company's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Betty Swan, Environmental Protection Agency, 1200 Sixth Avenue, M/S 524, Seattle, Washington 98101, phone (206) 442-2876.

ADDRESSES: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying during normal business hours at: EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101—11B, 11th Floor.

SUPPLEMENTARY INFORMATION: On February 12, 1982, the Regional Administrator of EPA's Region 10 Office published in the **Federal Register**, 47 FR 6442, a notice proposing approval of a Delayed Compliance Order issued by the Puget Sound Air Pollution Control Authority (PSAPCA) to Fletcher Oil Company. The Notice asked for public comments by March 15, 1982 on EPA's proposed approval of the Order. One document was received requesting an extension of the public comment period or to postpone final approval of the Order for 90 days. The Company requesting the extension claims to be in the process of acquiring the Fletcher Oil Company's assets. Since the Order contains the provision that the Order "shall apply and be binding upon the parties to this action, their officers, directors, employees, and successors," and since the Company was notified a month before the PSAPCA Board of Directors meeting and failed to comment, and since PSAPCA has advised EPA that it does not intend to make any changes in the Order regardless of change of ownership, EPA finds that no good cause is shown to extend the comment period.

Therefore, the Delayed Compliance Order issued to Fletcher Oil Company is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Fletcher Oil Company on a schedule to bring its gasoline terminal and tank farm at Tacoma, Washington, into compliance as expeditiously as practicable with WAC 173-490-040 and 173-490-201 and Sections 2.04, 2.05, 2.13, 3.05 and 3.10 of Puget Sound Air Pollution Control Agency Regulation II, a part of the federally approved Washington State Implementation Plan. If the conditions of the Order are met, it will permit Fletcher Oil Company to delay compliance with the SIP regulations covered by the Order until January 1, 1983. Fletcher Oil Company is unable to immediately comply with these regulations. EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place Fletcher Oil Company on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Washington State Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

(42 U.S.C. 7413(d), 7601)

Dated: May 11, 1982.

Anne M. Gorsuch,
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. Section 65.521 is amended by adding the following entry to the table to read as follows:

§ 65.521 EPA Approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
Fletcher Oil Co.	Tacoma, Washington	W13	WAC 173-490-040, WAC 173-490-201, PSAPCA Reg. II.	Feb. 12, 1982	Jan. 1, 1983.

[FR Doc. 82-13683 Filed 5-18-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 1F2491/R417; PH-FRL 2126-7]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Nosema Locustae

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the insecticide *Nosema locustae* in or on all raw agricultural commodities and home gardens. This regulation to eliminate the need to establish a maximum permissible level for residues of the insecticide in or on all raw agricultural commodities was requested by Reuter Laboratories, Inc.

EFFECTIVE DATE: Effective on May 19, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION, CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of June 2, 1981 (46 FR 29530) which announced that Reuter Laboratories, Inc., 1405 James Madison Highway, Haymarket, VA 22069, had filed

pesticide petition 1F2491 with the EPA which proposed that an exemption from the requirement of a tolerance be established for residues of the insecticide *Nosema locustae* when applied to all raw agricultural commodities.

No comments were received in response to this notice of filing.

The data submitted or referenced in the petition and other relevant material have been evaluated. The toxicology data considered in support of the exemption from the requirement of a tolerance included: a rat acute inhalation study, a rat acute oral toxicity study, a rat 90-day feeding study, a guinea pig acute dermal toxicity study, and a rabbit primary skin irritation study. In addition, the following toxicology studies were performed by the Agency: intraperitoneal injection in mice, intracerebral, and ocular innoculation. These studies were designed to show whether *Nosema locustae* is pathogenic to a mammalian test species. The result of these tests showed no adverse effects.

EPA sponsored an extramural study conducted by Dr. J. A. Shadduck entitled "Maximum Challenge Safety Tests of *Nosema lucustae* in Mice and Rabbits." Rabbits and mice were exposed by intracerebral, intraocular, and intraperitoneal injection (rabbits, 10-week studies) and intracerebral and intraperitoneal injection (mice, 8-week studies) to *Nosema locustae*. During the course of the study, no differences in clinical behavior, weight gain, body temperature, or hemograms were noted between injected and control rabbits, and no differences in body weight gain were noted between injected and control mice. It was concluded that *Nosema locustae* is not likely to be a hazard to mammals or humans even if exposure to high doses occurs.

Nosema locustae showed that, once removed from the insects for which it was intended, it rapidly dissipated into the environment. It is not expected to enter the human food chain. Thus acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition.

Nosema locustae is a naturally occurring protozoan of the class *Cnidosphoridea* which produces multicellular spores. When ingested by susceptible insects (mainly grasshoppers), these spores penetrate the midgut epithelium and vegetative forms reproduce repeatedly in fat bodies. When host tissue is depleted, sporulation occurs and spores are released as the host cadaver decomposes, allowing the cycle to continue.

No enforcement actions are anticipated. Therefore, the requirement of an analytical method for enforcement purposes is not applicable to this exemption request. However, an analytical method is available for quality control.

Nosema locustae is considered useful for the purpose for which an exemption from the requirement of a tolerance is sought, and it is concluded that the exemption will protect the public health. Therefore, the exemption from the requirement of a tolerance is established as set forth below.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: May 19, 1982.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticide and pests.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: May 5, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.1041 is revised to read as follows:

§ 180.1041 Nosema locustae; exemption from the requirement of a tolerance.

The insecticide *Nosema locustae* is exempted from the requirement of a tolerance for residues in or on all raw agricultural commodites.

[FR Doc. 82-13684 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP OF2399/R434; PH FRL 2125-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Cyano(3-Phenoxyphenyl)Methyl 4-Chloro-Alpha-(1-Methylethyl)Benzeneacetate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for residues of the insecticide in or on these commodities was requested by Shell Oil Co.

EFFECTIVE DATE: Effective on May 19, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of October 15, 1980 (45 FR 68461) which announced that Shell Oil Co., Suite 200, 1025 Connecticut Ave., NW., Washington, DC 20036, had submitted pesticide petition OF2399 to the EPA proposing that tolerances be established for residues of the insecticide cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate in or on celery at 4.0 parts per million (ppm), corn ensilage (forage and fodder) at 0.02 ppm, corn stover at 1.0 ppm, dried beans at 0.25, dried peas at 0.25, field corn grain at 0.02, meat and fat of cattle, goats, hogs, horses, and sheep at 0.2

ppm, milk fat at 0.2 ppm, and pears at 2.0 ppm.

This petition was subsequently amended by deleting the tolerances for celery, corn stover, meat and fat of cattle, goats, hogs, horses, and sheep and milk fat and increasing the tolerances for corn fodder and forage from 0.02 ppm to 1.0 ppm.

No comments were received in response to these notices of filing.

The data submitted in the petition and all other relevant material have been evaluated. The toxicology data considered in support of the tolerances included an acute oral rat toxicity study with a median lethal dose (LD_{50}) of 1–3 grams (g)/kilogram (kg) of body weight (bw) (water vehicle) and 450 milligrams (mg)/kg of bw (dimethylsulfoxide (DMSO)) vehicle; a 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (highest dose tested); a 90-day rat feeding study with a NOEL of 125 ppm; an 18-month mouse feeding study with a NOEL of less than 100 with no oncogenic effects at the highest level fed (3,000 ppm); a 24-month mouse feeding study with a NOEL of 10–50 ppm for males and 50–250 ppm for females (no oncogenic effects were noted at 1,250 ppm, the highest dose tested); a 24-month rat feeding study that demonstrated no oncogenic effects at 1,000 ppm (only level tested—significantly decreased body weight was observed at this dose level); a 2-year rat feeding study with a NOEL of 250 ppm (highest level fed)—no oncogenic effects were observed; a 3-generation rat reproduction study with a NOEL of 250 ppm (highest level fed); teratology studies (in mice and rabbits, both negative at the highest dose of 50 mg/kg of bw/day); and the following mutagenicity studies: mouse dominant lethal (negative at 100 mg/kg of bw, which was the highest level fed); mouse host-mediated bioassay (negative at 50 mg/kg of bw, which was the highest level fed); AMES test in vitro (negative); and bone marrow cytogenic study in the Chinese hamster (negative at 25 mg/kg of bw). The following studies assessing neurological effects were performed: A hen study negative at 1.0 g/kg of bw for 5 days, repeated at 21 days; a rat (8-day) acute study with a NOEL of 200 mg/kg of bw; a 15-month rat feeding study which resulted in a systemic NOEL of 500 ppm and a NOEL of 1,500 ppm with respect to nerve damage.

The acceptable daily intake (ADI) is calculated to be 0.125 mg/kg/day based on the 2-year rat feeding study and using a 100-fold safety factor. The maximum permissible intake (MPI) has been calculated to be 7.5 mg/day (60 kg). Approval of the tolerances would result in a theoretical maximum residue contribution (TMRC) of 0.8101 mg/day (1.5 kg) and utilize 10.80 percent of the ADI.

The metabolism of the insecticide is adequately understood for this use, and an adequate analytical method (gas chromatography) is available for enforcement purposes. There are currently no regulatory actions pending against the continued registration of this insecticide. There is no reasonable expectation of residues in poultry and eggs as delineated in 40 CFR 180.6(a)(3). The tolerances established for meat and milk will accommodate any secondary residues resulting from this use.

The pesticide is considered useful for the purposes for which the tolerances are sought, and it is concluded that establishment of these tolerances will protect the public health. Therefore, the regulation is established as set forth below.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: May 19, 1982.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Raw agriculture commodities, Pesticides and pests.

Dated: May 4, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.379 is amended by adding and alphabetically inserting the raw agricultural commodities corn fodder, corn forage, dried beans, dried peas, and field corn grain, and increasing the established tolerance on pears to read as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Beans, dried	0.25
* * * * *	
Corn, field, grain	0.02
Corn, fodder	1.0
Corn, forage	1.0
* * * * *	
Pears	2.0
* * * * *	
Peas, dried	0.25
* * * * *	

[FR Doc. 82-13209 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 0F2302, 0F2406/R351; PH FRL 2125-8]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Hexakis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for the combined residues of the insecticide hexakis and its organotin metabolites in or on certain raw agricultural commodities. This rule to establish the maximum permissible level for the combined residues of hexakis and its metabolites in or on the commodities was requested by Shell Chemical Co.

EFFECTIVE DATE: Effective on May 19, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, (A–110), Environmental Protection Agency, Rm.

M–3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jay S. Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued notices published in the **Federal Register** of January 16, 1980 (45 FR 3109) (0F 2302) and October 28, 1980 (45 FR 71421) (0F 2406) that Shell Chemical Co., Suite 200, 1025 Connecticut Ave., NW., Washington, DC 20036, had filed pesticide petitions proposing to amend 40 CFR 180.362 by establishing tolerances for the combined residues of the insecticide hexakis (2-methyl-2-phenylpropyl) distannoxane and its organotin metabolites calculated as hexakis (2-methyl-2-phenylpropyl) distannoxane in or on the raw agricultural commodities plums and prunes at 2 parts per million (ppm); cherries at 4.0 ppm; peaches at 10.0 ppm (0F2302); and strawberries at 10.0 ppm (0F2406).

No comments were received in response to these notices of filing.

The data submitted in the petitions and other relevant material have been evaluated. The toxicology data considered in support of the proposed tolerances included a 2-year dog feeding study with a no-observed-effect-level (NOEL) of 1,200 ppm; a 2-year rat feeding/oncogenicity study which was negative for oncogenic effects at 600 ppm (highest dose tested); a multigeneration reproduction study with NOEL of 100 ppm; mammalian mutagenicity assays which were negative for mutagenic effects; and rat and rabbit teratology studies with NOEL's of 30 mg/kg and 1.0 mg/kg, respectively. Based on the 2-year rat feeding/oncogenicity study with a NOEL of 100 ppm (5 mg/kg of body weight (bw)/day) and using a safety factor of 100, the acceptable daily intake (ADI) for humans is 0.05 mg/kg of bw/day. The theoretical maximum residue contribution (TMRC) in the human diet from these tolerances and tolerances which have previously been established for this chemical on a variety of raw agricultural commodities does not exceed the ADI.

The metabolism of hexakis (2-methyl-2-phenylpropyl) distannoxane in plants is adequately understood, and an adequate analytical method (gas-liquid chromatography) is available for enforcement purposes. Because no feed items are involved there will be no problem of secondary residues in meat, milk, poultry, and eggs. No actions are currently pending against the continued registration of the insecticide, nor are there any other relevant considerations involved in establishing these tolerances.

The pesticide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register** file written objections with the Hearing Clerk, EPA, Rm. M–3708 (A–110), 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: May 19, 1982.

(Sec. 408(d)(2), 68 Stat. 512, (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 6, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.362 is amended by adding and alphabetically inserting the raw agricultural commodities cherries, peaches, plums, prunes, and strawberries as follows:

§ 180.362 Hexakis; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Cherries	4.0
* * * * *	
Peaches	10.0
* * * * *	
Plums	2.0
* * * * *	
Prunes	2.0
* * * * *	
Strawberries	10.0

[FR Doc. 82-13345 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF ENERGY

41 CFR Parts 9–1, 9–3, 9–4, 9–7, 9–15, 9–50, 9–51

Proposed Amendments to the DOE Procurement Regulations

AGENCY: Energy Department.

ACTION: Final rule.

SUMMARY: This rule revises the DOE Procurement Regulations. It adds a new § 9–1.355, "Contracts conditioned upon the availability of funds"; as well as a new § 9–1.356, "Solicitations conditioned upon availability of funds;" amends § 9–1.405, "Ratification of unauthorized contract awards," to clarify the requirements which must be met to allow ratifications of unauthorized actions; revises § 9–1.705, "Cooperation with the Small Business Administration," to increase from $2 million to $3 million the ceiling for small business class set-aside procurements of construction; deletes Subpart 9–1.53, "Options"; revises § 9–3.805–51, "Noncompetitive procurement," in order to improve the Department's competitive posture by revising approval procedures for noncompetitive procurements to assure that the approving official is outside the initiating office and that the accountable official is the Contracting Officer and to emphasize the prudence of early coordination with legal counsel; amends § 9–3.809, "Contract audit as a pricing aid," to increase preaward audit thresholds; revises Subpart 9–4.57, "Program Opportunity Notices," and Subpart 9–4.58, "Program Research and Development Announcements," to simplify the approval process for using these solicitation methods; revises §§ 9–7.203 and 9–7.403, "Clauses to be used when applicable," to provide for use of a Cost and Schedule Control Systems clause under appropriate circumstances; revises § 9–7.402–59, "Stop work order,"

to make that clause optional rather than mandatory for contracts with educational and other nonprofit institutions; revises Subpart 9–50, "Operating and on-site service contracts," relating to procurement procedures for operating and on-site contractors; and clarifies § 9–51.102, "Contract actions requiring advance Headquarters' review and approval," regarding the requirement for Headquarters review of certain contract actions. This final rule is the result of operational experience which has shown a need to update and revise the regulations as herein described.

EFFECTIVE DATE: July 19, 1982.

FOR FURTHER INFORMATION CONTACT:
Mr. Richard Langston, Procurement Policy Branch (MA931.1); Policy and Procedures Division, Procurement and Assistance Management Directorate, Department of Energy, (202) 252–8188
Mr. Elliot Winnick, DAGC for Procurement and Financial Incentives, Office of General Counsel (GC44), Department of Energy, (202) 252–6902

SUPPLEMENTARY INFORMATION:

I. Background
II. Statutory and Regulatory Requirements
III. Public Comments

I. Background

Under Section 644 of the Department of Energy Organization Act (hereinafter referred to as "the Act") (Pub. L. 95–91, 91 Stat. 565, 41 U.S.C. 7254), the Secretary of the Department is authorized to prescribe such procedural rules and regulations as he may deem necessary or appropriate to effectuate the functions vested in him. Accordingly, the Department of Energy Procurement Regulations (DOE–PR) were promulgated with an effective date of June 30, 1979 (see 44 FR 34424).

II. Statutory and Regulatory Requirements

A. Review Under Executive Order 12291

Inasmuch as this final rule relates to agency management of the procurement function, the OMB clearance procedures set forth in Executive Order 12291 (February 17, 1981) are not applicable.

B. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Plan Act

DOE has determined that this rulemaking imposes no information collection and reporting requirements on organizations and individuals external to DOE that may be subject to this regulation in accordance with the Paperwork Reduction Plan Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this final rule clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 *et seq.* 1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the environmental impact statement pursuant to NEPA.

III. Public Comment

The changes being made by this final rule were published as a notice of proposed rulemaking on December 24, 1981, 46 FR 62480. That notice invited public comments for a 30 day period ending January 25, 1981. Comments were received from one association representing universities conducting research and from several interested individuals within the DOE procurement community. The specific comments, identified by proposed change number, and the Department's response are as follows:

Change 5.2

This proposed change involved the addition of a new clause for use in contracts conditioned upon the availability of funds. One reviewer suggested that a variation of the clause be developed for use in solicitations conditioned upon the availability of funding. This suggestion has been adopted by the addition of a variation of the clause to be used in solicitations. Another reviewer asked whether such a clause was used by any other Government agency. The answer is yes. The clause is essentially the same as that used by the Department of Defense. The Department of Defense's clause may be found at Section 1–318 of the Defense Acquisition Regulation and has been a part of that regulation since September 1962.

Change 5.3

This proposed change involved additional review and approval procedures to be followed when considering the ratification of unauthorized contractual commitments. Comments were received which suggested clarification was needed in the text of the change. Minor changes have been made for the purpose of clarifying the change.

Change 5.6

This proposed change involved providing that the Source Selection Official might be the HPA, the Contracting Officer, or some other official designated by the HPA. Several reviewers pointed out that our proposed language did not provide for situations in which the official designated by the HPA is outside the Contracting Officer's organization. This has been corrected by deleting the words "at a level higher than the Contracting Office" from the change.

Change 5.7

The proposed change involved reassigning the authority for approving noncompetitive procurement and specifying approval procedures. Comments were received which suggested that clarification of the text was needed. Minor changes have been made in the text for the sake of clarity.

Change 5.11

The proposed change set forth a clause entitled "Cost and Schedule Control Systems" to be used in certain instances. One reviewer was unfamiliar with such management control systems and suggested that such systems not be mandated for contracts with universities. The Cost and Schedule Control Systems Criteria are a set of management standards used by DOE, as well as the Department of Defense and NASA, to improve the visibility of contractor cost and schedule performance. This management system is only used for major acquisition projects. Full implementation is required only for contracts exceeding $50 million. Few university projects would require application of these criteria. The Department believes that any organization awarded a contract of such magnitude would need a disciplined approach to cost and schedule control. For the sake of uniformity, the Department has chosen the CSCS approach and will not consider an exemption based on type of organization. Language has been added to the preamble of the clause to show the dollar threshold at which such a system would be required.

Change 5.12

This proposed change involved making use of the "Stop Work Order" clause optional rather than required for contracts with educational or nonprofit institutions. One reviewer felt that contracting personnel would indiscriminately add this clause to university contracts and suggested that the clause be completely deleted from the DOE–PR. The Department believes there may be circumstances in which the clause is appropriate for a university contract and for this reason will not delete the clause from the DOE–PR. Another reviewer pointed out that the clause should remain mandatory for use if an operating or on-site contract is involved even if a university is involved. the Department agrees and has added a provision to that effect.

Change 5.13

This proposed change involved further limiting the allowability of precontract costs with a maximum term of 15 days of precontract cost allowance. A reviewer suggested that the final sentence of § 9–15.5006–4(a) be rewritten to make it clear that such costs under DOE contracts must be specifically identified in the contract document. This was done. It was also suggested that this guidance be inserted at §§ 9–15.107 and 9–15.205–30 to make it clear that the Department's policy and limitations regarding precontract costs are in addition to the standards set by 1–15.107 and 1–15.205–30 of the FPR. The Department has added a notice at §§ 9–15.107 and 9–15.205–30 directing the reader's attention to § 9–15.5006–4. Another comment suggested that the maximum period of 15 days was impractical and failed to recognize situations in which legitimate precontract costs under the FPR standard are incurred without a specific prior authorization. The Department recognizes this possibility and has changed the limitation from an absolute maximum of 15 days to a maximum of 15 days unless a longer period is approved by the HPA based on a finding that such an allowance is reasonable. As a result of this, the Department has added a provision to require, to the extent practical, that authorized precontract costs be recognized by establishing advance understandings as described at 1–15.107 of the FPR. It was further suggested that the "Date of Incurrence of Cost" clause from FPR 1–7.204–3 be included in any such contract. The Department has added this guidance to § 9–15.5006–4(a).

Change 5.16

This proposed change was the same as that at change 5.11 above except that it specifies the use of cost and schedule control systems in certain operating and on-site contracts. The comments and the Department's disposition are the same as discussed at 5.11 above.

Change 5.17

This proposed change involved increasing the dollar threshold at which individual employee compensation for operating and on-site contractors must be approved. One reviewer objected to the approval practice regardless of the dollar threshold and suggested that, in the case of university contracts, standard university compensation practices should suffice. The Department does not share this view and believes it must retain this management tool for all operating and on-site contractors regardless of type of organization. The Department thanks those parties providing comments for the helpful insights furnished by their views and has carefully considered their comments in the preparation of this final rule.

List of Subjects in 41 CFR Parts 9–1, 9–3, 9–4, 9–7, 9–15, 9–50, 9–51

Government procurement.

For the reasons set forth in the preamble, Chapter 9 of Title 41 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., on May 14, 1982.

Hilary J. Rauch,

Director, Procurement and Assistance Management Directorate.

41 CFR Chapter 9 is amended as follows:

Authority: Sec. 644, Department of Energy Organization Act, Pub L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

Change 5.1

PART 9–1—GENERAL

The Table of Contents of Part 9–1, "General," is amended by adding a new § 9–1.355 titled "Contracts conditioned upon the availability of funds," and a new Part 9–1.356 titled "Solicitations conditioned upon the availability of funds," and by removing and reserving Subpart 9–1.53, "Options," the provisions of which have been superseded by FPR Amendment 213, dated January 12, 1981. The revised text will read:

Subpart 9–1.0—Regulation System

Sec.

* * * * *

9–1.355 Contracts conditioned upon the availability of funds.

9–1.356 Solicitations conditioned upon the availability of funds.

* * * * *

Subpart 9–1.53 [Reserved]

Change 5.2

Subpart 9–1.3, "General Policies," is amended by adding a new § 9–1.355, "Contracts conditioned upon the availability of funds," and a new Part 9–1.356 titled "Solicitations conditioned upon the availability of funds." The new sections will read:

§ 9–1355. Contracts conditioned upon the availability of funds.

(a) There are many day-to-day supplies and services which must be provided on a continuing basis if the Department is to function efficiently. These requirements are generally funded under yearly operation and maintenance appropriations. A disruption in providing these requirements would seriously impact the orderly operation of the Department.

(b) When it is necessary to initiate a procurement properly chargeable to funds of a new fiscal year prior to the availability of such funds, the clause in paragraph (c) of this section shall be included in the contract.

This clause shall be used only for administrative operations and continuing services (such as rentals, utilities, and guard services) which are necessary for normal operation and for which the Congress consistently appropriates funds.

(c) The following clause shall be used as described in paragraph (b) this section:

Availability of Funds—Award

Funds are not presently available for this procurement. The Government's obligation hereunder is contingent upon the availability of appropriated funds from which payment for the contract purposes can be made. No legal liability on the part of the Government for payment of any money shall arise unless and until the funds are made available to the Contracting Officer for this procurement and notice of such availability, to be confirmed in writing by the Contracting Officer, is given to the contractor.

(d) When the clause in paragraph (c) of this section is used, the supplies or services shall not be accepted by the Department until funds are available to the Contracting Officer for the procurement and until the Contracting Officer has given notice to the contractor (to be confirmed in writing) of such availability. Records shall be maintained to insure adequate administrative control of funds.

§ 9-1.356 Solicitations conditioned upon the availability of funds.

(a) There may be instances in which advance procurement planning indicates that the administrative leadtime necessary to allow contract award by a required date will require release of the solicitation prior to the availability of funds. In such circumstances, the best interests of the Department may be served by early release of the solicitation document in advance of funding available for an award. Any solicitation released for such reason, shall include the clause set forth at paragraph (c) of this section.

(b) *Limitation.* Solicitations shall not be released in advance of the availability of funds unless the initiating office obtains a certificate from the responsible budget officer to the effect that funding for the action has been included in a budget request released by the President to the Congress.

(c) The following clause shall be used when solicitations are released in advance of the availability of funds:

Availability of Funds—Solicitation

Funds have not, as of the date of issuance of this solicitation, been made available to the Contracting Officer for award of a contract anticipated by this solicitation. It is expected that sufficient funds will become available for award prior to the contemplated contract award date. Offerors are advised that should funds not be made available, it will be necessary to either cancel this solicitation or make an award subject to inclusion of the clause entitled "Availability of Funds—Award" set forth at 41 CFR 9-1.355(c). The Government will not be responsible for any expenses incurred by others in connection with this solicitation.

Change 5.3

Section 9-1.405, "Ratification of unauthorized contract awards," is revised at paragraphs (b) and (c) (1), (2), and (3) to clarify the types of actions that can be ratified and what approvals are required. The revised text will read:

§ 9-1.405 Ratification of unauthorized contract awards.

(a) * * *

(b) Unauthorized commitments shall not be ratified unless it would have been otherwise proper to enter into a contract prior to the commitment. As used herein, the phrase "otherwise proper" means that a ratification of an unauthorized commitment can be made only if there occurred no violation of any substantive legal requirements, e.g., there can be no ratification unless a sole source can be justified; a determination made that the contractor is not debarred or otherwise ineligible for award; the Organizational Conflict of Interest reviews and determinations, if required, are completed; and where all other substantive legal requirements have been met. Whenever it is discovered that any person is performing work as a result of an unauthorized commitment, that person shall be advised that such work is being performed at their own risk pending establishment of valid contractual coverage. The HPA shall then be notified of the circumstances. If the HPA agrees that the work appears to be without valid authorization, the HPA will take appropriate steps to resolve the matter if within his or her area of cognizance. If outside the HPA's normal area of cognizance, the Senior Procurement Official and Senior Program Official will be notified by the HPA. If they determine that an unauthorized commitment exists, they will arrange for the appropriate contracting office to contact the person and direct that the work be stopped or arrange for valid contractual coverage. The Contracting Officer shall direct the disposition of all products and deliverables received by the Government as a result of an unauthorized commitment.

(c) * * *

(1) * * * Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the Senior Procurement Official may waive the requirement that the responsible employee initiate and document the request: *Provided,* The cognizant Assistant Secretary or the Head of the Procuring Activity determines in writing that the commitment was in fact made by an employee who shall be identified in the determination.

(2) The request for ratification, an approved justification for noncompetitive procurement, and the information required by Section 9-1.405(c)(1) must be forwarded to the cognizant Assistant Secretary, or HPA, based on the source of funds for the proposed contract, for that person's concurrence, together with recommended corrective actions to preclude reoccurrence.

(3) If the Assistant Secretary, or HPA concurs with the request for ratification, the request and concurrence shall be forwarded to the Senior Procurement Official. The Senior Procurement Official will review the request, the Justification for Non-Competitive Procurement, along with any comments or information submitted by the Contracting Officer which should be considered in evaluation of the request, and the information submitted in accordance with DOE-PR 9-1.405(c)(2). Based upon this review and advice from the Office of General Counsel, the Senior Procurement Official will proceed as follows:

(i) If the request submitted does not appear to be justified, it will be returned to the concurring Assistant Secretary or equivalent official without approval with an explanation of the decision not to ratify.

(ii) If the request and the recommended corrective actions appear justified and adequate, the Senior Procurement Official may ratify the action and return the file to the Contracting Officer for action and monitor the implementation of the corrective action plan.

(iii) A detailed record of the review shall be maintained for audit purposes.

* * * * *

Change 5.4

Subpart 9-1.7, "Small Business Concerns," is amended at § 9-1.705-3(b)(1) to increase the class set-aside ceiling for procurements of construction to $3,000,000, and by adding a new § 9-1.706-1(e) to read:

§ 9-1.705-3 Screening of procurements.

* * * * *

(b) * * *

(1) *Class Set-Asides.* By agreement with SBA, DOE has established a class set-aside for procurements of construction where the estimated value is from $10,000 through $3,000,000, including new construction and repair and alteration of structures. Lists of other class set-asides shall be maintained by all DOE procuring offices, including contractors who manage Government-owned sites. These lists shall be updated at least annually.

* * * * *

§ 9-1.706-1 General.

* * * * *

(e)(1) In lieu of the set-aside priorities set forth in FPR 1-1.706-1(a) and (e), DOE shall award contracts, and encourage the placement of subcontracts for procurement to small business concerns in the following manner:

(i) Concerns which are small business concerns and which are located in labor surplus areas, on the basis of a total set-aside;

(ii) Concerns which are small business concerns, on the basis of a total set-aside;

(iii) Concerns which are small business concerns and which are located in a labor surplus area, on the basis of a partial set-aside; and

(iv) concerns which are small business concerns, on the basis of a partial set-aside.

(2) After priority is given to the small business concerns specified in subsection (e), priority shall also be given to the awarding of contracts and the placement of subcontracts, on the basis of a total set-aside, to concerns which:

(i) Are not eligible under subsection (e);

(ii) Are not small business concerns; and

(iii) Will perform a substantial proportion of the production of those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas.

(3) See FPR 1–1.801 for the definition of a concern located in a labor surplus area.

Change 5.5

Subpart 9–1.53 entitled "Options" is removed and reserved because Amendment 213 to the Federal Procurement Regulation (46 FR 7966, January 26, 1981) has added coverage of this topic to the FPR and makes DOE–PR coverage unnecessary. The revised text will read:

Subpart 9–1.53 [Reserved]

Change 5.6

PART 9–3—PROCUREMENT BY NEGOTIATION

Section 9–3.805–50, "Selection procedures," is amended at paragraph (a)(1)(iv) to provide that the Source Selection Official may be an official designated by the HPA. As revised the text will read:

§ 9–3.805–50 Selection procedures.

* * * * *

(a) * * *

(1) * * *

(iv) The Source Selection Official shall be the HPA, an official designated by the HPA or the Contracting Officer.

* * * * *

Change 5.7

Section 9–3.805–51, "Noncompetitive procurement", is revised at paragraph (a)(2) by removing the words "an approved" and substituting the words "a recommended" and by removing the present text of paragraph (d) and inserting new language in its place. The effect of the change is that the justification will be in the form of a recommendation by the initiating office with approval outside the initiating office. The revised text will read:

§ 9–3.805–51 Noncompetitive procurement.

(a) * * *

(2) For a noncompetitive procurement, a recommended justification shall be attached to the procurement request when the request is sent to a contracting Officer for action.

* * * * *

(d) *Review and approval.* The justification shall contain a recommendation, concurrence (when needed) and approval as follows: (In the case of cost shared contracts, review levels shall be based on the sum of the contractor and Government shares.)

(i) The recommendation shall be prepared and reviewed within the initiating office at such levels as are deemed appropriate by the Senior Program Official for procurements initiated by Headquarters or the Head of the Procuring Activity for field initiated procurements. The objective of maximizing the use of competitive procurement procedures as well as the complexity or cost of a procurement shall be used as a guide in establishing the appropriate level of responsibility for preparation of a noncompetitive recommendation. In establishing levels for the review of such recommendations, the Senior Program Official or Head of the Procuring Activity shall assure that the recommendation is reviewed at a senior organizational level in order to assure that competition is sought whenever possible.

(ii) The more complex and costly transactions will benefit from early coordination with counsel. Justifications exceeding $1,000,000, or such lower level as counsel may determine, shall be submitted by the initiator to counsel, at the Headquarters or field location of the initiator, for concurrence prior to forwarding to the Contracting Officer. The Senior Program Official or the Head of the Procuring Activity, in consultation with counsel, may establish lower thresholds as appropriate to their organizations and circumstances.

(iii) The justification, following review of the recommendation and concurrence of counsel (if required or considered appropriate), shall be forwarded to the Contracting Officer. If the justification is acceptable to the Contracting Officer, review shall be sought at such level as the Head of the Procuring Activity may require. In specifying levels of review, the HPA shall assure that justifications of more than $10,000 are reviewed at a level above the Contracting Officer as required by Section 1–3.101(d) of the FPR. The HPA shall further assure that the official designated as the reviewing official is a Contracting Officer.

(iv) Justifications may be approved without regard to the award authority limitations. An information copy of the approved justification shall be furnished to the Contract Business Clearance Division, Procurement Review Office, Headquarters, for advisory purposes whenever it is anticipated that the contract award will require Headquarters approval.

Change 5.8

Section 9–3.809 is amended at paragraph (b)(1) to increase the preaward audit thresholds from $100,000 to $500,000 for fixed price contracts and from $250,000 to $1,000,000 for cost reimbursement type contracts, and by correcting an erroneous FPR reference at the end of the second sentence and replacing it by reference to FPR 1–3.807–2 and 1–3.809(b)(ii). The revised text will read:

§ 9–3.809 Contract audit as a pricing aid.

* * * * *

(b) *Auditor's reports on contract price proposals.* (1) Prior to negotiation of any contract or modification resulting from a proposal in excess of $500,000 for firm fixed-price and fixed-price with economic price adjustment provisions or $1,000,000 for all other contract types including initial prices, estimated costs of cost-reimbursement types, interim and final price redeterminations, escalation, target and settlement of price redeterminations, target and settlement of incentive types where the price will be based on cost or pricing data (FPR 1–3.807–3) submitted by the contractor, the Contracting Officer or authorized representative shall request an audit review by the contract audit activity. Also see FPR 1–3.807–2 and 1–3.809(b)(ii).

Change 5.9

PART 9–4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Section 9–4.5702–2 is amended at paragraphs (a)(2), (b)(2), and (b)(3) to remove the requirement that the prior concurrence of the Senior Procurement Official be obtained on determinations to use the Program Opportunity Notice type of solicitation and its content. The revised text will read:

§ 9–4.5702–2 Determination to use and approval of content.

(a) * * *

(2) The Senior Program Official or designee may approve the determination.

* * * * *

(b) * * *

(2) When a source evaluation board is not required, notices may be approved by the Senior Program Official or designee after prior concurrence by Counsel.

(3) When an SEB is required, notices shall be reviewed and approved by the SEB after prior concurrence by Counsel, and the Senior Program Official, or designee.

* * * * *

Change 5.10

Section 9–4.5802–2 is amended at paragraph (a)(1) by removing the final sentence which requires the prior concurrence of the Senior Procurement Official for use of the Program Research and Development Announcement under $2 million, by removing and reserving paragraph (a)(2) which requires additional justification for use of the Program Research and Development Announcement for individual award situations expected to exceed $2 million and by removing the requirement at paragraph (b)(2) that the content of Program Research and Development Announcements have the prior concurrence of the Senior Procurement Official, Headquarters. The revised text will read:

§ 9–4.5802–2 Determination to use and approval of content.

(a) * * *

(1) Before the PRDA is selected by the program office as the appropriate solicitation procedure, a written program determination shall be made to show that the conditions in § 9–4.5802–1(c) exist to support the conclusion that the use of the PRDA procedure is both necessary and appropriate. The determination must not be merely conclusory but shall be supported by specific facts and explanations.

(2) [Reserved]

(b) * * *

(2) The PRDA content may be approved by the Senior Program Official or designee after prior concurrence by counsel.

* * * * *

Change 5.11

PART 9–7—CONTRACT CLAUSES

The Table of Contents of Part 9–7 is revised to add new §§ 9–7.203–58 and 9–7.403–75 entitled "Cost and schedule control systems." The new text will read:

PART 9–7—CONTRACT CLAUSES

Sec.

* * * * *

9–7.203–58 Cost and schedule control systems.

* * * * *

9–7.403–75 Cost and schedule control systems.

* * * * *

§ 9–7.203–58 Cost and schedule control systems.

Certain DOE projects are of such significance and magnitude that responsible management calls for enhanced visibility of contractor cost and schedule performance as well as more formalized data to document their progress and to aid in decisions regarding their continuation. Any contract with a total estimated cost in excess of $50 million shall require full implementation of the DOE Cost and Schedule Control Systems Criteria. Selected projects between $2 million and $50 million may benefit from modified implementation of such a control system. In those instances where the DOE Cost and Schedule Control System Criteria are to be utilized, the Contracting Officer shall provide for this by including the "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," Office of the Controller Publication CR–0015, in the solicitation and shall include the following clause in the contract:

Cost and Schedule Control Systems

(a) In the performance of this contract, the contractor shall establish, maintain, and use cost and schedule control systems (management control systems) meeting the criteria set forth in the contract and as described in detail in DOE/CR–0015, "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," annexed hereto and hereinafter referred to as the "Guide." Prior to acceptance by the Contracting Officer and within ——— calendar days after contract award, the contractor shall be prepared to demonstrate systems operation to the Government to verify that the proposed systems meet the designated criteria. As a part of the review procedures, the contractor shall furnish the Government a description of the cost and schedule control systems applicable to this contract in such form and detail as indicated by the Guide, or as required by the Contracting Officer. The contractor agrees to provide access to all pertinent records, data, and plans as requested by representatives of the Government for the conduct of systems review.

(b) The description of the management control systems accepted by the Contracting Officer, identified by title and date, shall be referenced in the contract. Such systems shall be maintained and used by the contractor in the performance of this contract.

(c) Contractor changes to the reviewed systems shall be submitted for review and approval as required by the Contracting Officer. When Contracting Officer approval is required, the Contracting Officer shall advise the contractor of the acceptability of such changes within sixty (60) days after receipt from the contractor. When systems existing at the time of contract award do not comply with the designated criteria, adjustments necessary to assure compliance will be made at no change in contract price or fee.

(d) The contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer, or duly authorized representative, for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to this contract. Deviations from the systems description identified during contract performance shall be corrected as directed by the Contracting Officer.

(e) The contractor shall require that each selected subcontractor, as mutually agreed to between the Government and the contractor and as set forth in the schedule of this contract, meet the criteria for cost and schedule control systems as set forth in subcontract and shall incorporate in all such subcontracts adequate provisions for review and surveillance of subcontractor's systems to be carried out by the prime contractor, or by the Government when requested by either the prime or subcontractor.

§ 9–7.403–75 Cost and schedule control systems.

In those instances where the procurement request identifies the requirement as one for which cost and schedule control systems criteria are applicable, insert the clause set forth at § 9–7.203–58.

Change 5.12

Section 9–7.402–59 is amended by adding a preamble which will make the Stop Work Order clause optional for use rather than mandatory for use in contracts with educational or nonprofit institutions. The revised text will read:

§ 9–7.402–59 Stop work order.

Use of this clause is optional if the contract is for research and development being performed by an educational or nonprofit institution unless an operating or on-site contract is involved.

* * * * *

Change 5.13

PART 9–15—CONTRACT COST PRINCIPLES AND PROCEDURES

A new provision is added as § 9–15.107 entitled "Advance understandings" which will refer the reader to the policy guidance stated at § 9–15.5006–4. A new provision is added as § 9–15.205–30 entitled "Precontract costs," which will refer the reader to the policy guidance stated at § 9–15.5006–4.

Section 9-15.006-4 is amended by deleting all of the present text. The revised text will read.

§ 9-15.107 Advance understandings.

See § 9-15.5006-4 for further guidance.

§ 9-15.205-30 Precontract costs.

See § 9-15.5006-4 for further guidance.

§ 9-15.5006-4 Precontract costs.

(a) Precontract costs are those defined in 1-15.205-30 of the Federal Procurement Regulations. To the extent practical, known expenditures of precontract costs should be governed by establishing advance understandings as contemplated by Section 1-15.107 of the FPR. Contracts that include authorized precontract costs shall include the "Date of Incurrence of Cost" clause set forth at 1-7.204-3 of the FPR.

(b) The following limitations apply to establishment of advance understandings relative to precontract costs:

(1) Precontract cost authorizations shall not be used to cover a period in excess of 15 days, unless a longer period is approved by the HPA based upon a written finding that such an allowance is reasonable, and shall not be extended or renewed. A copy of the finding shall be forwarded to the Senior Procurement Official at the time of approval. If prolonged coverage is necessary, a letter contract shall be issued in accordance with DOE-PR 9-3.408.

(2) All precontract cost authorizations shall be reviewed and approved at a management level above the Contracting Officer.

(3) Retroactive precontract cost authorizations and the predating of contractual agreements shall not be used.

(4) Precontract cost authorizations shall not authorize the delivery or furnishing of any goods or services from a contractor until after the contract is executed.

Change 5.14

PART 9-50—OPERATING AND ON-SITE SERVICE CONTRACTS

The Table of Contents of Part 9-50, "Operating and On-site Service Contracts," is amended by inserting a new entry 9-50.704-48, "Cost and Schedule Control Systems" and by removing and reserving § 9-50.2002, "Compensation approval requirements." The revised entry will read:

Sec.

* * * * *

90-50.704-48 Cost and Schedule Control Systems.

* * * * *

90-50.2002 [Reserved]

Change 5.15

Section 9-50.104(c) (45 FR 24380, April 9, 1980) is amended to increase the ceiling for small business class set-asides of procurement of construction, including new construction and repair and alteration of structures, from $2 million to $3 million. The set aside threshold is also revised from $2,500 to $10,000 for the sake of consistency with § 9-50.302-3(h). The revised text will read:

§ 9-50.104 Small business and small disadvantaged business concerns.

(a) * * *

(b) * * *

(c) Procurement of construction between $10,000 and $3 million, including new construction, and repair and alteration of structures, shall be set-aside on a class basis for small business concerns. When, in the judgment of the contractor, a particular procurement falling within these dollar limits is determined to be unsuitable for a small business set-aside, notification to SBA shall be made through the DOE Contracting Officer. Unless SBA appeals the decision (see FPR 1-1.706-2), the contractor shall proceed to process the procurement on an unrestricted basis. Small business set-aside preferences should be considered for construction procurements in excess of $3 million on a case-by-case basis, with such preferential participation of small business to be favored, whenever appropriate.

* * * * *

Change 5.16

Section 9-50.704 is amended by adding a new § 9-50.704-48, "Cost and Schedule Control Systems". The new text will read:

§ 9-50.704-48 Cost and schedule control systems.

Certain DOE projects are of such significance and magnitude that responsible management calls for enhanced visibility of contractor cost and schedule performance as well as more formalized data to document their progress and aid in decisions regarding their continuation. Any contract with a total estimated cost in excess of $50 million shall require full implementation of the DOE cost and Schedule Control Systems Criteria. Selected projects between $2 million and $50 million may benefit from modified implementation of such a control system. In those instances where the DOE Cost and Schedule Control Systems Criteria are to be utilized, the Contractor shall follow the current Cost and Schedule Control Systems Implementation Guide, and the following clause, appropriately modified to identify the parties, shall be included:

Cost and Schedule Control Systems

(a) In the performance of this contract, the contractor shall establish, maintain, and use cost and schedule control systems (management control systems) meeting the criteria set forth in the contract and as described in detail in DOE/CR-0015, "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," annexed hereto and hereinafter referred to as the "Guide." Prior to acceptance by the Contracting Officer and within ——— calendar days after contract award, the contractor shall be prepared to demonstrate systems operation to the Government to verify that the proposed systems meet the designated criteria. As a part of the review procedures, the contractor shall furnish the Government a description of the cost and schedule control systems applicable to this contract in such form and detail as indicated by the Guide, or as required by the Contracting Officer. The contractor agrees to provide access to all pertinent records, data, and plans as requested by representatives of the Government for the conduct of systems review.

(b) The description of the management control systems accepted by the Contracting Officer, identified by title and date, shall be referenced in the contract. Such systems shall be maintained and used by the contractor in the performance of this contract.

(c) Contractor changes to the reviewed systems shall be submitted for review and approval as required by the Contracting Officer. When Contracting Officer approval is required, the Contracting Officer shall advise the contractor of the acceptability of such changes within sixty (60) days after receipt from the contractor. When systems existing at the time of contract award do not comply with the designated criteria, adjustments necessary to assure compliance will be made at no change in contract price or fee.

(d) The contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer, or duly authorized representative, for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to this contract. Deviations from the systems description identified during contract performance shall be corrected as directed by the Contracting Officer.

(e) The contractor shall require that each selected subcontractor, as mutually agreed to between the Government and the contractor and as set forth in the schedule of this contract, meet the criteria for cost and schedule control systems as set forth in subcontract and shall incorporate in all such subcontracts adequate provisions for review and surveillance of subcontractor's systems to be carried out by the prime contractor, or by the Government when requested by either the prime or subcontractor.

Change 5.17

Section 9–50.1510–14 is amended at paragraph (d) to increase from $40,000 to $45,000 the level at which individual employee compensation for operating and on-site employees must be approved by the Contracting Officer. The revised text will read:

§ 9–50.1510–14 Compensation for personal services.

* * * * *

(d) Review and approval of compensation paid individual employees. In determining the reasonableness of compensation, the compensation of each individual contractor employee normally need not be subject to review and approval. Generally, the compensation paid individual employees should be left to the judgment of contractors subject to the limitations of DOE-approved compensation policies, programs, classification systems, and schedules, and amounts of money authorized for wage and salary increases for group of employees. However, in the case of operating and on-site contracts, all compensation due an individual of $45,000 or more shall require the Contracting Officer's or designee's review and approval. In addition, in the case of operating and on-site contracts, it will often be necessary that employee compensation be subjected to review and approval on an individual basis at a level below $45,000, when the Contracting Officer finds it appropriate for the particular situation. The contract shall specifically provide for the approval by the Contracting Officer of the cost of compensating an individual contractor employee above the level determined by the Contracting Officer, if a total of 50 percent or more of such compensation is reimbursed under DOE cost-type contracts. For purposes of determining the level for individual review and approval, total compensation as used in this paragraph includes only the employee's base salary and bonus or incentive compensations. As in the case of other personnel and compensation costs, it is intended that Contracting Officer review and approval of individual compensation normally will be prior to incurrence of costs.

* * * * *

Change 5.18

Section 9–50.2002, "Compensation approval requirements," is removed as its content is duplicative of 9–50.1510–14(d). The revised entry will be:

§ 9–50.2002 [Reserved]

Change 5.19

PART 9–51—REVIEW AND APPROVAL OF CONTRACT ACTIONS

Section 9–51.102, paragraph (b)(3) is revised by adding the word "initial" before "proposed contract" to clarify the meaning and by changing the word "will" to "may" to better reflect the nature of estimates of future actions. A new subparagraph (5) is added to paragraph (b) to clarify that the estimated cost in the case of cost-shared procurements is the sum of the contractor and Government shares for purpose of ascertaining whether the action requires Headquarters review. The revised text will read:

§ 9–51.102 Contract actions requiring advance Headquarter's review and approval.

* * * * *

(b) * * *

(3) Any initial proposed contract or subcontract, regardless of amount, which in the opinion of the Head of the Procuring Activity may as a result of extension, follow-up work, or otherwise increase the contract or subcontract, or lead to a contract or subcontract with the same contractor, in an amount in excess of the delegated authority.

* * * * *

(5) In the case of cost-shared contracts, the estimated cost shall be considered to be the sum of the contractor and Government shares for the purpose of ascertaining whether Headquarters review and approval is required.

[FR Doc. 82–13607 Filed 5–18–82; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3130 and 3140

Final Regulatory Impact Analysis for Regulations Governing Competitive Oil and Gas Leasing in the National Petroleum Reserve in Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notification of availability of final regulatory impact analysis.

SUMMARY: In accordance with the provisions of Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–534), the Bureau of Land Management has prepared a Final Regulatory Impact Analysis for the regulations promulgated at 43 CFR Parts 3130 and 3140 which provide procedures for competitive oil and gas leasing in the National Petroleum Reserve—Alaska (November 9, 1981; 46 FR 55494). Notice is hereby given that the final regulatory impact analysis has been completed and is available for inspection and review.

ADDRESSES: Availability: The final regulatory impact analysis is available for inspection and review at the following addresses:

Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240

Bureau of Land Management, Alaska State Office, 701 C Street, P.O. Box 13, Anchorage, Alaska 99513.

The document will be available for public inspection and review in Room 5555 of the Washington, D.C. address and in the Public Room of the Alaska State Office during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wink Hastings, Bureau of Land Management, Division of Oil and Gas, Room 3417, 1800 C Street, NW., Washington, D.C. 20240, (202) 343–7753.

James M. Parker,

Acting Director.

May 13, 1982.

[FR Doc. 82–13544 Filed 5–18–82; 8:45 am]

BILLING CODE 4310–84–M

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43 CFR Public Land Order 6249

[OR–19001–A]

Oregon; Partial Revocation of Public Water Reserve No. 146

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive Order creating Public Water Reserve No. 146. This action will restore 200 acres to full operation of the public land laws generally, including nonmetalliferous mining. All lands affected by this order have been and will remain open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: June 15, 1982.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr. Oregon State Office, 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 5907 of August 18, 1932, which withdrew certain lands for public water reserve purposes, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

Public Water Reserve No. 146

T. 36 S., R. 32½ E.,
Sec. 23, SW¼NE¼, S½NW¼, and N½SE¼.

The area described contains 200 acres in Harney County.

2. At 10 a.m. on June 15, 1982, the land will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on June 15, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on June 15, 1982, the land will be open to nonmetalliferous mineral location under the United States mining laws. The land has been and will remain open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

May 10, 1982.

[FR Doc. 82-13560 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6250

[ES 26424]

Florida; Revocation of Public Land Order No. 869

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a military withdrawal affecting 39.91 acres of public land withdrawn for use by the Department of the Navy in connection with a gunnery range. This action will restore the land to operation of the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: June 15, 1982.

FOR FURTHER INFORMATION CONTACT: Michael J. Knipfing, Eastern States Office, 703-235-2846.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 869 of October 24, 1952, which withdrew the following described public lands for use of the Department of the Navy in connection with the Gulf Beach Gunnery Range is hereby revoked in its entirety:

Tallahassee Meridian

T. 3 S., R. 32 W.,
Sec. 33, lots 5 to 20 inclusive.

The area described contains 39.91 acres in Escambia County.

2. At 8:00 a.m. on June 15, 1982, the lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:00 a.m. on June 15, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands also will be open to applications and offers under the mineral leasing laws, and to location under the United States mining laws, at 8:00 a.m. on June 15, 1982.

Inquiries concerning the lands should be addressed to Michael J. Knipfing, Division of Lands and Minerals Operations Branch of Lands and Title Adjudication, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

May 10, 1982.

[FR Doc. 82-13562 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6251

[I-017167]

Idaho; Revocation of Public Land Order No. 4337

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order affecting 7,857.08 acres of public lands withdrawn for use by the Bureau of Land Management as a research and grazing study area. This action will restore the lands to operation of the public land laws, including the mining laws.

EFFECTIVE DATE: June 15, 1982.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208-334-1597.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 4337 of December 6, 1967, which withdrew the following described lands for use in connection with the Point Springs Research and Grazing Study Area is hereby revoked in its entirety.

Boise Meridian

T. 13 S., R. 27 E.
Sec. 1;
Sec. 2, lot 1, SE¼NE¼, E½SE¼;
Sec. 11, E½E½;
Secs. 12 and 13;
Sec. 14, E½E½;
Sec. 24.
T. 13 S., R. 28 E.,
Secs. 6 to 8 inclusive;
Sec. 9, W½, except that portion on the east side of Interstate Highway 80 North;
Sec. 17 to 19 inclusive;
Sec. 20, N½, SW¼.

The area described aggregates 7,857.08 acres in Cassia County.

2. At 8:00 a.m. on June 15, 1982 the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:00 a.m. on June 15, 1982 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands will be open to location under the United States mining laws, at 8:00 a.m. on June 15, 1982. They have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, Box 042, Boise, Idaho 83724.

Garrey E. Carruthers,

Secretary of the Interior.

May 10, 1982.

[FR Doc. 82-13559 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6319]

Notice of Communities With No Flood Hazard Areas for the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency, after consultation with local officials of the communities

listed below, has determined, based upon analysis of existing conditions in the communities, that these communities would not be inundated by 100-year flood. Therefore, the Agency is converting the communities listed below to the Regular Program of the National Flood Insurance Program of (NFIP) without determining base flood elevations.

EFFECTIVE DATE: Date listed in fourth column of list of Communities with No Special Flood Hazards.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, (202) 287–0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: In these communities, there is no reason not to make full limits of coverage available. The entire community is now classified as Zone C. In a Zone C, insurance coverage is available on a voluntary basis at low actuarial nonsubsidized rates. For example, under the Emergency Program in which your community has been participating the rate of a one-story 1–4 family dwelling is $.40 per $100 of coverage. Under the Regular Program, to which your community has been converted, the equivalent rate is $.10 per $100 coverage. Contents insurance is also available under the Regular Program at low actuarial rates. For example, when all contents are located on the first floor of a residential structure, the premium is $.15 per $100 of coverage.

In addition to the less expensive rates, the maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program. For example, a single family residential dwelling now can be insured up to a maximum of $185,000 coverage for the structure and $60,000 coverage for contents.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agency or broker serving the eligible community, or from the National Flood Insurance Program.

The effective date of conversion to the Regular Program would not appear in the Code of Federal Regulations except for the page number of this entry in the Federal Register.

Pursuant to the provision of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice regarding the completed stage of engineering tasks in delineating the special flood hazard areas of the specified community and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood Insurance, Flood plains.

The entry reads as follows:

§ 65.8 List of communities with no special flood hazard areas.

State	County	Community	Date of conversion to regular program
California	Santa Barbara	City of Guadalupe	Apr. 30, 1982.
California	Los Angeles	City of Maywood	Apr. 30, 1982.
California	Fresno	City of San Joaquin	Apr. 30, 1982.
California	Los Angeles	City of Santa Monica	Apr. 30, 1982.
Louisiana	Evangeline Par.	Village of Chataignier	Apr. 30, 1982.
Missouri	St. Louis	Village of Sycamore Hills	Apr. 30, 1982.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: May 7, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13528 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for Harris County, Texas; Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Harris County, Texas. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Harris County, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0216.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 480287 Panel 0200C, published on October 6, 1980, in 45 FR 66098, indicates that Harris County Municipal Utility District No. 200, being a 530.0835 acre tract of land in the John W. Bryan Survey, Abstract No. 159, Harris County, Texas, recorded as Instrument Number 124–88–1887 through 124–88–1893; Instrument Number 130–12–1783 through 130–12–1838 in Volume 1225, Pages 1 through 54; Instrument Number 138–83–0390 through 138–83–0397; Instrument Number 147–86–1504 through 147–86–1511; Instrument Number 150–87–0539 through 150–87–0553; Instrument Number 166–97–1834 through 166–97–1841; Instrument Number 185–96–1894 through 185–96–1899; and Instrument Number 188–87–1357 through 188–87–1375, in the Office of the Clerk, Harris County, Texas is within the Special Flood Hazard Area.

Map No. H & I 480287 Panel 0200C is hereby corrected to reflect that the above mentioned property with the exception of the area designated for Drainage Easement recorded in Volume 1225, Page 1, H.C.D.R. is not within the Special Flood Hazard Area identified on February 24, 1981. This property is in Zone C.

Map No. H & I 480287 Panel 0350C, published on October 6, 1980, in 45 FR 66098, indicates that Lots 5 through 7, Block 1; Lots 1 through 6, Block 9; and Lots 54 and 59 through 62, Block 12, Hunterwood Village Subdivision, Sections Three and Four, Harris County, Texas, recorded as Instrument No. H212023 in Volume 305, Page 13 of Map Records and Instrument No. H235031 in Volume 305, Page 74 of Map Records, respectively, in the Office of the Clerk, Harris County, Texas, are within the Special Flood Hazard Area.

Map NO. H & I 480287 Panel 0350C is hereby corrected to reflect that the above mentioned properties are not within the Special Flood Hazard Area identified on February 24, 1981. These lots are in Zone C.

Pursuant to provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: May 4, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82–13533 Filed 5–18–82; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 70

[Docket No. FEMA–5909]

Letter of Map Amendment for Larimer County, Colorado; Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Larimer County, Colorado. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Larimer County, Colorado, that certain property is within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is within the Special Flood Hazard Area, reinforces the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 080101 Panel 0178B, published on October 6, 1980, in 45 FR 66109, indicates that Lots 2 and 24 and Tracts A, B, and C, Plat of Granada Heights, Fort Collins, Colorado, recorded as Reception Number 323945 in Book 1981, Page 414, in the Office of the Recorder, Larimer County, Colorado are not located within the Special Flood Hazard Area.

Map No. H & I 080101 Panel 0178B is hereby corrected to reflect that the above mentioned properties are within the Special Flood Hazard Area identified on April 2, 1979. These properties are in Zone A.

Pursuant to provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood Insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 30, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82–13532 Filed 5–18–82; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 70

[Docket No. FEMA–6048]

Letter of Map Amendment for the Unincorporated Area of Cook County, Illinois; Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the Unincorporated Area of Cook County, Illinois. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Unincorporated Area of Cook County, Illinois, that portions of certain property are not within the Special Flood Hazard Area.

This map amendment, by establishing that portions of the subject property are not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for those portions as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or

broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620 toll free.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 170054, Panel No. 0040B, published on May 2, 1981, in 46 FR 26307, indicates that portions of a parcel of land, located in the Northwest Quarter of the Southeast Quarter of Section 12, Township 42 North, Range 10 East of the Third Principal Meridian, also identified on Tax Map No. 42–10–12G as Parcel No. 2–12–400–003, being a portion of the lands recorded as Document No. 19 411 954, in the Office of the Recorder of Deeds of Cook County, Illinois, are located within the Special Flood Hazard Area.

Map No. 170054, Panel No. 0040B, is hereby corrected to reflect that the portions of the above-mentioned property that are presently at or above the 100-year Base Flood Elevations (BFE's) which vary from elevation 722.0 feet National Geodetic Vertical Datum (NGVD) at Baldwin Road to elevation 717.5 feet NGVD at a point immediately below the Prairie Brook Detention Lake to elevation 716.5 feet NGVD at the east property line as shown on the topographic drawing entitled: Portion of Section 12, T. 42 N., R. 10 E., Cook County, Illinois, dated May 15, 1979, prepared by Chicago Aerial Survey, are not within the Special Flood Hazard Area identified on April 15, 1981. The portions of the property which are presently at or above the above-mentioned elevations are in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 30, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82–13531 Filed 5–18–82; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 70

[Docket No. FEMA–5909]

Letter of Map Amendment for the City of Tulsa, Oklahoma; Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Tulsa, Oklahoma. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for The City of Tulsa, Oklahoma, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 405381D Panel 71, published on October 6, 1980, in 45 FR 66095, indicates that Lot 2, Block 3, 2nd Resubdivision of Block 3, Lindell Park Addition, Tulsa, Oklahoma, recorded as Plat No. 1259, Record No. 754252, in the Office of the Clerk, Tulsa County, Oklahoma, is located within the Special Flood Hazard Area.

Map No. H & I 405381D Panel 71 is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on August 14, 1979. This property is in Zone C.

Map No. H & I 405381D Panel 25, published on October 6, 1980, in 45 FR 66095, indicates that Lot 20, Block 45, Valley View Acres Second Addition, Tulsa, Oklahoma, recorded as Plat No. 2068, Record No. 273310, in the Office of the Clerk, Tulsa County, Oklahoma, is located within the Special Flood Hazard Area.

Map No. H & I 405381D Panel 25 is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on August 14, 1979. This property is in Zone C.

Map No. H & I 405381D Panel 73, published on October 6, 1980, in 45 FR 66095, indicates that Lot 9, Block 6, Annahlee Heights, Tulsa, Oklahoma, recorded as Plat No. 1856, Record No. 159923, in the Office of the Clerk, Tulsa County, Oklahoma, is located within the Special Flood Hazard Area.

Map No. H & I 405381D Panel 73 is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on August 14, 1979. This property is in Zone C.

Map No. H & I 405381D Panel 71, published on October 6, 1980, in 45 FR 66095, indicates that Lots 1 and 2, Block 3, Harvard Hills, Tulsa, Oklahoma, recorded as Instrument No. 563938 in Book 1265, Page 1639, in the Office of the Clerk, Tulsa County, Oklahoma, are located within the Special Flood Hazard Area.

Map No. H & I 405381D Panel 71 is hereby corrected to reflect that the above mentioned lots are not within the Special Flood Hazard Area identified on August 14, 1979. These lots are in Zone C.

Pursuant to provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: May 4, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13530 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. 5909]

Letter of Map Amendment for the City of Rochester, Minnesota, Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the City of Rochester, Minnesota. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Rochester, Minnesota, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620 toll free.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 275246, Panel No. 0007B, published on October 6, 1980, in 45 FR 66083, indicates that the residential structures located on Lots Nos. 17 and 18, Block 10 and Lots Nos. 1 through 4, Block 11, Homestead Trails First Replat, City of Rochester, Olmsted County, Minnesota, as recorded in Book Z of Plats, Page 17, in the Office of the Recorder of Olmsted County, Minnesota, are located within the Special Flood Hazard Area.

Map No. 275246, Panel No. 0007B, is hereby corrected to reflect that the above-mentioned residential structures are not within the Special Flood Hazard Area identified on February 4, 1981. The residential structures located on Lots Nos. 17 and 18, Block 10 and Lots Nos. 1 through 3, Block 11, are in Zone B. The residential structure located on Lot No. 4, Block 11, is in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 8, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13529 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 20870; FCC 82-207]

Regulatory Policies and Procedures for the Domestic Public Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Second report and order.

SUMMARY: This Order eliminates the requirement that applicants in the Domestic Public Land Mobile Radio Service requesting one initial two-way frequency demonstrate a public need for the proposed service. This action will serve the public interest by making frequencies available for use by the public in a more timely manner, by reducing the costs associated with filing applications and by relieving the staff of an unnecessary processing burden. This action is necessary to speed service to the public and to reduce staff resources necessary to process applications.

DATES: Effective April 29, 1982.

FOR FURTHER INFORMATION CONTACT: Thomas Gutierrez, Mobile Services Division, Common Carrier Bureau, (202) 632–6450.

SUPPLEMENTARY INFORMATION:

In the matter of regulatory policies and procedures for the Domestic Public Land Mobile Radio Service, CC Docket No. 20870.

Second Report and Order

Adopted: April 29, 1982.

Released: May 5, 1982.

Background

1. In this proceeding,[1] the Commission has requested comment on whether to eliminate the requirement that applicants for one initial two-way[2] frequency in the Domestic Public Land Mobile Radio Service (DPLMRS) demonstrate a public need for the service proposed.[3]

2. The need standards which are applied to applications for a new frequency have evolved primarily out of two cases, *Long Island Paging*[4] and *New*

[1] CC Docket 20870, Further Notice of Proposed Rulemaking, 84 FCC 2d 857 (1981) 46 FR 15749, March 9, 1981.

[2] In another proceeding, General Docket 80–183, we are eliminating need showings for one initial one-way frequency.

[3] The Commission's rules do not expressly require such a showing; however, as discussed below, longstanding Commission policy does impose such a requirement.

[4] Long Island Paging, 30 FCC 2d 405, *review denied*, 32 FCC 2d 235 (1971), *recon. denied*, 34 FCC 2d 216 (1972).

York Telephone Co.[5] Although these cases suggest several types of evidence that might be considered persuasive in demonstrating public need for an initial frequency,[6] more recent Commission practice has been to require applicants for an initial two-way channel to submit a public need survey, with demographic and commercial information being accepted only to supplement the need survey. Edward R. Buckmaster and Burton R. Gigoux d/b/a Communications Services, Mimeo 28930, released March 19, 1981, aff'd sub nom. Advanced Electronics v. FCC, No. 81–1436 (D.C. Cir. February 19, 1982). Beyond this point, however, need standards for an initial frequency are far from clear, for two reasons. First, although these cases addressed the approach to be used to demonstrate public need, the discussions of methodology contained in them are sufficiently vague to invite almost endless argument over the adequacy of any particular need showing. Second, and more important, the cases afford inadequate guidance regarding the minimum size of public need required to justify one initial frequency, *i.e.*, the minimum amount of actual demand for the service as measured by the number of persons desiring service or the number of two-way mobile units requested by prospective customers.

3. As a result of these shortcomings, the public need standards have been a less than effective tool in deciding whether to grant initial two-way channel applications. The vague nature of the standards relating to need demonstration methodology has unnecessarily delayed service to the public because it has provoked frequent petitions to deny,[7] while amendments to applications almost always cure any deficiencies noted in the petitions. In addition, as we have acted on these cases individually, the situation has evolved to the point that virtually any initial need showing has been sufficient, if measured properly by an applicant, to justify assignment of an initial two-way frequency. In sum, under our current policy an applicant's need showing frequently becomes the subject of a petition to deny which adds to the Commission's workload and delays the availability of service to the public, while, in the end, the application, as amended in response to a petition to deny, almost invariably demonstrates a public need for the service proposed. For the above reasons, we proposed to eliminate the requirement that applicants for one initial two-way frequency in the Domestic Public Land Mobile Radio Service demonstrate a public need for the service proposed.

Comments

4. Six parties commented on our proposal. All but one supported it. That dissenter [8] argued that adoption of our proposal would permit warehousing of frequencies because applications that effectively request an additional frequency, or an additional location for the same frequency, would be designed specifically to meet our definition of an application for an initial frequency [9] and thus bypass any requirement for a need showing. [10]

Discussion

5. We have carefully considered the comments and have decided to eliminate the need showing required for one initial two-way channel. This policy will apply to all pending applications and to all applications filed after the effective date of the Order. We no longer find it necessary to impose such an affirmative requirement for initial two-way frequency applications. There is a clear public need for additional two-way services and facilities. [11] Over the last decade demand for these facilities has grown at the rate of 10 percent annually and is expected to grow at an even greater rate as technology advances and costs decline. Intensive competition already exists among RCCs and between RCCs and wireline carriers.[12] In sum, the mobile telephone market is demonstrably one in which individual need showings for new entry are not required to further the public interest. Accordingly, we conclude that a general policy in favor of new entry in the mobile telephone industry would serve the public interest, convenience and necessity. Consistent with that finding, we shall no longer require applicants for an initial two-way channel to demonstrate need.[13]

6. In addition to the benefits to potential users, there are also administrative benefits to elimination of this requirement. As we stated earlier, while public need showings frequently become subjects of petitions to deny, which add to the staff's workload, the Commission almost invariably finds these showings adequate to demonstrate a public need for an initial frequency. Thus, our current policy serves no useful purpose.[14] Elimination of it should reduce the Commission's workload and avoid delays in application processing.

7. In reaching our conclusion, we have thoroughly considered the prospect of frequency warehousing, which is contrary to Commission policy. However, we have decided that our action today will not significantly increase the likelihood of this, for two reasons. First, in our view, the incentive for warehousing is closely linked to the number of frequencies available. Limited availability encourages applicants to apply for frequencies which they do not currently need to insure that they will have those frequencies later should they develop a need. Several actions we have taken recently to make more frequencies available [15] should reduce this incentive.

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[5] New York Telephone Co., 47 FCC 2d 488, *recon. denied*, 49 FCC 2d 264 (1974), *aff'd sub nom.* Pocket Phone Broadcast Service, Inc. v. FCC, 538 F. 2d 447 (D.C. Cir. 1976).

[6] New York Telephone Co., *supra*, 47 FCC 2d at 494, lists four types of evidence which Long Island Paging considered "persuasive." These include (1) statistics or specific facts tending to show need, such as the nature and economics of the service area; (2) demographic or statistical evidence showing the nature and number of industries, businesses, professions and trades in the service area; (3) information on the identity and occupation of persons making service inquiries together with a statement as to whether or not costs were quoted and whether definite commitments were made; and (4) evidence as to the success or failure of other carriers offering that type of service in the same market.

[7] A review by Bureau staff shows that "public need" was among the issues most often raised in petitions filed against mobile telephone applications that were granted during the last two years.

[8] This set of comments was filed jointly on behalf of Radio Broadcasting Company (RBC) and Radio Dispatch Company (RDC).

[9] Our procedures provide that a determination regarding whether a requested facility is an additional or new frequency is based, in general, on the amount of overlap between existing and proposed facilities. *See* Public Notice entitled, "Clarification of Existing Policy", Mimeo 002411, released July 27, 1981, where our procedures for classifying applications are set forth.

[10] Our proposal provides that an applicant will still be required to demonstrate need for an application requesting any additional two-way channels. This action will only eliminate the requirement to show need for one initial two-way frequency.

[11] Cellular Communications Systems, 86 FCC 2d, 469, 489–490; Further Notice of Proposed Rulemaking in this proceeding, at 859, 46 FR 15749, March 9, 1981.

[12] In most major markets several carriers currently provide two-way service.

[13] In making this determination we act consistent with Commission and judicial precedent. *See* Specialized Common Carrier Services, 29 FCC 2d 870, 920 (1971), *aff'd sub nom.* Washington Utilities & Transportation Commission v. FCC, 513 F. 2d 1142 (9th Cir. 1975), *cert. denied*, 423 U.S. 836 (1975). *Accord*, American Telephone and Telegraph Co. v. FCC, 539 F. 2d 767 (D.C. Cir. 1976). *See also* Land Mobile Channels, 69 FCC 2d 1555, 1569 (1978).

[14] After arriving at this conclusion, we also considered whether our current need standards should be strengthened rather than eliminated. However, for the reasons discussed above, we determined that such a change would not serve the public interest. Also, we note that we considered this option on our own motion. None of the commenters in this proceeding advocated such a change.

[15] *See* Docket 21039, 69 F.C.C. 2d 1555 (1978), *recon. granted in part*, 77 FCC 2d 201 (1980), *appeal*

Continued

Second, our decision to eliminate need showing requirements applies only to applications for *one* initial two-way frequency. We shall continue to require licensees to construct their facilities within eight months of receiving a construction permit. We believe that few, if any, entrepreneurs will undertake the expense of applying for and constructing a facility for one initial two-way frequency unless they have assessed the potential of the market to support that operation and have found at least the level of public interest that we have found satisfactory in the past. We note that if an applicant for one-initial channel can demonstrate that an authorized frequency will serve even one two-way customer, the frequency will be used more efficiently than if it were left unassigned and, if other carriers are authorized in the area, a competitive alternative is afforded for other potential customers. Presumably, as further need for service develops, additional two-way customers will use that frequency.[16] Finally, we observe that although our existing need standards for an initial two-way frequency have been minimal, as noted in paragraph 3 above, we are unaware of any warehousing problem to date.

Conclusion

8. We believe that our decision here will benefit the public, applicants and the Commission. As we stated earlier, while public need showings frequently become subjects of petitions to deny, the Commission staff almost invariably finds these showings adequate to demonstrate a public need for an initial frequency. During the process of applicants perfecting these need showings, the public is deprived of needed service. In addition, our action today eliminating this requirement should reduce the administrative workload associated with applications, freeing valuable staff resources to work on other, more pressing matters and providing service to the public more expeditiously than in the past. We conclude, therefore, that on the balance, the public interest will be served by elimination of the requirement for need showings for one initial two-way frequency.[17]

9. The Commission has determined that the rule adopted in this rulemaking proceeding will have a significant beneficial economic effect on a substantial number of small entities. Pursuant to Section 604 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, we have performed the following analysis. This rule is necessary to provide service to the public as expeditiously as possible and to lessen the cost incurred by applicants and the Commission's staff in the preparation and processing of applications. All but one of those commenting supported the rule. The concern of the lone dissenting commenter was unrelated to the economic effect of the rule on small entities. The Commission considered applying the proposed rule to selected classes of applicants but ultimately determined that total elimination of the requirement would contribute most toward reduction of regulatory burdens and the speeding of service to the public.

10. In view of the foregoing, it is ordered, effective immediately,[18] that the requirement that applicants for one initial two-way frequency in the Domestic Public Land Mobile Radio Service demonstrate a public need for that service is eliminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-13471 Filed 5-18-82; 8:45 am]

BILLING CODE 6712-01-M

pending sub nom. Telocator Network of America v. FCC, No. 78-2218, (D.C. Cir., filed November 27, 1978); and Cellular Communications Systems, FCC Docket No. 79-318, FCC 81-161, Report and Order, 86 FCC 2d 469 (1981), *recon. granted in part*, FCC 82-99, released March 3, 1982, 47 FR 10018 (March 9, 1982).

[16] We recognize that the Commission has a statutory mandate to assure that available frequencies are assigned so as to serve the public interest. However, we do not consider our action today to be in any way inconsistent with such a mandate. Rather, we believe that the public interest can be best served through a regulatory framework which leaves considerable room for independent business judgment while also containing adequate safeguards to protect against the hoarding of scarce public resources, such as radio spectrum.

[17] We note that our action today is rather limited in scope. Relative demand remains a comparative hearing factor in the evaluation of all competing applications. In addition, an applicant seeking more than one new two-way frequency must still provide a public need demonstration, as set forth in Long Island Paging and New York Telephone Co., *supra*. This is because of the limited number of frequencies available and the potential for warehousing, which, as discussed above, is *more likely to be present* in multiple channel requests for new frequencies. We shall also continue to require that an applicant for any number of additional frequencies provide traffic loading studies, as required by § 22.516 of our rules.

[18] Our action today is a substantive rule that relieves a requirement currently imposed on applicants. Therefore, under section 553(d)(1) of the Administrative Procedure Act, 5 U.S.C. 553(d)(1) there is no need for publication or service prior to the effective date of this action.

Proposed Rules

Federal Register
Vol. 47, No. 97
Wednesday, May 19, 1982

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 112

Nondiscrimination in Federally Assisted Programs of SBA; Effectuation of Title VI of the Civil Rights Act of 1964

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of 28 CFR 42.403(d) which requires Federal agencies to list the types of programs that receive Federal financial assistance for purposes of effectuating the provisions of the Civil Rights Act of 1964, the Small Business Administration proposes to revise Appendix A to Part 112 which list those programs, and to add nonfinancial assistance programs which are provided by the agency.

DATES: Comments on this proposed rule must be received by June 18, 1982.

ADDRESSES: Send comments to: Office of Civil Rights Compliance, Small Business Administration, 1441 L Street, N.W., Vermont Bldg., 12th Floor, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:
Adelino Sanchez, Chief—(202) 653–6054.

List of Subjects in 13 CFR Part 112

Civil rights, Small businesses.

For the reasons set forth above, Appendix A of Part 112 of Title 13 of the Code of Federal Regulations should read as follows:

APPENDIX A

Name of program	Authority
Regular business loans	Small Business Act, sec. 7(a) and 7(a)(11).
Handicapped assistance loans.	Small Business Act, sec. 7(a)(10).
Small Business Energy Loans.	Small Business Act, sec. 7(a)(12).
Debtor State development company loans (501) and their small business concerns.	Small Business Investment Act, Title V.
Debtor small business investment companies and their small business concerns.	Small Business Investment Act, Title III.
Pollution Control	Small Business Investment Act, Title IV, Part A.
DISASTER LOANS	
Physical, including riot	Small Business Act, sec. 7(b)(1).
Economic injury (EIDL)	Small Business Act, sec. 7(b)(2).
Federal Action Loan Program	Small Business Act, sec. 7(b)(3) and Pub. L. 97-35. (No funds have been authorized for this program for FY 1982 thru FY 1984.)
Women's Business Enterprise.	Executive Order 12138.
Small Business Research	Public Law 96-302.
Procurement Automated Source System.	Small Business Act, sec. 8 and Pub. L. 96-302.
Business Development Program.	Small Business Act, sec. 8(a) and Pub. L. 95-507, as amended by Pub. L. 96-481.
Small Business Institute Program.	Small Business Act, sec. 8(b)(1) and Pub. L. 85-536.
Certificate of Competency	Small Business Act, sec. 8(b)(7) and Pub. L. 95-89.
Subcontracting Assistance Program.	Small Business Act, sec. 8(d), and Pub. L. 95-507.
Technology Assistance Program.	Small Business Act, sec. 9.
Small Business Development Centers.	Small Business Act, sec. 21 and Pub. L. 96-302.
International Trade Program	Small Business Act, sec. 22 and Pub. L. 96-481.
Service Corps of Retired Executives and Active Corps of Executives.	Small Business Act, secs. 101 and 8(b)(1) and Pub. L. 95-510.

NOTE.—All programs listed above are also covered by Part 113 of Title 13 of the Code of Federal Regulations.

Dated May 4, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-13578 Filed 5-18-82; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 113

Nondiscrimination in Federally Assisted Programs of SBA; Effectuation of Policies of Federal Government and Administrator

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of 28 CFR 42.403(d) and in effectuation of Federal Government and Small Business Administration policies against discrimination, the Small Business Administration proposes to revise Appendix A to Part 113 by updating its listing of programs that receive Federal financial assistance and to add to the list those nonfinancial assistance programs which are provided by the Agency. This appendix lists programs not specifically covered by Title VI of the Civil Rights Act of 1964.

DATES: Comments on this proposed rule must be received by June 18, 1982.

ADDRESSES: Send comments to: Office of Civil Rights Compliance, Small Business Administration, 1441 L St., N.W., Vermont Bldg., 12th Floor, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:
Adelino Sanchez, Chief—(202) 653–6054.

List of Subjects in 13 CFR Part 113

Civil rights, Small businesses.

For the reasons set forth above, Appendix A of Part 113 of Title 13 of the Code of Federal Regulations should read as follows:

APPENDIX A

Name of program	Authority
Regular business loans	Small Business Act, sec. 7(a) and 7(a)(11).
Seasonal Line of Credit	Small Business Act, sec. 7(a).
Contract Loan Program	Small Business Act, sec. 7(a).
Handicapped assistance loans.	Small Business Act, sec. 7(a)(10).
Small Business Energy Loans.	Small Business Act, sec. 7(a)(12).
Debtor small business investment companies and their small business concerns.	Small Business Investment Act, Title III.
Pollution Control	Small Business Investment Act, Title IV, Part A.
Surety bond guarantees	Small Business Investment Act, Title IV, Part B.
Debtor State development company loans (501) and their small business concerns.	Small Business Investment Act, Title V.
Debtor local development company loans (502) and their small business concerns.	Small Business Investment Act, Title V.
Debtor certified development company loans (503) and their small business concerns.	Small Business Investment Act, Title V and Pub. L. 96-302.
Disaster Loans	
Physical, including riot	Small Business Act, sec. 7(b)(1).
Economic injury (EIDL)	Small Business Act, sec. 7(b)(2).
Federal Action Loan Program	Small Business Act, sec. 7(b)(3) and Pub. L. 97-35. (No funds have been authorized for this program for FY 1982 thru FY 1984.)
Women's Business Enterprise.	Executive Order 12138.
Small Business Research	Public Law 96-302.
Subcontracting Assistance Program.	Small Business Act, sec. 8(d), and Pub. L. 95-507.
Procurement Automated Source System.	Small Business Act, sec. 8 and Pub. L. 96-302.
Certificate of Competency	Small Business Act, sec. 8(b)(7) and Pub. L. 95-89.
Subcontracting Program	Small Business Act, sec. 8(d) and Pub. L. 95-507.
Small Business Institute Program.	Small Business Act, sec. 8(b)(1) and Pub. L. 85-536.

APPENDIX A—Continued

Name of program	Authority
Business Development Program.	Small Business Act, sec. 8(a) and Pub. L. 95-507, as amended by Pub. L. 96-481.
Technology Assistance Program.	Small Business Act, sec. 9.
Small Business Development Centers.	Small Business Act, sec. 21 and Pub. L. 96-302.
International Trade Program	Small Business Act, sec. 22 and Pub. L. 96-481.
Service Corps of Retired Executives and Active Corps of Executives.	Small Business Act, secs. 101 and 8(b)(1) and Pub. L. 95-510.

Dated: May 4, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-13579 Filed 5-18-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

22 CFR Ch. I

[Docket No. SD-176]

Semiannual Agenda of Regulations and Regulatory Flexibility Agenda

AGENCY: State.

ACTION: Publication of Regulatory Agenda.

SUMMARY: As required by section 5 of Executive Order 12291, Federal Regulation (46 FR 13193), the first 1982 agenda of regulations of the Department of State is set forth below. The agenda also contains regulatory flexibility information required by the Regulatory Flexibility Act of 1980 (Pub. L. 96-354).

FOR FURTHER INFORMATION CONTACT: K. E. Malmborg, Assistant Legal Adviser for Management, Department of State, Room 4427A, 2201 C Street, NW., Washington, DC 20520, telephone (202) 632-2350.

Regulatory Agenda

The Department of State has no major regulations under consideration.

The proposed International Traffic in Arms Regulations (ITAR) referred to in the October Semiannual Agenda (46 FR 51258) are still under reconsideration in light of the criteria of Executive Order 12291. The point of contact for this regulation in the Department is Mr. William B. Robinson, Director, Office of Munitions Control, Department of State, 2201 C Street, NW., Washington, D.C., telephone (202) 632-9755.

The final report of the President's Commission on Hostage Compensation was submitted to the President on September 21, 1981. Proposed legislation on matters covered by the report is being prepared, but it has not yet been determined whether new or revised regulations to implement such legislation, if adopted by the Congress, will be necessary. The point of contact on this subject is Mr. Walter F. Weiss, Office of the Assistant Secretary for Administration, Department of State, 2201 C Street, NW., Washington, D.C. 20520, telephone (202) 632-1728.

Public Notices concerning the registration of claims of U.S. nationals against Iran and various developments at the Iran-United States Claims Tribunal established by the Claims Settlement Agreement signed at Algiers on January 10, 1981 have been published in the **Federal Register** (46 FR 19893, 25026, 25584, 36277, 37418, 45057, 49695, 55468, 57612, 58631; 47 FR 1063 8118). The most recent notice addresses proposed rules of procedure applicable to the adjudication of claims before the Tribunal. The point of contact on this subject is David P. Stewart, Administrator for Iranian Claims, Office of the Legal Adviser, Department of State, 2201 C Street, NW., Washington, D.C. 20520, telephone (202) 632-5040.

Flexibility Agenda

The Department of State has reviewed presently planned regulations in the light of the guidance issued by the Office of Management and Budget on incorporating regulatory flexibility into the regulatory process. We have not identified any which will have a significant economic impact on a substantial number of small entities.

The Department plans to publish its next semiannual agenda in October 1982.

Dated: April 23, 1982.

Richard T. Kennedy,

Under Secretary of State for Management.

[FR Doc. 82-13469 Filed 5-18-82; 8:45 am]

BILLING CODE 4710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL 2107-7]

Approval and Promulgation of Implementation Plans; Alabama; Proposed Group II VOC Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by Alabama, pursuant to the requirements of Part D of Title I of the Clean Air Act of 1977, for the control of volatile organic compounds (VOC). The plan revision would regulate all Alabama VOC sources covered by the second set of Control Techniques Guidelines (CTGs) issued by EPA, and known as Group II sources. The adoption of these control measures was triggered by the ozone nonattainment status of three Alabama counties. We are requesting written comments on the proposed action.

DATE: We will consider comments received on or before June 18, 1982.

ADDRESSES: Address any written comments to Sally Bethea of EPA Region IV's Air and Waste Management Division (see EPA Region IV address below). Copies of the materials submitted by Alabama may be examined during normal buisness hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Division of Air Pollution Control, Alabama Air Pollution Control Commission, 645 S. McDonough Street, Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Sally Bethea, EPA Region IV, Air and Waste Management Division, at the above listed address and phone 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION:

Background.

Part D of Title I of the Clean Air Act, as amended in 1977, requires that States revise their State Implementation Plan (SIP) for all areas that have not attained the National Ambient Air Quality Standards (NAAQS). Jefferson, Mobile and Russell Counties, Alabama have been designated by EPA as nonattainment for ozone.

As part of its control strategy for attainment of the ozone standard, Alabama has revised its SIP to require control of VOC from additional categories (Group II) of major sources. Major sources are those which have emissions, before control, of 100 tons per year or more. These control regulations for Group II VOC sources are to be applied statewide, to accommodate new source growth.

Public hearings were held on August 21 and November 17, 1980. On January 27, 1981, the Alabama Air Pollution Control Commission adopted regulations covering the added Group II source categories for inclusion in Chapter 6 (Control of Organic

Emissions) of the State Rules and Regulations.

Discussion. From January 1978 to January 1979, EPA published CTGs to assist the States in determining Reasonably Available Control Technology (RACT) for Group II source categories. These CTGs provide information on available air pollution control techniques and make recommendations on what EPA calls the "presumptive norm" for RACT. Group II CTGs cover the following source categories:

—Factory Surface Coating of Flatwood Paneling
—Petroleum Refinery Fugitive Emissions (Leaks)
—Pharmaceutical Manufacture
—Rubber Tire Manufacture
—Surface Coating of Miscellaneous Metal Parts and Products
—Graphic Arts (Printing)
—Perchloroethylene Dry Cleaning
—Gasoline Tank Trucks, Leak Prevention
—Petroleum Liquid Storage, Floating Roof Tanks

The VOC regulations submitted by Alabama cover the nine Group II categories listed above and are consistent with all the CTGs, except the one for tire manufacturing. The regulations for the Manufacture of Pneumatic Rubber Tires (Section 6.17) deviate from the EPA recommendations outlined in the CTG for (1) emission limits, (2) averaging time, and (3) operational components to be controlled.

(1) In the CTG, EPA assumed that a well-operated and well-maintained tire facility of reasonable capture and control device efficiency could expect to average 57 grams of VOC per tire. The submitted Alabama regulations use a standard of 76 grams per tire. After a plant-specific review, the State submitted documentation showing that a more stringent standard was not achievable due to the age of its existing plants and the humidity in the area.

(2) The submitted regulations, as written, require that average VOC emissions be determined on a yearly basis. The State has certified that it is in the process of reducing this averaging time to 30 days. The CTG recommends a shorter period for determining average emissions. According to the State, a shorter averaging period is not feasible due to procedures used by Alabama tire manufacturers. Those procedures involve the mixing of cement in batched loads, which makes it difficult to meter emission limits for a period of less than 30 days.

(3) Section 6.17 of the submitted regulations does not list "bead dipping" as an element of the tire manufacturing operation which require emission control. Although the CTG assumed this element was normally a part of such an operation, the State has certified that its plants do not dip beads.

Action. EPA today proposes to approve Alabama's Group II VOC regulations. This approval is based on the understanding that the State will change the averaging time for Rubber Tire Manufacturing (Section 6.17) to a maximum of 30 days. The State has made this commitment in a letter to EPA dated February 12, 1982. EPA is soliciting public comment on these regulations. A thirty-day comment period is being provided because the SIP submission and the issues involved are not so complex as to warrant a longer comment period. At the close of the comment period, EPA will review all comments and publish a notice of final rulemaking.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502))

Dated: April 12, 1982.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 82-13583 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6312]

Proposed Special Flood Hazard Areas for San Bernardino County, California Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed special flood hazard areas as described below.

The proposed special flood hazard areas are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed special flood hazards areas are available for review at the County Planning Department, 1111 East Mill Street, San Bernardino, California.

Send comments to: Mr. Robert Hammock, Chairman, Board of County Supervisors, San Bernardino County Courthouse, 175 West Fifth Street, San Bernardino, California 92415.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed special flood hazard areas for San Bernardino County, California in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Public Law 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Public Law 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These special flood hazard areas, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed special flood hazard areas will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed special flood hazard areas are being added and the corporate limits are being updated. On Panel 7945,

the proposed special flood hazard areas, identified as Zone A, are being added along an unnamed stream between 4th Avenue and 3rd Avenue and along Del Rosa Channel, north of Route 30. On Panel 7965, along the Little Sand Creek Channel overflow the proposed special flood hazard area, identified as Zone A, is being added north of Citrus Street. Also along the Little Sand Creek Channel Overflow, the area located south of Citrus Street is being revised from Zone A to Zone B. On Panels 8705 and 8715, the proposed special flood hazard area, identified as Zone A, is being added along The Mission Zanja between Redlands Boulevard and a point just west of Alabama Street. Panels 7875, 7900, 7915, 8630 and 8635 have been revised to reflect the corporate limits for the city of Rancho Cucamonga.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of Technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13534 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6310]

Proposed Base Flood Elevations and Zone Designations for the Town of Oro Valley, Pima County, Ariz., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is requried to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the Town Clerk, Town Hall, 680 West Calle Concordia, Oro Valley, Arizona.

Send comments to: Honorable E. S. Engle, Mayor, Town of Oro Valley, 680 West Calle Concordia, Oro Valley, Arizona 85704.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the Town of Oro Valley, Arizona in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base flood elevations and zone designations in the recently annexed areas are as follows:

Source of flooding and location	Elevation (feet), national geodetic vertical datum	Zone designation
Canada Del Oro:		
At the westernmost corporate limits.	2,453	A3.
At the point approximately 40 feet downstream of Calle Loma Linda.	2,458	A3.
At a point approximately 200 feet downstream of First Avenue.	2,543	A6.
At a point approximately 150 feet upstream of First Avenue.	2,546	A6.

Also along Canada Del Oro, between the limit of detailed study and the easternmost corporate limits, the proposed zone designation is Zone A. Along an unnamed tributary to Canada Del Oro, Zone A is being added in the easternmost portion of the City. All the remaining annexed areas have been identified as Zone C. The floodway delineation has been added along Canada Del Oro.

Pursuant to the provisions of 5 USC 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968, effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13622 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6308]

Proposed Base Flood Elevations and Special Flood Hazard Areas for the City of Willcox, Cochise County, Ariz., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and special flood hazard areas as described below.

The proposed base flood elevations and special flood hazard areas are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and special flood hazard areas are available for review at the Office of the City Clerk, City Hall, 151 West Maley Street, Willcox, Arizona.

Send comments to: Honorable Charles W. Leighton, Mayor, City of Willcox, 151 West Maley Street, Willcox, Arizona 85643.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and special flood hazard areas for the City of Willcox, Arizona in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These base flood elevations and special flood hazard areas, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and special flood hazard areas will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed special flood hazard areas and base flood elevations have been added due to recently annexed areas. The proposed special flood hazard area, designated as Zone A, has been added in the southernmost portion of the City. In the northernmost portion of the City and west of Interstate Route 10, the proposed zone designation identified as Zone AH with a proposed based flood elevation of 4180 feet National Geodetic Vertical Datum is being added. In addition, the areas throughout the City, identified as Zone AO, are being revised from designated base flood elevations to proposed depths of 1, 2 and 3 feet.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List in Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13623 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6309]

Proposed Base Flood Elevations and Zone Designations for the City of Thousand Oaks, Ventura County, Calif., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the City Clerk, City Hall, 401 West Hillcrest Drive, Thousand Oaks, California.

Send comments to: Honorable Lawrence E. Horner, Mayor, City of Thousand Oaks, P.O. Box 1496, Thousand Oaks, California 91360.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 287-0216.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Thousand Oaks, California, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by

§ 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base flood elevations and zone designations on Panel 15 of 25 are as follows:

Source of flooding and location	Elevation (feet) national geodetic vertical datum	Zone designation
South Branch Arroyo Conejo:		
Approximately 300 feet upstream of Borchard Road.	644	A4.
Just upstream of Strauss Drive extended.	648	A4.
Approximately 800 feet downstream of Reno Road.	662	A5.
Just downstream of Reno Road....	665	A5.
Just downstream of Mayfield Street.	677	A5.
Just downstream of Kimber Road..	682	A5.
Just upstream of Kimber Road.....	685	A3.
Approximately 400 feet upstream of Kimber Road.	688	A3.

In addition, the special flood hazard areas, identified as Zone A, have been added in the recently annexed area located north of Ventura Freeway and east of Paseo Vista.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968, effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13624 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6317]

Proposed Base Flood Elevations and Zone Designations for the City of Lakewood, Jefferson County, Colorado

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the City Engineer, City Hall, 44 Union Boulevard, Lakewood, Colorado 80228.

Send comments to: Honorable William Reitler, Mayor, City of Lakewood, 44 Union Boulevard, Lakewood, Colorado 80228.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Lakewood, Colorado, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base flood elevations and zone designations are as follows:

Source of flooding and location	Elevation (feet), national geodetic vertical datum	Zone designation
Sanderson Gulch:		
At the confluence of North Sanderson Gulch.	5,440	A1.
At a point located approximately 100 feet upstream of West Jewell Avenue.	5,452	A1.
At a point located approximately 1,200 feet upstream of West Jewell Avenue.	5,462	A1.

The proposed special flood hazard area, identified as Zone A, is being added at Smith Reservoir. All the remaining annexed areas have been identified as Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR

17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 30, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13625 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6318]

National Flood Insurance Program Proposed Zone Designation and Base Flood Elevation Determinations for the City of Westernport, Allegany County, Maryland

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed base flood elevations and zone designations are available for review at City Hall, Worston Street, Westernport, Maryland.

Send comments to: Honorable James Wills, Mayor, City of Westernport, P.O. Box 266, Westernport, Maryland 21562.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed base flood elevations and zone designations for the City of Westernport, Maryland, in accordance with Section 110 of the Flood Diseaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to polices established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance preminum rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed zone designations and base flood elevations are as follows:

Source of flooding and location	Elevation (feet), national geodetic vertical datum	Zone designation
North Branch Potomac River:		
Upstream corporate limits	916	A2, B.
Confluence with Georges Creek.	912	A2, B, C.
Downstream corporate limits	897	A2, B.
Georges Creek:		
Upstream corporate limits	980	A7, B.
Downstream side of Waverly Street.	945	A7, B, C.
Downstream side of Washington Street.	922	A7, B.
Downstream side of Maryland Avenue.	912	A7, B, C.
Overflow from Georges Creek into portions of the area bounded by River Road Drive from the eastern corporate limits to First Street, by a line which is parallel to and approximately 340 feet northeast of the Chessie System Railroad and which extends from the junction of River Road Drive and First Street to Georges Creek, by the eastern corporate limits, by the North Branch Potomac River, and by Georges Creek.		
Eastern corporate limits	897	A2, B, C.
Third Street	902	A2, B.
Junction of River Road Drive and the Chessie System Railroad.	915	A2, B, C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 30, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13626 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

Notices

Federal Register
Vol. 47, No. 97
Wednesday, May 19, 1982

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

Cooperative State Research Service

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Antidecertification Research; Meeting.

In accordance with the Federal Advisory Committee act of October 6, 1972, Pub. L. 92–463, 86 Stat. 770–776), the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Antidecertification Research of the Technical Advisory Committee for Science and Education Research Grants Program.

Date and time: May 26 and 27, 1982, Wednesday—8:00 a.m. to 5:00 p.m.; Thursday—8:00 a.m. to 4:00 p.m.

Place: La Quinta Motor Inn, 3975 Peoria Way, Denver, Colorado Telephone: (303) 371–5640

Type of meeting: Closed.

Contact Person: Charles B. Rumburg, Principal Agronomist, Manager, Antidecertification Program, United States Department of Agriculture, Room 6431 South Building, CSRS, Washington, D.C. 20250, Telephone: (202) 447–6074.

Purpose of subcommittee: To provide advice and recommendation concerning support for research in the Antidecertification Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of agriculture pursuant to provisions of section 10(d) of Pub. L. 92–463.

W. I. Thomas

Administrator, Cooperative State Research Service.

[FR Doc. 82–13519 Filed 5–18–82 8:45 am]

BILLING CODE 3410–03–M

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Aquaculture; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Aquaculture of the Technical Advisory Committee for Science and Education Research Grants Program.

Date and time: June 7, 8, and 9, 1982, Monday—9:00 a.m. to 5:30 p.m.; Tuesday—9:00 a.m. to 5:30 p.m.; Wednesday—9:00 a.m. to 5:30 p.m.

Place: United States Department of Agriculture, Fourteenth and Independence Avenue, SW., Room 6034, South Building, Washington, D.C. 20250.

Type of meeting: Closed.

Contact person: Clyde R. Richards, Acting Deputy Administrator, Aquaculture Program, United States Department of Agriculture, Cooperative State Research Service, Room 6034, South Building, Washington, D.C. 20250, Telephone: (202) 447–6628.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in the program on Aquaculture.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82–13525 Filed 5–18–82; 8:45 am]

BILLING CODE 3410–03–M

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Beef and Dairy Cattle Enteric and Digestive Diseases, Mastitis and Other Diseases and Parasites; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Beef and Dairy Cattle Enteric and Digestive Diseases, Mastitis and Other Diseases and Parasites Technical Advisory Committee for Science and Education Research Grants Program.

Date and time: June 9, 10, and 11, 1982, Wednesday—8:30 a.m. to 5:00 p.m.; Thursday—8:30 a.m. to 5:00 p.m.; Friday—8:30 a.m. to 5:00 p.m.

Place: Room 6030, South Agriculture Building, United States Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C., 20250.

Type of meeting: Closed.

Contact person: Earl J. Splitter, Principal Veterinarian, Cooperative State Reserch Service, United States Department of Agriculture, Washington, D.C., 20250. Telephone: (202) 447–5007.

Purpose of subcommittee: To provide advice and recommendation concerning support for research in the program on Beef and Dairy Cattle Enteric and Digestive Diseases, Mastitis and Other Diseases and Parasites.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

W.I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82–13521 Filed 5–18–82; 8:45 am]

BILLING CODE 3410–03–M

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Beef and Dairy Cattle Reproductive Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Beef and Dairy Cattle Reproductive Diseases of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: June 2, 3, and 4, 1982, Wednesday—8:30 a.m. to 4:30 p.m.; Thursday—8:30 a.m. to 4:30 p.m.; Friday—8:30 a.m. to 4:30 p.m.
Place: United States Department of Agriculture, 14th and Independence Avenue, SW., Room 6038-South Building, Washington, D.C. 20250.
Type of meeting: Closed.
Contact person: Howard S. Teague, Prinicpal Nonruminant Nutritionist, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447–3847.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in the program on Reproductive Diseases Affecting Beef and Dairy Cattle.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82–13520 Filed 5–18–82; 8:45 am]

BILLING CODE 3410–03–M

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Animal Health, Beef and Dairy Respiratory Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Animal Health—Beef and Dairy Respiratory Diseases of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: June 2, 3, and 4, 1982, Wednesday—9:00 a.m. to 5:30 p.m.; Thursday—9:00 a.m. to 5:30 p.m.; Friday—9:00 a.m. to 5:30 p.m.
Place: United States Department of Agriculture, Fourteenth and Independence Avenue, S.W., Room 6034-South Building, Washington, D.C. 20250.
Type of meeting: Closed.
Contact person: Clyde R. Richards, Acting Deputy Administrator, Animal Health—Beef and Dairy Respiratory Diseases, United States Department of Agriculture, Cooperative State Research Service, Room 6034-South Building, Washington, D.C. 20250. Telephone: (202) 447–6628.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in the program on Beef and Dairy Respiratory Diseases.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secrretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82–13525 Filed 5–18–82; 8:45 am]

BILLING CODE 3410–03–M

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Energy Research; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92–463, 86 Stat. 770–776, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Energy Research of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: June 2, 3, and 4, 1982, Wednesday—9:00 a.m. to 5:30 p.m., Thursday—9:00 a.m. to 5:30 p.m., Friday—9:00 a.m. to 5:30 p.m.
Place: Westpark Hotel, Rosslyn, 1900 N. Fort Meyer Drive, Arlington, Virginia.
Type of meeting: Closed.
Contact person: Paul E. Schleusener, Agricultural Engineer, United States Department of Agriculture, Room 6424 South Building, CSRS, Washington, D.C. 20250, Telephone: (202) 447–5680.
Purpose of subcommittee: To provide advice and recommendation concerning support for research in the Energy Research Program.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82–13516 Filed 5–18–82; 8:45 am]

BILLING CODE 3410–03–M

Technical Advisory Committee for Science and Education Research Grants Programs; Subommittee for Food Quality and Safety Research; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92–463, 86 Stat. 770–776, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Food Quality and Safety Research of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: May 24, 25, and 26, 1982, Monday—9:00 a.m. to 5:30 p.m., Tuesday—9:00 a.m. to 5:30 p.m., Wednesday—9:00 a.m. to 5:30 p.m.
Place: United States Department of Agriculture, 1300 Wilson Boulevard, Suite 103, Rosslyn, Virginia.
Type of meeting: Closed.
Contact person: Richard G. Garner, Food Scientist, United States Department of Agriculture, Room 6403 South Building, CSRS, Washington, D.C. 20250. Telephone: (202) 447–5547.
Purpose of subcommittee: To provide advice and recommendation concerning support for research in the Food Quality and Safety Research Program.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary

of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82–13518 Filed 5–18–82; 8:45 am]

BILLING CODE 3410–03–M

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Poultry and Horse Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Poultry and Horse Diseases of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: June 22, 23, and 24, 1982, Tuesday—8:30 a.m. to 5:00 p.m., Wednesday—8:30 a.m. to 5:00 p.m., Thursday—8:30 a.m. to 5:00 p.m.
Place: Room 6030, South Agriculture Building, United States Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250.
Type of meeting: Closed.
Contact person: Earl J. Splitter, Principal Veterinarian, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447–5007.
Purpose of subcommittee: To provide advice and recommendation concerning support for research in the Poultry and Horse Diseases Program.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82–13522 Filed 5–18–82; 8:45 am]

BILLING CODE 3410–03–M

Technical Advisory Committee for Science and Education Research Grants Progam, Subcommittee for Soybean Research; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92–463, 86 Stat. 770–776), the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Soybean Research of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: May 20 and 21, 1982, Thursday—9:00 a.m. to 5:30 p.m., Friday—9:00 a.m. to 5:30 p.m.
Place: United States Department of Agriculture, 1300 Wilson Boulevard, Suite 103, Rosslyn, Virginia.
Type of meeting: Closed.
Contact person: Charles B. Rumburg, Principal Agronomist, Manager, Soybean Special Grants Program, United States Department of Agriculture, Room 6431, South Building, Washington, D.C. 20250, Telephone: (202) 447–6047.
Purpose of subcommittee: To provide advice and recommendation concerning support for research in the Soybean Research Program.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82–13517 Filed 5–18–82; 8:45 am]

BILLING CODE 3410–03–M

Technical Advisory Committee for Science of Education Research Grants Program; Subcommittee for Swine and Sheep Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Swine and Sheep Diseases of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: June 15, 16, and 17, 1982, Tuesday—8:30 a.m. to 5:00 p.m., Wednesday—8:30 a.m. to 5:00 p.m., Thursday—8:30 a.m. to 5:00 p.m.
Place: Room 6030, South Agriculture Building, United States Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250.
Type of meeting: Closed.
Contact person: Earl J. Splitter, Principal Veterinarian, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447–5007.
Purpose of subcommittee: To provide advice and recommendation concerning support for research in the program on Swine and Sheep Diseases.
Agenda: To review and evaluate research propsals and project as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82–13523 Filed 5–18–82; 8:45 am]

BILLING CODE 3510–03–M

Organization, Functions and Availability of Information

Notice is hereby given for the guidance of the general public as to the organization, functions, and availability of information for the Economics Management Staff (EMS).

Part 1—Organization and Functions

Section 1—General. EMS is an agency of the U.S. Department of Agriculture which provides mutually agreed-upon management support services to the agencies reporting to the Assistant Secretary for Economics. It was created on September 30, 1981, (46 FR 47753) in response to Secretary's Memorandum 1000–1, of June 17, 1981, entitled "Reorganization of Department." The specific delegations of authority by the Assistant Secretary for Economics to the Director, EMS, are contained in 7 CFR 2.87.

Section 2—Organization. EMS maintains its offices in the South Building of the Department of Agriculture, 14th Street and Independence Avenue SW., Washington, D.C. 20250, and at 500 12th Street SW., Washington, D.C. 20250. The organization consists of the following:

Director
Deputy Director
Director, Administrative Services Division
Director, Budget and Finance Division
Director, Information Division
Director, Personnel Division
Director, Equal Opportunity and Civil Rights Staff

Section 3—Authority to act for the Director. In the absence of the Director, the following officials are authorized to act for him/her in the order indicated:

Deputy Director
Director, Personnel Division
Director, Budget and Finance Division
Director, Administrative Services Division
Director, Information Division

Section 4—The Director. Under the direction of the Assistant Secretary for Economics, the Director formulates, recommends, coordinates, and administers a comprehensive program of management support services for the Economic Research Service, the Statistical Reporting Service, the World Agricultural Outlook Board, the Office of Energy, and the Economics Management Staff itself. The incumbent is authorized to execute any document, authorize any expenditure, and promulgate any rule, regulation, order or instruction deemed by him/her to be necessary and proper to the discharge of the functions assigned to EMS, and to delegate and provide for redelegation of authority to appropriate officers and employees consistent with his/her personal responsibilities for the proper discharge of functions assigned to EMS. Delegations are stated in sections 5, 6, 7, 8, 9, and 10.

Section 5—Deputy Director. The Deputy Director is hereby delegated the authority to perform all the duties, and exercise all the functions and the powers, which are now, or which may be in the future, vested in the Director.

Section 6—Director, Administrative Services Division. The Director, Administrative Services Division, is hereby delegated authority to perform all the duties, and to exercise all the functions and powers, which are now, or which may be in the future, vested in the Director relating to actions required by law or regulation concerning procurement and contracting, real and personal property management, paperwork management, management analysis, and related functions.

Section 7—Director, Budget and Finance Division. The Director, Budget and Finance Division, is hereby delegated authority to perform all the duties, and to exercise all the functions and powers, which are now, or which may be in the future, vested in the Director relating to actions required by law or regulation concerning the discharge of the budget and related financial management functions.

Section 8—Director, Information Division. The Director, Information Division, is hereby delegated authority to perform all the duties, and to exercise all the functions and powers, which are now, or which may be in the future, vested in the Director relating to actions required by law or regulation concerning public information functions.

Section 9—Director, Personnel Division. The Director, Personnel Division, is hereby delegated authority to perform all the duties, and to exercise all the functions and powers, which are now, or which may be in the future, vested in the Director relating to actions required by law or regulation concerning staffing, organization, position management and classification, employee relations, employee development, and related functions.

Section 10—Director, Equal Opportunity and Civil Rights Staff. The Director, Equal Opportunity and Civil Rights Staff, is hereby delegated the authority to perform all the duties, and to exercise all the functions and powers, which are now, or which may be in the future, vested in the Director relating to actions required by law or regulation concerning Affirmative Action Program development and implementation, EEO discrimination complaint processing, civil rights compliance, and related functions.

Part II—Availability of Information

Section 11—General. This part is issued in accordance with the regulations of the Secretary of Agriculture in part I, Subpart A of Subtitle A of Title 7, CFR (7 CFR 1.1–1.16), and Appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by this part, govern the availability of records of EMS to the public.

Section 12—Indexes. 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials likewise be made available. EMS does not maintain any materials within the scope of these requirements.

Section 13—Requests for records. Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to: Chief, Records, Systems, and Analysis Branch, Administrative Services Division, Economics Management Staff, U.S. Department of Agriculture, Washington, D.C. 20250. Authority is hereby delegated to this official to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

Section 14—Appeals. Any person whose request for records is denied shall have the right to appeal that denial in accordance with 7 CFR 1.3(e) and 1.7. All appeals shall be addressed to: Director, Economics Management Staff, U.S. Department of Agriculture, Washington, D.C. 20250.

Issued at Washington, D.C., this 14th day of May 1982.

Allan S. Johnson,
Director.

[FR Doc. 82-13629 Filed 5-18-82; 8:45 am]
BILLING CODE 3410-35-M

Organization, Functions and Availability of Information

Notice is hereby given for the guidance of the general public as to the organization, functions, and availability of information for the Office of Energy (OE).

Part I—Organization and Functions

Section 1—General. OE is an office of the U.S. Department of Agriculture which is responsible for Departmental energy policy development and the coordination of energy programs and strategies for the allocation of scarce fuel resources. It was created on December 22, 1981, (46 FR 62046) as authorized by Secretary's Memorandum 1020–4, of December 24, 1981, entitled "Establishment of the Office of Energy." The specific delegations of authority by the Assistant Secretary for Economics to the Director, OE, are contained in 7 CFR 2.88.

Section 2—Organization. The central and only office of OE is located in the Administration Building of the Department of Agriculture, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250. The staff is headed by the Director.

Section 3—Authority to act for the Director. The Policy Analyst is authorized to act for the Director in his absence or when he is temporarily unavailable.

Section 4—Functions. OE has five major areas of responsibility:

(a) Provide Department leadership in:

(1) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(2) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(3) Reviewing and evaluating Departmental energy and energy-related programs and program progress;

(4) Developing agricultural and rural components of national energy policy plans;

(5) Preparing reports on energy and energy-related policies and programs required under Acts of Congress and Executive Orders, including those

involving testimony and reports on legislative proposals.

(b) Provide Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from the departments and agencies of the Federal Government pursuant to interagency agreements.

(c) Represent the Assistant Secretary for Economics at conferences, meetings, and other contacts where energy matters are discussed, including liaison with the Department of Energy and other governmental departments and agencies.

(d) Provide the Assistant Secretary for Economics with such assistance as he may request to perform the duties delegated to him concerning energy.

(e) Work with the Assistant Secretray for Governmental and Public Affairs to maintain Congressional and public contacts in energy matters, including development of legislative proposals, preparation of reports on legislation pending in Congress, appearances before Congressional committees and related activities.

Part II—Availability of Information

Section 5—General. This part is issued in accordance with the regulations of the Secretary of Agriculture in Part 1, Subpart A of Subtitle A of Title 7, CFR (7 CFR 1.1–1.16), and Appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by this part, govern the availability of records of OE to the public.

Section 6—Indexes. 5 U.S.C 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials likewise be made available. OE does not maintain any materials within the scope of these requirements.

Section 7—Requests for records. Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to: Chief, Records, Systems, and Analysis Branch, Administrative Services Division, Economics Management Staff, U.S. Department of Agriculture, Washington, D.C. 20250. Authority is hereby delegated to this official to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

Section 8—Appeals. Any person whose request for records is denied shall have the right to appeal that denial in accordance with 7 CFR 1.3(e) and 1.7. All appeals shall be addressed to: Director, Office of Energy, U.S. Department of Agriculture, Washington, D.C. 20250.

Issued at Washington, D.C., this 14th day of May 1982.

Earle E. Gavett,

Acting Director.

[FR Doc. 82-13630 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-90-M

Forms Under Review by Office of Management and Budget

May 14, 1982.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Comments and questions about the items in the listing should be directed to the agency person named at the end of each entry. If you anticipate commenting on a form but find that preparation time will prevent you from submitting comments promptly, you should advise the agency person of your intent as early as possible.

Copies of the proposed forms and supporting documents may be obtained from: Richard J. Schrimper, Statistical Clearance Officer, (202) 447–6201.

New

• Food and Nutrition Service
Claim for Reimbursement
FNS–806
Monthly
Businesses or other institutions: 15,000 responses; 21,900 hours; not applicable under 3504(h)
Rose T. Buskey (703) 756–3864

• Human Nutrition Information Service
Study to Determine the Effects of Infant Feeding Practices on Morbidity and Growth in the First Year of Life
Monthly
Individuals or households: 20,000 responses; 12,400 hours; not applicable under 3504(h)
Dr. Catherine Woteki (703) 436–8470

• Animal and Plant Health Inspection Service
9 CFR 166—Swine Health Protection (Reporting)
VS 13–15, VS 13–16
Monthly
Farms: 103,848 responses; 16,616 hours; applicable under 3504(h)
Dr. Robert Good (301) 436–8438

• Animal and Plant Health Inspection Service
9 CFR 166—Swing Health Protection (Recordkeeping)
On occasion
Farms: 8,229 responses; 1,317 hours; applicable under 3504(h)
Dr. Robert Good (301) 436–8438

Revised

• Agricultural Stabilization and Conservation Service
Peanut Warehousing Contracts, Examination Reports, Bond CCC–1028, 1028–A, 1029, 1031, 1031(1), 1032, 1033, 1036, 1071
Monthly and annually
Farms, businesses or other institutions: 2,320 responses; 232 hours; not applicable under 3504(h)
Bob Ray, (202) 382–9106

Extension

• Agricultural Marketing Service
Designated Handlers Report and Application for Refund of Assessment (Potato Research and Promotion Act)
Monthly
Farms, Businesses: 21,158 responses; 10,379 hours; not applicable under 3504(h)
Charles W. Porter (202) 4470–2615

Richard J. Schrimper,

Statistical Clearance Officer.

[FR Doc. 82-13526 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Boise National Forest Grazing Advisory Board; Meeting

The Boise National Forest Grazing Advisory Board will meet at 1 p.m. June 18, 1982, in the Boise National Forest conference room at 1750 Front Street, Boise, Idaho 83702. The purpose of this meeting is to discuss the functions, structure, and procedures the board will use to conduct its business.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, Idaho 83702, phone 208–334–1232. Written statements may be filed with the committee before or after the meeting.

Dated: May 10, 1982.

John J. Lavin,

Forest Supervisor.

[FR Doc. 82-13491 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-11-M

CIVIL RIGHTS COMMISSION

Vermont Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 7:00 pm and will end at 9:00 pm, on July 12, 1982, at the Vermont Agency for Human Services Training Center, 103 South Maine Street, in the Stanley Hall, Waterbury, Vermont, 05676. The purpose of this meeting is to discuss Committee plans to produce educational materials about prejudice, distribute pamphlets on sexual harassment, and hate group activity in Vermont.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Philip H. Hoff, 192 College Street, Hoff, Wilson and Powell, P.C., Burlington, Vermont 05401, (802) 658-4300 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 14, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-13633 Filed 5-18-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council, Its Administrative Subcommittee, Its Scientific and Statistical Committee and Its Advisory Panel; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The Caribbean Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), has established a Scientific and Statistical Committee (SSC), and Advisory Panel (AP), and an Administrative Subcommittee to assist the Council in carrying out its responsibilities under the Act. The Council, its SSC, its AP and its Administrative Subcommittee will hold separate meetings. The Council will hold its 41st regular meeting to consider status reports on fishery management plans (FMPs) under development; draft framework for the shallow-water reef fish fishery; draft FMP for coastal pelagic resources; draft FMP for the fishery resources of the Puerto Rican and St. Croix geological platforms and discuss other administrative and Council matters. The SSC and AP will consider status reports on FMPs under development; draft framework for the shallow-water reef fish fishery; draft FMP for the fishery resources of the Puerto Rican and St. Croix geological platforms and discuss other related matters. The Administrative Subcommittee will consider matters related to the Council's budget and regular administrative operations.

DATES: The Council's public meeting will convene on Wednesday, June 23, 1982, at approximately 9 a.m. and will adjourn on Thursday, June 24, 1982, at approximately noon. The SSC public meeting will convene on Wednesday, June 16, 1982, at approximately 9:30 a.m., and will adjourn at approximately 3 p.m.; the AP meeting will convene on Thursday, June 17, 1982, at approximately 9:20 a.m., and will adjourn at approximately 3 p.m., and the Administrative Subcommittee meeting will convene on Tuesday, June 22, 1982, at approximately 1:30 p.m., and will adjourn at approximately 5 p.m.

ADDRESS: The Council and Administrative Subcommittee public meetings will take place at the Conference Room of the Hotel Pierre, 105 de Diego Avenue, Santurce, Puerto Rico. The SSC and AP public meetings will take place at the Conference Room of the Council's Headquarters Office, 1108 Banco De Ponce Building, Hato Rey, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918; telephone: (809) 753-4926.

Dated: May 14, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-13640 Filed 5-18-82; 8:45 am]

BILLING CODE 3510-22-M

Issuance of Permit

On February 19, 1982, Notice was published in the **Federal Register** (47 FR 7478) that an application had been filed with the National Marine Fisheries Service by the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, to take up to 960 Dall porpoises (*Phocoenoides dalli)* over a period of five years for scientific research.

Notice is hereby given that on May 13, 1982, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Scientific Research Permit for the above taking to the Northwest and Alaska Fisheries Center, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, N.E., BIN C15700, Seattle, Washington 98115.

Dated: May 13, 1982.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 82-13639 Filed 5-18-82; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The New England Fishery Management Council, established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 942-65), has established a Scientific and Statistical Committee which will meet to discuss the relationship of science/fisheries regulation; the redefinition of the Committee's role vis-a-vis the Council and the Northeast Fisheries Center, and other scientific working groups, as well as discuss other Committee business.

DATES: The public meeting will convene on Wednesday, June 9, 1982, at approximately 10 a.m., and will adjourn at approximately 5 p.m. The meeting may be lengthened or shortened or agenda items rearranged depending upon progress of the same.

ADDRESS: The meeting will take place at the Council's Headquarter's Office, Suntaug Office Park, Five Broadway, Route One, Saugus, Massachusetts.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Suntaug Office Park, Five Broadway, Route One, Saugus, Massachusetts 01906, telephone: (617) 231-0422.

Dated: May 14, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-13641 Filed 5-18-82; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Cranbury Medical Labs, Inc., having a place of business at Cranbury, New Jersey 08512 an exclusive right in the United Sates to manufacture, use and sell products embodied in the invention, "Fiber Optic pH Probe for Tissue Measurements," U.S. Patent Application No. 6-296,239 (dated August 25, 1981). The availability of this invention for licensing was announced in the **Federal Register** (47 FR 14215, dated April 2, 1982). Copies of the Patent Applications may be obtained from the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, at the address above. NTIS will maintain and make available for public inspection a file containing all inquiries, comments and other written materials received in response to this Notice and a record of all decisions made in this matter.

Dated: May 10, 1982

Douglas J. Campion,

Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 82-13493 Filed 5-18-82; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB)

Dates of meeting: Tuesday, 1 June 1982, Wednesday, 2 June 1982, Thursday, 3 June 1982

Times and places: 1 June 1982—1300-1700 hours—SRI International, Menlo Park, CA; 2 June 1982—0900-1230 hours—Stanford University, Palo Alto, CA, 1530-1800 hours—Northrop Corporation, Los Angeles, CA; 3 June 1982—0900-1700 hours—Hughes Aircraft, El Segundo, CA

Agenda: The Army Science Board Ad Hoc Subgroup conducting a study on Robotics/Artificial Intelligence will meet for briefings and visits of artificial intelligence laboratory/manufacturing facilities and to hold discussions with key personnel of host facilities. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. In order to be able to accommodate prospective attendees, the Army Science Board Administrative Officer, Helen M. Bowen, must be notified no later than 27 May 1982. For further information and specific meeting locations, call (202) 695-3039 or 697-9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 82-13634 Filed 5-18-82; 8:45 am]

BILLING CODE 3710-92-M

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS) Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS) is scheduled to be held from 1:30 p.m. to 5:00 p.m., 15 June 1982 in MRA&L Conference Room #3E794, The Pentagon, and from 9:30 a.m. to approximately 12:00 noon, 16 June 1982 in MRA&L Conference Room #3E794, The Pentagon. Meeting sessions will be open to the public.

The purpose of the meeting is to review the recommendations/requests for information/continuing concerns made at the 1982 Spring Meeting, discuss current issues relevant to women in the Services, and plan the itinerary/program for the next Semiannual Meeting scheduled for 7-11 November 1982.

Persons desiring to make oral presentations or submit written statements for consideration at the Executive Committee Meeting must contact Captain Mary J. Mayer, DACOWITS Executive Secretary, OASD (Manpower, Reserve Affairs, and Logistics), Room 3D769, The Pentagon, Washington, D.C. 20301, telephone (202) 697-2122 no later than 10 June 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 13, 1982.

[FR Doc. 82-13527 Filed 5-18-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Institute of Handicapped Research; Proposed Funding Priorities for Fiscal Year 1983

AGENCY: Education Department.

ACTION: Notice of proposed funding priorities for fiscal year 1983.

SUMMARY: The Secretary of Education proposes funding priorities for research activities to be supported by the National Institute of Handicapped Research (NIHR) in Fiscal Year 1983. NIHR is required under the Rehabilitation Act of 1973, as amended, to develop a long-range research plan which identifies rehabilitation research that needs to be conducted and to determine funding priorities which will facilitate the support of these activities within available resources. These proposed priorities are derived from the NIHR Long-Range Plan and are articulated within the goals, objectives, and research activities specified in the Plan. NIHR final regulations (46 FR 45300, September 10, 1981) authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 351.32).

Authority for the research program of NIHR is contained in section 204 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602.

Under this program, awards are issued to public and private agencies and organizations, including institutions of higher education. NIHR is permitted to make awards for periods up to 60 months.

The purpose of the awards is for planning and conducting research, demonstrations, and related activities.

These activities have a direct bearing on the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to handicapped individuals, especially those with the most severe handicaps.

NIHR invites public comment on the merits of the proposed priorities both individually and collectively, including suggested modifications to the proposed priorities. Comments can include factors which support the importance of a priority to handicapped individuals and other interested parties. The priorities are grouped according to the program authority under which NIHR believes they should be funded. These programs are described below. The public is asked to comment also on the merits of this organizational grouping of priorities (i.e., whether certain research objectives are better accomplished by Centers or by other grantees as discrete projects).

This Notice does not solicit application proposals or concept papers. The final priorities will be selected on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. These final priorities will be announced in the form of an Application Notice in the **Federal Register.** That Notice will solicit grant applications and set the closing date.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before June 18, 1982.

ADDRESS: All written comments and suggestions should be sent to Betty Jo Berland, National Institute of Handicapped Research, Department of Education, Room 3511, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FURTHER INFORMATION: For further information contact Betty Jo Berland, National Institute of Handicapped Research, Department of Education, Room 3511, Switzer Office Building, 400 Maryland Avenue, S.W., Washington, D.C. 20202, Telephone: (202) 472–6551 or TTY for the Deaf (202) 472–4217.

SUPPLEMENTARY INFORMATION: The following proposed priorities represent areas in which NIHR proposes to support research and related activities through grants or cooperative agreements. Research and other activities which NIHR intends to procure through contracts will be announced by Requests for Proposals published in the *Commerce Business Daily.*

The publication of these proposed priorities does not bind the United States Department of Education to fund projects in any or all of these research areas. Funding of particular projects depends on both the availability of funds and on responses to this Notice.

NIHR is authorized to support research and related activities in a variety of areas and through several program authorities. The priorities proposed in this Notice cover research and related activities to be conducted through Rehabilitation Research and Training Centers, Rehabilitation Engineering Centers, Research and Demonstration Projects, and Knowledge Dissemination and Utilization Projects. Following are brief overview descriptions of these four research programs.

Research and Training Centers (RTCs) have been established to conduct coordinated and advanced programs of rehabilitation research, and to provide training to rehabilitation personnel engaged in research or the provision of services. RTCs must be operated in collaboration with institutions of higher education and must be associated with a rehabilitation service program. Ideally each Center conducts a program of research, evaluation, and training activities that is directly concerned with one or more *related core areas* of research. Each Center is encouraged to develop practical applications for all of its research findings through a scientific evaluation process which tests and validates its findings, as well as related findings of other Centers. Center training programs generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as undergraduate and graduate texts and curricula, in-service training, and continuing education.

Rehabilitation Engineering Centers (RECs) have been established to conduct coordinated programs of advanced research of an engineering or technological nature. RECs are also encouraged to develop systems for the exchange of technical and engineering information and to improve the distribution of technological devices and equipment to handicapped individuals. Each REC must be located in a clinical rehabilitation setting and is encouraged to collaborate with institutions of higher education.

Ideally each REC conducts a program of research, scientific evaluation, and training that is directly concerned with one or more *related core areas* of research. RECs are encouraged to develop practical applications for their research through scientific evaluation activities which validate their findings as well as related findings of other Centers. RECs generally conduct training programs to disseminate and encourage utilization of new rehabilitation engineering knowledge through such means as development of or contribution to undergraduate and graduate texts and curricula, inservice training, continuing education, and distribution of information and appropriate technology.

Research and Demonstration Projects have been supported to conduct research and/or demonstrations in single project areas on problems encountered by handicapped individuals in their daily activities. These projects may conduct research on rehabilitation techniques and services, including analysis of medical, industrial, vocational, social, sexual, psychiatric, psychological, economic, and other factors affecting the rehabilitation of handicapped individuals.

Knowledge Dissemination and Utilization Projects have been supported to insure that rehabilitation knowledge generated from projects and Centers funded by NIHR and other sources is fully utilized to improve the lives of handicapped persons.

The following priorities are proposed by research program. Following each identified research area is a brief statement of national need and specific research concepts or objectives that singly or in combination address this need. NIHR has not yet decided the precise scope of research to be carried out by individual Centers or projects in each prioritized research area, i.e., whether all specific research objectives are better accomplished by an individual Center or project or by distributing them among several Centers or projects.

Rehabilitation Research and Training Centers

NIHR proposes that research in the following 16 areas be carried out in Research and Training Centers.

Chronic Obstructive Pulmonary Disease (COPD)

Pulmonary diseases like emphysema, chronic bronchitis, cystic fibrosis, asthma, black lung disease, and tuberculosis kill relatively early in life and account for significant amounts of lost work and functioning. In 1975, treatment costs for COPD amounted to $7.5 billion.

- Determine the proper role of physical conditioning in the management of patients with chronic obstructive pulmonary diseases.
- Define specific psychological and cognitive characteristics that must be considered in developing rehabilitation

programs for pulmonary disease patients.

Arthritis

Arthritis directly affects almost every American and is a crippling and often painful disease. While the incidence of arthritis increases enormously with age, the disease also affects ten of thousands of children, often with devastating consequences. The Arthritis Foundation estimates that the cost of arthritis exceeds $13 billion in medical care and implications of lost work alone. There are no reliable indicators of the efficacy of various treatment regimens, given the variability of the course of the illness and the unpredictability of the responses to therapy.

- Evaluate clinically various rehabilitation modalities for arthritis to determine their effectiveness for treatment and/or maintenance of sympton-free states.
- Investigate the value of physcial rehabilitation modalities on the treatment and control of osteoarthritis. Determine the clinical course of past traumatic arthrists and its long-term disability effects.
- Evaluate the utilization of surgical treatment versus drug therapy and other non-surgical treatment for juvenile arthritis.

Rehabilitation of the Cardiac Patient

Each year approximately 200,000 of those who survive coronary infarction will experience repeated cardiac symptoms and psychological complications affecting regular life activities. Exercise is regarded as a major factor in assessment and improvement of performance after infarction.

- Evaluate the benefits and hazards of prescribed exercise testing programs on survivors of myocardial infarction, including the changes that may be necessary to strengthen the guidelines for standards and procedures developed for exercise testing.
- Study the physiological and psychological effect of early ambulation and exercise therapy.
- Investigate causes of the failure to achieve normal exercise performance following definitive heart repair.

Severe Head Trauma

Brain trauma is a major catastrophic occurrence resulting in a costly and significant impairment of neurological function, behavior, mobility, cognition, and perception. To date, the clinical course of severe head trauma has not been understood and documented. Rehabilitation needs and service delivery methods have not been identified. The available scientific literature yields few insights into appropriate and effective rehabilitation modalities.

- Study the timing of the return and plateau of different behavioral systems, including language, cognitive functions, perception, and motor activity, following traumatic brain damage.
- Develop tools to indicate prognosis, as measured by noninvasive neurometric indices, including eye movements, length of coma, and post-traumatic amnesia.
- Determine the importance of age at the time of brain injury to prognosis and differential recovery.
- Document the possible stages of recovery, especially from psychiatric and medical perspectives.
- Examine clinically physiological theories explaining recovery, including compensating neural centers, synaptic connections, and related theories.

Multiple Sclerosis (MS)

Multiple sclerosis afflicts as many as 500,000 persons in the Untied States. Although there is now no cure for multiple sclerosis, there is a substantial need for rehabilitation modalities to restore or maintain physical function and retard the disabling effects of this disease.

- Develop quantitative, standardized methods of measuring remission of MS with emphasis on locomotion and movement.
- Study the prevention and control of ataxia, spasticity, and urinary tract and sensory problems in persons with multiple sclerosis.

Spinal Cord Injury

Between 175,000 and 200,000 persons have spinal cord injuries (SCI), with new incidences occurring at a rate of 8 to 10,000 annually. The cost of care (estimated as $2.3 to $3 billion annually) is considered excessive and attributable to several factors: age of onset; involvement of multiple body systems; improved survival rates among very severely handicapped persons; and need for prolonged, sophisticated treatment regimens.

- Develop and evaluate methods of treatment for urinary tract management in spinal cord injured persons.
- Study the mechanisms, prevention, and treatment of life threatening respiratory and circulatory complications in persons with SCI.
- Identify and describe the basic pathophysiological mechanisms of secondary neurological complications of SCI.
- Investigate the precipitating factors and causative mechanisms, including etiologic factors of gastrointestinal stress reaction in the active traumatic phase.
- Develop invasive and noninvasive therapeutic modalities for prevention, control, and treatment of mass reflex spasm and spasticity, orthostatic hypotension, and autonomic dysreflexia.

Improving Delivery of Vocational Rehabilitation Services

Improved management of service programs for the handicapped and development of new service delivery mechanisms are needed to improve the effectiveness of individual service programs and the coordination between these service programs.

- Develop model individual service plans for common use by multiple agencies, basing this on surveys of current content requirements, agency needs, and usages.
- Evaluate the effectiveness of client followup and post-employment services in vocational rehabilitation agencies.
- Assess over a three-year period the effects of program reductions on counselor roles, including changes in counselor roles and the use of technology to increase productivity.
- Demonstrate and evaluate programs based on new definitions of counselor roles and develop related conuselor training materials.
- Investigate the parameters, implications and alternative models of client co-management in rehabilitation settings and evaluate the effectiveness of these models.
- Evaluate the job development and placement performance of post-secondary programs for deaf individuals over the past 3–5 years and determine which of these many programs provides the best return to clients/students in terms of maximum success in today's labor market.
- Analyze legislation relating to rehabilitation of railroad workers at State and Federal levels, review rehabilitation efforts in the industry, and develop and demonstrate effective service models for this population.
- Assess the relationship of organizational structure and distribution of adminsitative personnel to organizational performance and develop organizational models.
- Assess the management and utilization of human resources in rehabilitation agencies as it impacts on the functioning of agencies and delivery systems and develop human resource use models.

Increasing Employability

Research is needed to improve the entire continuum of employability development from client assessment through training, job development, placement, and followup.

There remains a need to increase the validity and reliability of client assessment instruments and to conduct studies of their effectiveness in improving job opportunities for severely handicapped persons. Training methods require analysis to identify successful approaches.

Traditional service delivery approaches for stimulating jobs for handicapped persons and for placement assistance are changing rapidly. Staff shortages will decrease job counseling in rehabilitation with increasing use of job clubs, peer support, private vendors, and other resources. Research is needed to assist the rehabilitation services delivery system to adopt, adapt, and evaluate these techniques.

Target groups which are underserved in vocational rehabilitation are neglected due in part to basic weaknesses in rehabilitation methods and materials for addressing their specific needs. Acute need exists for developing or adapting new rehabilitation approaches to Rubella youth and deaf-blind individuals, to mentally retarded persons, to psyhiatrically disabled persons, to severely hearing and speech impaired individuals, and to learning disabled individuals.

- Develop and refine client assessment techniques and test for validity and reliability and determine effective combinations of techniques.
- Develop techniques to synthesize and correlate data from assessment measures to identify strengths and abilities of rehabilitation clients.
- Investigate the applicability of the work-study model which organizes the student's schedule to include paid work experience along with a regular program of instruction for rehabilitation and retraining of adult workers.
- Develop new techniques for job placement, with special attention to resolving problems of the "hard-to-place" severely handicapped persons and increasing jobs for such workers in specific industries or service sectors.
- Evaluate the impact of affirmative action on the employment of disabled individuals in private industry.
- Assess the special vocational needs of each of the above-mentioned under-served groups.
- Develop or improve vocational assessment, training, job development, placement, and post-employment methods and technologies for each special population based on the above analysis.

Vocational Rehabilitation at the Work Site

Adaptation at the work site to improve functional capacities for mobility, self-care, endurance, communication, dexterity, and social intereaction is an extremely important factor in successful employment outcomes for disabled individuals. Research is needed on both early intervention for individual adjustment and on modification of the work site.

- Identify target populations and jobs with both high rates of disability and low participation in rehabilitation services.
- Identify factors in successful early intervention.
- Design and implement model programs of early intervention and evaluate the impact of early intervention on employment outcomes and rehabilitation at the work site.

Sheltered and Protected Employment

There is a need to improve the eocnomic viability of sheltered workshops as well as to develop innovative forms of semi-sheltered or alternative employment.

- Analyze the management, procurement practices, and production factors correlated with successful business operations in sheltered workshops.
- Devise alternatives to sheltered employment via employment in the public sector.
- Devise alternatives to sheltered employment via employment in the home.
- Devise and assess alternative forms of protected employment in the competitive sector.

Community Services for the Mentally Retarded

As retarded youth leave school or are released into the community from institutions, new problems of individual adjustment, work, daily living, and use of appropriate resources emerge. Successful, sustained living in the community will require some manipulation of the social environment for these youth.

- Identify multiple measures of successful living in the community and devise instruments to assess needs and predict outcomes.
- Identify optimal matches between individual characteristics and the social environment prescribed for or chosen by individuals, with emphasis on living arrangements.
- Identify factors which enhance productivity, job security, and job satisfaction for severely retarded persons in settings involving various types and levels of social support.
- Identify actual costs and benefits of various service delivery and income support models for retarded persons with various functional deficits and assets.

Comprehensive Services for Handicapped Children and Youth

Disabled children require a range of services from medical treatment and restoration through education, rehabilitation, and assistance in psychological and social development. Current services to this group are fragmented and uncoordinated, with ineffective linkages among the various service systems involved. Not enough is known about the impact and course of disability in children and youth.

- Study the psychosocial development of handicapped children, including the impact of various handicapping conditions on peer relationships, the nature of adolescent experiences, the interaction of handicap and patterns of sexual maturation, and the career aspirations of handicapped children and youth.
- Determine the existing components of a comprehensive service system for children and devise innovative methods to forge linkages to create a service continuum and interrelate the components in a coordinated manner.
- Evaluate the long-term costs and benefits of intervention programs with children.
- Develop guidelines for optimal use of practitioners at various skill levels and in various disciplines as team members, educators, case managers, and related roles.

Deafness and Psychosocial Development

Deaf persons experience, especially in early childhood, serious social deprivation which may have an impact upon their psychosocial development and mental health. Modalities of measurement and therapy must be based on factors different from those for a hearing population.

- Develop developmental norms for physical, cognitive, social, and emotional growth of deaf children.
- Develop diagnostic instruments to assess deaf infants and children.
- Study mother-infant bonding processes and their impact on emotional growth and family relations of deaf children.

• Develop techniques to enhance communication competency in deaf children with emphasis on alternatives to English language competencies.

• Study the processes of linguistic maturation in young deaf adults in the post-secondary years.

• Study the effects of deafness on family relations, including patterns of family interaction, impact on the marital relationships, sibling behavior, and integration of deaf children and adults and their families into the community at the neighborhood level.

Specific Learning Disability

A learning disability may be characterized by perceptual and/or auditory deficits, language disorders, aggressiveness, hyperactivity, and academic problems. The disability may last throughout life, making it difficult to succeed in school, in interpersonal relationships, and in employment. It is necessary to investigate specific areas relating to the impact of a learning disabled member has on a family, the vocational rehabilitation needs of the learning disabled population, and the diagnostic and service needs of urban minority group members who are learning disabled.

• Develop instruments to measure family interaction patterns; develop strategies for teaching high risk families how to improve relationships and meet the unique needs of the learning disabled member; and develop a plan for disseminating the information and training parents in the strategies that result from the research.

• Identify unique vocational rehabilitation needs of learning disabled persons and the existing and potential barriers to the provision of services; determine the factors to be considered in job placement; develop strategies for providing appropriate rehabilitation services; and demonstrate model rehabilitation programs to meet the needs of this population.

• Investigate the patterns of learning disabilities among urban minority groups; and design and test model programs to meet the needs of this population.

Psychiatric Disabilities

The process of deinstitutionalization, especially of the chronically mentally ill, has imposed new, unique demands on the service-delivery system. Traditional community-based agencies are being called upon to provide services to the more severely disabled psychiatric population. This major change in the place *where* services are provided has become an impetus for *what* and *how* services are provided. As a result, innovative methods for service delivery and the interaction among various components of this community-based service system must be assessed.

• Develop and evaluate community resource utilization programs for clients tailored to specific levels of functioning; develop training programs to teach networking skills as well as the recognition of dysfunctional behavior and sources of assistance.

• Investigate the unique treatment needs of the physically disabled with psychiatric disabilities.

• Develop and assess programs for family members of psychiatric patients in: behavior management, "early warnings signs," legal issues, social agency linkages, and medical management.

Psychosocial Development

Not enough is known about processes of psychosocial adjustment in handicapped individuals. Investigations in this area will not only add to our understanding of the effects of handicapping conditions on the process of psychosocial development but will provide information for developing more effective remedial and treatment programs.

Social, attitudinal and legal barriers limit the full participation of handicapped individuals in society. Research is needed to provide an improved understanding of the psychosocial environment relevant to handicapped individuals, and to develop methods for increasing the acceptance of handciapped individuals as full-fledged members of society.

• Design and conduct a comprehensive, logitudinal study of the processes of psychological responses to the existence or acquisition of a disability, including emotional, cognitive, social, and environmental developments; the relation of adjustment patterns to disability type; and the personal and environmental factors conducive to effective coping for disabled men and women.

• Develop a comprehensive theory which describes and measures the physical, social, and psychological ecology most relevant to handicapped individuals and develop theory-based techniques to modify psychosocial environments.

• Develop a program to asess attitudes of the general public and specific target populations toward handicapped individuals and to increase the readiness to accept persons with handicaps, disabilities, and chronic illness.

Rehabilitation Engineering Centers

NIHR proposes that research in the following 11 areas be carried out by Rehabilitation Engineering Centers.

Communication/Mobility for the Blind and Partially Sighted

Independent orientation and mobility of blind and partially sighted persons is essential for full rehabilitation. The long cane, dog guide and sighted guide are the only systems with universal acceptability, but each is deficient in terms of cost-effectiveness, independence or information provided. Similar problems exist for blind and partially sighted persons in obtaining immediate independent rapid access to printed materials.

• Conduct a study of the performance of blind pedestrians judged to be competent travelers, and develop a theory of blind mobility to be used in the design of new electronic travel aids for the blind.

• Determine the efficacy of foldable long canes with appropriate acoustical and mechanical properties.

• Develop and evaluate electronic orientation systems including systems for both indoor and outdoor orientation.

• Develop electronic reading machines with synthetic speech output using modern optical character recognition technology.

• Conduct research and development of a high quality personal braille embosser to permit original braille copy by an individual.

• Conduct research to improve paperless braille.

Communication Controls and Interfaces of Assistive Devices

Communication aids and other assistive devices are useless the disabled person can effectively operate them. Appropriate controls and interfaces of controls for different devices are crucial for these consumers. Vairous parties have devised controls for specific applications, but little effort has been given to considering controls comprehensively as they pertain to all assistive devices and users.

• Develop and clinically evaluate controls and interfaces between different systems to meet specific needs of disabled persons.

• Disseminate information, educate medical clinicians and administrative officials, and train medical personnel on availability and use of controls, including the generation of quantitative data on the performance of controls.

• Evaluate new electronic education aids for use with congenitally blind or deaf children to assist in the teaching of

perceptual, manipulative, cognitive, and voice communication skills.

Improved Wheelchair Systems

Approximately three-quarters of a million handicapped persons use the wheelchair as their primary mode of mobility. The problems of wheelchair reliability, durability, and versatility are constant sources of frustration to the user and prevent the achievement of true independence. The average lifespans of manual and power wheelchairs are similarly brief, while the major repair problems differ somewhat. Repair services are not evenly dispersed geographically.

- Develop new designs with emphasis on more durable and lightweight chairs; maneuvering, stability, and ease of use in both manual and powered chairs; improved performance and safety characteristiscs; new materials; improved design, power systems, and controls.
- Develop and evaluate programs to conduct tests and assessment of new designs and establish demonstration projects to inform manufacturers and new consumers.
- Develop educational programs to train physicians and allied health staff in the proper prescription of wheelchairs and a training program for manufacturers and others regarding the repair of wheelchairs.
- Conduct research to develop standards and specifications for modular seating and body positioning supports that can be customized and used independently or as integral parts of standard or newly designed wheelchairs.
- Conduct research and development on cost-effective methods to produce custom modular seating systems for persons with severe neuromuscular body problems and/or deformity.
- Conduct research on ways of reducing costs of wheelchairs and frequency and cost of repairs.

Nonvocal Communication Assistance

The loss of speech, or the inability to speak in an easily understood manner, may quickly isolate an individual. The inability to communicate in a natural and expressive way disrupts the normal educational process, makes employment difficult, and leaves the speech-impaired person unable to complete the communicative cycle. The loss of effective speech can be caused by birth defect, childhood diseases, cancer, stroke, or other neuromyopathies.

Further refinements are needed in synthetic speech devices and alternatives such as printers and devices using light-emitting diodes.

- Conduct research and development in the various methods of interfacing communication aids by persons with different disabilities and investigate the various types of spoken word, light-emitting diodes, and print devices.
- Conduct research and development in laryngeal implants or similar permanent devices for patients with laryngectomies.
- Conduct research and development in aphasic and other speech and language disabled pre-school children to determine what devices and techniques can allow improved speech.
- Conduct research and development in cerebral vascular episodes and other neuropathies leading to speech and language dysfunction in adults, and determine which devices and techniques can best ameliorate these problems.

Stimulation of Industry

To meet the challange of providing devices and technological products for the handicapped community there is a need to encourage and facilitate greater business involvement in the development and distribution of these devices and equipment because private industry has the necessary resources required to make new and improved products more readily available.

- Conduct a study of the market for technology for the handicapped, including demand, distribution of demand among groups with various types of handicaps, and among regions, and cost considerations.
- Study of incentives to promote business investment in ventures that have potentially high social benefit which at present are not profitable. Incentives to be studied include: (1) Low cost loans or grants; (2) tax abatements; (3) contracting arrangements related to government purchases.
- Conduct a comprehensive study of disincentives to business investment including: patent policy, product liability; and third party payment problems.

Transportation

The vast majority of handicapped people do not use mass transit systems because of accessibility problems. Vehicle design, limited routes, need to coordinate connections among transportation modes, and inaccessibility of destination points from transit terminal points are some of the problems. Individual vehicles also present problems of vehicle design and operation, cost, and safety issues.

- Research and develop alternatives for existing mass transit systems for the handicapped community and demonstrate projects of "model" systems to verify workable solutions. Include innovations to improve interfaces between different transit modes and facilitate intermodal transfer.
- Conduct a program to develop a "universal" wheelchair restraint system for both driver and passenger and to improve overall wheelchair design of tubular frame models to allow their use as a vehicle seat.
- Conduct studies on handicapped drivers' accident and traffic violation records to provide more accurate data on which to base insurance rates.
- Stimulate the private sector to develop energy-efficient cars, including electrical ones, which can accommodate a wheelchair whether occupied or unoccupied.
- Evaluate all currently available handicapped driver control systems and personal licensed vehicle adaptations and mmodifications to determine the most appropriate devices and combinations of devices for disable persons with various types of physical and sensory abilities.

Prostheses, Orthoses and Functional Electrical Stimulation

Several million persons have neuro-musculoskeletal impairments that cause abnormal limb and/or spinal functions which can be ameliorated by technological systems. Current devices are often cumbersome, uncomfortable, unattractive and expensive.

Millions of persons have impariments of function and deformity of the feet as a result of disease, trauma, and congenital abnormality. There is a substantial need for custom orthopedic footwear to provide improved comfort, function and appearance, as well as to reduce the incidence of surgical intervention for these people.

- Determine which materials and fabrication methods provide the best means for producing orthotic devices which are lighter weight, more comfortable and more cosmetic, while reducing fabrication time and costs.
- Develop new orthotic techniques and principles that avoid overbracing so that an orthosis designed to correct one problem does not interfere with the function of other normal activities.
- Develop practical orthotic joints that conform to anatomical joint motion and maximize function.
- Develop improved spinal orthoses which are effective in reducing or limiting spinal deformity while being comfortable and cosmetically acceptable.
- Design and develop devices and modes of therapy utilizing functional

electrical stimulation and biofeedback training for impairments resulting from stroke, head injury and cerebral palsy.

• Design and develop devices and modes of therapy utilizing functional electrical stimulation in combination with passive or active orthotic systems to restore or assist function in persons with spinal cord discontinuity or deformity.

• Design and develop devices and modes of therapy utilizing functional electrical stimulation to restore or assist bowel and bladder function.

• Develop innovative approaches to the attachment of prostheses to human beings, featuring greater compatibility and natural transition from flesh to apparatus.

• Determine ways to utilize new technology and materials to reduce the time needed to fabricate and fit prostheses.

• Develop powered upper-limb prostheses which have characteristics more commensurate with those of "normal" human joints.

• Develop simple devices that permit conscious control of multifunctional arm prostheses.

• Investigate sensory and proprioceptive aspects of the prostheses/human interface.

• Design and develop an experimental computer-aided design system for custom orthopedic footwear using existing technologies that convert optical and/or tactile information into digital form to produce inputs yielding visual displays of the foot and ankle from variable but controllable viewpoints.

• Design and develop methods using graphic displays for modification of foot-ankle displays to produce corrections required. Utilize clinical pressure distribution matrix systems to assist modifications and produce individually designed foot lasts, shoe inlays or inlay molds using computer aided millery molding equipment.

New Generation Hearing Aid Research

Hearing aids can be used to various degrees of satisfaction by those persons impaired by conductive, sensorineural, mixed conductive and sensorineural, and central hearing losses.

Hearing aid technology has advanced to a state where it could benefit from additional research to improve the quality of amplification and frequency responses produced.

• Conduct research and development into new concepts in hearing aids and conduct evaluation and demonstration projects on these new concepts.

• Initiate a five-year program to develop performance evaluation standards for hearing aids, evaluate existing aids, and develop diagnostic/prescriptive tests and common prescriptive criteria.

• Evaluate responses of hearing-handicapped individuals to use of new generation hearing aids.

Work Site Modification

Employability for handicapped persons could be greatly enhanced by technological and social modifications to the work site. These can include adaptations of equipment and work stations, access to work sites and auxiliary locations, relocation of workers, or other modifications to the environment. Work site modification can be useful in maintaining employability for the worker who acquires a disability as well as for unemployed handicapped populations.

• Conduct a series of case studies in innovative work site modification to test the effectiveness of each modification and develop standards and criteria for each.

• Classify and objectively describe places of work in terms related to client functional assessment indicators.

• Conduct a series of case studies in innovative equipment modifications and development to document the most effective means of adapting work environments and equipment to solve problems within industry.

• Develop a training program for VR counselors in the use of workplace modification and special equipment.

• Design technology to mechanize and automate production systems in sheltered workshops and to minimize the impact of functional impairment in severely handicapped individuals.

Low Back Pain

Disability as a result of low back pain is one of the most common handicapping conditions affecting millions of Americans and limiting their productivity. Very little systematic, coordinated research has been focused upon the rehabilitation of persons with chronic low back syndrome. The complexity of the problem has resulted in very few scientists willing to undertake research in this area. It is anticipated that this area can benefit from concentrated, coordinated research which combines the efforts of the medical and engineering scientists.

• Design and develop methods and equipment to quantify low back pain including pain perception and measure limitation of motion.

• Evaluate existing, and design and develop new, orthotic systems used to immobilize the low back and to modify chairs, seating, and other environmental components to reduce low back pain.

• Evaluate the effectiveness of electrical stimulation for the control of low back pain and for increasing muscular strength to stabilize the low back.

• Evaluate existing exercise regimens and design new ones to reduce the incidence of low back pain.

Quantification of Motor Performance

At present, therapeutic treatment of physically impaired individuals is usually evaluated subjectively by clinicians on the basis of experience. The development of new diagnostic systems based on current technology can save years of ineffective treatment by redirecting resources to more effective therapeutic treatment. This will result in more rapid rehabilitation for more people and thus be more cost effective.

• Develop instrumentation to measure the energy expenditure in walking for various disabilities with and without internal and external devices such as joint replacements or braces. Quantify which devices and/or treatment methods provide the most effective performance.

• Develop instrumentation that accurately measures spasticity and test various drugs (under FDA certification), treatment methods, and devices designed to reduce uncontrolled spasticity.

• Develop quantification techniques to measure functioning and performance of appropriate body systems indidividually or in combination.

• Develop precise instrumentation to measure the active range of motion and strength at all joints in the extremities.

Research and Demonstration Projects

NIHR proposes that research in the following 18 areas be conducted through discrete research and demonstration projects.

Interpreters for the Deaf

Both the Education of All Handicapped Children Act of 1975 (Pub. L. 94–142) and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112) have had a profound impact on the deaf community. New opportunities have led to a demand for greater quality and quantity of interpreter services for deaf persons.

Not only deaf individuals but also service providers and institutions could use the services of interpreters in discharging their duties.

• Identify characteristics of successful manual and oral interpreters

for deaf individuals for use in training, evaluating, and certifying new interpreters.

• Study evaluation as a process that leads to appropriate certification of interpreters for deaf persons, address the quality and content of evaluation materials and consistency of evaluation procedures among States, and establish reliability and validity measures for the entire evaluation/certification process.

• Develop an evaluation measure of entrance and exit skills for interpreter trainees to determine what is needed to produce good interpreters on a timely, cost-effective basis.

• Conduct research relating to the employment of interpreters and the deaf consumer of services, and the geographic projections for future demand.

• Evaluate current curricula used in training interpreters, measure their effectiveness, and develop improved, tested, and more uniform instructional packages for training both manual and oral interpreters for deaf individuals.

Rural Outreach

Severly handicapped persons in rural areas are hampered in their ability to live independently by remoteness from services and resources. At the same time, there are existing outreach networks which could be used to benefit this population.

• Develop and test innovative models for using existing outreach networks such as Home Demonstration Agents for the delivery of independent living services to deinstitutionalized and other severely handicapped persons in rural areas.

Private Sector Rehabilitation

There is evidence of increasing private sector involvement in some types of rehabilitation activities. It is important to assess appropriate roles for public and private sector rehabilitation activities and to determine whether the approaches and techniques developed in one sector can be advantageously transferred to the other.

• Analyze private sector hiring of disabled individuals, trends and patterns thereof, and the role of private placement services in these hires.

• Review existing rehabilitation efforts in workmen's compensation programs in various businesses and industries, and develop alternative model programs for appropriate classes/groups of workers.

• Analyze the growing field of private rehabilitation services to identify its research needs, exemplary service practices, impact on public rehabilitation programs, and implications for public policy.

Economics of Disability

Among the reasons more advanced economic analysis of the impact of rehabilitation is needed now are: (1) Major economic initiatives now underway require study as to their impact on disabled people; (2) the value of rehabilitation programs in economic terms is a vital ingredient in formulating public policy about the nature of future rehabilitation programs and on the level of support; (3) advances in economic analysis, including econometrics, simulation models, benefit-cost analysis, and other methodological approaches are now available.

• Compare trends in expenditures for rehabilitation services with those for transfer payments and medical insurance.

• Evaluate the impact on handicapped individuals of changes in the organization of intergovernmental rehabilitation efforts. Determine methods to continue management support services with minimum resources and minimal Federal involvement.

Work-Study Programs for Disabled Students

Improved methods are needed to ease the transition of disabled students from school or college to work and at the same time provide them greater participation in career choice and meaningful career exposures prior to placement. Research in cooperative education indicates that such an approach or similar work-study methods can be very effective in meeting these goals, yet there is little information or knowledge in this area.

• Determine the reasons for low participation of disabled students in work-study and cooperative education programs.

• Determine the components of these programs and which adaptations are most appropriate for disabled students.

• Design and demonstrate innovative approaches in cooperative school-work programs for disabled students, including vocational training and coordination with independent living and facilities programs.

• Develop strategies to optimize involvement of handicapped persons in vocational education.

Developmental Processes as Indicators of Learning Disabilities

Learning disabilities include perceptual disorders and language deficits and are associated with math and reading problems, hyperactivity, and poor social relationships. Learning disabilities remain difficult to diagnose and predict; neither effective prevention nor early intervention are possible without a more complete knowledge base.

• Develop instruments, methods, and/or techniques to identify factors that may predispose children to learning disabilities.

• Examine the correlations and preductive utility of these factors.

• Develop and implement appropriate early rehabilitation strategies and programs to reduce the consequences of learning disabilities.

Mental Health in Mental Retardation

Mentally retarded persons are highly susceptible to a range of mental, emotional and/or behavioral disorders. Efforts to integrate mentally retarded individuals into the community place additional strains on their limited adaptive behavioral skills.

• Develop an improved knowledge base of the causes and successful treatment of mental health and behavior problems in mentally retarded individuals.

• Develop effective prevention and treatment procedures and related service delivery systems for mentally retarded persons with mental health and behavior problems.

Recreation

Handicapped people are often unable to particpate in many recreational and leisure activities such as hobbies, avocations, entertainment, and sports. In addition, they are prevented from using some facilities because of their inaccessibility, unsuitable equipment, or inadequate staff.

• Demonstrate an accessible and usable recreation and leisure program that allows inclusion of handicapped individuals.

• Develop protocols for fitness programs for handicapped individuals to be carried out within the home as well as in fitness courses adapted for disabled persons.

Use of Adaptive Devices

There are many assistive devices which are rarely prescribed or infrequently used. There has been little systematic investigation of the factors that affect the prescription and utilization of adaptive devices and equipment.

• Investigate the attitudes, perceptions, and motivating factors that affect disabled individuals' acceptance of adaptive equipment and assistive devices.

• Investigate the attitudes and perceptions of rehabilitation professionals as they facilitate or impede the prescription and/or adoption of the products of rehabilitation engineering, adaptive devices and equipment.

• Develop strategies and techniques for modifying clients' and clinicians' attitudes and behaviors to facilitate acceptance of adaptive equipment.

• Provide means of feedback of consumer and clinician opiniona to those who research, design, manufacture, or distribute assistive devices.

Independent Living

New emphasis on independent living necessitates the development of new models of service delivery, new technology, and new knowledge of successful independent living models.

• Develop and implement a mode for the application of scientific systems analysis to the delivery of a range of services for handicapped persons. Areas to be addressed include housing, transportation, employment, communications, health care, education, and cost analysis.

• Develop and evaluate systems to control personal environments designed to produce supportive environments for handicapped persons.

• Develop optimal housing design criteria and standards that utilize human factors and anthropometric data derived from disabled persons in independent living situations.

• Develop optimal retrofitting systems that will allow existing housing to be modified to better serve the needs of disabled persons at reasonable cost and minimal disruption.

• Design and develop remote signal systems for monitoring safety and health of severely disabled persons from a central community control center to facilitate immediate assistance.

• Conduct analytic studies of existing independent living centers to determine the characteristics that foster successful outcomes.

• Develop criteria and guides for selection, training, and employment of peer counselors for independent living programs, including guidelines for appropriate goals.

• Develop methods for assisting elderly persons with disabilities, including those requiring institutional care, to maintain maximum independence.

• Develop methods for involving family members in programs of independent living for handicapped individuals.

• Study factors in successful matches of foster home and client characteristics.

Severe Burns

It is estimated that more than two million persons per year receive burns requiring medical attention. Approximately 70,000 of those require hospitalization, and another 9,000 die. Recent studies indicate that successful rehabilitation is possible for 95 percent of burn victims, provided treatment during the acute-care and first year post-burn period is adequate to prevent contractures and severe hypertrophic scarring.

• Evaluate long-term rehabilitation efforts, using various outcome measures and identify factors important in success.

• Develop national consensus for preventive treatment, and burn rehabilitation procedures to develop an adequate rehabilitation program for burn medicine.

• Assess rehabilitation needs of adolescents and young adults burned in childhood: evaluate psychological and social adjustment of young adults burned in childhood, including a study of relationship of age-at-onset to adjustment process; identify problems and stages in long-term adjustment process.

• Explore relationship of medical preventive rehabilitation, such as splints, pressure, and surgical reconstruction, to outcome measures, including function, mobility, dexterity, and wound healing.

Chronic Obstructive Pulmonary Diseases (COPD)

Chronic obstructive pulmonary diseases like emphysema, chronic bronchitis, cystic fibrosis, asthma, black lung disease, and tuberculosis kill early in life and account for considerable years of lost work and limitation on health and functioning. In 1975, treatment costs for COPD amounted to $7.5 billion.

• Evaluate the effectiveness of bronchial hygiene (including antibiotic therapy) in treatment of patients with chronic bronchitis.

• Evaluate the value of pursed lips and "abdominal" breathing techniques in the treatment of patients with predominant pulmonary emphysema.

• Develop knowledge and techniques to maximize the vocational options of young people with crystic fibrosis.

Multiple Sclerosis

Multiple sclerosis afflicts as many as 500,000 persons in the United States. Although there is now no known cure for multiple sclerosis, there is a substantial need for rehabilitation modalities to restore or maintain physical function and retard the disabling effects of this disease.

• Study the effect of exercise and drug therapy on physical performance in persons with multiple sclerosis.

Spinal Cord Injury

It is estimated that 175,000 to 200,000 persons have spinal cord injuries (SCI), with new incidences occurring at a rate of 8 to 10,000 annually. Care is costly and complicated due to generally young age of onset and to the involvement of most body systems.

• Develop and evaluate methods of treatment for urinary tract management in spinal cord injured persons.

• Study the mechanisms, prevention, and treatment of life threatening respiratory and circulatory complications in persons with SCI.

• Identify and describe the basic pathophysiological mechanisms of secondary neurological complications in SCI.

• Investigate the precipitating factors and causative mechanisms, including etiologic factors of pastrointestinal stress reaction in the acute traumatic phase.

Technology Evaluation

It is important to improve the national capability for testing and evaluating products developed to assist handicapped individuals, in order to assure the safety, utility, feasibility and appropriateness of such technological developments. Products may include mobility or communication aids, prostheses, orthoses, adaptive devices for daily living, or environmental control systems, for example.

• Develop guidelines for establishing performance and safety criteria and methods to test products against such criteria. This includes procedures for utilizing existing test and evaluation systems such as that of the Veterans Administration.

• Develop guidelines on how to design protocols for clinical and/or field evaluation and how to manage such evaluations.

• Demonstrate how to effectively disseminate the results of tests and evaluations to disabled persons and others in the rehabilitation delivery system.

Deaf Communications Systems and Telecommunications

The large population of auditorially impaired individuals requires careful matching of available technology with existing needs and the development of

new systems to promote and enhance communication capabilities with other people, both in person and through telecommunication networks. Problems with current technology include high cost and short useful life of equipment and high cost and excessive time required for repairs.

- Develop speech vocoders (devices designed to display speech sounds either visually or tactually) utilizing modern micro-processor technology and determine methods of improving cutaneous and/or visual displays.
- Develop devices for flexible use of existing teletypewriters (TTYs), including those of home computers.
- Investigate the possibility of creating time-sharing networks to reduce costs of long-distance communication for deaf persons.

Intergenerational Self-Sufficiency Services

It is estimated that there are more than 20 million preschool aged children in the United States, approximately one-half of whom have both parents in the work force. An almost identical number of Americans aged 65 or older are residents of nursing homes and many of these persons are only slightly disabled. A model program could be developed to selectively place preschool children (handicapped or not) who are in day care centers and elderly (slightly disabled) nursing home residents in conjoint settings to simultaneously provide adult care for the children and improve the emotional health of the elderly handicapped persons.

- Idenify the most sutiable care environment for the conduct of such a program and develop criteria and standards.
- Identify the types of handicapping conditions and other factors most suited to participation of children and elderly in these programs and identify criteria to be used in determining the best match of preschoolers and elderly persons.

Special Populations

It is apparent that minority populations such as Blacks and Hispanics have unique handicapping problems. There appears to be a differential distribution of handicapping conditions among various minority populations, although documentation is inadequate. Further, it is clear that vocational rehabilitation services are underutilized for reasons that are not documented and there are no known systems to improve service delivery.

- Document the unique handicapping problems and rehabilitation needs of one or more minority populations.
- Determine causes of underutilization of vocational rehabilitation services.
- Design and demonstrate model service delivery programs to meet the needs of one or more of these populations.
- Provide for a grant award to at least one historically black college or university to investigate variables significant to disabilities in black persons and establish and evaluate a model service delivery program for this population.

Knowledge Dissemination and Utilization

NIHR proposes that research in the following two areas be accomplished through Knowledge Dissemination and Utilization Projects.

International Information Exchange

There is a need to assess research information and exemplary programs in other countries against identified needs in the United States as well as to transmit rehabilitation knowledge to other countries in need.

- Conduct surveys of practices and programs, develop a compendium describing such programs, practices, and devices available in other countries, and disseminate findings within the United States.
- Develop demonstrations including training and other activities designed to improve knowledge exchange between the United States and other countries.
- Provide opportunitys for the international exchange of researchers and others in order to improve communications about developments in rehabilitation knowledge and increase the skill level of rehabilitation personnel.

Utilization of Research Results

There is a need to promote the widespread adoption of new, tested and validated practices and exemplary programs resulting from rehabilitation research and training which will improve and generally enhance the service delivery system for disabled individuals. Projects should include one or more of the following functions:

- Develop regionally based programs to provide technical assistance, and access to research information, exemplary programs and training opportunities provided by NIHR, its grantees, or other governmental entities.
- Establish and maintain a screening activity to select those innovations in the field with the greatest potential for improving practice and develop materials to disseminate validated results of research, training, and exemplary programs.

(Catalog of Federal Domestic Assistance No. 84.133—National Institute of Handicapped Research)

Dated: May 14, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-13510 Filed 5-18-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Proposed Finding of No Significant Impact Fuel Materials Facility, Savannah River Plant, Aiken, South Carolina

AGENCY: Department of Energy.

ACTION: Notice of availability of environmental assessment and proposed finding of no significant impact for the construction and operation of the Naval Reactor Fuel Materials Facility.

SUMMARY: The Department of Energy has prepared an environmental assessment for the proposed construction and operation of the Naval Reactor Fuel Materials Facility at the Department's Savannah River Plant near Aiken, South Carolina (copies of the assessment are available upon request). Based upon the analysis in the environment assessement, a proposed Finding of No Significant Impact has been prepared and is presented below. The Finding is being made available for public review and comment for 30 days before the Department makes its final determination whether to prepare an environmental impact statement.

DATE: Comments must be postmarked no later than June 18, 1982.

ADDRESS: Address comments to, and obtain copies of the environmental assessment from: Roger P. Whitfield, Director, Fuel Materials Facility Project Office, Department of Energy, P.O. Box A, Aiken, South Carolina 29801.

Proposed Finding of No Significant Impact

The proposed action involves the construction and operation of the Naval Reactor Fuel Materials Facility at the Department of Energy's Savannah River Plant (SRP) near Aiken, South Carolina. The facility will convert enriched uranium into a form suitable for use in the fabrication of reactor cores for propulsion of the ships of the Naval Nuclear Fleet. The Fuel Materials Facility will argument the production of

fuel material, currently limited to an existing commerical supplier, as a contingency against unforseen events.

There are no known sigificant environmental impacts associated with the proposed action. The Fuel Materials Facility will be located on a previously cleared 6-acre site in an existing SRP operating area. Minor construction impacts will be experienced, including minimal increases in particulate emissions and noise levels at the SRP boundary. The peak construction work force demand for 580 employees will primarily be met by the local labor force. Immigration of an estimated 180 construction employees should have a minor effect on land use, housing and social services. No impacts are expected on historic or archeologocial sites or ecological resources.

The routine operation of the proposed Fuel Materials Facility will result in atmospheric and liquid radiological releases that will be substantially below naturally occurring (background) levels. Similary, even the most serious accident (tornado) would result in a maximum individual dose (at the SRP boundary 6 miles away) of 1.9 millirem, which is 2 percent of naturally occurring levels and 0.4 percent of the Department's standard for radiation protection (DOE Order 5480.1).

Nonradiological releases will not signficantly affect the environment. Atmospheric emissions will result in maximum offsite concentrations that are substantially below background levels and will have a negligible effect on air quality. The liquid effluents will result in increased concentrations of pollutants in onsite streams; however, levels will be well below drinking water standards (40 CFR Part 140 and Part 143) and changes in offsite concentations in the Savannah River will be undetectable.

The alternatives to the proposed action considered were: no action, commerical production, alternative processes and alternative DOE sites. The no-action alternative is considered unacceptable because of project need. Commerical production of fuel materials was eliminated as a viable alternative due to requirements by commercial firms for Government funding and assumption of finanical risks. Alternative processes were precluded from consideration since only one process is technically qualified for producing fuel materials. A siting study identified an alternate site at Oak Ridge, Tennessee, which was assessed; no sigificant difference between it and the SRP were found.

Dated: May 13, 1982.

William A. Vaughan,

Assistant Secretary, Environmental Protection, Safety, and Emergency Preparedness.

[FR Doc. 82-13635 Filed 5-18-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF82-133-000]

Alternative Energy Decisions, Inc.; Greenville; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Greenville, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Greenville, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 20,000 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13566 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-134-000]

Alternative Energy Decisions, Inc.; Pittston Farm; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Pittston Farm, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Pittston Farm, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 20,000 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982, and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13564 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-132-000]

Alternative Energy Decisions, Inc.; Stratton; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Stratton, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Stratton, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 20,000 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kennety F. Plumb,

Secretary.

[FR Doc. 82-13565 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3757-001]

City of Bountiful, Utah; Application for License (5 MW or Less)

May 12, 1982.

Take notice that City of Bountiful, Utah (Applicant) filed on February 22, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of a water power project to be known as the Lost Creek Hydro Project No. 3757. The project would be located on Lost Creek, Weber River, in Morgan County, Utah. Correspondence with the Applicant should be directed to: W. Berry Hutchings, Manager, City of Bountiful Light and Power, 198 South 200 West, Bountiful, Utah 84010.

Project Description—The proposed project would utilize the existing Bureau of Reclamation's Lost Creek Dam and Reservoir, operated and maintained by the Weber Basin Water Conservancy District, and would consist of: (1) A new 36-inch steel penstock utilizing the existing outlet works near the right dam abutment; (2) a new powerhouse containing a turbine-generator unit having a total rated capacity of 1,000 kW; (3) a tailrace; (4) a new 46-kV transmission line, 1,200 feet long; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 4,092,000 kWh. Project energy would be utilized by the City of Bountiful through transmission agreements with Utah Power and Light Company.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—This application was filed as a competing application to Western Hydro Electric Incorporated's application for Project No. 5243 filed on August 18, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing applications for licenses or exemptions, or notices of intent to file competing applications, will be accepted for filing in response to this notice. [*See:* 18 C.F.R. § 4.30 et. seq. or § 4.101 et. seq. (1981), as appropriate.]

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the reqirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 8, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13567 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2952-001]

City of Idaho Falls, Idaho; Intent To Prepare Environmental Impact Statement and Notice of Scoping Meeting and Public Session

May 12, 1982.

The City of Idaho Falls, Idaho filed on September 11, 1981, an application for license for the Gem State Project, FERC No. 2952–001. The project would be located on the Snake River, 5.5 miles southwest of the City of Idaho Falls in the Counties of Bingham and Bonneville, Idaho.

Public notice of the filing of the application was issued by the Commission on January 26, 1982. The application has been mailed out for agency review and comment. The Commission's staff has determined that issuance of a license for the proposed hydroelectric project would constitute a major federal action significantly affecting the quality of the human environment. The staff therefore intends to prepare an environmental impact statement in accordance with the

National Environmental Policy Act. Possible alternatives to the proposed action will be addressed.

Interested persons and agencies are invited to participate in a scoping meeting to discuss the environmental impact expected from the proposed Gem State Project. The scoping meeting will be convened by the Commission's staff at 2:00 p.m., Wednesday, June 9, 1982 at the Council Chambers, 140 South Capitol Street, Electric Division Building, Idaho Falls, Idaho 83402. Interested persons are encouraged to attend the scoping session commencing at 2:00 so that they will have the opportunity to hear the comments of participating governmental agencies in addition to expressing their own views. For those persons unable to attend the scoping meeting during business hours, an additional session will be convened at the same location at 7:30 p.m. and interested persons will have an opportunity to express their views regarding significant environmental issues. The submission of prepared written statements is encouraged. Both sessions will be recorded by a stenographer.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13568 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5160-001]

Edwards Energy Systems, Inc.; Application for License (5MW or Less)

May 12, 1982.

Take notice that Edwards Energy Systems, Inc. (Applicant) filed on November 2, 1981, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of a water power project to be known as Inglis Lock & Dam Hydropower Project No. 5160. The project would be located on the Withlacoochee River in Levy County, Florida. Correspondence with the Applicant should be directed to: Dean N. Edwards, President, 2992 Heather Trail, Clearwater, Florida 33519.

Project Description—The proposed project would utilize the U.S. Army Corps of Engineers' Inglis Dam. The reservoir, owned by the State of Florida, has a surface area of 6.5 square miles, a storage capacity of 41.184 acre-feet, and an approximate surface elevation of 27.5 feet m.s.l. Project No. 5160 would consist of: (1) An enclosed reinforced concrete penstock crossing under the road between the spillway and the powerhouse; (2) a proposed powerhouse located downstream of the spillway structure on the north bank of the river, with an estimated installed capacity of 2.8 MW; (3) existing transmission lines; and (4) appurtenant facilities. The project would be operated on a run-of-the-river basis.

Purpose of Project—All project energy produced will be sold to the Florida Power Company to offset the consumption of oil by the power company's older generating stations. The average annual generation is expected to be 15,693 MWh.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before July 19, 1982, either the competing application itself [See 18 CFR 4.33(a) and (d)] or a notice of intent [See 18 CFR 4.33(b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in §4.33(c) or §4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to inervene must be received on or before July 19, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13569 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6212-000]

Energenics Systems, Inc.; Application for Preliminary Permit

May 12, 1982.

Take notice that Energenics Systems, Inc. (Applicant) filed on April 15, 1982, an application for preliminary permit [persuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6212 to be known as the Caddo Lake Project located on Caddo Lake, Cypress Bayou in Caddo Parish, Louisiana and Harrison and Marion Counties, Texas. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: President, Energenics Systems, Inc., 1717 K Street, Suite 706, Washington, D.C. 20006.

Project Description—The project would consist of: (1) An existing 620-foot long, 47-foot high earth dam; (2) a 920-foot long, 37-foot high concrete spillway section; (3) an 860-foot long, 35-foot high concrete spillway section; (4) a reservoir with a maximum usable storage capacity of 129,000 acre-feet at elevation 168.5 feet M.S.L.; (5) a new powerhouse located at the south dam abutement containing turbine-generators with a total rated capacity of 5 MW; (6) a 75-foot long tailrace canal; (7) a 2 mile long 115-kV transmission line; and (8) appurtenant facilities. The dam and reservoir are jointly owned by the states of Texas and Louisiana. The project would produce up to 30,000,000 kWh annually. Energy produced would be sold to a local utility or industrial user.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The work proposed under this preliminary permit would include engineering plans, an assessment of compatibility with local uses of water from the lake and U.S. Army Corps of Engineers navigational plans, and an environmental assessment. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for exemption or license to construct and operate the project. Applicant estimates that the work to be performed under this preliminary permit would cost $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 16, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 19, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 19, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13570 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5089-001]

Fall River Rural Electric Cooperative, Inc.; Application for License (Over 5 MW)

May 12, 1982.

Take notice that Fall River Rural Electric Cooperative, Inc. (Applicant) filed on February 22, 1982, and revised on April 19, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for reconstruction and continued operation of a water power project known as the Felt Project No. 5089. The project would be located on the Teton River in Teton County, Idaho. Correspondence with the Applicant should be directed to: Mr. Calvin Wickhan, Fall River Rural Electric Cooperative, Inc., 714 Main Street, Ashton, Idaho 83420.

Project Description—The Applicant-owned and operated project presently consists of the following existing facilities: (1) A 12-foot high 135-foot long dam having a 90-foot long spillway section with crest elevation 5,530 feet m.s.l; (2) a reservoir having a surface area of 10 acres and a storage capacity of 40 acre-feet; (3) three intake structures along the reservoir right bank; (4) flowline no. 1 consisting of a 170-foot long tunnel and an inoperative 530-foot long 54-inch diameter wood-stave penstock; (5) flowline no. 2 consisting of a 215-foot long tunnel and a 395-foot long 59-inch diameter steel penstock; (6) flowline no. 3 consisting of a 180-foot long tunnel and a 405-foot long 59-inch diameter steel penstock; (7) a powerhouse containing: (a) Generating units 1, 2 and 3 having a total rated capacity of 650 kW and connected to flowline no. 1; (b) generating unit 4 having a rated capacity of 720 kW and connected to flowline no. 2; (c) generating unit 5 having a rated capacity of 500 kW and connected to flowline no. 3; (8) a short 2.4-kV transmission line; (9) a plant substation; (10) a 1,000-foot long 46-kV transmission line; (11) the Badger Substation; and (12) appurtenant facilities.

Applicant proposes to: (1) Construct a fish ladder; (2) provide a public parking area near the Badger Substation; (3) reconstruct the access road; (4) construct an 8-foot diameter 1,200-foot long steel penstock extending from the 59-inch penstocks to a new powerhouse; (5) construct a powerhouse containing two generating units having a total rated capacity of 6,025 kW at a net head of 123 feet and hydraulic capacity of 680 cfs; (6) construct a 4.16/46-kV plant substation; (7) excavate a 170-foot long tailrace; and (8) construct a 1,600-foot long 46-kV transmission line.

The redeveloped Felt Project would be operated as run-of-river. The new construction would affect lands of the United States under the jurisdiction of the Bureau of Reclamation. Applicant estimates that project redevelopment would cost $9,420,000.

Purpose of Project—Project energy would be sold to the Bonneville Power Administration. Applicant estimates that the average annual energy output would be 31,400 MWh.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before July 26, 1982, either the competing application itself [See 18 CFR 4.33(a) and (d)] or a notice intent [See 18 CFR 4.33 (b) and (c) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et. seq. (1981).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 26, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Application Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13571 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6140-000]

Greene County Electric Company; Application for Preliminary Permit

May 12, 1982.

Take notice that Greene County Electric Company (Applicant) filed on March 29, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6140 to be known as the Normandy Dam Hydroelectric Project located on Duck River in Coffee and Bedford Counties, Tennessee. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Daniel E. Burgner, President, Greene County Electric Company, Route 1, Box 183 A, Greenville, Tennessee 37743.

Project Description—The proposed project would utilize the existing Tennessee Valley Authority (TVA) Normandy Dam and would consist of: (1) the existing 117,000 acre-feet reservoir; (2) a proposed powerhouse with generating units having an estimated installed capacity of 2,200 kW and producing an average annual energy output of 19 GWh; (3) a proposed 500-foot-long tunnel through the dam to convey water from the reservoir to the turbines; (4) a proposed ½-mile 161-kV transmission line to connect an existing line; and (5) appurtenant facilities. The proposed market for the power is TVA or Duck River Electric Membership Corporation (DREMC).

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant requested a 36-month permit to prepare a project report including preliminary designs, and results of hydrological, environmental and economic feasibility studies. The cost of these activities along with obtaining agreements with TVA or DREMC, consulting Federal, State, and local agencies, and preparing a license application is estimated by the Applicant at $30,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 8, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for licnese or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for licnese or exemption must be submitted to the Commission on or before July 19, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 19, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Notice of Intent To File Competing Application", "Competing Application", "Protest", or "Pitition to Intervene", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13572 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6176-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

May 12, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on April 7, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)) for Project No. 6176 to be known as the Proctor Creek Project located on Proctor Creek, within Snoqualmie-Mt. Baker in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Lawrence J. McMurtrey, 12122–196th N.E., Redmond, Washington 98052.

Project Description—The proposed project would consist of: (1) A 36-inch wide concrete intake structural placed in the streambed at elevation 1,600 feet; (2) a diversion pipeline 7,000 feet long; (3) a powerhouse at 640 feet containing a turbine generator with 2.3 MW capacity and 10.1 GWh annual energy production; and (4) a transmission line 1 mile long. The potential market for project-generated energy includes Puget Sound Power and Light, the Bonneville Power Administration and the Intalco Aluminum Company.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The applicant seeks issuance of a preliminary permit for a term of 24 months, during which engineering, economic and environmental studies will be conducted to ascertain project

feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 22, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et. seq. (1981; and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 22, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate.

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 20, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to interevene must be received on or before July 22, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kennety F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13573 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-125-000]

Watson Biogas Systems—Corona; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Watson Biogas Systems, 22010 S. Wilmington Avenue, Suite 207, Carson, California 90745, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Corona, California. The primary energy source of the facility will be biomass in the form of biogas obtained from a sanitary landfill. The electric power production capacity of the facility will be 6 megawatts. Diesel oil will be used for ignition fuel and will make up approximately seven percent of the total fuel use. There is no other facility located within one mile of the facility owned by Watson Biogas Systems which uses the same energy source. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status 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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13574 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-124-000]

Watson Biogas Systems—Duarte; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Watson Biogas Systems, 22010 S. Wilmington Avenue, Suite 207, Carson, California 90745, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Duarte, California. The primary energy source of the facility will be biomass in the form of biogas obtained from a sanitary landfill. The electric power production capacity of the facility will be 2.3 megawatts. Diesel oil will be used for ignition fuel and will make up approximately seven percent of the total fuel use. There is no other facility located within one mile of the facility owned by Watson Biogas Systems which uses the same energy source. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status 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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13575 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5860-000]

West Slope Power Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 mW Capacity

May 12, 1982.

Take notice that on January 8, 1982, West Slope Power Company (Applicant) filed an application, under section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 5860) would be located on Big Creek, near Pine in Fresno County, California. Correspondence with the Applicant should be directed to: Mr. John S. Hansen, President, West Slope Power Company, 59880 Cascadel Drive North, North Fork, California 93643.

Project Description—The proposed project would consist of (1) a proposed low concrete weir, approximately 5 feet high; (2) a proposed reinforced concrete intake structure approximately 5 feet wide, 7.5 feet long, and 4 feet deep; (3) a proposed penstock of 24-inch diameter welded steel pipe, and approximately 10,500 feet long; (4) a proposed powerhouse containing one turbine generator with an installed capacity of 4.5 MW; (5) a proposed 60 kV transmission line; and (6) appurtenant facilities. The project is located on the Sierra National Forest. The proposed project would be operated on a run-of-river basis. The Applicant estimates that the average annual energy output would be 12.6 GWh. Power at the proposed project would be sold to the Pacific Gas & Electric Company (PG&E).

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State of California Department of Fish & Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before July 1, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13576 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6091-000]

Western Hydro Electric, Inc.; Application for Exemption for Small Hydroelectric Power Project Under 5 Mw Capacity

May 12, 1982.

Take notice that on March 15, 1982, Western Hydro Electric, Incorporated (Applicant) filed an application under section 408 of the Energy Security act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 6091) would be located on Skate Creek, Lewis County, Washington. Correspondence with the Applicant should be directed to: Mr. Donald J. White, Vice President, Western Hydro Electric, Incorporated, Commercial Security Bank Building, Suit 600, 50 S. Main Street, Salt Lake City, Utah 84144.

Project Description—The proposed project would consist of: (1) A 70-foot long, 6-foot high diversion structure; (2) a 10,600-foot long, 60-inch diameter diversion pipeline; (3) a 2,100-foot long, 60-inch diameter penstock; (4) a powerhouse with a total rated capacity of 2,700 kW; and (5) a 3,700-foot long transmission line from the powerhouse to an existing 69-kV transmission line. The Applicant estimates that the average annual energy production would be 13.0 GWh. The project is located on U.S. Federal lands owned by the Gifford Pinchot National Forest.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and

operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, the State of Washington Department of Fisheries and State of Washington Department of Game are requested, for the purposes set forth in section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before June 29, 1982 either the competing license application that proposes to develop at least 7.5 magawatts in that project, or notice of intent to file such a license application. Submission of a a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or petitions to intervene must be received on or before June 28, 1982.

Filing and Service of Responsive Documents—Any filings must bar in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Brancy, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13577 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER80-713-003]

Arkansas Power & Light Co.; Order Dismissing Appeal and Granting Joint Request for Deferral of Action on Compliance Filing

Issued May 10, 1982.

On April 9, 1982, certain wholesale customers [1] of Arkansas Power & Light Company (AP & L) submitted an "application for rehearing" and request for stay of a letter order issued March 9, 1982, by the Acting Director of the Office of Electric Power Regulation. The letter order accepted for filing a January 22, 1982 submittal by AP & L reducing rates to these wholesale customers purportedly in accordance with an earlier settlement agreement between the parties dated August 8, 1980, and accepted for filing by Commission letter order dated October 21, 1980.

The Acting Director's March 9 letter order also directed AP & L to make refunds with interest to the wholesale customers within thirty days of all amounts previously collected in excess of the rate levels reflected in AP & L's January 22, 1982 submittal. AP & L also was directed to file with the Commission a refund compliance report within fifteen days after such refunds had been made.

The wholesale customers state that they "have learned that AP & L intends to accomplish a variety of previously unknown actions under the color of the March 9, 1982 qualified, letter order, possibly including the calculation of refunds in a prejudicial manner." No specific information has been provided by the wholesale customers that would further describe their concerns.

The wholesale customers ask for rehearing and request that the Commission stay the effect of the Acting Director's March 9, 1982 letter order to allow the parties to confer and resolve their differences. On April 16, 1982, AP & L filed a response in opposition to the customers' pleading. [2] AP & L has already tendered refunds to its affected customers and the company submitted a refund compliance report to the Commission on April 20, 1982.

On April 27, 1982, AP & L and its cutomers filed a joint request that final action with respect to the April 20 compliance report be deferred for a period of three weeks. In support of this extension of time, AP & L and the intervenors state that a conference has been scheduled between the intervenors and AP & L to attempt to reach an amicable resolution of any problems presented by the disputed compliance filing, and that a deferred decision should obviate the need for critical comments with respect to the compliance report.

Discussion

While captioned as an "application for rehearing," the customers' April 9, 1982 pleading was filed with the Commission and should have been filed as an appeal of a staff action, under §1.7(d) of the Commission's regulations, 18 CFR 1.7(d). In any event, it is untimely since it was filed more than thirty days after the issuance of the Acting Director's letter order. Moreover, based on the extremely limited information provided by the wholesale customers, we would have no basis at this time for reconsidering the conclusions expressed in the Acting

[1] Benton Municipal Light and Waterworks, Hope Water & Light Commission, Farmers Electric Cooperative Corp., and the Cities of North Little Rock, Osceola, and Prescott, Arkansas.

[2] While responses to an application for rehearing may not be submitted under §1.34(d) of the Commission's regulations, as noted below, the customers' pleading is, in fact, an appeal under §1.7 of the regulations. Moreover, insofar as the customers moved for a stay of the Acting Director's letter order, AP & L's response is permitted.

Director's letter order. As noted, AP & L has already filed a compliance refund report with the Commission. In the event that the customer's concerns materialize and the compliance filing is inconsistent with the prior settlement agreement, the customers may file a pleading with the Commission describing the disputed matters. Accordingly, we shall at this time deny the relief sought by the customers in their April 9 pleading.

However, upon consideration of the joint request of AP & L and its wholesale customers filed on April 27, 1982, we shall defer action of AP & L's compliance filing in order to give the parties an opportunity to resolve their differences. We fully expect the parties to make every effort to do so and to promptly report the results of their discussions. The administrative burdens on the Commission and the parties will be reduced if a controversy concerning AP & L's filing can be avoided.

The Commission orders:

(A) The appeal of the Acting Director's March 9, 1982 letter order submitted by the wholesale customers on April 9, 1982, is dismissed as untimely.

(B) The wholesale customer's request for a stay of the March 9, 1982 letter order is denied without prejudice.

(C) The joint request for deferral of action filed on April 27, 1982, by Arkansas Power & Light Company and its customers is hereby granted.

(D) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13801 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-302-000]

Cities Service Gas Co.; Notice of Application

May 12, 1982.

Take notice that on April 27, 1982, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP82-302-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of up to 100,000 Mcf of natural gas per day on an interruptible basis to Williams Gas Supply Company (Williams) for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a contract dated March 12, 1982, between Applicant and Williams, assignee of Faustina Pipe Line Company, Applicant proposes to sell up to 100,000 Mcf of natural gas per day to Williams for a term of five years. It is asserted that Applicant would sell up to 100,000 Mcf per day of its excess quantities of gas and Williams would take or pay for a minimum annual quantity of 70,000 Mcf times the number of days in the contract year that 100,000 Mcf are made available for purchase. It is stated that the price is at a rate level equal to Applicant's Rate Schedule I-2. It is further asserted that the sale of gas herein would be subordinate only to Applicant's established market area requirements including storage injection requirements.

It is submitted that in order to effect delivery to Williams, Applicant would deliver gas to Natural Gas Pipeline Company of America (Natural) for William's account at existing points of interconnection in Ford and Barton Counties, Kansas, or other mutually agreed upon delivery points. It is further stated that Natural would transport the gas for Williams for delivery at a point of interconnection between Stingray Pipeline Company and Louisiana Resources Company in Cameron Parish, Louisiana. It is explained that no new facilities are necessary to make the sale.

Applicant indicates that it currently has substantial gas volumes surplus to the needs of its own customers which surplus would continue throughout the term of the proposed sale and that such sale would substantially reduce the anticipated claims for take-or-pay payments which would be made pursuant to Applicant's gas supply contracts during the five-year term of the proposed sale.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to 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 petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition 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 the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13802 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP70-258-005]

Cities Service Gas Co.; Notice of Petition To Amend

May 12, 1982.

Take notice that on April 22, 1982, Cities Service Gas Company (Petitioner), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP70-258-005 a petition to amend further the order issued July 22, 1970,[1] in Docket No. CP70-258 pursuant to Section 7(c) of the Natural Gas Act so as to authorize the construction and operation of facilities for an additional delivery point for the exchange of natural gas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order issued July 22, 1970, in the instant docket, Petitioner states that it was authorized to exchange up to 150,000 Mcf of natural gas per day with Kansas-Nebraska Natural Gas Company, Inc. (K-N), pursuant to an exchange agreement dated March 27, 1970. The order has been amended from time to time to authorize additional delivery points.

Petitioner asserts that by amendment dated February 18, 1982, the exchange agreement was further amended so as to provide for an additional delivery point from Petitioner to K-N, the Copeland II delivery point. It is stated that this

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

delivey point would be located on K–N's rural irrigation system in Gray County, Kansas.

It is submitted that K–N has requested this additional delivery point to provide service to new irrigation customers in the area. It is stated that the estimated cost of constructing the facilities is $40,350 which would be reimbursed by K–N.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13603 Filed 5–18–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–303–000]

Cities Service Gas Co.; Notice of Application

May 12, 1982.

Take notice that on April 28, 1982, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP82–303–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities necessary to make a direct sale of natural gas to the Board of Public Utilities of Springfield, Missouri (City Utilities), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to tap its Springfield 16-inch pipeline in Greene County, Missouri, and construct and operate measuring, regulating and appurtenant facilities and to make direct sale of natural gas to City Utilities for operation by City Utilities of two 50 MW combustion turbine electric generating units. It is submitted that City Utilities has purchased two United Technologies FT4C–1 (DF) Twin Pac plants to be installed at City Utilities' Southwest Power Station for use as peaking units. It is asserted that Applicant's current supply is adequate to meet the needs of this customer on an interruptible basis.

Applicant estimates the cost of the proposed facilities to be $94,450 which would be financed from treasury cash.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to 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 petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition 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 the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13604 Filed 5–18–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–301–000]

Cities Service Gas Co.; Application

May 11, 1982.

Take notice that on April 26, 1982, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP82–301–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of pubic convenience and necessity authorizing the construction and operation of facilities necessary for the sale of natural gas to Peoples Natural Gas Company, a Division of InterNorth, Inc. (Peoples) for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a tap on its Murray Gill 20-inch pipeline in Sedgwick County, Kansas, including measuring, regulating and appurtenant facilities to make a proposed sale to Peoples for resale to Vulcan Materials Company (Vulcan) at its plant located near Wichita, Kansas. Applicant asserts that it and Peoples entered into a contract dated January 18, 1982, whereby Applicant would sell and deliver up to 15,000 Mcf of gas per day on an interruptible basis to Peoples for Vulcan. It is stated that the sale to Peoples would initially be made at a commodity rate equal to Applicant's Rate Schedule I–2 rate with a minimum monthly bill of $2,000.

It is asserted that Vulcan proposes to increase the plant's chlor-alkali production by an amount equivalent to roughly 30 megawatts of additional power demand. Vulcan, it is submitted, proposes to generate the additional power with a gas turbine powered generator.

Applicant estimates the cost of the proposed facilities to be $57,600 which would be financed from treasury cash.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 1 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 petition to intevene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to 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 petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition 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 the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13591 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3431-001]

City of East Providence, Rhode Island; Surrender of Preliminary Permit

May 12, 1982.

Take notice that the City of East Providence, Rhode Island, Permittee for the proposed Hunts Mills Project No. 3431, requested by letter dated April 15, 1982, that its preliminary permit be surrendered. The preliminary permit was issued on February 24, 1981, and would have expired on August 1, 1982. The project would have been located at the James V. Turner Reservoir Dam on the Ten Mile River in the City of East Providence, Providence County, Rhode Island.

The surrender of the permit is in the public interest. Therefore, the surrender of the preliminary permit for Project No. 3431 is accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13590 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-146-002 and ER82-146-003]

Commonwealth Edison Co.; Order Denying Application for Rehearing in Part and Granting Application in Part

Issued: May 10, 1982.

On February 17, 1982, and March 1, 1982, applications for rehearing were filed by the Cities of Batavia, Naperville, Geneva, St. Charles, and Rochelle, Illinois (Cities), and by the Village of Winnetka, Illinois, challenging aspects of the Commission's order entered February 5, 1982, in this docket. That order, *inter alia*, accepted for filing an increase in wholesale rates submitted by Commonwealth Edison Company (Commonwealth), suspended its effectiveness for one day, and ordered a hearing concerning the rates. The Cities seek rehearing of the Commission's denial of their request to reject the filing or, in the alternative, to suspend it for the maximum period. On March 16, 1982, the Cities requested that their petition for rehearing be handled on an expedited basis.

Winnetka also seeks rehearing as to the suspension period and urges the Commission to summarily reject the proposed demand ratchet contained in Commonwealth's partial requirements tariff. To the extent that the use of a ratchet is permitted, Winnetka contends that it should be applied on a prospective basis only.

By order issued on March 18, 1982, the Commission granted rehearing of its suspension order for the limited purpose of further consideration; at the same time, we granted the petition of members of the Illinois delegation to Congress to intervene in support of the Cities' application for rehearing. In their petition, the Congressional intervenors stated that a one day suspension does not give the Cities sufficient time to reflect an increase in their wholesale rates at the retail level, and that the Commission erred in not holding an evidentiary hearing concerning the period for which Commonwealth's rate increase should be suspended.

On March 16, 1982, Commonwealth filed an answer to Winnetka's motion for summary disposition concerning the demand ratchet. While disputing Winnetka's claim that the proposed ratchet constitutes "retroactive ratemaking" and results in a double recovery of capacity costs incurred in 1981, the company admits that it would overcollect its demand-related costs for 1982 under the original proposal; this overcollection occurs because Commonwealth used its projected 1982 summer peak demands to develop projected billing determinants, rather than using the 1981 demands to which the ratchet was intended to apply.[1] To alleviate the concerns expressed by Winnetka, Commonwealth proposed to delay implementation of the ratchet until October 1, 1982, on the condition that its proposed demand charge of $9.16/kW for the period February 9, 1982, to September 30, 1982, be redetermined to yield the same overall revenue level. This would result in a demand charge of $9.81/kw applicable to unratcheted billing demands.

On March 25, 1982, Winnetka responded to Commonwealth's proposal, again requesting that the Commission summarily reject the partial requirements tariff or a retroactive application of the demand ratchet. In addition, Winnetka restated its request that the rate increase be suspended for five months.

Discussion

In support of their application for rehearing, the Cities contend that: the Commission failed to state the reasons for imposing a one day suspension in its February 5, 1982 order; a five month suspension is appropriate in order to prevent or minimize the anticompetitive effects of the alleged price squeeze caused by Commonwealth's rate increase; a one day suspension fails to give the Cities sufficient time to reflect the increase in wholesale rates at the retail level; the inclusion of a 100% demand ratchet for the partial requirements customers results in retroactive application of its new rate design; the filing fails to comply with the Commission's regulations; and suspension of the filing for the maximum period more properly reflects the Congressional policies embodies in the Federal Power Act.

As noted, Winnetka also challenges the imposition of a one day suspension and argues that Commonwealth's proposed partial requirements tariff or demand ratchet should be rejected or, at least, that the ratchet should be limited to prospective application. In large part, Winnetka's rationale parallels that of the Cities. The Congressional intervenors state that a one day suspension does not give the Cities sufficient time to reflect an increase in their wholesale rates at the retail level, and that the Commission erred in not holding an evidentiary hearing concerning the period for which Commonwealth's rate increase should be suspended.

We appreciate and share the concern of the intervenors that the Cities and Winnetka not be burdened with excessive rates. However, we believe that the Congressional purpose in granting this Commission the authority to suspend rate filings was not to protect customers against rate increases but against unjustifiably increased rates. To achieve this purpose, the Commission

[1] Commonwealth's 1982 summer demand projections were based upon demands established in the summers of 1978-80. At least as to the City of Rochelle, the 1981 demands proved to be abnormally high. However, with respect to Winnetka, Commonwealth states that 1981 and projected 1982 demands are relatively consistent.

must balance the respective interests of utilities and ratepayers.[2]

We note that neither the Federal Power Act nor the Commission's regulations provide for a hearing on the length of time for which a utility's rates are suspended, if at all. This decision typically must be made within 60 days of a rate filing; the decision whether to accept or suspend a filing, and the length of any suspension imposed, is a matter within the exclusive discretion of this agency, as provided for by section 205(e) of the Federal Power Act. *Arrow Transportation Co.* v. *Southern Railway Co.*, 372 U.S. 658 (1963); *Delmarva Power & Light Co.* v. *FERC*, Docket No. 80-2102 (D.C. Cir., February 19, 1982); *Papago Tribal Utility Authority* v. *FERC*, 628 F.2d 235 (D.C. Cir.), *cert. denied*, 449 U.S. 1061 (1980). The suggestion that there be hearings concerning the length of any suspension period imposed is, therefore, fundamentally at odds with the present statutory scheme.

The Cities assert that a one day suspension fails to given them sufficient time to redesign their retail rates to reflect the increase in Commonwealth's wholesale rates. We do not believe that the purpose of the suspension period is to provide notice of rate changes. That purpose is achieved by section 205(d) of the Federal Power Act which provides that, unless waiver is granted, an increase in rates shall not become effective except upon 60 days notice. We note that the Cities do not allege that they failed to receive copies of Commonwealth's filing in a timely fashion as provided for in §§ 35.2 and 35.3 of the Commission's regulations. Nor have the Cities specified the nature of the difficulties they allegedly face. We shall therefore deny their request for reconsideration on this point.[3]

Since the decision in *Connecticut Light & Power Co.* v. *FERC*, 627 F.2d 467 (D.C. Cir. 1980), the Commission has articulated the reasons for the suspension period imposed in rate proceedings. Thus, we stated in our suspension order of February 5, 1982, in this docket that our review of Commonwealth's proposed rates may not produce substantially excessive revenues, and that, in those circumstances, a nominal suspension period and a refund obligation should provide adequate protection to Commonwealth's customers pending the outcome of a hearing. While we recently announced a reformulation of our suspension policy in *West Texas Utilities, supra*, the substantive effect of our policy remains unaltered. Accordingly the Cities' claim that we have failed to comply with the decision in *Connecticut Light & Power Co.* v. *FERC, supra*, is without merit.[4] Further review indicates, however, that, with respect to the company's application of its proposed demand ratchet in its partial requirements tariff, reconsideration is warranted. Accordingly, to the extent indicated below, we shall grant the Cities' and Winnetka's applications for rehearing.

With respect to the demand ratchet, the argument that Commonwealth has improperly engaged in "retroactive ratemaking" is misplaced. By including a demand ratchet based upon the four summer months of the preceeding twelve month period, Commonwealth is neither retroactively altering the rates previously charged to its customers nor presently charging rates other than those currently on file with the Commission.

As indicated, Commonwealth admits that application of its proposed demand charge to billing demands ratcheted to 1981 summer peaks results in an overcollection of its test year demand-related costs. The inconsistency between Commonwealth's projected partial requirements billing determinants and the actual billing determinants appears to contravene Commonwealth's proposed partial requirements contract as well as the Commission's regulations. The partial requirements contract provides that the billing demands will be determined by application of a ratchet to actual demand experienced during the prior summer; yet Commonwealth's filed cost of service develops projected billing determinants that rely, in part, on a ratchet applied to projected demands for the summer following the billing month. In addition, pursuant to § 35.13 of the Commission's regulations, utilities are required to submit with their cost of service a summary of the proposed revenue levels developed by application of the proposed charges to the projected billing determinants. Due to the inconsistency noted above, between projected and actual billing determinants, Commonwealth has substantially understated its proposed revenues.

The unusually high 1981 summer peak and the interaction of Commonwealth's proposed demand charge and ratchet results in an overcollection of test year demand-related costs which we cannot permit to occur. We believe that this overcollection should be remedied by using the summer peaks during the test year for purposes of determining actual ratcheted billing demand. This will, in effect, "normalize" the abnormally high 1981 summer peaks. Accordingly, Commonwealth will be directed to substitute its projected summer peaks for the 1981 summer peaks in determining actual billing demand and then to apply its originally proposed demand charge to the billing demands thus determined. This resolution of the problem arising as a result of aberrational 1981 demands, appears to be the solution most equitable to both Commonwealth and its customers.

While we find no basis upon which to summarily reject Commonwealth's proposed ratchet provision at this time, we emphasize that our decision is without prejudice to a final Commission determination concerning the inclusion of a demand ratchet in the partial requirements tariff following a hearing.

The Commission orders:

(A) The applications of the Cites and Winnetka for rehearing of the Commission's order of February 5, 1982, in this docket are, except as indicated below denied.

(B) For billing purposes Commonwealth is hereby ordered to apply its originally proposed demand charge to actual billing demand; when the proposed ratchet clause is applicable, billing demand is to be determined by substituting the projected 1982 test year summer peaks for actual 1981 summer peaks. This requirement shall apply as of the date on which the rates filed in this proceeding became effective subject to refund, and Commonwealth shall refund all additional amounts already collected under the demand ratchet as originally proposed to operate within thirty (30) days of the date of this order. Within (15) days after refunds have been made, Commonwealth shall file a refund compliance report.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

[2] *See West Texas Utilities*, Docket No. ER82-23-000 (February 26, 1982), in which the Commission recently gave an expanded explanation of its suspension policy.

[3] The Cities and Winnetka also allege that Commonwealth officials expressed their belief that a five month suspension period would be imposed. Assuming *arguendo* that this assertion is correct, this fact does not affect our decision. We note, in this regard, that Commonwealth did not be itself or jointly with the Cities or Winnetka, request such a suspension.

[4] With respect to the Cities' contention that a five month suspension is warranted in light of their price squeeze claim, the Commission has consistently stated that, barring extraordinary circumstances, it would not consider unproved price squeeze allegations as a separate factor in the suspension analysis. *E.g., Virginia Electric & Power Company*, Docket Nos. ER81-130-000 and ER81-139-000 (February 25, 1981).

By the Commission.

Kenneth F. Plumb,

Secretary

[FR Doc. 82-13605 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-477-000]

Connecticut Light and Power Co.; Filing

May 11, 1982.

The filing Company submits the following:

Take notice that on April 28, 1982, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to Transmission Agreement dated November 1, 1981 between (1) CL&P, The Hartford Electric Light Company (HELCOM) and Western Massachusetts Electric Company (WMECO) and (2) Holyoke Gas and Electric Department (HG&E).

CL&P states that the Transmission Agreement provides for a transmission service to HG&E for the wheeling of HG&E's entitlement in the Somerset Unit No. 6 generating facility during the period from November 1, 1981 to April 30, 1982.

CL&P further states that the transmission charge rate is a monthly rate equal to one-twelfth of the annual average cost of transmission service on the Northwest Utilities system determined in accordance with Schedule A and Exhibits I, II and III thereto of the Transmission Agreement. The monthly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-month), and (ii) the number of kilowatts which HG&E is entitled to receive during such month. The monthly transmission charge is reduced by 50% to give due recognition for payments made by HG&E to other systems also providing transmission service to HG&E.

CL&P requests that the Commission waive its standard notice period and permit the Transmission Agreement to become effective on November 1, 1981.

CL&P states that copies of this filing have been mailed to HELCO, WMECO and HG&E.

Any person desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests must be filed on or before May 24, 1982. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13592 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-283-000]

East Tennessee Natural Gas Co.; Notice of Application

May 12, 1982.

Take notice that on April 14, 1982, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37919, filed in Docket No. CP82-283-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to three of its existing customers, The Jefferson-Cocke Utility District of Newport, Tennessee, (Jefferson-Cocke), United Cities Gas Company of Nashville, Tennessee, (United Cities) and Tennessee-Virginia Energy Corporation (Tennessee-Virginia), under combined purchase gas contracts and supplemental winter service contracts, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant's three customers each purchases natural gas under two separate contracts. Applicant proposes to combine the contracts of each of these three customers into single gas sales contracts and to combine the supplemental winter service contracts into single supplemental winter service contracts. Applicant explains that each of these three customers has requested these changes to give additional operating flexibility to serve the high priority needs of its customers.

Applicant states that Jefferson-Cocke purchases natural gas for it Jefferson City service area under a gas sales contract dated January 1, 1970, wherein Applicant's maximum daily contract obligation is 1,984 Mcf. Applicant asserts that Jefferson-Cocke also purchases natural gas for its Newport service area under a separate contract dated November 1, 1969, wherein Applicant's maximum daily contract obligation is 4,046 Mcf. It is submitted that Jefferson-Cocke's supplemental winter service contract volume is currently 700 Mcf at its Jefferson City service area. Applicant avers that Jefferson-Cocke needs the flexibility of shifting volumes between these two service areas to recognize shifts in load patterns as would be permitted under single, consolidated contracts.

Applicant states that United Cities currently purchases natural gas for its Lynchburg, Maryville-Alcoa, Columbia, and Shelbyville service areas under a gas sales contract dated November 1, 1973, wherein Applicant's maximum daily contract obligation is 21,988 Mcf. It is submitted that the contract demands for each of these service areas are as follows:

	Contract demands (1,000 ft.^{3} per day)
Lynchburg	1,260
Maryville-Alcoa	7,400
Columbia	7,998
Shelbyville	5,330

Applicant avers that the supplemental winter service maximum daily contract volume is 7,000 Mcf for the above service areas.

Applicant asserts that United Cities also purchases natural gas for its Morristown and Bristol service areas under a separate contract dated December 1, 1972, wherein Applicant's maximum daily contract obligation is 5,500 Mcf per day at Bristol and 5,700 Mcf per day at Morristown. Applicant avers that United Cities' supplemental winter service maximum daily contract volume is 6,000 Mcf for these service areas. It is submitted that United Cities needs the flexibility of shifting volumes between its six service areas to best meet the high priority requirements of its customers.

Applicant states that Tennessee-Virginia was formed following the merger of Colonial Natural Gas Company (Colonial) with Volunteer Natural Gas Company (Volunteer). It is submitted that Applicant currently has in effect a gas sales contract with Volunteer dated August 1, 1970, wherein Applicant's maximum daily contract obligation is 18,285 Mcf. Applicant asserts that the contract demand for the service areas contained in this contract are as follows:

	Contract demands (1,000 ft.^{3} per day)
Elizabethton	2,694
Greeneville	4,885

	Contract demands (1,000 ft.³ per day)
Gray	208
Johnson City	5,700
Kingsport	4,800

Applicant explains that the supplemental winter service maximum daily contract volume is 3,000 Mcf for these service areas.

It is asserted that Tennessee-Virginia also purchases natural gas for the former Colonial service area in southwestern Virginia under a separate contract dated January 1, 1969, wherein Applicant's maximum daily contract obligation is 18,005 Mcf. Applicant avers that Tennessee-Virginia's supplemental winter service maximum daily contract volume is 4,000 Mcf for the Colonial service area. Applicant submits that Tennessee-Virginia has requested that the Volunteer contracts and the Colonial contracts be consolidated into new Tennessee-Virginia contracts.

Applicant states that Jefferson-Cocke, United Cities, and Tennessee-Virginia each have installed peak-shaving facilities in one or more of their service areas but not in every service area. Applicant submits that the proposed combination of the contracts would permit the entire, nonintegrated distribution system of each to use and benefit from existing peak-shaving facilities regardless of the location of such facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to 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 petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition 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 the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13606 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA82-18-000]

Houston Oil & Minerals Corp.; Notice of Application for Adjustment

May 12, 1982.

Take notice that on April 27, 1982, Houston Oil & Minerals Corporation (applicant), 1100 Louisiana Street, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission (Commission) an application for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) 15 U.S. 3301-3432, (Supp. IV 1980), and § 1.41 of the Commission's regulations. Applicant seeks an exception to § 273.204 of the Commission's regulations.

Specifically, applicant states that its Vermillion Block 50 No. B-1 well and its F-19 well received final determinations that they qualified pursuant to section 102 of the NGPA on September 2, 1979 and February 2, 1981, respectively. Applicant also states that after production ceased in the Vermillion Block 50 No. B-1 well and the F-19 well, those wells were recompleted, and the gas from the recompletion location in each well, like that from the completion location that had ceased producing, was sold to Texas Gas Transmission Corporation (Texas Gas) and United Texas Transmission Company, respectively, at the section 102 price. Applicant asserts that it filed an application with the jurisdictional agency for a determination for the recompletion in the Vermillion Block 50 No. B-1 well on June 24, 1981, and the F-19 well on April 13, 1981. Applicant further states that if the adjustment is not granted the gas from the recompletion in the Vermillion Block 50 No. B-1 well and the F-19 well would qualify pursuant to section 104 and 109, respectively, for the period beginning with initial deliveries until the dates the applications for section 102 determinations were filed with the jurisdictional agency for the wells. Applicant, in addition, alleges that it has repaid the pipeline purchasers the amounts paid above the applicable maximum lawful price, with interest, and now requests the Commission to adjust § 273.204 of the Commission's regulations to permit the applicant to collect the section 102 rate from the date of initial deliveries from the recompletion locations rather than the date the applications for determination were filed for the recompletion locations.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24, issued March 22, 1979, (44 FR 19861, March 30, 1979).

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41(e). All petitions to intervene must be filed on or before June 3, 1982.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13607 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RO82-15-000]

Kitty Bell, d.b.a. Bell's Texaco; Terminating Proceedings

May 11, 1982.

On April 20, 1982, the petitioner, Bell's Texaco Service Garage, filed a request to withdraw its appeal in this proceeding because it has executed a consent order, settling all issues involved in the proceeding, with the Department of Energy. Accordingly, pursuant to 18 CFR 1.38(p) the request to withdraw is hereby granted.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13593 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-483-000]

Middle South Services, Inc.; Filing

May 11, 1982.

The filing Company submits the following:

Take notice that on April 30, 1982, Middle South Services, Inc. (Services) tendered for filing a revised System Agreement among Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light

Company, New Orlean Public Services Inc., and Services dated April 23, 1982. The Agreement supersedes in its entirety the Agreement among Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service, Inc., and Services, dated April 16, 1973 as amended in Docket Nos. ER79–277, ER80–366 and ER81–405. This new Agreement is proposed to be effective August 1, 1982 and suspended five months to a revised effective date after suspension of January 1, 1983.

Services states that this new Agreement provides for certain power pooling transactions, including Reserve Equalization, Transmission Equalization, Energy Transactions, Unit Power Sales, as well as other interchange arrangements between the companies.

Services further states that the filing includes detailed workpapers demonstrating the changes incorporated in the new Agreement and also schedules of the effects of the changes on the various companies included in the Agreement.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 26, 1982. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13594 Filed 5–18–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–296–000]

Northern Border Pipeline Co.; Notice of Application

May 12, 1982.

Take notice that on April 22, 1982, Northern Border Pipeline Company (Applicant), P.O. Box 3330, Omaha, Nebraska 68103, filed in Docket No. CP82–296–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, but not the operation, of a right-of-way tap to the Fort Peck Indian Reservation, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the construction of a tee, side valve and blind flange to accommodate the future delivery of natural gas to the Fort Peck Indian Reservation, Roosevelt County, Montana, a right-of-way grantor. It is asserted that in the course of construction across the Fort Peck Reservation the delivery outlet was installed. Applicant states that prior to the time of installation it was intended that a request would be made of the Office of the Federal Inspector for approval to install the facilities. Subsequently, Applicant states that it was advised that Commission approval was required. Applicant asserts that it is herein requesting authorization for the delivery outlet already installed on the Fort Peck Indian Reservation.

It is asserted that the actual cost of the proposed facilities is $42,200 which would be financed as a part of the overall financing plan for Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to 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 petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition 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 the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13608 Filed 5–18–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–484–000]

Northern States Power Co.; Filing

May 11, 1982.

The filing Company submits the following:

Take notice that Northern States Power Company (Minnesota) [NSP (Minn)] on April 30, 1981, tendered for filing proposed rate schedule changes to NSP (Minn)'s contracts with the following 25 wholesale customers:

	FERC rate schedule No.
City of Ada	390
City of Anoka	336
City of Arlington	378
City of Brownton	324
City of Buffalo	369
City of Chaska	323
City of East Grand Forks	387
City of Fairfax	400
City of Granite Falls	355
Home Light and Power Company	335
City of Kasota	318
City of Kasson	379
City of Kenyon	394
City of Lake City	361
City of Le Sueur	392
City of Madelia	397
City of Melrose	401
City of North Saint Paul	371
City of Olivia	388
City of Saint Peter	325
City of Sauk Centre	389
City of Shakopee	368
City of Sioux Falls	386
City of Waseca	380
City of Withrop	364

The rate schedule changes were filed concurrently with a new Coordinating Agreement between Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin) [NSP (Wisc)], and Lake Superior District Power Company (LSDP) which is a newly acquired NSP subsidiary. NSP (Minn) has requested that the tariff changes become effective on the same date as is ordered by the Commission in that Coordinating Agreement filing, proposed by the parties in that filing to be June 30, 1982.

The new Coordinating Agreement brings LSDP within the existing arrangements for single system planning, operation, and cost sharnig

among the affiliated companies in the NSP electric system. As a result of this affiliation, NSP system fuel costs will increase by $9,131,000 or 0.012¢ per kilowatt-hour, based upon 1982 budgeted costs. NSP (Minn) proposes to increase the base cost of fuel in the fuel clause provision of its wholesale rate schedules by 0.012¢ per kilowatt-hour, to insulate its existing wholesale customers from the higher fuel costs and prevent the double recovery of those costs which would otherwise result.

A copy of the filing has been mailed to each of NSP (Minn)'s customers affected by the proposed change, to the Minnesota Public Utilities Commission the South Dakota Public Utilities Commission, and the North Dakota Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 1982. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public ispection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13595 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-486-000]

Northern States Power Co.; Filing

May 11, 1982.

The filing Company submits the following:

Take notice that Northern States Power Company (Wisconsin) (NSP (Wis.)) on April 30, 1982, tendered for filing proposed rate schedule changes to NSP (Wis.)'s contracts with the following 11 existing and 1 prospective wholesale customers:

	FERC rate schedule No.
Bangor	58
Barron	(1)
Black River Falls	54
Bloomer	62
Cadott	61
Cornell	*59
New Richmond	60
Rice Lake	56
Spooner	64
Trempealeau	52
Westby	55
Whitehall	51

[1] Customer not yet receiving service. No FERC Rate Schedule Number has yet been assigned.

The rate schedule changes were filed concurrently with a new Coordinating Agreement between Northern States Power Company (Minnesota) (NSP (Minn.)), Northern States Power Company (Wisconsin) (NSP (Wis.)), and Lake Superior District Power Company (LSDP) which is a newly acquired subsidiary of NSP (Minn.).

NSP (Wis.) requests an effective date of June 30, 1982, and therefore requests waiver of the Commission's notice requirements.

The new Coordinating Agreement brings LSDP within the existing arrangements for single system planning, operation and cost sharing among the affiliated companies in the NSP electric system. As a result of this affiliation, NSP system fuel costs will increase by $9,131,000 or 0.012¢ per kilowatt hour, based upon 1982 budgeted costs. NSP (Wis.) proposes to increase the base cost of fuel in the fuel clause provision of its wholesale rate schedules by 0.012¢ per kilowatt hour, to insulate its existing wholesale customers from the higher fuel costs and prevent the double recovery of those costs which would otherwise result.

A copy of the proposed rate schedule changes has been mailed to each of NSP (Wis.)'s customers affected by the proposed change, and the Wisconsin Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 1982. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13596 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-485-000]

Northern States Power Company (Minnesota) et al.; Filing

May 11, 1982.

The filing Company submits the following:

Take notice that on April 30, 1982, Northern States Power Company (Minnesota) (NSP (Minn.)) and Northern States Power Company (Wisconsin) (NSP (Wisc.)), and Lake Superior District Power Company (LSDP) jointly tendered for filing a Coordinating Agreement dated April 23, 1982. The Coordinating Agreement brings LSDP, a newly acquired subsidiary of NSP (Minn.), within the existing arrangements for single system planning, operating and cost sharing among the affiliated companies in the NSP electric system.

The Coordinating Agreement revises and supersedes a 1970 Coordinating Agreement between NSP (Minn.) and NSP (Wisc.) which now provides for coordination on the NSP electric system.[1] The new Coordinating Agreement preserves the substantive provisions of the previous agreement. The only changes are those needed to bring LSDP within the terms of the Agreement and to preserve consistency of usage in language throughout the Agreement.

Write-off charges under the Coordinating Agreement associated with the Commission-ordered write-off of the cancellation losses on the Tyrone nuclear plant in Docket No. ER79-616 will not be shared between LSDP and the two NSP companies.

The parties request an effective date of June 30, 1982, and therefore request waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8

[1] The 1970 Coordinating Agreement is designated FERC Rate Schedule No. 374 for NSP (Minn.) and FERC Rate Schedule No. 53 for NSP (Wisc.). it was executed on October 12, 1970 and was amended on August 22, 1979 and December 30, 1981.

and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 1982. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13597 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-478-000]

Ohio Power Company; Filing

May 11, 1982.

The filing Company submits the following:

Take notice that Ohio Power Company (OPCo), on April 28, 1982, tendered for filing a power sales agreement executed with the City of Bryan, Ohio (Bryan) dated may 21, 1980. This agreement is intended to replace the existing service agreement between Bryan and the Toledo Edison Company (Toledo Edison), designated by the Commission as FERC Electric Tariff Original Vol. 1.

OPCo requests a proposed effective date for the tendered agreement of June 1, 1982 to match the requested effective date of the notice of cancellation by the Toledo Edison Company in Docket No. ER82-425-000. OPCo therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the City of Bryan, and the Toledo Edison Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 25, 1982. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13598 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-473-000]

Pacific Power & Light Co.; Filing

May 11, 1982.

The filing Company submits the following:

Take notice that on April 23, 1982, Pacific Power & Light Company (PP&L) tendered for filing Bonneville Power Administration's (Bonneville) determination of Average System Cost (ASC) for Pacific's Appendix 1 for the states of Idaho, Montana, Oregon and Washington, and Pacific's Reconciliation of filed Appendix 1 to Bonneville's Recommendations for each state.

The additional information filed by PP&L, as a result of Bonneville's determination, indicates an ASC for the states as detailed below:

State	Mills/kWh
Idaho	13.28
Montana	20.18
Oregon	24.40
Washington	20.43

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 25, 1982. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13599 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CS82-52-000, et al.]

Petro-Energy Exploration Inc., et al.; Applications for "Small Producer" Certificates [1]

May 11, 1982.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 27, 1982 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions 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 National Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS82-52-000	Apr. 6, 1982	Petro-Energy Exploration Inc., 500 American Standard Life, Center South, Enid, Oklahoma 73701.
CS82-53-000	Apr. 12, 1982	William J. Hancock, P.O. Box 1555, Billings, Montana 59103.
CS82-54-000	Apr. 16, 1982	Patterson Resources, Inc., 305 Baronne St., Suite 404, New Orleans, Louisiana 70112.
CS82-55-000	Apr. 21, 1982	Charles, Winchester & Co., 1881 First National Building, Detroit, Michigan 48226.
CS82-56-000	Apr. 23, 1982	Iris V. Belbach, Lorna R. Harvey, 1536 18 Road, P. O. Box 968, Fruita, Colorado 81521.
CS82-57-000	Apr. 28, 1982	Tortuga Oil & Mineral, 7745 San Felipe, Suite 200, Houston, Texas 77063.
CS82-58-000	Apr. 30, 1982	G. & N. Company and James H. French, Jr., Post Office Box 398, Smackover, Arkansas. 71762.
CS82-59-000	do	Old Dominion Oil Corportion, 660 Court Plaza Building, Oklahoma City, Oklahoma 73102.
CS82-61-000	May 3, 1982	L. B. Hodges, Post Office Box 489, Roswell, New Mexico 88201.
CS82-62-000	do	Empire Boeki K.K. Inc., Cutty Sark Scotch Whisky, (Japan) Ltd., 817th St., Suite 202, Denver, Colorado 80202.

[FR Doc. 82-13600 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP82-34-000]

Southern Union Gathering Co.; Notice of Application for Commission Determination

Issued: May 12, 1982.

On April 22, 1982, Southern Union Gathering Company (Southern Union—filed an application, pursuant to § 270.203(g) of the Federal Energy Regulatory Commission's (Commission) regulations implementing the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432 (Supp. IV 1980), for a determination by the Commission that certain sales made by Southern Union will not longer be treated as "first sales" under the NGPA, as defined in section 2(21)(A).

Southern Unions states: It is currently making first sales in Northwest New Mexico to two primary purchasers, El Paso Natural Gas Company (El Paso) and Gas Company of New Mexico (GCNM). Both of the sales are made pursuant to long-term contracts, and commenced in 1953, the year Southern Union began doing business. After producer-type sales were held, in 1954, to be jurisdictional under the Natural Gas Act (NGA), 15 U.S.C. 717–717w, as amended (Supp. IV 1980), Southern Union made its sales to El Paso under a permanent certificate issued by the Federal Power Commission. *See* 19 FPC 594 (1958). Southern Union's sales to GCNM have been and continue to be made pursuant to the laws of the State of New Mexico. The rate at which Southern Union sold gas to El Paso was regulated, during the period 1954–1978, under the NGA. After passage of the NGPA, however, the rates for Southern Union's sales to El Paso and GCNM became subject to the NGPA "first sale" regulations. Southern Union is seeking to establish a regulatory framework under which the rates for sales from its existing gathering system will be treated by this Commission as if the sales are made by an interstate pipeline and are subject to the just and reasonable standards of the NGA. In light of its past rate treatment, Southern Union is requesting that the exemption from first sale treatment be granted with respect to the sale to GCNM also, as well as with respect to other sales in the San Juan Basin Area.

Any person desiring to be heard or to make any protest with reference to said application should file, on or before June 4, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). 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 party wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13609 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-286-000]

Texas Eastern Transmission; Application

May 12, 1982.

Take notice that on April 15, 1982, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in docket No. CP82-286-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to exchange the natural gas produced in South Pass Block 89, offshore Louisiana, with Gulf Oil Corporation acting through Gulf Oil Exploration and Production Company, A Division thereof (Gulf), pursuant to a gas exchange agreement dated April 2, 1982. It is stated that Applicant has available quantities of gas from certain producers attributable to production from Platforms A and B, South Pass Block 89, offshore Louisiana. Applicant explains that it has filed an application in Docket No. CP82-1-000 to construct approximately 47 miles of 20-inch pipeline from Platform B, South Pass Block 89 to Applicant's 36-inch pipeline near Gulf's Venice Plant in Plaquemines Parish, Louisiana, to attach the above quantities of gas from South Pass Block 89. Applicant assets that prior to completion of its proposed South Pass Block 89 pipeline, the producers would be transporting crude petroleum and associated casinghead gas and that such gas would be separated and delivered to Gulf for the account of Applicant at or near the producer's receiving station. Applicant avers that this gas would be available for delivery to Gulf on July 1, 1982.

Applicant proposes to cause to be delivered by the producers to Gulf for the account of Applicant daily gas quantities of up to 15,000 dekatherms (dt) equivalent per day and such additional quantities as are mutually agreeable at Applicant's point of exchange located at a mutually acceptable existing point between the producers and Gulf at or near the producers' West Delta Receiving Station in Plaquemines Parish, Louisiana. It is

submitted that Gulf would deliver to Applicant at Gulf's primary point of exchange quantities equivalent to those quantities delivered by Applicant to Gulf at Applicant's point of exchange.

Applicant states that if Gulf is unable, wholly or in part, to deliver the equivalent quantity of gas to Applicant at Gulf's primary point of exchange Gulf would deliver the balance to Applicant at a secondary point of exchange. Gulf's primary point of exchange would be those existing locations on Applicant's offshore Cameron system at which Applicant currently receives gas for the account of Gulf, it is averred. Applicant explains that this gas is attributable to Eugene Island Block 313, West Cameron Blocks 198, 332, 406, 409 and 479 and Vermilion Block 260. Applicant states that Gulf's secondary point of exchange would be the existing interconnection between Gulf's facilities at Gulf's Venice processing plant and Applicant's 36-inch Line No. 40 located near the City of Venice, Plaquemines Parish, Louisiana. Applicant asserts that pursuant to the agreement quantities of gas received by each party would be exchanged on an equivalent heating value basis and would be adjusted for plant fuel use and the heating value of liquefiables extracted at Gulf's Venice processing plant. It is submitted that neither party would charge for the exchange.

Applicant asserts that the exchange arrangement proposed herein would enable Applicant to obtain on an interim basis quanitites of casinghead gas which it has purchased in South Pass Block 89. Applicant states that the exchange would commence upon the date of initial delivery and would terminate either one year from such date or on the date on which Applicant's South Pass Block 89 pipeline is placed into service. Applicant expects that the South Pass Block 89 pipeline would be placed into service in October 1982.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10 and the Regulations under the National 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 petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to 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 petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition 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 the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13610 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-322-002]

Texas Gas Transmission Corp.; Petition To Amend

May 12, 1982.

Take notice that on April 22, 1982, Texas Gas Transmission Corporation (Petitioner), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP81-322-002 a petition to amend the order issued August 12, 1981, in Docket No. CP81-322 pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for Natural Gas Pipline Company of America (Natural) for an additional 363-day term, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued August 12, 1981, Petitioner received authorization to transport up to 50,000 Mcf of natural gas per day for Natural to Dow Intrastate Gas Company for ultimate delivery to Dow Chemical Company (Dow) for a term of 363 days. It is asserted that Natural agreed to sell on a best-efforts basis up to a total of 15,000,000 Mcf of gas to Dow over the period.

Petitioner proposes herein to transport gas for Natural for an additional 363-day term. Petitioner further proposes to transport on an interruptible basis a daily volume of gas not to exceed a total of 30,000,000 Mcf during this additional term. It is submitted that Natural and Dow on March 30, 1982, executed an amendment to their gas sales agreement providing for the sale of an additional 30,000,000 Mcf of natural gas over a 363-day period following the expiration of the initial term of the sales agreement.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13611 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-129-000]

Alternative Energy Decisions, Inc.—Ashland; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Bangor, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Ashland, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 20,000 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying

status 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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13664 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-128-000]

Alternative Energy Decisions, Inc.—Carrabassett Valley; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Bangor, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Carrabassett Valley, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 16,700 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status 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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13662 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-127-000]

Alternative Energy Decisions, Inc.—Chester; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Bangor, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Chester, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 16,700 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status 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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13666 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-130-000]

Alternative Energy Decisions, Inc.—Columbia; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Bangor, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Columbia, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 20,000 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status 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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13663 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-131-000]

Alternative Energy Decisions, Inc.—Harrington; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Bangor, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Harrington, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 20,000 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status 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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13667 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-126-000]

Alternative Energy Decisions, Inc.—Houlton; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Bangor, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Houlton, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 16,700 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status 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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13665 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6236-000]

Dale L. R. Lucas; Application for Preliminary Permit

May 13, 1982.

Take notice that Dale L. R. Lucas (Applicant) filed on April 20, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for Project No. 6236 to be known as the Nelder Creek Power Project located on Nelder Creek, within Sierra National Forest in Madera County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to Mr. Dale L. R. Lucas, 36600 Orange Grove Avenue, Madera, California 93637.

Project Description—The proposed project would consist of: (1) A 5-foot high natural rock and concrete diversion structure at elevation 3,600 feet; (2) a diversion conduit 4,707 feet long; (3) a penstock 1,640 feet long; (4) a powerhouse at 3,040 feet containing an impulse turbine powerplant with 748 kW capacity and 6.5 GWh annual energy production; and (5) a transmission line 7,200 feet long. Power output would be purchased by the Pacific Gas and Electric Company.

Purposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 36 months, during which engineering, economic and evironmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $30,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 23, 1982, the competing application itself, or a notice of intent to file such and application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 23, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent of file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 21, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980).

In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 23, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION","COMPETING APPLICATION" "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13671 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6238-000]

Dale L. R. Lucas; Application for Preliminary Permit

May 13, 1982.

Take notice that Dale L. R. Lucas (Applicant) filed on April 20, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6238 to be known as the Lewis Fork Creek Power Project located on Lewis Fork Creek, within Sierra National Forest in Madera County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Dale L. R. Lucas, 36600 Orange Grove Avenue, Madera, California 93637.

Project Description—The proposed project would consist of: (1) A 5-foot high natural rock and concrete diversion structure at elevation 3,960 feet; (2) a diversion conduit 3,362 feet long; (3) a penstock 1,660 feet long; (4) a powerhouse at 3,360 feet containing an impulse turbine powerplant with 1,480 kW capacity and 13 GWh annual energy production; and (5) a transmission line 1,900 feet long. Power output would be purchase by the Pacific Gas and Electric Company.

Purpose Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 36 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and and to support application for a license to construct and operate the project. The estimated cost of permit activities is $30,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 23, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR § 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981].

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 23, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file in acceptable competing application for preliminary permit no later than September 21, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or petitions to intervene must be received on or before July 23, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13672 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5940-000]

Energenics Systems, Inc.; Application for Preliminary Permit

May 13, 1982.

Take notice that Energenics Systems, Inc. (Applicant) filed on February 2, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5940 to be known as the Green River Lock and Dam No. 1 Hydroelectric Project located on Green River near Spottsville, in Henderson County, Kentucky. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Thomas H. Clarke, Jr., President, Energenics Systems, Inc., 1717 K Street, N.W., Suite 706, Washington, D.C. 20006.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' Green River Lock and Dam No. 1 and would consist of: (1) A proposed powerhouse with generating units having an estimated installed capacity of 3,000 kW and producing an average annual energy output of 13.1 GWh; (2) a proposed 5-mile long transmission line to connect to an existing Henderson Union

Cooperative line; and, (3) appurtenant facilities. The proposed market for the power is Henderson Union Cooperative, Tennessee Valley Authority, or Henderson Municipal Power and Light.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, state, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $35,000.00.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 2, 1982, the competing application itself [see 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 23, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 23, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Notice of Intent to File Competing Application", "Competing Application", "Protest", or "Petition to intervene", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13688 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5957-000]

The Farmers Irrigation District; Application for Exemption of Small Conduit Hydroelectric Facility

May 13, 1982.

Take notice that on February 9, 1982, The Farmers Irrigation District (Applicant) filed an application, under Section 30 of the Federal Power Act (Act) [16 U.S.C. 823(a)], for exemption of a proposed hydroelectric project from requirements of Part I of the Act. The proposed Reed Road Pump/Generator Plant Project (FERC Project No. 5957) would be located on Ditch Creek, Hood River County, Oregon. Correspondence with the Applicant should be directed to: Mr. Henderson, Manager, Farmers Irrigation District, 1185 Tucker Road, Hood River, Oregon 97031.

Purpose of Project—Project energy would be sold to Pacific Power and Light Company.

Project Description—The proposed project would consist of: (1) A 16-inch diameter, 2,300-foot long existing conduit; (2) a turbine-generating unit with a rated capacity of 160 kW; (3) a 50-foot long transmission line connecting into an existing Pacific Power and Light Company's line; and (4) appurtenant facilities. Applicant estimates a 750,000 kWh average annual energy production.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Oregon State Department of Fish and Wildlife are requested, for the purposes set forth in Section 30 of the Act, to submit within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulation to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative

of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13669 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6178-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

May 13, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on April 7, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for Project No. 6178 to be known as the Anderson Creek Project located on Anderson Creek, within Snoqualmie-Mt. Baker in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Lawrence J. McMurtrey, 12122 196th N.E., Redmond, Washington, 98052.

Project Description—The proposed project would consist of: (1) A 36-inch wide concrete intake struture placed in the streambed at elevation 1,600 feet; (2) a diversion pipeline 6,000 feet long; (3) a powerhouse at 640 feet containing a turbine generator with 1.41 MW capaicty and 6.17 GWh annual energy production; and (4) a transmission line 1 mile long. The potential market for project-generated energy includes Puget Sound Power and Light, the Bonneville Power Administration and the Intalco Aluminum Company.

Purposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 24 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 23, 1982, the competing application itself, or a notice of intent to file such an application [see 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981].

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 23, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than Septebmer 21, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 23, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION","COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-136 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6209-000]

Springfield Utility Board; Application for Preliminary Permit

May 13, 1982.

Take notice that Springfield Utility Board (Applicant) filed on April 13, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6209 to be known as the Christy Creek in Lane County, Oregon in the Williamette National Forest. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Steve L. Loveland, Springfield Utility Board, P.O. Box 300, Springfield, Oregon 97477.

Project Description—The proposed project would consist of: (1) A reinforced concrete diversion dam approximately 8 feet high with negligible impoundment; (2) a penstock approximately 9,400 feet long; (3) a powerhouse containing a turbine generator with 4.0 MW capacity and 18.0 GWh annual energy output; (4) transmission lines; and (5) appurtenant facilities. Power would be sold to the Bonneville Power Administration or a local utility.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 36 months, during which time engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $80,000.

Competing Applications—This application was filed as a competing application to Grisdale Hill Company's application for Project No. 5685 filed on November 24, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an appplication for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or

exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "PETITION TO INTERVENE", as applicable, and the project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13675 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5642-000]

Tuolumne County, California; Application for Preliminary Permit

May 13, 1982.

Take notice that Tuolumne County (Applicant) filed on November 12, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5642 to be known as the Clavey River Project located on the Clavey River in the Stanislaus National Forest in Tuolumne County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Ms. Mildred Filiberti, Chairperson, Board of Supervisors, County of Tuolumne, Tuolumne Administration Center, 2 South Green Street, Sonora, California 95370.

Project Description—The proposed project would consist of two developments. The Hunter Bend Development would consist of: (1) a 450-foot high earthfill dam; (2) a reservoir with a surface area of 200 acres and a storage capacity of 41,000 acre-feet at normal water surface elevation 2,250 feet; (3) a 900-foot-long, 66-inch-diameter, power tunnel; (4) a powerhouse containing two 6-MW generating units; and (5) a two–mile–long, 69kV transmission line.

The Butcher Knife Development would consist of: (1) A 450-foot-high, earthfill dam; (2) a reservoir with a surface area of 152 acres and a storage capacity of 29,000 acre-feet at normal water surface elevation 1,750 feet; (3) a 1,700-foot-long, 69-inch-diameter power tunnel; (4) a powerhouse containing two 5.6-MW generating units; and (5) a 2.5-mile-long, 69-kV transmission line. Applicant estimates that the project would have an average annual generation of 102,100 MWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. During the term of the permit Applicant would conduct engineering, economic, financial and environmental studies of the project. Applicant stated that no more than 4 core borings would be made at each dam site. Equipment would be airlifted into the site and all disturbed areas would be restored. Applicant estimates that the studies would cost $300,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 23, 1982, the competing application itself or a notice of intent to file such an application [see 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 23, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 21, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 23, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Notice of Intent to File Competing Application" "Competing Application", "Protest", or "Petition to Intervene", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13676 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3188-003]

Joseph M. Keating; Application for License (5 mW or Less)

May 13, 1982.

Take notice that Joseph M. Keating (Applicant) filed on April 2, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of a water power project to be known as the Pyramid Creek Project No. 3188. The project would be locate on Pyramid Creek, near Twin Bridges, in El Dorado County, California, and affect U.S. lands within El Dorado National Forest. Correspondence with the Applicant should be directed to: Mr. Joseph M. Keating, 847 Pacific Street, Placerville, California 95667.

Project Description—The proposed project would consist of: (1) Reconstruction of the existing 6.3-foot high diversion dam with 3-foot high flashboards; (2) two earth dikes; (3) an intake structure; (4) a 1,200-foot long, 42-inch diameter steel penstock; (5) a concrete powerhouse containing two generating units, one rated at 350 kW and one rated at 640 kW; and (6) a 1,200-foot long transmission line. The average annual energy generation is estimated to be 3.1 million kWh.

Purpose of Project—The energy generated by the project would be sold to the Pacific Gas and Electric Company.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Application—Anyone desiring to file a competing application must submit to the Commission, on or before July 23, 1982, either the competing application itself [See 18 CFR 4.33 (a) and (d)] or a notice of intent [See 18 CFR 4.33(b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et. seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 23, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION","COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13670 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6090-000]

Rainsong Company; Application for Exemption for Small Hydroelectric Power Project Under 5 mW Capacity

May 13, 1982.

Take notice that on March 15, 1982, Rainsong Company (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended),* for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 6090) would be located on Smith Creek, within Gifford Pinchot National Forest in Lewis County, Washington. Correspondence with the Applicant should be directed to: Mr. Jerry L. Johnson, Agent, Post Office Box 485, Lynden, Washington 98264.

Project Description—The proposed project would consist of: (1) A 6-foot high prefabricated steel and concrete gravity diversion weir at elevation 2,640 feet; (2) a 36-inch pipeline and penstock with a total length of 14,000 feet; (3) a powerhouse at 1,100 feet containing a turbine generator with 5 MW capacity and 30.66 GWh annual energy production; and (4) a transmission line 2,000 feet long.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Washington State Department of Fisheries and Department of Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly indentified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before July 2, 1982 either the competing license application that proposed to develop at least 7.5 megawats in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Notice of intent to file competing application", "Competing application", "Protest", or "Petition to intervene", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13674 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5862-000]

West Slope Power Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 mW Capacity

May 13, 1982.

Take notice that on January 8, 1982, West Slope Power Company (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended)*, for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 5862) would be located on Whisky Creek & Willow Creek, near North Fork in Madera County, California. Correspondence with the Applicant should be directed to: Mr. John S. Hansen, President, West Slope Power Company, 59880 Cascadel Drive North, North Fork, California 93643.

Project Description—The proposed project would consist of: (1) A proposed low concrete weir, approximately 5 feet high; (2) a proposed reinforced concrete intake structure approximately 5 feet wide, 7.5 feet long, and 4 feet deep; (3) a proposed penstock of 30-inch diameter welded steel pipe, and approximately 8,500 feet long; (4) a proposed powerhouse containing one turbine generator with an installed capacity of 4.0 MW; (5) a proposed 60 kV transmission line; and (6) appurtenant facilities. The project is located on the Sierra National Forest. The proposed project would be operated on a run-of-river basis. The Applicant estimates that the average annual energy output would be 15.1 GWh. Power at the proposed project would be sold to the Pacific Gas & Electric Company (PG&E).

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State of California Department of Fish and Game are requested, for the pruposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before July 2, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Notice of Intent to File Competing Application" "Competing Application", "Protest", or "Petition to Intervene", as applicable, and the project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13677 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementations of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding to members of the public $431,651.48 in consent order funds. The funds are maintained in escrow accounts that were established in settlement of enforcement proceedings brought by the Office of Enforcement [now the Office of Special Counsel] in the Matters of Triton Oil and Gas Corporation ($78,358.48), Perry Gas Processors, Inc. ($38,000), and Upham Gas and Oil Company ($315,293).

DATES AND ADDRESS: Applications for refund must be postmarked on or before August 17, 1982, and should be addressed to Triton Consent Order Refund Proceedings, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461. All applications and comments should display conspicuously a reference to the appropriate case name and number.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633-8377.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the final decision and order set out below. The final decision and order relates to consent orders entered into by the Office of Enforcement of the DOE's Economic Regulatory Administration and Triton Oil and Gas Corporation, *see* 44 FR 40548 (1979), Perry Gas Processors, Inc., *see* 44 FR 52863 (1979), and Upham Gas and Oil Company *see* 44 FR 61993 (1979). All three firms are gas plant operators that produced natural gas liquids (NGLs). Pursuant to the consent orders, these firms have agreed to make refunds totaling over $431,651 to settle alleged violations of the DOE price regulations which occurred for periods between 1973 and 1976.

The Office of Hearings and Appeals has previously issued proposed decisions and orders which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order funds. The proposed decision and order discussing the distribution of funds obtained through the consent order with Triton Oil and Gas Corporation was issued on May 22, 1981, 46 FR 28929 (1981). The proposed decision and order discussing the distribution of funds obtained through the consent orders with Perry Gas Processors, Inc. and Upham Gas and Oil Company was issued on August 18, 1981, 46 FR 42743 (1981).

The final decision and order reflects our analysis of comments received from interested parties. As we indicate in the final decision, applications for refund from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than ninety days from the date of publication of this notice. *See* 10 CFR 205.283. We will accept applications from all claimants that can affirmatively demonstrate that they have been directly injured by the violations alleged in the consent orders. A detailed discussion of what information a party must provide in order to assert a successful claim is set forth in the final decision and order appended to this notice.

The final decision reaches no determination with regard to the disposition of any funds in the second stage of the proceeding, however, because the most appropriate disposition of the remaining funds may be determined, to a great extent, by the amount of money that remains after the first stage of the proceeding. Instead, the final decision solicits further comments on the appropriate distribution of these funds. Commenting parties are requested to submit two copies of their comments. Comments should be filed within 30 days of publication of this notice, and should be addressed to the address set forth at the beginning of that notice.

All comments received in this proceeding will be available for public inspection in the public Docket Room of the Office of Hearings and Appeals, between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on May 11, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

May 11, 1982.

Name of Petitioner: Office of Enforcement, Economic Regulatory Administration: In the Matters of Triton Oil and Gas Corportation, Perry Gas Processors, Inc., and Upham Gas and Oil Company.

Dates of Filing: March 16, 1981, May 13, 1981, May 18, 1981.

Case Numbers: BEF-0038, BEF-0048, BEF-0051.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration's Office of Enforcement (OE) (now the Office of Special Counsel) may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds to injured persons in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V.

In accordance with these regulatory provisions, the OE filed Petitions for the Implementation of Special Refund Procedures in connection with consent orders entered into with Triton Oil and Gas Corporation (Triton), Perry Gas Processors, Inc. (Perry), and Upham Gas and Oil Company (Upham). Under the terms of these consent orders, the three firms agreed to make refunds for their alleged violations of the DOE price regulations in sales of natural gas liquids (NGLs) (*1*) in the following amounts: $78,358.48 (Triton) (*2*), $38,000 (Perry) (*3*), $315,293 (Upham) (*4*). The funds have been paid to the DOE and are now being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their distribution.

Background

Proposed decisions and orders which tentatively established special refund procedures to be used in adjudicating claims to the settlement funds involved in this proceeeding have been previously issued, and comments have been received from interested parties concerning the proper disposition of the consent order funds. (*5*) In the proposed decisions we tentatively established a two-stage special refund procedure for the consent order funds. In the first stage, those firms which purchased NGLs during the relevant period from the firms involved and who believed they were eligible for a portion of the consent order funds could file Applications for Refund pursuant to 10 CFR 205.283. Downstream purchasers would also be permitted to file

Applications for Refund during the first stage of the refund process. Each application would be analyzed, and individual determinations on the merits of each would be rendered. All meritorious claims would then be paid. Finally, we suggested as the second stage of the refund process that first purchasers submit proposals which set forth appropriate mechanisms for returning moneys to the parties who likely paid increased prices as a result of the alleged overcharges. We alternatively proposed that if such plans proved infeasible, any portion of the settlement fund which, because of prohibitive administrative costs, might otherwise go undistributed be deposited in the Treasury of the United States. *See* 10 CFR 205.287(c).

The proposed decisions and orders were published in the **Federal Register**, and copies were sent to all interested parties. The comment periods specified in the **Federal Register** have passed. The cases of Triton, Perry and Upham (hereinafter "the three firms") have in common many factual and legal issues. All three firms are "gas plant operators" as that term is defined in 10 CFR 212.62. In all cases first purchasers have been identified. Furthermore, all of the proposed decisions issued for these firms contained identical first-stage refund procedures. Finally, many of the commenters who responded to our request for comments filed virtually the same comments in each case. Consequently, we believe that these three cases should be consolidated for a final determination concerning the first stage of the refund procedures.

The purpose of this decision will be to establish the mechanism by which firms that purchased NGLs from the three firms may file Applications for Refund. We shall first discuss the comments which we received concerning the first-stage refund procedures which we tentatively adopted in the proposed decisions and orders in these cases. Then we shall discuss in detail the Application for Refund procedures that we have decided to adopt. We shall not, however, discuss the second stage refund process in this decision since the first purchasers identified in this proceeding may file claims which, if meritorious, would thoroughly deplete the consent order funds. In that event no second stage would be necessary. (*6*) Moreover, our determination concerning the final disposition of any residual funds will necessarily depend on the size of the fund. *Office of Enforcement*, 8 DOE ¶ 82, 597 (1981) (hereinafter cited as *Vickers*). It is therefore unnecessary at this time for us to reach the issues raised by the commenters concerning the proposed disposition of funds remaining after all meritorious claims have been paid. (*7*)

Jurisdiction and Authority to Fashion Refund Procedures

We previously determined that the jurisdictional requirements of Subpart V have been satisfied with regard to Triton and assumed jurisdiction over distribution of the funds involved in this case in an Interlocutory Order issued on April 8, 1981. *See Office of Enforcement*, 8 DOE ¶ 82,516 (1981). With regard to Perry and Upham, we tentively determined that we should likewise exercise jurisdiction to distribute the funds in those cases in our August 18, 1981 Proposed Decision. *See* 46 FR 42743, 42746 (1981).

Two parties who submitted comments following the issuance of the proposed decisions and orders for these cases contend that the OHA should not have asserted juridiction. In particular, the commenters contend that: (i) It would be more appropriate to permit state governments to distribute the refunds under the states' inherent power to take possession of unclaimed funds belonging to their citizens; (ii) the OHA's authority extends only to fashioning refund procedures for entities that were direct purchasers from these firms. We shall discuss each of these contentions in turn.

The Controller of the State of California has commented that the state governments are better suited to adjudicate the disposition of the settlement funds than is the OHA. The Controller noted that under the American common law system, states have traditionally held the sovereign right to take possession of unclaimed funds belonging to their citizens. The Controller stated that the State of California has amply procedures and expertise to assure all claimants of due process in the adjudication of their claims. The Controller observed that in another Proposed Decision, the OHA tentatively determined that a portion of certain settlement funds should be distributed through the states. *See Office of Enforcement*, No. DFF–0002 (May 8, 1981) (proposed decision), 46 FR 16681 (1981) (hereinafter cited as *Alkek*). The Controller therefore suggests that it would be more efficient to turn over each state's share of the settlement funds to each state for redistribution in accordance with the national restitutionary goals and state procedures, rather than utilizing Subpart V in these cases.

As our proposal in *Alkek* indicates, we agree that states can be effective conduits for the distribution of settlement funds in appropriate cases. However, the three cases presently before us involve circumstances that are materially different from those present in *Alkek*. In *Alkek* most of the settlement funds were obtained from producers or resellers of crude oil whose alleged regulatory violations fell into three major categories. The first category concerned producers' sales of "old" price-controlled crude oil as "new" or "stripper well" oil subject to less stringent controls. The second type of violation involved producers who allegedly miscalculated the prices of "old" oil which they sold. The third type involved resellers or brokers of crude oil who miscertified "old" crude oil. We observed that due to the nature of these violations and the operation of the Crude Oil Entitlements Program, 10 CFR 211.67, it was likely that few firms would be able to demonstrate during the first stage that they had been injured. Consequently, we predicted that there would be a large fund remaining at the conclusion of the first stage of the refund process. In contrast, in the present cases we have received numerous notices of claims which, if meritorious, would completely exhaust the settlement funds.

In addition, the locale of the injured parties may be more readily ascertained in the present cases in *Alkek*. In *Alkek*, we determined that it was unlikely that the effects of crude oil violations could be localized due to the operation of the DOE regulatory program. In particular, we noted that the operation of the Entitlements Program would have spread the effects of the violations among all refiners even if they had not purchased crude oil from any of the crude oil producers involved. (*8*) Consequently, we proposed to disburse the remainder of the *Alkek* funds through a nation-wide mechanism. In the case of NGLs, tracing the effects of overcharges may be much less complex because they were not subject to the Entitlements Program. Furthermore, it may develop that in the course of adjudicating Applications for Refunds we may determine that a firm who purchased NGLs passed on the overcharges to customers in a discrete marketing area. *See, e.g., Vickers.* In that event we may conclude that distribution through the indicated states would be appropriate if the amount of money involved is substantial. (*9*) However, we do not know the amount, if any, of the funds that will be available for distribution after the first stage is completed. As we have stated above, the first purchasers identified in this proceeding may file claims which, if meritorious, would completely use up the settlement fund, and there would not be a second-stage distribution. We have therefore concluded that it would be inappropriate for us to relinquish responsibility over these funds to the states at this time.

Gulf Oil Corporation (Gulf) and the Transportation Group (*10*) contend that the OHA does not have authority to fashion refund procedures that would result in funds being disbursed to firms that were not direct purchasers from the three firms. Gulf apparently objects to both the proposed first and second stages of the refund procedures on the grounds that downstream purchasers and consumers may obtain refunds at either stage. Gulf argues that because only direct purchasers may maintain an action for overcharges under Section 210 of the Economic Stabilization Act (ESA), 12 U.S.C. 1904 note (1976), only direct purchasers should be able to recover from DOE settlements. Furthermore, Gulf particularly objects to our proposals that first purchasers be obliged to demonstrate that they did not pass on the overcharges to their customers and, if a first purchaser cannot make such a showing, that downstream purchasers may qualify for refunds. Gulf maintains that such a requirement is beyond the OHA's authority. Gulf therefore contends that the entire consent order funds must be distributed among first purchasers only.

Inasmuch as the present determination only establishes procedures for the filing of Applications for Refunds, we will not address Gulf's objections to our proposals for the distribution of residual funds. In addition, we shall reserve our discussion of whether the OHA may require a showing of injury until later in this Decision. As for its objections to the first-stage procedures, Gulf consistently confuses a party's private right of action under Section 210 of the ESA with DOE enforcement actions on behalf of the general

public that are authorized by the ESA and the Emergency Petroleum Allocation Act (EPAA), 15 U.S.C. 751 *et seq.* (1973). The cases which Gulf cites concerning private remedies under Section 210 of the ESA are simply inapposite to the special refund procedures, which are based upon Section 209 of the ESA and "the broad purposes of the Congressional mandate in both the ESA and the EPAA." *Bonray Oil Co. v. DOE*, 472 F. Supp. 899, 904 (W.D. Okla. 1978), *aff'd on basis of district court opinion*, 601 F. 2d 1191 (Temp. Emer. Ct. App. 1979). (*11*) The Temporary Emergency Court of Appeals has expressly held that private actions authorized by Section 210 and governmental actions authorized by Section 209 serve different purposes and may be maintained separately at the same time. *Bulzan v. Atlantic Richfield Co.*, 620 F. 2d 278 (Temp. Emer. Ct. App. 1980); *see also S.O.S. Gasoline Enterprises v. DOE*, 3 Fed. Energy Guidelines ¶ 26,231 (D.D.C. July 8, 1981).

Gulf also contends that *United States v. Ringer*, 492 F. Supp. 350 (D. Colo. 1980), and certain opinions of the Comptroller General of the United States stand for the proposition that the DOE may not order restitution to indirect purchasers. In *Ringer* the court refused to enforce a price rollback provision in a Remedial Order because it was not evident that future purchasers, who would benefit from the rollback, were the same parties as previously overcharged customers. Similarly, the Comptroller General objected to certain proposals for distribution of settlement funds on the basis of his belief that there was not a sufficient nexus to the overcharged parties. (*12*) We believe that those opinions, which are not binding upon this office, are inconsistent with the DOE's broad restitutionary authority as outlined by the courts. The Temporary Emergency Court of Appeals has construed Section 209 of the ESA as conferring an extremely broad remedial authority on DOE and the courts. In *Sauder v. DOE*, 648 F. 2d 1341 (Temp. Emer. Ct. App. 1981), the court states that it did not "believe that Congress intended to limit the agency's and courts' power to restore overcharges" by enacting Section 209 of the ESA. The court further states that "[t]here is no indication * * * that [Section 209] * * * attempts to limit the power of the courts or the agency to restitution or to a particularly strict interpretation of restitution." *Id.* Thus, nothing in the governing statutes nor in judicial interpretation of those statutes prohibits the DOE from ordering restitution to indirect purchasers. Moreover, the refund procedures which we adopt today expressly require that an applicant must establish, *inter alia*, that it purchased NGLs produced by one of the three firms in order to qualify for a refund. We believe that the adoption of this criterion will alleviate the concerns of the *Ringer* court *and* the Comptroller General. Accordingly, we reject Gulf's contention and hold that first purchasers and downstream customers may file Applications for Refund.

Comments on the Proposed First Stage

In the proposed decisions which we issued for these cases, we tentatively concluded that as the first stage of the refund procedures we would accept Applications for Refunds from parties who had purchased NGLs produced by the three natural gas processors involved. In addition to satisfying the filing requirements of 10 CFR 205.283, the applicant would be required to demonstrate that it purchased during the relevant time period a specific quantity of products which were produced with or from the NGLs sold by the three firms. In addition, unless the applicant was an ultimate consumer, a party claiming that it was injured would also have to demonstrate that it absorbed any cost increase resulting from the alleged overcharges. We also stated that we would accept and evaluate on a case-by-case basis applications filed on behalf of groups of claimants identifying themselves as adversely affected purchasers. Finally we solicited comments from all interested parties concerning our proposals.

In response to our request, we received comments from numerous parties including first purchasers from the three firms, their downstream purchasers, state governments, an office within the DOE, and public interest groups. Commenting parties suggested various modifications of the proposed procedures and expressed several concerns which we shall discuss below. They commented that: (1) The Application for Refund proceedings must be held publicly so that no potential claimants are excluded from contesting their eligibility for a portion of the funds; (2) The proposed first stage is unfair because it would give first purchasers first priority in filing claims for the settlement funds. Those commenters also though that the Proposed Decisions did not establish an adequate level of proof of injury for claimants; and (3) Claimants who have themselves entered into DOE consent orders or are the subject of DOE enforcement proceedings for the relevant time periods should not be permitted to file Applications for Refunds.

With regard to the conduct of the first stage proceedings, the Controller of the State of California commented that the Application for Refund proceedings should be open to the public. He suggested that copies of all Applications for Refund should be made available at no cost to all potential claimants and that all claimants should be permitted to participate in the initial proceedings.

We believe that the Controller's concerns are adequately met by the existing procedural regulations. The Subpart V regulations require that any application for a refund in excess of $100 be filed in duplicate and a copy of the Application, with confidential information deleted, be made available in the OHA Public Docket Room. 10 CFR 205.283(a). It is the policy of the OHA Public Docket Room to make available to any requester a copy of any document filed with it. Copies are provided at no cost, if the requested document consists of 30 pages or less, or at a cost of 10 cents per page for each page in excess of 30 pages. In addition, the applicable regulations specify that in evaluating an Application the OHA may conduct an investigation of any statement made in an Application and may solicit and consider information from any source. 10 CFR 205.284(b). Therefore it is clear that any party may submit information and comments to aid us in our adjudication of specific claims.

Some of the commenters complained that the proposed decisions gave first purchasers first priority treatment of their claims to the prejudice of downstream purchaser claimants. In addition, those commenters objected to the proposed procedures because they believed the proposals would permit first purchasers to automatically recover refunds to the extent that their "banked" (unrecovered increased product) costs for the relevant period equalled or exceeded the amount claimed.

We believe that these commenters have taken an unnecessarily narrow view of the proceedings envisoned by the proposed decisions and the Subpart V regulations. As an initial matter, our proposed decisions clearly stated that Applications for Refunds would be accepted from *all* claimants, including representatives of groups of consumers. *See, e.g., Office of Enforcement*, Nos. BEF–0049, 0048, 0051, 0054, 0056 (August 18, 1981) (proposed decision), 46 FR 42744, 42747. In addition, the required showing of sufficient banks is only a threshold showing to be applied in making a determination as to whether a claimant actually suffered any injury. If a claimant meets this test, it will still be necessary for the firm to proffer some type of additional evidence, depending upon the size and nature of firm, to demonstrate that it indeed was injured by the alleged overcharges. To the extent that a first purchaser can establish that it did not pass on overcharges to its downstream customers, those customers were not injured and would have no claim. We therefore disagree with commenters who believe that first purchasers are being accorded an unwarranted priority status in these proceedings.

The Office of Special Counsel (OSC) of the DOE contends that claimants who have themselves entered into consent orders or who are currently the subject of enforcement proceedings should be precluded from filing Applications for Refunds. The OSC observed that since it has closed its investigation of firms with which it has entered into consent orders, there is no mechanism for ascertaining the truth of a firm's allegations concerning its banks of unrecovered product cost increases. Moreover, the OSC asserts that its agreement to a consent order does not indicate that it has retreated from its position that a firm violated the regulations. With respect to those firms against which enforcement actions challenging costs are pending, the OSC states that until these actions are resolved, correct banks cannot be determined.

Upon consideration of the documents filed in these proceedings, we have concluded that it would be inappropriate at this time to refuse to entertain Applications for Refund from any class of claimants. The purpose of the present determination is simply to "set forth the standards and procedures that will be used in evaluating individual Applications for Refunds." 10 CFR 205.282(d). A determination on the merits of a particular Application for Refund is a separate process which may include an investigation of statements made by the applicant, submission of information by other sources, and the convening of a conference or hearing.

10 CFR 205.284. While we agree that consent order funds should not be distributed to parties who, for example, have profited from a criminal scheme to circumvent the DOE regulations, we certainly are in no position to rule on a claimant's eligibility in advance of the filing of an Application for Refund. Moreover, we think it would be undesirable to delay distribution of these funds for the period of years that may elapse before pending enforcement actions have been completed.

Instead of adopting a blanket prohibition against certain claimants, we shall require that each person filing an Application for Refund specify whether there is or has been an enforcement proceeding covering its compliance with the DOE regulations. The applicant should also state whether the matter has been concluded and provide a copy of any final order issued in the case (*i.e.* remedial order, consent order, court order). Where appropriate, the relevant enforcement office may be informed of the application by the OHA. We shall then decide on a case-by-case basis whether the applicant was injured by the alleged overcharges in light of all the available information, including substantial evidence of violations.

The records in these proceedings do not contain sufficient case-specific information for us to set forth more than general considerations that we shall apply in the disposition of cases involving allegations of violations by claimants. We note that if there is an ongoing enforcement proceeding involving an applicant, any recovery from the consent order funds may be offset against its available banks and recovered if a remedial order is ultimately issued. Where a claimant has already negotiated a consent order, we believe that it will generally be contrary to the policy encouraging settlements to exclude a claimant on that basis. Finally, we wish to emphasize that these refund proceedings may not be used as a substitute for actions that might be brought under sections 209 or 210 of the ESA. The purpose of these proceedings is to provide an equitable mechanism for restitution of funds to parties who were injured by alleged overcharges, not to provide an alternative legal forum to adjudicate the regulatory compliance of claimants.

Application for Refund Procedures

After having considered all the comments received concerning the first stage proceedings tentatively adopted in our Proposed Decisions we have concluded that: (i) The OHA has properly asserted jurisdiction over the distribution of the funds involved in these cases pursuant to 10 CFR Part 205, Subpart V; (ii) the OHA has authority to implement all of the procedures which were tentatively adopted in the Proposed Decisions for these cases; (iii) Applications for Refunds should now be accepted from parties who purchased NGLs from Triton, Perry, and Upham. We shall now discuss the specific requirements for Applications for Refunds the we have decided to adopt.

We have determined to accept Applications for Refund for a portion of the three frims' consent order funds file within 90 days after the publication of this Decision and Order in the Federal Register. *See* 10 CFR 205.283. We will consider all applications, although we may later impose a lower dollar limit on claims. *See* 10 CFR 205.286(b). Applications made on behalf of a class of claimants will be considered on a case-by-case basis. An application must be in writing, signed by the applicant, and specify which case it pertains to, by firm name and case number. If the applicant is not a first purchaser from one of the three firms, it should indicate from whom the NGLs were purchased and indicate what basis the applicant has for its belief that the NGLs which it purchased originated from the natural gas processing plants named in the consent orders.

Any application for a refund in excess of $100 must be filed in duplicate, and a copy of that application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461. Any applicant who believes that his application contains confidential information must so indicate on the first page of his application and submit two additional copies of his application from which the information that the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application shall indicate whether the applicant or any person acting on his instructions has filed or intends to file any other application or claim of whatever nature regarding the maters at issue in the underlying enforcement proceeding. Each application shall also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by the OHA for additional information concerning the Application. All applications should be sent to: Triton Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461. All Applications for Refund received within the time limit specified will be processed pursuant to CFR 205.284.

In order to assist applicants in establishing eligibility for a portion of the consent order funds, the following section discusses the showing that should be made by refiners, resellers, retailers and end-users of the NGLs covered by the consent orders:

A. Each applicant should report its volume of purchases of NGLs by calendar quarter for the period of time for which it is claiming it was injured by the alleged overcharges.

B. Each applicant should specify how it used the NGLs—as a petrochemical producer, refiner, reseller or ultimate user.

C. If the applicant is a refiner or reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the violation through January 27, 1981. It should furnish the OHA with quarterly bank calculations for the entire period.

D. The applicant must state whether it or any of its affiliates have any other Applications for Refunds which might affect its level of banks.

E. The applicant must submit evidence to establish that it did not pass on the overcharges to its customers. For example, a firm may submit market surveys to show that price increases to recover overcharges were infeasible.

F. The applicant should report whether it is or has been involved as a party in DOE or private, section 210 actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d).

Distribution of the Remainder of the Consent Order Funds

Several comments addressed our proposed distribution of the remainder, if any, of the consent order funds after all meritorious claims have been paid. Those comments can be divided into two groups. First, some comments contend that the OHA lacks the statutory or regulatory authority to implement the proposed distribution. Secondly, some comments acknowledge that this Office possesses the authority to fashion such a restitutionary mechanism, but suggest alternatives to or modifications of our original proposal. In this Decision we are not implementing the second-stage refund procedure. Such a step would be difficult to take before the analysis and processing of Applications for Refund filed in the first-stage of the distribution of the Consent Order funds to claimants, since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme. Moreover, in the present cases claimants have asserted claims which, if meritorious, would completely exhaust the consent order funds. However, in order for members of the public to be made aware of outstanding issues and be able to comment on them, we summarized and briefly addressed the comments received concerning the proposed second-stage procedure in the *Vickers* decision. *See Vickers*, 8 DOE at 85,398–99. Many of the same parties who commented on the second-stage procedures proposed for the *Vickers* case submitted virtually identical comments in the present cases. We will not reiterate our discussion of these issues. We continue to seek additional comments on these issues.

It Is Therefore Ordered That:

The refund amounts provided by Triton Oil and Gas Corporation, Perry Gas Processors, Inc., and Upham Gas and Oil Company will be distributed in the manner set forth in the foregoing Decision.

Dated: May 11, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(1) As discussed in n.4 below, the Perry consent order also covered sales of plant condensate ("scrubber oil") from the firm's Ozona and Levelland gas plants. "Plant condensate" was included in the regulatory

definition of "crude oil" and was subject to the crude oil pricing regulations. *See* 10 CFR 212.31; 212.73. In the Notice of probable Violation (NOPV) issued to the firm, the OE alleged that Perry erroneously sold "old" crude oil as "new" crude oil in apparent violation of 10 CFR 212.73. This decision will focus on refund procedures for purchasers of NGLs, and throughout the decision we will refer to purchasers of NGLs from the three firms. Since violations involving crude oil of the type allegedly committed by Perry were necessarily affected by the Crude Oil Entitlements Program (see pages 4–5 and n.8), different considerations are involved in devising refund procedures than for purchasers of NGLs. With respect to purchasers of plant condensate, we will therefore follow our recent decisions in *Office of Enforcement (Alkek)*, 9 DOE ¶ 82,521 (1982) and *Adams Resources and Energy, Inc.*, 9 DOE ¶ ———, Nos. BEF–0055 *et al.* (April 8, 1982), 47 FR 16381 (April 16, 1982). We refer purchasers of plant condensate and their downstream customers to these decisions for a detailed discussion of eligible claimants and of the showing required to obtain a refund.

The Perry consent order funds will be prorated among purchasers of NGLs and plant condensate based on the violations alleged in the NOPV. Thus, $5,007 will be available for distribution to those claimants eligible for refunds as a result of alleged violations involving plant condensate (approximately 13% of the consent order funds) and the remaining $32,993 will be available for distribution to purchasers of NGLs and their downstream customers.

(*2*) In its audits of Triton's gas plants, the OE found possible violations with respect to Triton's first sales of NGLs during the period September 1, 1973 to July 31, 1976. Triton sold the NGLs to four companies: Teneco Oil Company, American Oil Company, Cities Service Oil Company, and Dorchester Gas Processing Company. On June 27, 1979, the DOE and Triton entered into a Consent Order under which Triton agreed to refund $78,358.48 to the DOE in settlement of all claims and disputes between the parties arising from the audits of Triton's gas plants. The parties also stipulated that the funds were to be distributed by the DOE pursuant to 10 CFR Part 205, Subpart V. The terms of the final consent order were published in the Federal Register on July 11, 1979. *See* 44 FR 40548 (1979). Interested parties were given an opportunity to comment on the terms of the Consent Order and to submit written notice of potential claims against the refund account. The DOE received no claims in response to that notice.

(*3*) In its audits of Perry's Antelope Ridge plant, OE found possible violations of DOE price regulations with respect to first sales of NGLs during the period September 1973 through August 1975. The OE also found possible violations of the DOE price regulations with respect to Perry's first sales of plant condensate from its Ozona and Levelland gas plants. The OE therefore alleged that Perry had overcharged the initial purchasers of products sold from these plants. The initial purchasers were identified as Shell Oil Company, Tesoro Crude Oil Company, and the Permian Corporation. In order to settle all claims and disputes between the parties regarding the firm's first sales of NGLs and plant condensate, Perry and the OE entered into a consent order on August 13, 1979. Notice of the Consent Order was published by the DOE in the Federal Register on September 11, 1979, and the DOE requested that persons believing they had a claim to all or a portion of the refund amount file written notification of such a claim with ERA within 30 days of publication. 44 FR 52863 (1979). A claim was filed by Tesoro Petroleum Corporation on behalf of Tesoro Crude Oil Company; Shell and Permian did not submit claims.

(*4*) The OE audit of Upham's Chico gas processing plant revealed possible overcharges with respect to first sales of NGLs during the period September 1973 through December 1975. In order to settle all claims and disputes between the parties regarding the firm's first sales of NGLs, Upham and the OE entered into a consent order in which the firm agreed to refund a total of $500,000 including interest. Of that amount, $184,707 has been refunded to the firm's customers by price reductions made prior to the initiation of Subpart V proceedings. Consequently, $315,293, which is deposited in an escrow account under the control of the DOE, is available for distribution through a Subpart V proceeding. Notice of the Consent Order was published in the Federal Register on October 29, 1979, 44 FR 61993 (1979), and interested persons were invited to submit written notification of potential claims. No claims were received. However, the OE has identified a number of first purchasers from Upham during this time period, including Pedigo Oil Company, Petroleum Industries, the Permian Corporation, T-LOK Corporation—Marketing Division, Odessa LPG Transport, LP Gas Marketing, and Culbertson Oil and Gas.

(*5*) We issued a proposed decision and order discussing the distribution of funds obtained through the consent order with Triton on May 22, 1981. *See* 46 FR 28929 (1981). The proposed decision and order which included our tentative determinations concerning the Perry and Upham consent order funds was issued on August 18, 1981. *See* 46 FR 42743 (1981).

(*6*) Since most of the first purchasers claim that they have adequate banks of unrecouped product costs to establish that they did not pass through the overcharge amounts, none of the identified first purchasers submitted plans for distribution of the remainder of the funds.

(*7*) We have already discussed many of these comments in *Vickers*.

(*8*) Briefly stated, the Entitlements Program was generally designed to equitably distribute among all domestic refiners the access to benefits of price controls on domestic crude oil. Most of the firms covered by the *Alkek* proposed decision had allegedly miscertified price-controlled crude oil as being exempt from price controls. When this information was included in the data base used by the DOE to formulate the monthly Entitlements Lists, it had the effect of causing the entitlements obligations of some firms to increase while other firms' obligations correspondingly decreased. *See Alkek*, 46 FR at 28682–83.

(*9*) Several of the States that submitted comments regarding the *Alkek* proposal observed that unless the amounts of funds to be distributed were quite considerable, their administrative expenses would be so prohibitive that they would decline to accept their pro rata share of the funds. *See, e.g.*, Comment filed by the State of Texas.

(*10*) The Transportation Group is an *ad hoc* organization of four trade associations whose members are regulated transportation companies.

(*11*) While Gulf has cited cases which it claims hold that only direct purchasers may sue under ESA section 210, *e.g.*, *Stertz v. Gulf Oil Corp.*, 3 Fed. Energy Guidelines ¶ 26,280 (Temp. Emer. Ct. App. 1981), *Arnson v. General Motors Corp.*, 377 F. Supp. 209 (N.D. Ohio 1974), and *Go-Tane Service Stations v. Ashland Oil, Inc.*, No. 79–C 1675 (N.D. Ill. 1981), none of those cases state that the DOE's remedial authority is limited to refunding monies only to direct purchasers. Additionally, Gulf cited *Bow Valley Coal Resources, Inc. v. DOE*, Civ. Action No. C–80–0162W (D. Utah 1980). We are unable to understand the relevance of that citation because the only reported opinions in that case hold that (i) a certain first purchaser may maintain a section 210 action and (ii) the action was dismissed as to the DOE.

(*12*) In his October 10, 1980 letter, the Comptroller General discussed a proposal for distribution of funds obtained through a consent order with Getty Oil Company and specifically held that "in order for any distribution of the Getty funds to satisfy the statutory and regulatory requirements for restitution, it must be made in approximate proportion to the injury actually sustained to Getty customers and to *ultimate customers of Getty products* who were the victims of the overcharges." GAO letter at 7 (Emphasis added). In his April 1, 1981 letter, while espousing a view of our authority to institute the proposed second stage refund procedures which we find overly narrow, *see Vickers*, 8 DOE at 85,398, the Comptroller General again directed his criticism towards refunds "to persons or organizations with no necessary nexus to the alleged violations which gave rise to the consent orders." April 1, 1981 Letter at 8.

[FR Doc. 82–13636 Filed 5–18–82; 8:45 am]
BILLING CODE 6450–01–M

Western Area Power Administration

Central Valley Project; Proposed Rate for Minor New Service

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Notice of a proposed power rate for a minor new service—Central Valley Project.

SUMMARY: On January 28, 1982, (47 FR 4139) the Western Area Power Administration (Western) allocated 30

MW of Central Valley Project (CVP) power (diversity allocations) to certain customers which will shed load upon request during CVP's peak periods. The purpose of the allocations was to provide a benefit in return for an agreement to shed load. This will maintain the CVP systems maximum simultaneous peak load within contractually prescribed limits and avoid a general withdrawal of power from other CVP customers. The additional power allocated will be available to such customers at any time except during CVP system peak periods. The amount of load required to be shed will be provided in the customer's contract.

The National Aeronautics and Space Administration (NASA)-Ames (Ames) and three Department of Energy laboratories were given diversity allocations on the condition that satisfactory contracts could be negotiated to provide the necessary load shedding. However, the benefits of the increased allocation are marginal compared to the cost of shedding load for Ames because it has a low load factor. Thus, to provide an incentive to encourage Ames to shed load upon request, Western is proposing a rate for a minor new service. That rate will reduce Ames' billing demand in return for the obligation to shed load. This rate schedule is printed in full below.

Recognizing that the CVP could have peaks reaching the maximum allowable simultaneous demand as early as May, and the CVP customers are in jeopardy of having their contract rates of delivery reduced, Western will not be able to complete the public notice and comment process prior to the required effective date of the rate. However, an opportunity for public comment will be provided but will occur after the effective date of the rate. Western will condition the contract under which the rate applies so that possible modification of the rate would occur should the rate be rejected or a substitute rate be approved by the Federal Energy Regulatory Commission.

DATES: The rate will be effective May 1, 1982, through April 30, 1983.

A consulation and comment period will begin with the publication of this notice in the Federal Register and will end not less than 45 days thereafter, or 15 days after the comment forum, whichever is later.

A comment forum will be held on June 17, 1982, at the Holiday Inn, Holidome, 5321 Date Avenue, Sacramento, California, beginning at 9:30 a.m. Western will accept oral or written comments on the proposed rate or any alternatives to the proposed rate.

Written comments may be submitted to the address below throughout the consultation and comment period.

ADDRESS: For further information contact: Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 2800 Cottage Way, Sacremento, CA 95825, (916) 484–4251.

PROPOSED RATE SCHEDULE:

United States Department of Energy, Western Area Power Administration, Central Valley Project, California

Schedule of Rates for Wholesale Interruptible Power Service

Effective: May 1, 1982, through April 30, 1983.

Available: In the area served by the Central Valley Project.

Applicable: To NASA-Ames for interruptible power service provided by contract under which NASA-Ames agrees to shed load upon telephone notice from Western and provided NASA-Ames maintains an average annual load factor of less than 40 percent.

Character and Conditions of Services: Alternating current, sixty hertz, three phase, delivered and metered at the voltages and points established by contract.

Monthly Rate: Demand charge: $2.00 per kilowatt of billing demand.

Energy charge: 5.11 mills per kilowatt-hour for all energy use up to, but not in excess of, the energy obligation under the power sales contract.

Billing demand: The billing demand will be the customer's contribution to the Central Valley Project system maximum simultaneous demand for the month.

Energy obligation: The maximum kilowatt-hour obligation of the United States during the month as established under the power sales contract.

Minimum bill: None.

Billings for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power and/or energy obligations, such overrun shall be billed at ten times the above rate.

Adjustments:

For character and conditions of service: If delivery is made at transmission voltage so that the United States is relieved of substation costs, 5 percent discount will be allowed on the demand and energy charges.

For transformer losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased 2 percent to compensate for transformer losses.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

SUPPLEMENTARY INFORMATION: Power rates for the CVP are established pursuant to the Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101, *et seq.);* the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*) as amended and supplemented by subsequent enactments, particularly Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and the acts specifically applicable to the project and divisions thereof.

The Secretary of Energy delegated to the Assistant Secretary for Resource Applications, by Delegation Order No. 0204–33 (43 FR 60636, December 28, 1978), the authority to develop, acting by and through the Administrator of Western and to confirm, approve, and place into effect on an interim basis, power and transmission rates for Western. The delegation order also gave to the Federal Energy Regulatory Commission the authority to make a final decision either confirming and approving, disapproving or remanding such rates. On March 19, 1982, Delegation Order No. 0204–33 was amended by substituting the "Assistant Secretary for Conservation and Renewable Energy" for the "Assistant Secretary for Resource Applications" (46 FR 25426, May 7, 1981).

Procedures for public participation in rate adjustments for power marketed by Western are found at 10 CFR Part 903 (hereinafter referred to as the "Procedures").

Under Section 903.2 of the procedures, a minor rate adjustment means a rate adjustment which ". . . (3) is a rate for a minor new service." A minor new service is a new service which ". . . (3) will not be provided for more than one year." The Contract for the service to which the rate applies will be in effect for the period of May 1982 through April of 1983. Whether Western will want to continue providing and Ames will want to continue taking the service after the 1-year period will depend upon the new CVP power sales rate which is expected to become effective in May 1983, Ames ability and willingness to continue shedding load upon demand, and the costs and benefits resulting to both Ames and Western. If the service to which this rate will apply continues beyond April 30, 1983, the rate for that service will be established in the general

rate adjustment which is anticipated to become effective during early 1983. Since this is a minor rate adjustment under the procedures, a minimum 30-day consultation and comment period is required. Neither public information nor public comment forums are mandatory and, therefore, a public information forum will not be provided. However, Western will hold one public comment forum on June 17, 1982. At the public comment forum interested persons will be allowed to make oral comments on the record or submit written comments for the record. All proceedings at the public comment forum will be recorded. Pursuant to Section 903.21 of the Procedures, "Following completion of the consultation and comment period and review of any oral and written comments on the Proposed Rates . . . the Administrator shall develop rates which, in the Assistant Secretary's judgment, should be confirmed, approved, and placed in effect on an interim basis . . . The Assistant Secretary shall set the effective date for the rates he or she has confirmed and approved on an interim basis (Provisional Rates). The effective date shall be at least 30 days after the Assistant Secretary's decision, except that the effective date may be sooner when appropriate to meet a contract deadline, to avoid financial difficulties, to provide a rate for a new service, or to make a minor new service, or to make a minor rate adjustment." Here the exception applies and the effective dates will be May 1, 1982, through April 30, 1983.

The purpose of the proposed rate schedule is to encourage Ames to reduce its demand during periods of high CVP system peaks, maintain the CVP's system simultaneous demand within contract limits and reduce the possibility of withdrawals from CVP customers.

Under this rate schedule, the rate is the wholesale rate currently applicable to firm sales. However, the billing demand to which the rate applies is based upon the contribution to CVP's peak during the month, i.e., the demand at the time of the CVP system's monthly peak(s). Thus, the revenue received by the CVP for capacity sold under this rate schedule will be reduced.

The rate will be applicable to Ames which has a diversity allocation and an average annual load factor of less than 40 percent. This rate schedule is applicable to Ames because it does not receive a proportionate savings in its cost of energy as a result of its diversity allocation when coupled with a commitment to shed load upon request. The cost of load shedding for Ames equals or exceeds the benefits of the diversity allocation.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for the CVP relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered "rules" within the meaning of the Act. Since the rate of CVP power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA) and Department of Energy (DOE) regulations published in the **Federal Register** on March 28, 1980 (45 FR 20694–20701), Western will conduct an environmental evaluation of proposed rate adjustments.

Section D of the above guidelines states that for rate adjustments for power marketing administrations, the level of documentation under NEPA depends on the magnitude of the rate as it relates to the rate of inflation since the last rate adjustment. If, as in the case of this proposed rate, it does not exceed the rate of inflation since the last rate adjustment, no further NEPA documentation is required. In such cases, a memorandum is prepared explaining the basis for that determination and an administrative determination is made that no further documentation under NEPA is required.

Determination under Executive Order 12291

DOE has determined that this is not a major rule because it does not meet the criteria of Section 1(b) of Executive Order 12291, 46 CFR 13193 (February 19, 1981). Western has an exemption from Sections 3, 4, and 7 of Executive Order 12291.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rate are and will be available for inspection and copying at the Sacramento Area Office, Western Area Power Administration, 2800 Cottage Way, Sacramento, California, 95825, (916) 484–4251.

Issued at Golden, Colo., May 14, 1982.

Robert L. McPhail,

Administrator.

[FR Doc. 82-13818 Filed 5-18-82; 10:44 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP 00156; PH-FRL 2124-3]

Pesticides on Commercial Non-Food/Non-Feed Nursery and Greenhouse Crops Not Named on Product Labels; Minor Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments.

SUMMARY: EPA is considering whether to develop a determination, under sec. 2(ee) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that the use of pesticides on commercial non-food/non-feed nursery and greenhouse specialty crops not explicitly named on product lables would be found consistent with the purposes of FIFRA. Although specific terms and conditions remain to be decided, several options are currently under consideration to accommodate these minor use pesticide needs.

DATE: Submit comments and pertinent information by July 19, 1982.

ADDRESS: Comments should be submitted to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E–401, 401 M Street, SW.

FOR FURTHER INFORMATION CONTACT: Karen Flagstad, Policy and Special Projects Office (TS–766C), Office of Pesticide Programs, U.S. Environmental Protection Agency, Room 1109, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7102).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. General Background

The amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), effected by the Federal Pesticide Act (FPA) of 1978 (Pub. L. 95–396), included revisions to sec. 2 and sec. 3(c)(2) intended to alleviate some of the problems associated with registration of pesticides for minor uses.

In general, a "minor use" is defined as a pesticide use for which there is insufficient economic incentive, on the part of pesticide product manufacturers, to justify timely development of the market for that particular use, and to register the use in accordance with the provisions of FIFRA. According to specialty crop growers represented by the National Forest Products Association (NFPA), the American Association of Nurserymen (AAN), and the Society of American Florists (SAF), economic disincentives have consistently dissuaded pesticide product manufacturers from obtaining timely registrations to meet the minor use pesticide needs of commercial growers of non-food/non-feed nursery and greenhouse crops. According to these associations, this has been the case even though pesticides already registered for uses on food crops would be effective on nursey and greenhouse sites, since these pesticides are now used to control many of the same pests which also infest non-food/non-feed nursery and greenhouse plants.

The economic disincentives in question are two-fold: (1) The extremely low market potential for each of the diverse uses for which pesticides are needed to control pests on nursery and greenhouse sites; and (2) the possibility of liability problems in the event that expensive nursery or greenhouse specialty crops are damaged by a pesticide. At the same time, effective pest control is economically urgent for commercial non-food/non-feed specialty crop growers, especially since many nursery crops are subject to United States Department of Agriculture (USDA) quarantines as well as State quarantines and regulations prohibiting shipments of pest-infested plants.

For purposes of this Notice, the term "nurseries" refers to commercial outdoor production sites (including lath and slat houses, shadestructures, and cold and hotbed frames) where plants are grown for transplanting, for production of seed, for use as stocks for propagation, or for sale. The term "greenhouses" refers to commercial indoor production sites (including frame houses and sash houses) where plants are grown for the same purposes as in nurseries.

The registration of many pesticides needed to control pests on these commercial nursery and greenhouse sites is not to any significant extent impeded by EPA registration requirements. Under current policy, EPA requires little, if any, additional data to add minor non-food/non-feed uses to the label of a product which already has been registered on the basis of data adequate to show that its major uses do not pose the risk of unreasonable adverse effects on the environment. This is especially true if the pesticide has already been approved for use on food crops. Instead, the primary impediment to registration in many instances has been the time and cost of data not required by EPA, but routinely developed to show that the pesticide is effective and will not damage expensive specialty crops.

Because unintended damage to treated plants could create complicated liability problems, pesticide product manufacturers have generally not taken steps to add these minor use specialty crop uses to their labels unless extensive phytotoxicity and efficacy testing has been conducted, demonstrating that a product will be efficacious without damaging the plant it is intended to protect. The marketplace offers registrants little incentive to invest in this kind of testing. There are thousands of species of nursery crops (including forest products) and greenhouse plants, each of which could react differently to pesticide applications, and there is little market potential for any single use.

For these reasons, commercial growers represented by the NFPA, the AAN, and the SAF contend that it has not been possible to accommodate the minor use pesticide needs of commercial growers of non-food/non/feed nursery and greenhouse crops. Therefore, these growers have collectively appealed to EPA for assistance in this matter, within the context of the existing law.

B. Legal Background

Sec. 12(a)(2)(G) of FIFRA provides that it shall be unlawful for any person "to use any registered pesticide in a manner inconsistent with its labeling." The 1978 amendments to FIFRA added a new sec. 2(ee) which states, among other things, that the term "to use any registered pesticide in a manner inconsistent with its labeling" shall not include certain defined use practices, such as using pesticides on unnamed pests so long as the correct site is observed, or employing a method of application not specifically prohibited by the label (sec. 2(ee)(2) and (3)). Sec. 2(ee) also authorizes the Administrator to declare other uses "not inconsistent" with the label if such uses are consistent with the purposes of the Act.

Sec. 2(ee) was intended in part to reduce the need for minor use registrations in instances when additional uses not specifically named on the label would not cause unreasonable adverse effects on the environment. In addition, the 1978 amendments to FIFRA included changes to sec. 3(c)(2) which were intended to alleviate minor use registration problems by providing guidance regarding appropriate registration requirements for minor uses. Specifically, the Congress clarified that EPA is to make minor use pesticide data requirements "commensurate with anticipated extent of use, pattern of use, and the level and degree of potential exposure of man and the environment to the pesticide." In tailoring registration requirements for minor uses, EPA has been further instructed to "consider the economic factors of potential national volume of use, extent of distribution, and the impact of the cost of meeting the requirements on the incentives for any potential registrant to undertake the development of the required data."

Congress also envisioned sec. 24(c), State registration to meet special local needs, as a way to help alleviate minor use problems. Under sec. 24(c), a State may expand the uses of an already federally registered product to meet local needs, except that food uses not covered by a tolerance may not be registered. If State registrations under sec. 24(c) could accommodate a significant number of the pest control needs of commercial growers of non-food/non-feed nursery and greenhouse crops, the registration problems of these specialty crop producers might be considerably alleviated. However, these producers report that since the States generally require efficacy and phytotoxicity data to support 24(c) registrations, the cost of these data, and the overwhelming number of species which require testing, make State registrations a burdensome avenue for protecting their crops. Additionally, commercial producers of non-food/non-feed nursery and greenhouse crops point out that their pest control needs are often multi-State in scope, and as such are not properly "local" needs. Extensive and duplicative sec. 24(c) registrations might therefore be required.

Outside of FIFRA, Congress has also provided, in special programs, funds for developing data to aid the private sector. The funds pertaining to developing data to support minor use pesticide registrations are administered by the United States Department of Agriculture (USDA) through the Inter-Regional Project No. 4(IR-4), which has programs in concert with the land grant universities and extension services to develop data for both food and non-food use registrations. The IR-4 operates an Ornamental Program which has been

supporting increasing numbers of pesticide registrations for non-food/non-feed sites. Growers represented by the NFPA, the AAN, and the SAF report, however, that so many individual uses remain to be registered for their purposes that many years would be required for the IR–4 Program to meet their pest control needs.

In view of the registration problems persistently encountered by commercial growers of non-food/non-feed nursery and greenhouse crops, the Agency is considering a determination under FIFRA sec. 2(ee) which would address the minor use pesticide needs of these commercial specialty crop producers. Several specific options, described in II below, are under consideration as possible remedial courses of action. Comments concerning these options, as well as additional suggestions, are requested from all interested parties, so that the Agency can take these views into account before proposing the terms and conditions of a determination in this area.

II. Options Under Consideration

The Agency is soliciting comments on the following options as remedial courses of action to address the minor use pesticide registration problems of commercial producers of non-food/non-feed nursery and greenhouse crops:

(1) Determining that a registered pesticide labeled for either restricted or non-restricted (general) use on any nursery plant may be used to control labeled pests on all non-food/non-feed crops grown in commercial nurseries, including slat and lath houses, shadestructures, and cold and hotbed frames (outdoor sites).

(2) Determining that a registered pesticide labeled for either restricted or non-restricted (general) use on any greenhouse plant may be used to control labeled pests on all non-food/non-feed crops grown in commercial greenhouses, including frame houses and sash houses (indoor sites).

(3) Determining that a registered pesticide labeled for non-restricted (general) use on one or more food crops may be used to control labeled pests on all non-food/non-feed crops grown in commercial nurseries, including slat and lath houses, shadestructures, and cold and hotbed frames (outdoor sites), provided that the methods of application specified on the label are explicitly followed.

(4) Determining that a registered pesticide labeled for either restricted or non-restricted (general) use on food crops may be used to control labeled pests on commercial non-food/non-feed nursery and greenhouse sites. This would not include greenhouse (indoor) uses of pesticides registered only for outdoor field uses. It would, however, permit changes in method of application so long as methods of application prohibited by the labeling are not employed. Comments are requested on the need for specific restrictions to ensure that such unlabeled use would not represent a significant increase in potential exposure and risk to man or the environment.

(5) Offering registrants, without data or compensation obligations, a label addition which would permit food use pesticides to be used on non-food/non-feed commerical nursery or greenhouse crops provided that the methods of application specified on the label are explicitly followed. This would not include greenhouse (indoor) uses of pesticides registered only for outdoor field uses. The Agency would allow the manufacturer to state on the label that all liability for any damage to crops treated under this label provision is the responsibility of the user. The Agency requests comment particularly regarding how many registrants would add this label statement. If enough registrants were willing to take this initiative, the problems of meeting the minor use pesticide needs of commercial non-food/non-feed commercial speciality crop growers would be considerably diminished by this option alone.

(6) Determining that a registered pesticide labeled for either restricted or non-restricted (general) use on food crops may be used on commercial non-food/non-feed nursery and greenhouse plants, provided that the use in question had been given a "third party certification" by trade associations or other interested parties such as extension service agents and university experts. Such third parties would be responsible for certifying that certain food use pesticides can effectively be used without crop damage on commercial non-food/non-feed nursery or greenhouse sites. This would not include greenhouse (indoor) uses of pesticides registered only for outdoor field uses. Methods of application not specified on the label would be permissible if endorsed by a responsible third party, so long as methods of application prohibited by the label are not employed.

The commercial non-food/non-feed specialty crops encompassed by the above options under consideration would include (1) ornamental and/or landscape plants and other nursery and greenhouse products such as bulbs, florists' greens, flowers and flower seeds and plants, and sod; (2) forest seed and seedling trees cultivated for purposes of reforestation; and (3) Christmas trees. According to figures provided by the NFPA, the AAN, and the SAF, commercial non-food/non-feed nursery and greenhouse crops comprise roughly the following site areas in the U.S.: forest nurseries (3,000 acres); forest seed orchards (13,600 acres); non-food/non-feed horticultural specialty crops (364,274 field acres; and 483,879,000 square feet, or 11,000 acres, under glass or other protection [extrapolated from the 1978 Census of Agriculture].

If adopted, Options 1 through 6 above would represent a determination that the additional uses in question do not pose the risk of unreasonable adverse effects to man or the environment, taking into account the economic, social, and environmental costs and benefits associated with these uses. This determination would also reflect considerations of economic factors including the low potential volume of use involved, the small extent of distribution anticipated, and the lack of incentives for potential registrants to take steps to obtain registrations for minor uses on commercial non-food/non-feed nursery and greenhouse sites. It would likewise reflect consideration of the level and degree of potential exposure to man and the environment. The Agency does not at this time have reason to believe that these additional minor uses of pesticides on unlabeled non-food/non-feed crops grown in commercial nurseries and greenhouses would represent any significant increase in potential exposure, given that very limited additional acreage would be involved, and the expanded uses allowed would not include indoor uses of pesticides registered only for outdoor field uses.

Issues of efficacy and phytotoxicity would not be affected by any of the options under consideration, and the Agency would not assume responsibility for determining the potential efficacy or phytotoxicity of pesticides used on unlabeled nursery or greenhouse crops. If proposed and implemented as a policy, a determination in this area would affect only the enforcement finding of what uses do or do not constitute pesticide misuse under FIFRA sec. 12(a)(2) (F) and (G). A user would not be able to avail himself of the provisions of such a policy if he chose to proceed under the unlabeled use practices allowed by FIFRA sec. 2(ee) (2) and (3). Nor would a determination in this area allow the use of pesticides classified for restricted use by any user who is not a certified applicator, or under the direct supervision of a certified applicator, for any uses not

covered by the certified applicator's certification. All comments and additional suggestions on the options under consideration will be welcome.

Dated: May 6, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 13289 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[PP 1G2550/T368; PH FRL 2124-8]

Acephate; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the insecticide acephate and its metabolite, methamidophos, in or on the raw agricultural commodity avocados. This temporary tolerance was requested by Chevron Chemical Company.

DATE: This temporary tolerance expires March 30, 1983.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2600).

SUPPLEMENTARY INFORMATION: Chevron Chemical Company, 940 Hensley St., Richmond, CA 94804, has requested, in pesticide petition PP 1G2550, the establishment of a temporary tolerance for the combined residues of the insecticide acephate *O,S*-dimethyl acetyl-phosphoramidothioate and its cholinesterase inhibiting metabolite, methamidophos, in or on the raw agricultural commodity avocados at 2.0 parts per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 239-EUP-99 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Chevron Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires March 30, 1983. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: May 5, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-13132 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[PP 1G2570/T365; PH-FRL 2123-6]

Amitraz; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the insecticide/acaricide amitraz and its metabolites in or on the raw agricultural commodities fat, meat, and meat byproducts of cattle. These temporary tolerances were requested by BFC Chemicals, Inc.

DATE: These temporary tolerances expire March 17, 1983.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: BFC Chemicals, Inc., P.O. Box 2867, Wilmington, DE 19805, has requested the establishment of temporary tolerances for the combined residues of the insecticide/acaricide amitraz, N'(2,4-dimethylphenyl)-N-[[(2,4-dimethylphenyl)imino]methyl]-N-methylmethanimidamide, and its metabolites containing the 2,4-dimethylaniline moiety (calculated as the parent compound), in or on the raw agricultural commodities fat, meat, and meat byproducts of cattle at 0.5 part per million (ppm).

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 45639-EUP-4 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. BFC Chemicals, Inc. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 17, 1983. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally

applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: April 29, 1982.

Douglas D. Campt,

Director, Registration Division, Office of pesticide Programs.

[FR Doc. 82-13000 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[PP OG2344/T366; PH-FRL 2124-2]

Amitraz; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide amitraz and its metabolite in or on the raw agricultural commodities citrus, milk, fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep.

DATE: These temporary tolerances expire March 17, 1983.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA has extended temporary tolerances for the combined residues of the insecticide amitraz (N'-(2,4-dimethylphenyl)-N-[[2,4-dimethylphenyl) imino] methyl]-N-methyl-methanimidamide) and its metabolite containing the 2,4-dimethyl-aniline moiety (calculated as the parent compound) in or on the raw agricultural commodities citrus at 1.0 part per million (ppm); and in milk, fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.01 ppm. These temporary tolerances had been established in response to pesticide petition PP OG2344, submitted by BFC Chemicals, Inc., P.O. Box 2867, Wilmington, DE 19805.

The company has requested a one-year extension of the temporary tolerances to permit the continued marketing of the remaining raw agricultural commodities named above when treated in accorance with the provisions of experimental use permit (43142–EUP–1), which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. BFC Chemicals, Inc. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 17, 1983. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FDR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: April 26, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 13005 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[PF-271; PH-FRL 2123-5]

Certain Companies; Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to establishment, amendment, and/or withdrawal of tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS: Written comments to the product manager (PM) cited in each specific petition at the address below: Registration Division (TS–767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number "[PF–271]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each petition at the telephone number provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide petitions relating to establishment, amendment, and/or withdrawal of tolerances for residues of certain pesticide chemicals in or on certain agricultural commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

FAP 1H5304. Zoecon Corp., PO Box 10975, Palo Alto, CA 94303. Proposes amending 21 CFR Part 193 by establishing a regulation permitting

residues of the insecticide *N*-[2-chloro-4-(trifluoromethyl)phenyl]-*DL*-valine (+)-cyano (3-phenoxyphenyl) methyl ester in the commodity cottonseed oil at 0.3 part per million (ppm). (PM 17, Franklin D. R. Gee, 703–557–2690).

FAP 1H5304. Zoecon Corp., PO Box 10975, Palo Alto, CA 94303. Proposes amending 21 CFR Part 561 by establishing a regulation permitting residues of the insecticide *N*-[2-chloro-4-(trifluoromethyl)phenyl]-*DL*-valine (+)-cyano (3-phenoxyphenyl) methyl ester in or on the commodity cottonseed hulls at 0.1 ppm. (PM 17, Franklin D.R. Gee, 703–557–2690).

FAP 2H5338. Ciba-Geigy Corp., PO Box 11422, Greensboro, NC 27409. Proposes amending 21 CFR Part 561 by establishing a regulation permitting residues of the insecticide *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine on poultry feeds at 5.0 ppm in connection with an experimental use program involving the application of the insecticide around poultry. (PM 17, Franklin D. R. Gee, 703–557–2690).

PP OF2399. Shell Oil Company, Suite 200, 1025 Connecticut Ave., NW, Washington, DC 20036. In the **Federal Register** of October 15, 1980 (45 FR 68461), EPA announced that Shell Oil Co. submitted pesticide petition (PP OF2399) proposing the establishment of tolerances for residues of the insecticide cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodities celery at 4.0 ppm; corn fodder and forage at 0.02; corn stover 1.0 ppm; fat and meat of cattle, goats, hogs, horses, and sheep at 0.2 ppm; and milk fat at 0.2 ppm.

Shell Oil Company has amended this petition by deleting the tolerances for celery; corn (stover); fat and meat of cattle, goats, hogs, horses, sheep; and milk fat, and increasing the tolerances for corn fodder and forage from 0.02 ppm to 1.0 ppm. The proposed analytical method for determing residues is gas chromatography. (PM 17, Franklin D.R. Gee, 703–557–2690).

FAP 2H5337. FMC Corp., 2000 Market St., Philadelphia, PA 19103. In the **Federal Register** of March 10, 1982 (47 FR 10290), EPA announced that FMC Corp. submitted a food additive petition (FAP 2H5337) proposing that a regulation be established permitting residues of the insecticide (2,3-dihydro-2,2-dimethyl-7-benzofuranyl[(dibutylamino)thio]methyl carbamate) and its carbamate cholinesterase inhibiting metabolites (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*n*-methylcarbamate; 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*n*-methylcarbamate; 2,3-dihydro-2,2-dimethyl-3-keto-7-benzofuranyl-*n*-methylcarbamate); and its phenolic metabolites (2,3-dihydro-2,2-dimethyl-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol and 3,7-benzofurandiol) and its dibutylamine metabolite in or on citrus oil at 14.5 ppm and molasses 12.5 ppm.

FMC Corp. has submitted an amendment to this petition proposing that the tolerances be increased from 14.5 ppm to 21.0 ppm in citrus oil and from 12.5 ppm in molasses. (PM 12, Jay S. Ellenberger, 703–557–2386).

FAP 2H5337. FMC Corp., 2000 Market St., Philadelphia, PA 19103. In the **Federal Register** of March 10, 1982 (47 FR 10290), EPA announced that FMC Corp. submitted a feed additive petition (FAP 2H5337) proposing that a regulation be established permitting residues of the insecticide (2,3-dihydro-2,2-dimethyl-7-benzofuranyl[(dibutylamino)thio]methyl carbamate) and its carbamate cholinesterase inhibiting metabolites (2,3-dihydro-2,2-dimethyl-7-benzofuranyl *n*-methylcarbomate; 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*n*-methylcarbamate; (2,3-dihydro-2,2-dimethyl-3-keto-7-benzofuranyl-*n*-methylcarbamate); and its phenolic metabolites (2,3-dihydro-2,2-dimethyl-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol and 3,7-benzofurandiol) and its dibutylamine metabolite in or on dried citrus pulp 9.50 ppm.

FMC Corp. has submitted an amendment to this petition proposing that the tolerances be increased from 9.50 ppm to 15.5 ppm in dried citrus pulp. (PM 12, Jay S. Ellenberger, 703–557–2386).

PP 1F1088. FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. In the **Federal Register** of June 18, 1971, (36 FR 11772), the EPA announced that FMC Corp. had submitted a pesticide petition (PP 1F1088) which proposed establishment of interim tolerances for negligible residues of the fungicide that is a mixture of 5.2 parts by weight of ammoniates of [ethylenebis(dithiocarbamato)] zinc with 1 part by weight ethylenebis[dithiocarbamic acid] bimolecular and trimolecular cyclic anhydrosulfides and disulfides, calculated as zinc ethylenebisdithiocarbamate, in or on the raw agricultural commodities peanuts, sugar beet roots, and sweet corn (kernels plus cob with husks removed) at 0.5 ppm.

FMC Corp. has withdrawn this petition without prejudice to future filing in accordance with 40 CFR 180.8. (PM 21 Henry M. Jacoby, 703–557–1900).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136), (Sec. 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: April 29, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-13001 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[PF-270; PH-FRL-2123-7]

Pennwalt Corp.; Food and Feed Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pennwalt Corporation has submitted food and feed additive petitions proposing the establishment of a regulation permitting the combined residues of the fungicide thiophanate-methyl (dimethyl [(1,2-phenylene)bis(iminocarbonothioyl)]bis-(carbamate], its oxygen analogue, dimethyl-4,4'-*o*-phenylenebis (allophanate), and its benzimidazole-containing metabolites (calculated as thiophanate-methyl) in or on certain commodities.

ADDRESS: Written comments to: Henry Jacoby, Product Manager (PM–21), Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petition is pending before the Agency. The comments are to be identified by the document control number "[PF–270]" and the petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA gives notice that the Pennwalt Corp., Agchem Division, Three Parkway, Philadelphia, PA 19102, has submitted food and feed additive petitions to EPA proposing that 21 CFR Parts 193 and 561 be amended as follows.

FAP 2H5341. Proposes amending 21 CFR 561.387 by establishing a regulation permitting the combined residues of the fungicide thiophanate-methyl and its metabolites in or on the commodity dried grape pomace at 125 parts per million (ppm).

FAP 2H5341. Proposes amending 21 CFR Part 193 by establishing a regulation permitting the combined residues of thiophate-methyl and its metabolites in or on the commodity raisins at 50 ppm.

FAP 2H5342. Proposes amending 21 CFR 561.387 by establishing a regulation permitting the combined residues of thiophanate-methyl and its metabolites in or on commodity rice hulls at 20.0 ppm.

(Sec. 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: April 26, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-12999 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[PP 2G2583/T370; PH-FRL 2123-8]

Polymeric Film Coating; Establishment of an Exemption From Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporaryexemption from the requirement of a tolerance for residues of the copolymer formed by reaction of linseed oil alone or a combination of linseed oil and soybean oil with dicyclopentadiene when used as a coating agent to be used in or on the raw agricultural commodity rice..

DATE: This temporary exemption from the requirement of a tolerance expires August 1, 1982

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: Sierra Chemical Company, 1001 Yosemite Drive, Milpitas, CA 95035, has requested, the establishment of a temporary exemption from the requirement of a tolerance for residues of the copolymer formed by reaction of linseed oil alone or a combination of linseed oil and soybean oil with dicyclopentadiene (containing less than 10 percent manganese, cobalt, or zirconium salts of organic acids) when used as a coating agent for S-ethyl hexahydro-1H-azepine-1-carbothioate at no more than 20 percent of the pesticide formulation. This exemption is limited to use in or on the raw agricultural commodity rice, before edible parts form. This exemption from the requirement of a tolerance was established in response to pesticide petition PP 2G2583.

This temporary exemption is to permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 46574-EUP-1 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Sierra Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires August 1, 1983. Residues remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience or scietific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FDR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: April 29, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 13002 Filed 5-18-82 8:45 am]

BILLING CODE 6560-50-M

[PP 2G2581/T367; PH-FRL 2124-1]

Thiodicarb; Establishment of Temporary Tolerances

AGENCT: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the insecticide thiodiçarb and its metabolite methomyl in or on the raw agricultural commodities cottonseed and soybeans. These temporary tolerances were requested by Union Carbide Corporation.

DATE: These temporary tolerances expire March 31, 1983.

FOR FURTHER INFORMATION CONTACT: J. Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703-557-2386).

SUPPLEMENTARY INFORMATION: Union Carbide Corporation, P.O. Box 12014, Research Triangle Park, NC 27709, has requested, in pesticide petition PP 2G2581, the establishment of temporary tolerances for residues of the insecticide thiodicarb (dimethyl N,N'-[thiobis[(methylimino)carbonyloxy]]bis[ethanimidothioate]) and its metabolite methomyl (N-[(methylcarbamoyl)oxy]thioacetimidate) in or on the raw agricultural commodities cottonseed at 0.4 part per million (ppm) and soybeans at 0.1 ppm. A related document establishing a feed additive regulation permitting residues of thiodicarb in or on cottonseed hulls at 0.8 part per million (ppm) and soybean hulls at 0.4 ppm, has been published.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 264-EUP-61 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated,

and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Union Carbide Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 31, 1983. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: April 26, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-13004 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[A-1-FRL-2127-2]

Approval of PSD Permits

Notice is hereby given that the Environmental protection Agency (EPA) has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. Algonquin Gas Transmission Company, Boston, Massachusetts (PSD-026042CT01); modification of the existing natural gas compressor station in Cromwell, Connecticut by the addition of a natural gas-fired turbine engine; issued on March 5, 1982;

2. Energy Answers Corporation, Albany, New York (PSD-025-120MA14); construction of a resource recovery facility in Rochester, Massachusetts; issued on March 15, 1982.

These permits have been issued under EPA's PSD regulations (40 CFR 52.21) and are subject to certain conditions. For Algonquin, these include:

1. NO_x emissions shall not exceed 0.0135% by volume at 15% oxygen and on a dry basis;

2. SO_x emissions shall not exceed 0.015% by volume at 15% oxygen and on a dry basis; and,

3. Only natural gas shall be combusted in the modification.

For Energy Answers, the conditions include:

1. The firing rate shall not exceed 75 tons of refuse derived fuel per hour;

2. Under oil firing conditions, the firing rate shall not exceed 3,200 gallons of No. 2 fuel oil per hour, and the sulfur content shall not exceed 0.3% sulfur by weight;

3. TSP emission shall not exceed 0.05 gr/dscf, corrected to 12% CO_2;

4. SO_2 emissions shall not exceed 0.23 lb/million Btu;

5. NO_x emissions shall not exceed 0.3 lb/million Btu under oil firing conditions, and 0.5 lb/million Btu under refuse firing conditions;

6. CO emissions shall not exceed 0.3 lb/million Btu and the applicant must submit a plan to further minimize the CO emissions.

The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Copies of the applications and permits are available for public inspection upon request at the following location: U.S. Environmental Protection Agency, Region I, Air Branch, Room 1903, JFK Federal Building, Boston, Massachusetts 02203. The Algonquin application and permit is also located at: Connecticut Department of Environmental Protection, Office of the Air Quality Director, Room 144, State Office Building, 165 Capitol Avenue, Hartford, Connecticut 06115.

The Energy Answers application and permit is also located at: Massachusetts Department of Environmental Quality Engineering, Southeast Massachusetts Air Pollution Control District, c/o Lakeville Hospital, Main Street, Lakeville, Massachusetts 02346.

Dated: April 30, 1982.

Leslie Carothers,

Acting Regional Administrator, Region I.

[FR Doc. 82-13554 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[PP 6G1838/T372; PH-FRL 2126-6]

Butachlor; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the herbicide butachlor in or on the raw agricultural commodities rice and rice straw.

DATE: These temporary tolerances expire April 23, 1983.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Envionmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, that was published in the Federal Register of March 24, 1981 (46 FR 18346), announcing the renewal of temporary tolerances for residues of the herbicide butachlor [N-(butoxymethyl)-2-chloro-2', 6'diethylacetanilide] in or on the raw agricultural commodities rice at 0.5 part per million (ppm) and rice straw at 3 ppm. These tolerances were established in response to pesticide petition (PP 6G1838), submitted by Monsanto Company, 1101 17th St., NW., Washington, D.C. 20036. A food additive regulation permitting the residues of butachlor at 1 part per million (ppm) in rice hulls and 0.5 ppm in rice bran has been published.

The company requested a one-year extension of the temporary tolerances to permit the continued marketing of the

temporary tolerances to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of exprimental use permit (524–EUP–30), which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Monsanto Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 23, 1983. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981, (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: May 10, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82–13555 Filed 5–18–82; 8:45 am]

BILLING CODE 6560–50–M

[A–1–FRL–2127–1]

Delegation of Authority to the State of New Hampshire for Prevention of Significant Deterioration (PSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Informational notice.

SUMMARY: EPA Region I has delegated authority for the Administrative and Technical portions of the Prevention of Significant Deterioration (PSD) program to the State of New Hampshire Air Resources Agency (ARA) under 40 CFR 52.21. The New Hampshire ARA will receive, conduct technical review, and process the PSD applications; however, issuance of final PSD permits, as well as enforcement of these permits, will continue to be performed by EPA.

EFFECTIVE DATE: March 18, 1982.

ADDRESS: Copies of the State request for delegation and State/EPA Agreement for delegation of authority are available for public inspection at the Air Branch, Environmental Protection Agency, Region I, J. F. Kennedy Federal Building, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Arnold Leriche, Air Branch, Environmental Protection Agency, Region I, J. F. Kennedy Federal Building, Boston, Massachusetts 02203, 617/223–4448.

SUPPLEMENTARY INFORMATION: On August 31, 1981, Governor Gallen of New Hampshire submitted to EPA Region I a request for EPA to delegate to the New Hampshire ARA the responsibility for the administrative and technical review authority of sources under EPA's PSD regulations. After a thorough review of their request the Regional Office determined that the State's procedures for this portion of the PSD program are adequate and effective. Thus, on March 18, 1982 the Regional Administrator delegated authority for the technical and administrative review portion of the Federal PSD program to the State of New Hampshire. The conditions of the delegation are delineated in the Regional Administrator's letter to the State dated March 18, 1982.

Effective immediately, all applications and other information pursuant to 40 CFR 52.21 for sources locating in the State of New Hampshire should be sent directly to the State agency at the following address: Air Resources Agency, State Laboratory Building, Hazen Drive, Concord, New Hampshire 03301.

Dated: May 6, 1982.

Lester A. Sutton,

Regional Administrator.

[FR Doc. 82–13553 Filed 5–18–82; 8:45 am]

BILLING CODE 6560–50–M

[WH–FRL 2116–5]

Mississippi Pretreatment Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the national pollutant discharge elimination system pretreatment program of the State of Mississippi.

SUMMARY: On May 13, 1982, the Environmental Protection Agency approved the State of Mississippi's National Pollutant Discharge Elimination System State Pretreatment Program. This action authorizes the State of Mississippi to administer the National Pretreatment Program as it applies to muncipalities and industries within the State.

FOR FURTHER INFORMATION CONTACT: George E. Young, Permits Division (EN–336), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 202–426–4793.

SUPPLEMENTARY INFORMATION:

Background

The Pretreatment Program, required by the Clean Water Act of 1977, governs the control of industrial wastes introduced into Publicly Owned Treatment Works (POTWs). The objectives of the Pretreatment Program are to: (1) Prevent introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; (2) prevent the introduction of pollutants into POTWs which will pass through treatment works or otherwise be incompatible with such works; (3) improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges. Local pretreatment programs will be the primary vehicle for administering, applying and enforcing pretreatment standards for industrial users of POTWs. To receive pretreatment program approval a State must submit to the EPA a modification to its NPDES program pursuant to the requirements

and procedures of the General Pretreatment Regulation (40 CFR Part 403).

Federal Register Notice of Approval of State NPDES Programs or Modifications

Under the Consolidated Permit Regulations (45 FR 33290, May 19, 1980), EPA will provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program.

Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this regulation from the OMB review requirements of Executive Order 12291 pursuant to Section 8(b) of that Order.

Pursuant to Section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this State Pretreatment Program Approval will not have a significant impact on a substantial number of small entities. Approval of the Mississippi NPDES State Pretreatment Program establishes no new substantive requirements, but merely transfers responsibility for administration of the program from EPA to the State.

Dated: May 13, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-13552 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[AAA-FRL-2124-5]

Performance Review Board; Addition of Members

AGENCY: Environmental Protection Agency.

ACTION: Notice of addition of members to the performance review board.

SUMMARY: This Notice announces the appointment by the Administrator of the Environmental Protection Agency of two members and an executive secretary to the Agency's Performance Review Board as provided for in 5 U.S.C. 4314. The appointments announced in this Notice are in addition to the appointments of eleven members published in the **Federal Register** of December 22, 1981.

The purpose of the Performance Review Board is to review initial senior executive appraisals and to make recommendations to the Administrator concerning performance of senior executives in the Agency and performance awards.

ADDRESSES: The names, titles, and addresses of the individuals now appointed to the EPA Performance Review Board are as follows:

1. Dr. Roger S. Cortesi, Deputy Director, Office of Health Research, Office of Research and Development, Environmental Protection Agency, Washington, D.C. 20460.

2. Mr. William A. Whittington, Director, Facility Requirements Division, Office of Water, Environmental Protection Agency, Washington, D.C. 20460.

3. Mr. Clarence Hardy, Director, Personnel Management Division, Office of Administration, Environmental Protection Agency, Washington, D.C. 20460 (Executive Secretary, PRB).

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Environmental Protection Agency Performance Review Board may contact Mr. Clarence Hardy, Director, Personnel Management Division, Environmental Protection Agency, Washington, D.C. 20460; telephone (202) 382-3300.

Anne M. Gorsuch,

Administrator.

May 17, 1982.

[FR Doc. 82-13551 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket FEMA-RED-7-NE-1]

Nebraska Radiological Emergency Response Plan

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of receipt of plan.

SUMMARY: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and state and local government's radiological emergency response plans. Since FEMA has a responsibility for reviewing the state and local government plans, the State of Nebraska has submitted its radiological emergency plans to the FEMA Regional Office. These plans support nuclear power plants which impact on Nebraska, and include those local of governments near the Omaha Public Power District, Fort Calhoun Nuclear Station located in Washington County, Nebraska.

Date plans received: April 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick J. Breheny, Regional Director, FEMA Region VII, 911 Walnut Street, Kansas City, Missouri 64106, (816) 374-5912.

NOTICE: In support of the Federal requirement for emergency response plans, FEMA has proposed a Rule describing its procedures for review and approval of state and local government's radiological emergency response plants. Pursuant to this proposed FEMA Rule (44 CFR 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness," the "Nebraska Radiological Emergency Response Plan for Nuclear Power Plant Incidents" was received by the Federal Emergency Management Agency Region VII Office.

Included are plans for local governments which are wholly or partially within the emergency planning zones of the Fort Calhoun Station. Plans are included for Sarpy, Washington, Douglas and Dodge Counties.

Copies of the Plan are available for review at the FEMA Region VII Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR Part 5. There are 888 pages in the document; reproduction fees are $.10 a page payable with the request for copy.

Comments on the Plan may be submitted in writing to Mr. Patrick J. Breheny, Regional Director, at the above address on or before June 17, 1982.

Dated: May 6, 1982.

Patrick J. Breheny,

Regional Director, FEMA Region VII.

[FR Doc. 82-13504 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-658-DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA-658-DR), dated May 11, 1982, and related determinations.

DATED: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

NOTICE: Pursuant to the authority vested in the Director of the Federal Emergency Management Agency by the President under Executive Order 12148, effective July 15, 1979, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, and by virtue of the Act of May 22, 1974, entitles "Disaster Relief Act of 1974" (88 Stat. 143); notice is

hereby given that, in a letter of May 11, 1982, the President declared an emergency as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from flooding beginning on or about February 19, 1982, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, the Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area except for technical assistance which will be funded at 100 percent.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of Federal Emergency Management Agency under Executive Order 12148, and delegated to me by the Director under the Federal Emergency Management Agency Delegation of Authority, I hereby appoint Mr. David P. Grier of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster.

Adams, Grant and Hettinger Counties for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83–300, Disaster Assistance. Billing Code 6718–02).

Lee M. Thomas,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 82–13503 Filed 5–18–82; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–653–DR]

Ohio; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–653–DR), dated March 26, 1982, and related determinations.

DATED: April 28, 1982.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, telephone No. (202) 287–0501.

NOTICE: In a letter of April 28, 1982, the President amended this major disaster as follows:

I therefore amend the March 26, 1982, declaration to include Public Assistance. Consistent with the requirement that Federal assistance be supplemental, the Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area except for technical assistance which will be funded at 100 percent.

The notice of a major disaster for the State of Ohio, dated March 26, 1982, is hereby amended to designate the following areas eligible for Public Assistance.

Defiance County and Paulding County, The Village of Grand Rapids in Wood County.

(Catalog of Federal Domestic Assistance no. 83.300, Disaster Assistance).

Lee M. Thomas,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 82–13502 Filed 5–18–82; 8:45 am]

BILLING CODE 6718–02–M

Privacy Act of 1974; New System of Records

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed New System of Records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Federal Emergency Management Agency gives notice of the proposed new system of records, FEMA/RMA–10, Claims Collection Files. A new system report has been filed with the Office of Management and Budget, the Speaker of the House of Representatives and the President of the Senate. The Office of Management and Budget has been requested to waive the advance notice requirement.

DATE: The proposed new system of records shall be effective as proposed without further notice on June 18, 1982, unless the waiver is not approved or comments are received on or before that date which would result in a contrary determination. If the waiver is not approved or comments are received within 30 days of this publication which would result in a contrary determination, FEMA will publish such notice at this time. Any interested party may submit written comments regarding this proposal.

ADDRESS: Address comments to the Federal Emergency Management Agency, Attn: Docket Clerk, Office of General Counsel, Room 840, 500 C Street, SW., Washington, D.C. 20472. Comments received will be available for public inspection at the above address from 9 a.m. to 4 p.m., Monday through Friday (except for legal holidays).

FOR FURTHER INFORMATION CONTACT: Linda Keener, FOIA/Privacy Specialist, at (202) 287–0313.

SUPPLEMENTARY INFORMATION: The proposed system of records is needed to comply with the Federal Claims Collection Act of 1966 and the related FEMA regulations, 44 CFR Part 11, Subpart C. It is the policy of the Federal Emergency Management Agency to ensure the timely and economical collection of all monies owed the Government, including, but not limited to, monies due for loans, grants, procurements, sales of goods and services, fines, penalties, forfeitures, interest, overpayments, fees, duties, rents, royalties, claims and damages.

Dated: April 30, 1982.

James L. Holton,

Director, Office of Public Affairs, Federal Emergency Management Agency.

FEMA/RMA–10

SYSTEM NAME:

Claims Collection Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary System is located in the Office of Comptroller, Resource Management & Administration, Federal Emergency Management Agency, Washington, D.C. Secondary Systems will be maintained by the specific Claims Collection Officers of the following offices: Federal Insurance Administration, National Preparedness Programs, State and Local Programs and Support, National Emergency Training Center, U.S. Fire Administration, and each FEMA Regional Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are indebted to the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative reports with supporting documentation, employee's financial condition, and requests for

waiver. The Claim Collection Officers' file will contain, as a minimum, the name and address of the debtor; amount of claim or deliquent amount; basis of claim; date claim arose; office referring claim to the Claim Collection Officer; record of each collection made; date claim should be referred to the Agency Claims Officer, Resourcement Management & Administration, in order to avoid statute of limitations deadlines; citation of basis on which claim was terminated or compromised; credit reports or other information which show the net worth of the debtor; and the name of the accounting officer to which the claim was reported and the appropriation symbol under which the Accounts/Notes Receivable was established.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

31 U.S.C. 951–953 (Federal Claims Collection Act of 1966), Pub. L. 90–616, Pub. L. 92–453.

PURPOSE:

Information is used to collect monies owed the U.S. Government. Information is maintained to support case files; financial statements provide an understanding of individuals' financial condition with respect to request for deferment of payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

If debtors do not enter into satisfactory arrangements or demonstrate a legitimate dispute within a specific period, the debt will be reported to a commercial credit bureau. When debts are uncollectable, case files are forwarded to the U.S. General Accounting Office, Department of Justice, or a United States Attorney for further collection action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on lists and forms, and in computer processible storage media.

RETRIEVABILITY:

Filed alphabetically by name.

RETENTION AND DISPOSAL:

The file of each claim on which administrative collection action has been completed shall be retained by the appropriate officer not less than 1 year after the applicable statute of limitations has run. As deemed appropriate, the files are either forwarded to the Federal Records Center for remaining years or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Resource Management and Administration, Federal Emergency Management Agency, Washington, D.C. 20472.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager identified above.

RECORD ACCESS PROCEDURE:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envolope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

Directly from the debtor, initial loan applications, other Federal agencies, financial institutions, and members of the general public.

[FR Doc. 82–13509 Filed 5–18–82; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons or Voyages pursuant to the provisions of Section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Canadian Cruise Lines Ltd., 401 1208 Wharf Street, Victoria, B.C. V8W 3B9, Canada.

Dated: May 14, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–13638 Filed 5–18–82; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Idemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Canadian Cruise Lines Ltd., 401 1208 Wharf Street, Victoria, B.C. V8W 3B9, Canada.

This Certificate expires June 11, 1982.

Dated: May 14, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–13637 Filed 5–18–82; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Continued Use of Certain Former Public Health Service Facilities; Delegation of Authority

Notice is hereby given that in furtherance of the April 20, 1982 delegation by the Secretary of Health and Human Services to the Assistant Secretary for Health (47 F.R. 19797–19798) of authority under section 911 of Public Law 97–99, the "Military Construction Authorization Act, 1982," the Assistant Secretary for Health has delegeted to the Director, Medical Facilities Conversion Staff, Office of the Assistant Secretary for Health, without authority to redelegate, all the authority delegated to the Assistant Secretary for Health under section 911 of Public Law 97–99, the "Military Construction Authorization Act, 1982" (42 U.S.C. 248c), as amended, concerning the continued use of certain former Public Health Service facilities.

The delegation to the Director, Medical Facilities Conversion Staff, became effective April 28, 1982 and terminates October 1, 1982.

Dated: April 28, 1982.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

[FR Doc. 82–13515 Filed 5–18–82; 8:45 am]

BILLING CODE 4160–17–M

Health Maintenance Organizations; MetroCare Inc.; Revocation of Federal Qualification

AGENCY: Public Health Service, HHS.

ACTION: Notice, continued regulation of health maintenance organizations: Determination of noncompliance and revocation of Federal Qualification.

SUMMARY: On September 19, 1980, the Office of Health Maintenance Organizations (OHMO) determined that MetroCare, Inc., (MetroCare), 1701 West Euless Boulevard, Euless, Texas 76039, a federally qualified health maintenance organization (HMO), was not in compliance with the assurances it has provided to the Secretary that it would (1) maintain a fiscally sound operation and (2) maintain satisfactory administrative and managerial arrangements. On April 26, 1982, the Director of OHMO notified MetroCare that he was revoking MetroCare's Federal qualification and this revocation would become effective the fifth working day after receipt of this letter. Accordingly, Metrocare is no longer a federally qualified HMO.

FOR FURTHER INFORMATION CONTACT: Frank H. Seubold, Ph. D., Director Office of Health Maintenance Organizations, Park Building, 3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443–4106.

SUPPLEMENTARY INFORMATION: Under Section 1312(b)(1) of the Public Health Service Act (the Act) (42 U.S.C. 300e–11(b)(1)), if the Secretary makes a determination under section 1312(a) that a qualified HMO is not organized or operated in the manner prescribed by section 1301(c), then the HMO shall be (1) notified in writing of the determination and (2) directed to initiate corrective action to bring it into compliance with the assurances it provided to the Secretary under section 1310(d)(1). The notice of September 19, 1980, gave MetroCare an opportunity to initiate corrective action to bring it into compliance with the assurances that it would (1) maintain a fiscally sound operation and (2) maintain satisfactory administrative and managerial arrangements. On April 15, 1982, MetroCare notified OHMO that it chose not to pursue continuance of Federal qualification at this time. The basis for the revocation of Federal qualification was OHMO's determination that MetroCare has not carried out the corrective action necessary to return to compliance.

The effect of the revocation of MetroCare's Federal qualification is as follows: (1) MetroCare may not seek inclusion in employees' health benefits plans under section 1310 of the Act; (2) with respect to employers including MetroCare in the health benfits plan offered their employees, MetroCare is not a qualified HMO for purposes of section 1310 of the Act; (3) the inclusion of MetroCare in an employees' health benefits plan will be disregarded for purposes of determining whether, and to what extent, the employer is subject to 42 CFR Part 110, Subpart H, and will not constitute compliance with the requirements of that subpart; and (4) MetroCare is not a qualified HMO for purposes of the financial assistance programs under 42 CFR Part 110.

Section 1312(b)(1) of the Act requires that a notice of the determination of noncompliance and of the revocation of Federal qualification of an HMO be published in the **Federal Register.**

Dated: May 11, 1982.

Frank H. Seubold,

Director, Office of Health Maintenance Organizations.

[FR Doc. 82–13507 Filed 5–18–82; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 17526]

Baker District Office, Oregon; Realty Action—Land Exchange

Correction

In FR Doc. 82–11380, appearing at page 18053, in the issue of Tuesday, April 27, 1982 make the following change:

On page 18053, the land description following the paragraph beginning "Exchange for these lands," should read:

Willamette Meridian, Oregon

T. 10 S., R. 45 E.,
Sec. 11, E½SW¼ and SE¼; and
Sec. 14, NE¼ and E½NW¼.
T. 10 S., R. 46 E.,
Sec. 4, Lot 4 and SW¼NW¼ and W½SW¼; and
Sec. 5, Lots 1, 2, and 3 and SE¼NW¼ and E½SW¼, and SE¼ and S½NE¼.
Aggregating 1,112.55 acres of private land.

BILLING CODE 1505–01–M

Elko District, Nevada; Meeting of Elko District Grazing Advisory Board

In accordance with the Federal Advisory Committee Act and the Federal Land Policy and Management Act, notice is hereby given that the Elko District Grazing Advisory Board will meet on June 3 & 4, 1982. The meeting will begin on June 3 at 8:00 a.m. at the Ranchinn, 852 Idaho Street, Elko, Nevada. On June 4 a field tour will be conducted. Participants will depart from the Elko District Office, 2002 Idaho Street, Elko, Nevada at 8:00 a.m.

The agenda for the meeting will include: (1) Approval of the last meetings minutes; (2) update on FY 1982 range improvement projects; (3) discussion of proposed FY 1983 range betterment funds and expenditures; (4) update on district Selective Management Category Criteria—Rangeland management Policy; (5) update on pesticide/herbicide program; (6) update on current water policy; (7) slide show, field tour and discussion on riparian management objectives and obtainable results.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 and 3:30 on June 3 or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, BLM, 2002 Idaho Street, Elko, Nevada 89801, by May 28, 1982. Depending upon the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Rodney Harris,

District Manager.

May 11, 1982.

[FR Doc. 82–13485 Filed 5–18–82; 8:45 am]

BILLING CODE 4310–84–M

[Serial No. I–2834]

Idaho; Partial Termination of Classification for Multiple-Use Management; Correction

May 10, 1982.

In F.R. Doc. 82–10182, filed April 13, 1982, and appearing on page 16107 of the issue of April 14, 1982, the following correction should be made:

T. 12 N., R. 20 E., sec. 34 S½SE¼, should read: T. 12 N., R. 20 E., sec. 34, S½SW¼.

Clair M. Whitlock,

State Director.

[FR Doc. 82–13484 Filed 5–18–82; 8:45 am]

BILLING CODE 3410–01–M

[Group 743]

California; Filing of Plat of Survey

May 7, 1982.

1. A plat of survey of the following described land accepted May 3, 1982, will be officially filed in the California State Office, Sacramento, California, effective at 10:00 a.m. on July 1, 1982.

Mount Diablo Meridian, California

T. 10 N., R. 9 W.,
Sec. 3.

2. This plat representing the dependent resurvey of a portion of the east boundary of the Rancho Caslamayomi, the Second Standard Parallel North along the south boundary of Township 11 North, Range 9 West, a portion of the subdivisional lines, and the survey of a portion of the subdivision of section 3, Township 10 North, Range 9 West, Mount Diablo Meridian, California.

3. The plat will become the basic record for describing the land for all authorized purposes at and after 10:00 a.m. of the above date. Until this date and time, the plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to restore the corners in their true original locations according to the best available evidence.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, Room E-2841, Cottage Way, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Section of Records and Data Management.

[FR Doc 82-13486 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

Oregon; Redelegation of Authority

Pursuant to the authority contained in Section 2.1 of Bureau order No. 701, as amended, the following specific authority delegated to the Chief, Branch of Lands and Minerals Operations in the cited order is hereby redelegated to the Chief, Minerals Operations Section as an authorized signing alternate:

Section 2.3 Fiscal Affairs

(c) Repayments

This redelegation is effective May 19, 1982.

Dated: May 7, 1982.

Paul M. Vetterick,

Associate State Director.

[FR Doc. 82-13488 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

Oregon; Redelegation of Authority

Pursuant to the authority contained in Section 2.1 of the Bureau order No. 701, as amended, the following specific authority delegated to the Chief, Branch of Lands and Minerals Operations in the cited order is hereby redelegated to the Chief, Lands Operations Section:

Section 2.2 General and Miscellaneous Matters

(b) Cancellations or surrenders of contracts and leases
(c) Copies of records

Section 2.9. Land Use

(a) Airport and air navigation facilities
(b) Cemetery sites
(c) Color-of-Title
(d) Exchanges
(f) Indian Allotments
(i) Sites for recreational or any public purpose
(j) Public sales

This redelegation is effective May 19, 1982.

Dated: May 7, 1982.

Paul M. Vetterick,

Associate State Director.

[FR Doc. 82-13489 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

Oregon; Redelegation of Authority

Pursuant to the authority contained in Section 2.1 of Bureau order No. 701, as amended, the following specific authority delegated to the Chief, Branch of Lands and Minerals Operations in the cited order is hereby redelegated to the Chief, Minerals Operations Section:

Section 2.6 Minerals

(a) Oil and Gas Leases
(k) Mining Claims
(n) Geothermal Leases

This redelegation is effective upon publication in the **Federal Register.**

Dated May 7, 1982.

Paul M. Vetterick,

Associate State Director.

[FR Doc. 82-13490 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

Utah; Correction to State Director's Final Wilderness Inventory Decisions

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice.

SUMMARY: The following **Federal Register** notices were published on the Utah State Director's final wilderness inventory decisions, protests and appeals.

Final Wilderness Inventory Decision—November 14, 1980 (vol. 45, No. 222).

Final Wilderness Inventory Decision in Effect—December 31, 1980 (vol. 45, No. 252).

Decision on Protests—March 5, 1981 (vol. 46, No. 43).

Republication of Decision on Protests—March 12, 1981 (vol. 46, No. 48).

These **Federal Register** notices indicated that several areas of less than 5,000 acres in the State of Utah were designated as wilderness study areas (WSAs) under authority of section 603(a) of the Federal Land Policy and Management Act (FLPMA) of 1976, and indicated that they would be managed under restrictions imposed by section 603(c) of that Act. This notice makes a correction to those **Federal Register** notices. Wilderness study areas of less than 5,000 acres in size are designated as such under authority of sections 202 and 302 of FLPMA rather than section 603(a). Wilderness study areas identified under this authority need not be reported to the President and Congress if they are found non-suitable for Wilderness designation. These WSAs fall under the general management authority as contained in sections 202 and 302 and are not managed under the more restrictive management criteria imposed by section 603(c) of FLPMA as do others WSAs designated under authority of section 603(a).

The WSAs of less than 5,000 acres involved in this correction notice are:

		Acres
UT-040-145	Orderville Canyon	1,750
UT-040-146	Deep Creek	3,320
UT-040-147	Red Butte	904
UT-040-148	Spring Canyon	4,433
UT-040-149	The Watchman	900
UT-040-150	North Fork Virgin River	1,040
UT-040-153	LaVerkin Creek Canyon	567
UT-040-154	Taylor Creek Canyon	35
UT-040-176	Goose Creek Canyon	89
UT-040-177	Beartrap Canyon	40
UT-050-221	Fremont Gorge	2,540
UT-060-131B	South Lost Spring Canyon	3,880
UT-080-414	Daniel's Canyon	2,475

FOR FURTHER INFORMATION CONTACT:
Kent Biddulph, BLM, Utah State Office, (801) 524-4257.

Dated: May 10, 1982.

Roland G. Robison,

State Director, Utah.

[FR Doc. 82-13487 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

Colorado and Wyoming; Meeting of the Green River-Hams Fork Regional Coal Team

May 7, 1982.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: The next meeting of the Green River-Hams Fork Regional Coal Team will be held at the Bonnie Brae Room in the Airport Holiday Inn, 4040 Quebec, Denver, CO 80216 at 8:00 a.m., June 16, 1982. Principal agenda items are a review of Expressions of Interest, existing delineated tracts, existing site specific analysis and tract profiles. The Team may provide guidance to the coal activity planning process. Tract ranking factors and subfactors will be reviewed and discussed. Public comment on the ranking subfactors will be accepted by the Team and a ranking system adopted.

FOR FURTHER INFORMATION CONTACT: Kenneth P. Smith, Bureau of Land Management (932), 1037 20th Street, Denver, CO 80202.

SUPPLEMENTAL INFORMATION: All expressions of interest for this round of coal leasing in the Green River-Hams Fork Region will be reviewed at the meeting. The completed tract delineations, site specific analysis and tract profiles will be reviewed and the Team will provide appropriate guidance pursuant to 43 CFR 3420.4–3(h).

Tract ranking factors are set forth in the regulations at 43 CFR 3420.4–4. Subfactors are a matter of Regional Coal Team discretion. Factors and subfactors are used to rank tracts in terms of low, medium and high desirability for coal leasing. For instance, if archeology is a subfactor, a tract that has no archeological conflicts would rank high for that subfactor.

The Regional Coal Team will initially discuss a ranking system with the following subfactors:

Factor	Subfactors
1. Coal Economics	a. Coal Quality.
	b. Coal Quantity.
	c. Energy Production Potential.
	d. Transportation.
	e. Surface Ownership.
2. Impacts on the Natural Environment.	a. Air Quality.
	b. Water.
	c. Reclamation Potential.
	d. Wildlife
	e. Archeology.
	f. Paleontology.
	g. Historic.
	h. Transportation.
	i. Other Unique Resources.
3. Socio-Economic Impacts	a. Public Attitudes.
	b. Revenue Generation.
	c. Life Style and Social Structure.
	d. Community and Social Services.
	e. Consistency with Other Plans and Policies.
	f. Agricultural Operations.

Cecil Roberts,

Acting State Director, Colorado.

[FR Doc. 82-13506 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Capitol Reef National Park; Availability for Draft Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of availability for draft environmental impact statement for general management plan, Capitol Reef National Park.

SUMMARY: The Draft Environmental Impact Statement for the General Management Plan, Capitol Reef National Park is available for public distribution. Copies will be mailed to some 500 individuals, interest groups and public Agencies for review and comment.

The document addresses the issues of management zoning, resources management, visitor use and interpretation, general development, and boundary adjustment. The draft environmental impact statement describes the affected environment; five alternatives, including the preferred alternative, for the management of the park; and the environmental consequences of implementing these alternatives.

A copy of the draft environmental impact statement may be obtained from the Superintendent, Capitol Reef National Park, Torrey, Utah 84775 or from the Regional Director, Rocky Mountain Region, National Park Service, 655 Parfet Street, Post Office Box 25287, Denver, Colorado 80225. Comments on the document will also be received at these addresses through July 20, 1982 and should be addressed to either the Superintendent or Regional Director.

Dated: May 6, 1982.

James B. Thompson,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 82-13628 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Fourth Rev. ICC Order 80 Under S.O. 1344]

St. Louis Southwestern Railway Co. et al.; Rerouting of Traffic

In the opinion of J. Warren McFarland, Agent, the Chicago, Rock Island and Pacific Railroad Company is unable to transport promptly traffic offered for movement via its lines, because of an embargo of its lines.

Rerouting authority previously granted in Reroute Order No. 63, was continued in Reroute Order No. 80, and should be extended for those carriers which have indicated that tariff modifications in progress could not be completed by the expiration of that order. This matter is considered to be outside the scope of a single railroad as provided by Ex Parte No. 376, and therefore requires this action by the Commission.

It is ordered, (a) *Rerouting traffic.* The Chicago, Rock Island and Pacific Railroad Company (RI), being unable to transport promptly traffic offered for movement via its lines because of an embargo of its lines, that lines interim operators named below are authorized to reroute such traffic via any available route. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenue of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to the order as authority for the rerouting.

St. Louis Southwestern Railroad Company.
Cadillac & Lake City Western Transportation Company.
Chicago and North Western Transportation Company.
Iowa Railroad Company.

(b) Concurrence of receiving roads to be obtained. The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be rerouted, before rerouting.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted and shall furnish to such shipper the new routing provided for under this order, except when the disability requiring the rerouting occurs after the movement has begun.

(d) Inasmuch as the rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic rerouted by said Agent shall be rates which were

applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 12:01 a.m., May 12, 1982.

(g) *Expiration date.* This order shall expire at 11:59 p.m., May 31, 1982, unless otherwise modified, amended or vacated.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 10, 1962.

Interstate Commerce Commission.

J. Warren McFarland,

Agent.

[FR Doc. 82-13475 Filed 5-18-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte 387 (Sub-131)]

Rail Carriers; the Baltimore & Ohio Railroad Co.; Exemption for Contract Tariffs ICC-BPO-C-0028, 0029, and 0030

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariffs to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John J. Sado, (202) 275-7277.

SUPPLEMENTARY INFORMATION: Baltimore & Ohio Railroad Company (BO) filed a petition on April 29, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). Petitioner requests that we permit contract tariff ICC-BO-C-0028, 0029, and 0030 to become effective on one day's notice. Tariff 0028 and 0030 provide for the transportation of sand and alpite rock. Tariff 0029 provides for the transportation of industrial sand, alpite rock, and limestone. All contracts involve the same receiver.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirements. Cf. former section 10762(d)(1). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. The receiver has experienced a severe loss for the first quarter of 1982 and will divert his traffic to a lower-priced mode of transportation unless an exemption is granted. Moreover, the contracting carriers have a vast surplus of covered hoppers and this surplus would increase with the diversion of this traffic. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

Petitioner's contract ICC-BO-C-0028, 0029, and 0030 may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

Although the Commission has permitted the contracts to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 days notice requirements in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the Federal Register.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: May 12, 1982.

By the Commission, Division 1, Commissioners Sterrett, Gilliam, and Andre.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13477 Filed 5-18-82; 8:45 am]

BILLING CODE 7035-01-M

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

May 13, 1982.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. within 15 days from the date of publication of the notice.

MC 43966, Southwestern Freight Bureau, Agent (No. B-157), published reduced rates on shipments of Iron or Steel Pipe and Related Articles, from Doraville, Savannah, Ga. and Kernersville, NC to points in Arkansas, Louisiana, Missouri, New Mexico, Oklahoma and Texas, in Supplement 339 to Tariff ICC SWFB 4853, effective June 9, 1982. Grounds for relief market competition.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13474 Filed 5-18-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume 256]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: May 11, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian Carrier Applicants: In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC-157, *Investigation Into Canadian Law*

and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 109632 (Sub-38)X, filed March 25, 1982. Applicant: LOPEZ TRUCKING, INC., 131 Linden St., Waltham, MA 02154. Representative: Joseph M. Klements, 89 State St., Boston, MA 02109. Lead and Subs 11, 16, 17, 20, 21, 22, 23, 27, 28G, 30, 31 and 33 and E–1 letter notice. Broaden: lead, general commodities (with exceptions) to "general commodities (except classes A and B explosives)"; household goods to "household goods and furniture and fixtures"; cotton in bales, wool, waste materials, sugar, building materials, and heavy machinery and equipment, to "textile mill products, waste materials, food and related products, building materials, machinery and equipment"; lumber, plywood and millwork to "lumber and wood products"; broaden turf to "farm products"; Waltham, MA to Norfolk, Suffolk and Middlesex Counties, MA; Watertown, Cambridge, Somerville, Brookline, and Boston, MA to Essex, Middlesex, Suffolk, Norfolk, Plymouth and Bristol Counties, MA; Boston, MA to Suffolk, Norfolk, Middlesex, Essex, Plymouth, Bristol, and Worcester Counties, MA; in Sub 11, building materials to "construction and building materials"; Boston, MA (and points within 15 miles thereof) as in lead; in Sub 16, sectional floors and sectional board tracks, uncrated, and parts and supplies used in the installation thereof, to "construction and building materials"; Boston, MA (as in lead); in Sub 17, building materials, except commodities in bulk, to "construction and building materials"; points in NJ and NY within 50 miles of point of origin (New York, NY and points in Westchester, Nassau, Suffolk, Orange and Rockland Counties, NY, and points in Hudson, Essex, Union, Bergen, Passaic, Middlesex, Warren, Hunterdon, Morris, and Somerset Counties, NJ) to points in NJ in and north of Gloucester and Atlantic Counties, NJ, and points in NY in and south of Dutchess, Ulster and Orange Counties, NY; port of Newark, NJ and port of New York, NY to points in NY in and south of Westchester and Rockland Counties, NY, and points in Hudson, Bergen, Essex, Union, Middlesex and Passaic Counties, NJ; points in PA east of an imaginary line and points in NY east of an imaginary line to points in PA in and east of Susquehanna, Wyoming, Luzerne, Schuylkill, Berk, and Lancaster Counties, PA, points in NY in and east of Sullivan, Delaware, Ostego, Herkimer and St. Lawrence, Counties, NY; in Sub 20, beer, ales, beverages and brewery supplies to "food and related products"; porcelain enamel panels, crated or uncrated, to "construction and building materials"; irregular routes: Boston, MA to Essex, Middlesex, Norfolk, Suffolk, Bristol, Plymouth and Worcester Counties, MA; Westerly, RI to Washington County, RI; Albany, Amsterdam, Endicott, Long Island City, Smithtown, Troy and Utica, NY to Saratoga, Oneida, Herkimer, Albany, Schenectady, Montgomery, Fulton, Broome, Tioga, Queens, Suffolk, and Rensselaer Counties, NY; Bayonne, Elizabeth, Hoboken, Jersey City, Newark, Perth Amboy, Point Pleasant, Union City, and Weehawken, NJ to Middlesex, Union, Essex, Passaic, Hudson, Bergen, Ocean and Monmouth Counties, NJ; Milford, MA to Worcester, Middlesex and Norfolk Counties, MA; in Sub 21, prefabricated buildings, complete, knocked down, or in sections and when transported in connection with such buildings, component parts thereof and equipment and materials incidental to the erection and completion of such buildings to "building and construction materials"; Acton, Sudbury and Billerica facilities to Middlesex County, MA; prefabricated structural beams, arches and trusses to "construction and building materials"; in Sub 22, roofing materials, except in bulk, in tank vehicles, to "construction and building materials"; Waltham facilities to Middlesex, Norfolk and Suffolk Counties, MA; in Sub 23, structural steel to "metal products"; finishing materials, flooring, shingles, and lumber to "construction and building materials"; Boston, MA (as in lead); Dover and Rochester to Strafford County, NH, Exeter and Salem to Rockingham County, NH, Nashua to Hillsborough County, NH and West Warwick to Kent County, RI; Saylesville to Providence County, RI; Boston and points in MA within 35 miles of Boston to Essex, Suffolk, Norfolk, Middlesex, Bristol, Plymouth and Worcester Counties, MA; in Sub 27, general commodities, with exceptions to "general commodities (except classes A and B explosives)"; paper and paper products, and machinery, except commodities in bulk, to "pulp, paper, and related products and machinery"; building materials, except in bulk, to construction and building materials"; paint, lead and zinc, except in bulk, to chemicals and related products and ores and minerals"; paints, lead, zinc, and building materials, except in bulk, to "construction and building materials, chemicals and related products and ores and minerals"; Monmouth, Mercer, Somerset, Morris, Passaic, Bergen Essex, Hudson, Union and Middlesex Counties, NJ for points in NJ within 25 miles of New York, NY; Worcester, Middlesex, Essex, Norfolk, Suffolk, Plymouth and Bristol Counties, MA for points in MA within 30 miles of Boston; Essex, Middlesex, Plymouth, Norfolk and Suffolk Counties, MA for Peabody and points in MA within 25 miles of Peabody; Boston, MA (as in lead); Claremont, Hanover, Keene, Nashua, and Manchester, NH to Graifton, Sullivan, Cheshire, Hillsborough and Rockingham Counties, NH; Burlington and Montpelier, VT to Washington and Chittendon Counties, VT; Portland and Bangor, ME to Cumberland and Penobscot Counties, ME; Providence and Pawtucket, RI to Providence, Kent and Bristol Counties, RI; Hartford and Meriden, CT to Hartford, Tolland, Middlesex and New Haven Counties, VT; Lancaster, Dover, Keene and Claremont, NH to Koos, Strafford, Cheshire and Sullivan Counties, NH; Portland and Winthrop, ME to Cumberland and Kennebec Counties, ME; Bennington, VT to Bennington County, CT; Pawtucket, RI to Providence County, RI; Newark, NJ to Hudson, Bergen, Essex, Passaic, Union, Somerset and Middlesex Counties, NJ; Points within an imaginary line in NJ beginning at Belmar, NJ to points in Monmouth, Mercer, Somerset, Morris and Passaic Counties, NJ; points within an imaginary line to points in NH in and south of Sullivan, Merrimack, Belknap and Strafford Counties, NH and points in ME in and south of Oxford, Androscoggin, Kennebec and Knox counties, ME; in Sub 28G, building materials (except commodities in bulk) to "construction and building materials"; lumber, plywood and millwork to "lumber and

wood products"; prefabricated buildings, complete, knocked down, or in sections and when transported in connection with such buildings, component parts thereof, and equipment and materials incidental to the erection and completion of such buildings to "construction and building materials"; prefabricated structural beams, arches, and trusses to "construction and building materials", broaden roofing materials (except in bulk, in tank vehicles) to "construction and building materials"; remove restrictions: against transportation of refractory products from/to named points; pipe, tubing and fittings from/to facilities/points; and restriction to transportation of building materials; points in NJ within 25 miles of New York, NY to Monmouth, Mercer, Somerset, Morris, Passaic, Bergen, Essex, Union, Middlesex and Hudson Counties, NJ; points in MA within 30 miles of Boston to Worcester, Essex, Middlexsex, Norfolk, Suffolk, Plymouth and Bristol Counties, MA; in Sub E1, building materials (except commodities in bulk) to "construction and building materials"; lumber, and lumber, plywood and millwork to "lumber and wood products"; in Sub 30, coated crushed granules, in bulk, in tank vehicles, to "clay, concrete, glass or stone products"; asphalt to "petroleum, natural gas, and their products"; Belle Mead and Bound Brook, NJ to Somerset County, NJ; Waltham facilities to Norfolk, Suffolk, and Middlesex Counties, MA; Kearney, NJ to Hudson, Essex, Union and Bergen Counties, NJ; in Sub 31, iron and steel wire rods, in coils, to "metal articles"; Perth Amboy to Union, Middlesex and Monmouth Counties, NJ; in Sub 33, general commodities, with exceptions, in containers or in trailers, to "general commdities (except classes A and B explosives)"; ports of: Portland, ME to Cumberland and York Counties, ME; Portsmouth, NH to Strafford and Rockingham Counties, NH; Boston, New Bedford and Fall River, MA to Norfolk, Suffolk, Essex, Middlesex, Bristol and Plymouth Counties, MA; Providence, RI to Providence, Kent and Newport Counties, RI; New London, New Haven, and Bridgeport, CT to New London, New Haven and Fairfield Counties, CT; Albany and Poughkeepsie to Albany and Dutchess Counties, NY; Port Newark, Port Elizabeth, Camden, Perth Amboy, Carteret, Jersey City, Sewaren, and Port Reading, NJ to Bergen, Essex, Cumberland, Hudson, Union, Passaic, Somerset, Middlesex, Monmouth, Burlington, Camden, and Gloucester Counties, NJ; Philadelphia, PA to Philadelphia, Bucks, Montgomery, Delaware and Chester Counties, PA; Wilmington, DE to New Castle County, DE; remove immediately prior/subsequent water restriction; broaden to radial service in all authorities except Subs 11 and 16.

MC 114868 (Sub-8)X, filed April 30, 1982. Applicant: HARRY EARL NEWLON, JR., d.b.a. NEWLON'S TRANSFER, 1511 North Nelson St., Arlington, VA 22201. Representative: Betty Jo Christian, Esq., Steptoe & Johnson, Chartered, 1250 Conn. Ave., N.W., Washington, DC 20036. Subs 1, 2, 3G, 4 and 5G, broaden household goods to "household goods, furniture and fixtures, and materials, equipment and supplies used in the manufacture, sale and distribution of furniture and fixtures."

MC 125788 (Sub-4)X, filed April 29, 1982. Applicant: RAYMOND A. HARSCH, INC., 53 Evans Ave., Elmont, NY 11003. Representative: Kenneth M. Piken, Esq., Piken & Piken, P.C., Queens Office Tower, 95–25 Queens Blvd., Rego Park, NY 11374. Subs 1 and 3 permits, broaden: to "lumber and wood products, furniture and fixtures, electrical machinery and equipment, and accessories and materials used in the installation and assembly of those commodities" from kitchen equipment, kitchen cabinets, moldings, vanities, mirrors, exhaust fans, garbage disposal units and parts, accessories and materials used in the installation and assembly of the commodities described above, in Sub 1; to "furniture and fixtures" from new furniture and new furniture parts, in Sub 3; to between points in the U.S. under continuing contracts with named shippers, in both subs.

MC 133757 (Sub-6)X, filed April 30, 1982. Applicant: CAROLINA EAST FURNITURE TRANSPORT, INC., P.O. Box 1426, Sumter, SC 29501. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Lead (1) broaden new furniture, new furniture crated, used furniture, and used furniture (except hotel equipment and kitchen equipment) to "furniture and fixtures"; (2) remove restriction against service from Rochester, NY and Williamsport PA, to Columbia, SC, (3) broaden Sumter, SC to Sumter County; Bennettsville, SC to Malboro County; Fairfax, SC to Allendale, Bamberg and Collton Counties, Florence, SC to Florence County; Mullins, SC to Marion County; Newark, NJ to Hudson, Bergen, Essex, Middlesex, Morris, Passaic, and Union Counties; and Bronx, Kings, Queens, Manhattan, and Richmond Counties, NY; Philadelphia, PA to Bucks, Chester, Delaware, Montgomery and Philadelphia Counties, PA; New Castle County, DE; Burlington, Camden, Gloucester, Mercer and Salem Counties, NJ; Goldsboro, Lumberton, Tabor City, Whiteville and Wilmington, NC to Wayne, Robeson, Columbus, Brunswick, and New Hanover Counties; Abbeville, Charleston, Darlington, Dillon, Hartsville, Lake City, Leesville, Mullins, Summerton, Sumter and Walterboro, SC to Abbeville, Berkeley, Charleston, Colleton, Dorchester, Darlington, Dillon, Florence, Lexington, Marion, Clarendon, and Sumter Counties, Rochester, NY to Monroe, Orleans, Ontario and Wayne Counties; Williamsport, PA to Lycoming County and Columbia, SC to Lexington and Richmond Counties; Laurens, SC to Laurens County; (4) remove restriction against transportation of traffic when moving as household goods, and (5) to radial authority.

MC 136270 (Sub-6)X, filed May 3, 1982. Applicant: BIG WHEELS TRANSPORT AND LEASING, LTD., 5 Seaton st., P.O. Box 275, Kensington, PE1, Canada. Representative: Francis E. Barrett, Jr., 10 Industrial Park Rd., Hingham, MA 02043. Sub-5: (1) Broaden commodity description (a) processed fish and fish to "food and related products" and (b) bananas, to "farm products and food and related products"; (2) expand ports of entry at Calais, Houlton, Bar Harbor and Portland, to Washington, Aroostook, Hancock, and Cumberland Counties, ME; (3) Change Gloucester to Essex County, MA; (4) replace one-way with radial authority; and (5) remove the restrictions as to: (a) mixed loads; (b) except in bulk; (c) except lumber; and (d) foreign commerce and traffic having prior or subsequent movement by water.

MC 141483 (Sub-6)X, filed May 3, 1982. Applicant: VALCON PACKAGE DELIVERY, INC., 3840 West St., Landover, MD 20785. Representative: Gerald K. Gimmel, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877. Sub 4F permit: broaden to "between points in the U.S. (except AK and HI)," under continuing contracts with a named shipper.

MC 144858 (Sub-48)X, filed May 3, 1982. Applicant: DENVER SOUTHWEST EXPRESS, INC., P.O. Box 9799, Little Rock, AR 72219. Representative: Scott E. Daniel, P.O. Box 9799, Little Rock, AR 72219. Subs 10 and 35F permits. Broaden foodstuffs (except in bulk), to "food and related products"; and to between points in U.S., under continuing contract(s) with named shipper.

[FR Doc. 82-13478 Filed 5-18-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note:—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP3–072

Decided: May 11, 1982.

By the Commission, Review Board No. 2, members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 1934 (Sub-48), filed April 29, 1982. Applicant: THE ARROW LINE, INC., 105 Cherry St., East Hartford, CT 06108. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103, (413) 732–1136. Transporting (1) *passengers and their baggage,* in special operations and (2) *automobiles,* in secondary movement, in truckaway service, between points in Hartford and Fairfield Counties, CT, Middlesex County, MA, Westchester County, NY and Bergen County, NH, on the one hand, and, on the other, points in FL.

MC 1934 (Sub-49), filed May 3, 1982. Applicant: THE ARROW LINE, INC., 105 Cherry St., East Hartford, CT 06108. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103, (413) 732–1136. Transporting *passengers and their baggage,* in charter and special operations, beginning and ending at points in CT, and Hampden County, MA, and extending to points in the U.S. (except AK and HI).

MC 2455 (Sub-2), filed April 23, 1982. Applicant: BAYARD TRUCKING CO., INC., 237 Harrison St., Elizabeth, NJ 07202. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park NJ 08904, (201) 572–5551. Transporting *food and related products,* between New York, NY, Philadelphia, PA, and points in Fairfield County, CT, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 2934 (Sub-119), filed April 23, 1982. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Rd., Carmel, IN 46032. Representative: James L. Beattey, 300 E. Fall Creek Parkway, Suite 403, Indianapolis, IN 46205, (317) 923–8118. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 2934 (Sub-121), filed May 3, 1982. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 N. Michigan Rd., Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant), (317) 875–1142. Transporting *household goods,* between points in the U.S. (except AK and HI), under continuing contract(s) with Jimmy Swaggart Ministries, of Baton Rouge. LA.

MC 15735 (Sub-43), filed April 29, 1982. Applicant: ALLIED VAN LINES, INC., P.O. Box 4403, Chicago, IL 60680. Representative: Richard V. Merrill (same address as applicant), (312) 681–8378. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with General Mills. Inc. of Minneapolis, MN.

MC 99455 (Sub-14), filed April 29, 1982. Applicant: M. H. HILLERY, INC., 90 Western Ave., Allston, MA 02134. Representative: Ronald N. Cobert, 1730 M St., N.W., Suite 501, Washington, D.C. 20036, (202) 296–2900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Freight Train, Inc. of Chicago, IL.

MC 107934 (Sub-48), filed May 4, 1982. Applicant: BYRD MOTOR LINE, INCORPORATED, P.O. Box 828, Lexington, NC 27292. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004, (202) 737–1030. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, AR, FL, GA, LA, MD, MS, NC, OK, SC, TN, TX, and VA.

MC 111274 (Sub-87), filed April 27, 1982. Applicant: SCHMIDGALL TRANSFER, INC., P.O. Box 351, Morton, IL 61550. Representative: Frederick C. Schmidgall (same address as applicant), (309) 266–9773. Transporting *paper and paper mill products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Chesapeake Corporation, of West Point, VA.

MC 116164(Sub-16), filed April 26, 1982. Applicant: ARROW TRANSPORTATION CO., 1911 N.E. 58th Ave., Des Moines, IA 50313. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, (515) 274–4985. Transporting (1) *building materials and refractory products,* between the facilities of General

Refractories Company at points in the U.S., on the one hand, and, on the other, points in IL, IN, IA, KY, KS, MD, MI, MN, MO, NE, NJ, NY, OH, PA, TN, WI and WV and (2) *plastic pipe, building and insulating materials*, between the facilities of Manville Corporation at points in the U.S., on the one hand, and, on the other, those points in and east of ND, SD, NE, KS, OK and TX.

MC 116164 (Sub-17), filed April 27, 1982. Applicant: ARROW TRANSPORTATION CO., 1911 N.E. 58th Ave., Des Moines, IA 50313. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, (515) 274–4985. Transporting *lumber, wood products, building and construction materials*, between the facilities of Weyerhaeuser Company and The Celotex Corporation at points in the U.S., on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK and TX.

MC 120764 (Sub-4), filed May 3, 1982. Applicant: EXPEDITE TRUCK LINES, 600 S. Maple Ave., Montebello, CA 90640. Representative: William Davidson, 5501 Pacific Blvd., Suite 200, Huntington Park, CA 90255, (213) 589–6073. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CA.

MC 127505 (Sub-83), filed May 3, 1982. Applicant: R. H. BOELK TRUCK LINES, INC., R.R. 2, Mendota, IL 61342. Representative: Warren A. Goff, 109 Madison Ave., Memphis, TN 38103, (901) 526–2900. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of paper and paper products, between points in Brown County, WI and Muskogee County, OK, on the one hand, and, on the other, points in AR, CO, IL, IN, KS, KY, LA, MS, NM, OK, TN, TX, and WI.

MC 140834 (Sub-4), filed April 27, 1982. Applicant: TURNER TRANSPORTATION, INC., R.R. #2, South Second St., Mitchell, IN 47446. Representative: Andrew K. Light, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204, (317) 638–1301. Transporting *transportation equipment*, in drive-away service, between points in Jennings and Lawrence Counties, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141464 (Sub-5), filed April 28, 1982. Applicant: TOM SMITH TRUCKING CO., a corporation, 2277 N. Locust St., Canby, OR 97013. Representative: Robert G. Harrison, 4299 James Dr., Carson City, NV 89701, (702) 882–5649. Transporting *food and related products*, between points in CA, OR, WA, UT, AZ, CO, NM, ID, TX, and OK.

MC 142124 (Sub-2), filed April 29, 1982. Applicant: PACKAGE DELIVERY, INC., 421 W. Tremont Ave., Charlotte, NC 28203. Representative: E. H. Van Deusen, P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in NC and SC, on the one hand, and, on the other, points in NC, SC, GA, TN, KY, VA and WV.

MC 143154 (Sub-15), filed April 29, 1982. Applicant: A & S TRUCKING, P.O. Box 4027, Missoula, MT 59806. Representative: Charles A. Murray, Jr., 2822 Third Ave. N., Billings, MT 59101, (406) 252–4165. Transporting *general commodities* (except classes A and B explosives and household goods), between points in MT, ID, WA, OR, CA, UT, NV, AZ, NM, CO, WY, ND, SD, TX, MN, WI, MI, IL, IN, KS, MO, AR, KY, TN, FL, GA, OH, PA, MD, NY, NJ, MA, VA, WV, OK, IA and NE.

MC 143165 (Sub-6), filed April 26, 1982. Applicant: MC CLELLAND LUMBER TRANSPORTS, P.O. Box 73, Cuba, MO 65453. Representative: Charles W. McClelland (same address as applicant), (314) 885–2160. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of paint and sealers, between points in the U.S. (except AK and HI), under continuing contract(s) with Prismo Universal Corporation, of East Point, GA.

MC 143185 (Sub-6), filed April 28, 1982. Applicant: CHARLES G. LAWSON TRUCKING, INC., P.O. Box 2805, Montgomery, AL 36105. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., Arlington, VA 22210, (703) 525–4050. Transporting *food and related products*, (1) between Baltimore, MD, and points in Pike County, AL, Sussex County, DE, and Vigo County, IN, (2) between Baltimore, MD, on the one hand, and, on the other, points in AL, and (3) between points in Pike County, AL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 149295 (Sub-2), filed April 28, 1982. Applicant: H & W HOT SHOT DELIVERY SERVICE, INC., 13907 Gainsville, Houston, TX 77015. Representative: Joe G. Fender, 9601 Katy Freeway, Suite 320, Houston, TX 77024, (713) 827–1407. Transporting *Mercer commodities*, and *metal products*, between points in TX and LA.

MC 150724 (Sub-11), filed April 26, 1982. Applicant: DONALD SANTISI TRUCKING COMPANY, 340 Victoria Rd., P.O. Box 4145, Youngstown, OH 44515. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215, (614) 228–8575. Transporting *meats, meat products and meat byproducts and articles distributed by meat packing houses*, as described in Section A and C, Appendix I, to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, between points in the U.S. (except AK and HI), under continuing contract(s) with Swift Independent Packing Company of Chicago, IL.

MC 154695 (Sub-1), filed May 3, 1982. Applicant: ATLANTIC TRANSPORTATION COMPANY, a corporation, P.O. Box 82000, Atlanta, GA 30366. Representative: Paul M. Daniell, Suite 1200, 235 Peachtree St., N.E., Atlanta, GA 30303, (404) 522–2322. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Atlantic Steel Company, of Atlanta, GA.

MC 156045 (Sub-3), filed April 30, 1982. Applicant: H. P. LEASING, INC., 44 Chandler Dr., Somerset, MA 02726. Representative: Francis E. Barrett, Jr., 100 Industrial Park Rd., Hingham, MA 02043, (617) 749–6500. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contracts with (1) Eastern Company, d.b.a. Eastco, of Westwood, MA, (2) Handy Pax Inc., of Randolph, MA, and (3) U.S. Textile Co., Inc., of Fall River, MA.

MC 157555 (Sub-1), filed April 28, 1982. Applicant: E. CLAYTON OWEN, d.b.a. OWEN TRANSPORT, 7 Glen Carran Circle, Sparks, NV 89431. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701, (702) 882–5649. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in OR, WA, ID, CA, NV, UT, CO, AZ, and NM.

MC 158414, filed April 29, 1982. Applicant: HUB TRUCKING, INC., P.O. Box 190, U.S. Hwy 431 So., Wedowee, AL 36278. Representative: Wade H. Brown, P.O. Box 217, Bessemer, AL 35021, (205) 428–8629. Transporting (1) *lumber and wood products and building materials*, between points in Dallas County, AL, on the one hand, and, on the other, points in FL, GA, LA, MS, NC, SC, TN, TX and VA, (2) *textile mill products*, between points in Randolph County, AL, Berrien, Decatur and Jeff Davis Counties, GA on the one hand, and, on the other, points in AR, CA, ID, IL, IN, MO, OK, OR, TX and WA, (3)

lumber and wood products and furniture and fixtures, between points in Clay County, AL, on the one hand, and, on the other, points in AZ, CA, CT, FL, IL, IN, IA, LA, MD, MA, MS, NJ, NY, NC, OH, PA, SC, TX, UT and VA, (4) *furniture and fixtures and metal products,* between points in Randolph County, AL, on the one hand, and, on the other, points in GA, FL, IL, KY, MD, MA, MO, NC, OH, SC, VA and DC, and (5) *pre-cut log buildings, building materials and lumber and wood products,* between points in Whitfield County, GA, on the one hand, and, on the other, points in AR, FL, IL, LA, MI, NC, OH, PA, SC, TN, TX and WV.

MC 161494, filed May 3, 1982. Applicant: THOMAS O. GOESSL, d.b.a. T.O.G. TRUCKING, Route 1, Box 60, Stetsonville, WI 54480. Representative: Standley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424, (612) 927–8855. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of metal products, between points in the U.S. (except AK and HI), under continuing contract(s) with Arrow Tank & Engineering Co., of Minneapolis, MN.

MC 161645, filed April 28, 1982. Applicant: A.W. McAFEE, d.b.a. McAFEE TRUCKING, Route 1, Box 469, Lowell, AR 72745. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702, (501) 521–8121. Transporting *cement,* between points in Allen and Neosho Counties, KS, and Mayes County, OK, on the one hand, and, on the other, points in Benton County, AR.

MC 161704, filed April 27, 1982. Applicant: BERTS TOWING RECOVERY CORPORATION, 173rd and Kennedy Ave., P.O. Box 2100, Hammond, IN 46323. Representative: Harry J. Harman, 700 Harrison Bldg., 143 West Market St., Indianapolis, IN 46204, (317) 634–4242. Transporting (1) *wrecked, disabled, and repossessed motor vehicles,* (2) *freight trailers,* and (3) *replacement motor vehicles and freight trailers,* between points in Lake, Porter, LaPorte, and Newton Counties, IN, and Cook and Will Counties, IL, on the one hand, and, on the other, points in IA, IL, IN, KS, KY, MA, MI, MN, MO, NC, ND, NE, NY, OH, OK, PA, SC, SD, TN, VA, WI, and WV.

MC 161715 filed April 27, 1982. Applicant: THOMAS M. MURPHY AND RICHARD J. MURPHY, 8455 Verree Rd., Philadelphia, PA 19111. Representative: Raymond A. Thistle, Jr., Five Cottman Ct., Homestead Rd. & Cottman St., Jenkintown, PA 19046, (215) 576–0131. Transporting *general commodities* (except classes A and B explosives and household goods), between points in PA in the east of Bedford, Blair, Centre, Clinton, Lycoming, Sullivan, and Bradford Counties, PA, on the one hand, and, on the other, points in NJ.

MC 161735, filed April 29, 1982. Applicant: MOTOR COACH TOURS, INC., 13 Syossett Lane, Cazenovia, NY 13035. Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ 07076, (201) 322–5030. As a *broker,* at Cazenovia, NY, in arranging for the transportation of *passengers and their baggage,* between points in the U.S.

Volume No. OP4–167

Decided: May 12, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 89716 (Sub-59), filed May 3, 1982. Applicant: DICK JONES TRUCKING, P.O. Box 965, Powell, WY 82435. Representative: Jerome Anderson, 100 Transwestern I, Billings, MT 59101, (406) 248–2611. Transporting (1) *petroleum, natural gas and their products,* between points in WY, on the one hand, and, on the other, points in ND, SD, NE and CO, and (2) *crude petroleum,* between points in ND and SD, on the one hand, and, on the other, points in MT, WY and CO.

MC 125386 (Sub-2), filed May 3, 1982. Applicant: BULLOCK'S, INC., East Monroe St., Maquoketa, IA 52060. Representative: Carl E. Munson, 469 Fischer Bldg., P.O. Box 796, Dubuque, IA 52001, (319) 557–1320. Transporting *metal products,* between points in Scott County IA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 143786 (Sub-7), filed May 4, 1982. Applicant: HAL MAST TRUCKING CO., INC., Route 1, Box 259, Sugar Grove, NC 28679. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Bldg., Charlotte, NC 28204, (704) 372–6730. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continung contract(s) with Associated Meats, Inc., of Silver Spring, MD, and Swift Independent Packing Company, of Chicago, IL.

MC 152146 (Sub-4), filed May 3, 1982. Applicant: FAR WEST TRANSPORTERS, INC., 14901 Chandler Rd., Omaha, NE 68138. Representative: Arlyn L. Westergren, 9202 W. Dodge St., Suite 201, Omaha, NE 68114, (402) 397–7033. Transporting *building materials,* between points in Douglas and Sarpy Counties, NE, on the one hand, and, on the other, points in AZ, CA, CO, ID, NV, NM, OK, TX, UT and WY.

MC 152706 (Sub-5), filed May 4, 1982. Applicant: MIDWEST OIL TRANSIT, INC., P.O. Box 68023, Indianapolis, IN 46268. Representative: Robert B. Hebert, 777 C of C Bldg., Indianapolis, IN 46204, (317) 639–4511. Transporting *petroleum and coal products,* between Indianapolis, IN and Louisville, KY, on the one hand, and, on the other, points in Champaign and Vermilion Counties, IL.

MC 160596, filed April 29, 1982. Applicant: NANCY BAER TRUCKING INC., 880 Conrad Ave., Jasper, IN 47546. Representative: Barbara J. Gears, 2225 Hwy 41-North, Evansville, IN 47711, (812) 423–0389. Transporting *cleaning compounds, gym bags, molded plastic articles, greeting cards, suntan products and bath products,* between Cincinnati, OH, and points in Robertson County, TN, Green County, KY, Calhoun County, AL, and Hidalgo County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Nasco Inc. and its subsidiaries.

MC 160906, filed May 3, 1982. Applicant: LEE LUNDE, d.b.a. VIKING OIL AND HOTSHOT SERVICES, Mohall, ND 58761. Representative: Charles E. Johnson, Box 2056, Bismarck, ND 58502, (701) 756–7112. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Dover Corporation—Norris Division, of Williston, ND, and National Supply Company, a division of Armco Inc., of Mohall, ND.

MC 161586, filed May 3, 1982. Applicant: JACK GREESON, d.b.a. GREESON TRUCKING, 304 N 8th St., Midlothian, TX 76065. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245, (214) 358–3341. Transporting *chemicals and related products,* between points in Ellis County, TX, on the one hand, and, on the other, points in NM, NY, NJ, NC, GA, MO and MI.

MC 161786, filed April 30, 1982. Applicant: K & L TRANSPORT, INC., 417 Washington Ave., North Haven, CT 06473. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415, (212) 263–2078. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CT, on the one hand, and, on the other, points in AR, CA, CO, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, NC, NH, NJ, NY, OH, OK, OR, PA, RI, SC, TN, TX, VA, VT, WA, WI, WV and DC.

MC 161796, filed May 3, 1982. Applicant: JERRY D. RAINEY, d.b.a. J.R. ExPRESS, Greenland Road, Anderson, SC 29622. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328, (404) 256–4320. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Clark-Schwebel Fiber Glass Corporation, of Anderson, SC.

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Decided: May 11, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 44927 (Sub-5), filed May 4, 1982. Applicant: PRO EXPRESS, 1225 W. Washington Blvd., Montebello, CA 90640. Representative: Wyman C. Knapp, Suite 1800, 707 Wilshire Blvd., Los Angeles, CA 90017, (213) 627–8471. Transporting *electrical equipment and supplies,* between points in Los Angeles, Orange, Santa Barbara, Ventura, San Bernardino, Riverside, and San Diego Counties, CA.

MC 143406 (Sub-6), filed May 5, 1982. Applicant: MICHEL PROPERTIES, INC., Stenersen Lane, Cockeysville, MD 21030. Representative: Walter T. Evans, 4304 East-West Hwy, Bethesda, MD 20814, (301) 657–2636. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Nabisco Brands, Inc., of New York, NY, and its subsidiaries.

MC 143446 (Sub-5), filed May 5, 1982. Applicant: McCALLISTER BROTHERS, INC., 510 Signal Dr., P.O. Box 2114, Rock Springs, WY 82901. Representative: Ward A. White, P.O. Box 568, Cheyenne, WY 82001, (307) 634–2184. Transporting (1) *Mercer commodities,* and (2) *those commodities* which because of their size or weight require the use of special handling or equipment, between those points in the U.S. (except AK and HI), in and west of ND, SD, NE, KS, OK, TX and LA.

MC 143787 (Sub-9), filed April 30, 1982. Applicant: ADMIRAL TRANSPORT CORPORATION, 921 Pulliam Ave., Worland, WY 82401. Representative: Winston A. Hollard, P.O. Box 1169, Arvada, CO 80001–1169, (303) 425–0384. Transporting *non-alcoholic beverages,* between points in Weber County, UT, on the one hand, and, on the other, points in AZ, CO, ID, NM, MT, NV and WY, under continuing contract(s) with Admiral Beverage Corporation, of Ogden, UT.

MC 144177 (Sub-2), filed May 6, 1982. Applicant: BILL'S MOBILE HOME TRANSPORT, INC., 4900 Laurel Rd., Billings, MT 59101. Representative: Joel E. Guthals, P.O. Box 1977, Billings, MT 59101, (406) 245–3071. Transporting (1) *trailers* designed to be transported by passenger automobiles and other vehicles, and (2) *buildings and buildings in sections,* between points in AZ, CO, ID, KS, MT, NE, NV, MN, ND, OK, OR, SD, UT, WA and WY.

MC 146807 (Sub-38), filed May 3, 1982. Applicant: S-n-W ENTERPRISES, INC., P.O. Box 1131, Wilkes-Barre, PA 18702. Representative: Edward F. V. Pietrowski, 430 Scranton Life Bldg., Scranton, PA 18503, (717) 346–5761. Transporting *perlite,* between points in Lake County, IL, on the one hand, and, on the other, points in MD, PA, NY, NJ, MO, IN, TN, OK, KS, LA, TX, OH, MI, AR, GA, FL, NC, SC, VA and DC.

MC 151637 (Sub-4), filed May 3, 1982. Applicant: LARRY BREEDEN TRUCKING, INC., 1301 Fayetteville Rd., Van Buren, AR 72956. Representative: Don Garrision, P.O. Box 1065, Fayetteville, AR 72702, (501) 521–8121. Transporting *paper articles and plastic articles,* between points in Sebastian County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159367 (Sub-1), filed May 3, 1982. Applicant: MID-AMERICA TRAVEL CENTERS, INC., 508 6th St., Grundy Center, IA 50638. Representative: Martha Martell, 600 Fifth Ave. Plaza, Des Moines, IA 50309, (515) 282–6068. Transporting *passengers and their baggage,* in the same vehicle with passengers, in round-trip charter operations, beginning and ending at points in Blackhawk County, IA, and extending to points in the U.S. (including AK, but excluding HI).

MC 161837, filed May 4, 1982. Applicant: FIRST NATIONAL TRAVEL SERVICE, INC., 126 E. Main St., Norman, OK 73069. Representative: Glenda Heinsius (same address as applicant), (405) 364–1130. To operate as a *broker,* at Norman, OK, in arranging for the transportation of *passengers and their baggage,* between points in OK, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP4–170

Decided: May 11, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

Applicant: POLMAN TRANSFER, INC., Rt. 3 Box 470, Wadena, MN 56482. Representative: Robert P. Sack, 837 Apollo Rd., Eagan, MN 55121, (612) 452–8770. Transporting *food products,* between points in Todd County, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 144547 (Sub-16), filed April 20, 1982. Applicant: LEASING SYSTEMS, INC., 1346 E. Taylor St., San Jose, CA 95133. Representative: Gary L. Teskey (same address as applicant), (408) 286–3051. Transporting *Liquor, wine, and distilled products,* between points in AZ, CA, ID, NM, OR, UT, WA, WY, CO, TX, OK, KS, NE, NV, IA, MO, and IL, under continuing contract(s) with Frank-Lin Distillers, a Corporation, of San Jose, CA.

MC 161827, filed May 3, 1982. Applicant: A. M. DELIVERY EXPRESS, INC., P.O. Box 16235, Chattanooga, TN 37416–0235. Representative: Edward L. Moore, Rt. #3, Box 148, Decatur, TN 37322, (615) 334–9050. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 156227 (Sub-1), filed May 3, 1982. Applicant: STATELINE SYSTEMS, INC., P.O. Box 101020, Nashville, TN 37210. Representative: Stephen L. Edwards, 806 Nashville Bank & Trust Bldg., 315 Union St., Nashville, TN 37201, (615) 244–2926. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (a) between points in TN, on the one hand, and, on the other, points in AL, AR, GA, KY, MS, and TN, and (b) between points in Wilson County, TN, on the one hand, and, on the other, points in Charleston County, SC.

MC 158657, filed May 4, 1982. Applicant: PATRICK A. BARRETT, d.b.a. SHAMROCK ENTERPRISES, 2540 Gail Dr., Riverside, CA 92509. Representative: Robert Fuller, 13215 E. Penn St., Ste. 310, Whittier, CA 90602, (213) 945–3002. transporting *petroleum products,* between points in CA, on the one hand, and, on the other, points in AZ, CO, ID, MT, ND, NM, NV, TX, UT, and WY.

MC 159467 (Sub-2), filed May 3, 1982. Applicant: JOOR TRUCKING, INC., 52nd St., New Rochelle, NY 10801. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, (201) 836–1144. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Seven-Up Bottling of St. Louis, of Hazelwood, MO.

Volume No. OP5–106

Decided: May 11, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 31389 (Sub-338), filed May 3, 1982. Applicant: McLEAN TRUCKING COMPANY, P.O. Box 213, Winston-Salem, NC 27154. Representative: Daniel R. Simmons (same address as applicant), 919–721–2433. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. under continuing contract(s) with Union Carbide Corporation of Danbury, CT.

MC 37398 (Sub-5), filed May 3, 1982. Applicant: JOHN J. BOYCE TRANSPORTATION, INC., West End Ave., P.O. Box 663, Hammonton, NJ 08037. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110, 215–561–1030. Transporting *food and related products*, (except in bulk), between points in the U.S. (except AK and HI).

MC 130189 (Sub-3), filed May 3, 1982. Applicant: SHENANDOAH TOURS, INC., 2309 Poplar St., Staunton, VA 24401. Representative: Robert E. Everidge (same as applicant), 703–885–1528. As a *broker* at points in VA, in arranging for the transportation of *passengers and their baggage* in the same vehicle with passengers, between points in the U.S.

MC 142649 (Sub-8), filed May 3, 1982. Applicant: H. O. SMESTAD CO., P.O. Box 2904, Great Falls, MT 59403. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343–3071. Transporting *such commodities* as are dealt in by grocery and food business houses, between points in the MT, ND, and WY, on the one hand, and, on the other, points in CA, MT, ND, OR, TN, WA, and WY.

MC 144999 (Sub-10), filed May 3, 1982. Applicant: JEM TRUCKING COMPANY, INC., P.O. Box 217, Wilkesboro, NC 28697. Representative: Fred W. Johnson, Jr., P.O. Box 1291, Jackson, MS 39205, (601) 355–3543. Transporting *food and related products* between points in U.S. (except AK and HI), under continuing contracts with Geraphyl, Inc., of Bristol, TN, and Lowe's Food Stores of Wilkesboro, NC.

MC 148299 (Sub-1), filed April 28, 1982. Applicant: CHAMY TRANSPORT LTD., 3080 Bernard Pilon St., St. Mathieu de Beloeil, Quebec, Canada J3G 4S5. Representative: W. Norman Charles, P.O. Box 724, Glens Falls, NY 12801, 518–792–0957. Transporting in foreign commerce *general commodities* (except classes A and B explosives and household goods), between ports of entry on the international boundary line between the United States and Canada, on the one hand, and, on the other, points in the U.S. (including AK but excluding HI).

MC 151118 (Sub-22), filed May 3, 1982. Applicant: MDR CARTAGE, INC., 516 West Johnson, Jonesboro, AR 72401. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701, (601) 335–3576. Transporting *transportation equipment* between points in Craighead County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151359 (Sub-3), filed May 3, 1982. Applicant: PAC-WEXT CARRIERS, INC., P.O. Box 873, Los Alamitos, CA 90720. Representative: Miles L. Kavaller, 315 S. Beverly Dr., Suite 315, Beverly Hills, CA 90212, (213) 277–2323. Transporting *general commodities* (except household goods, classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 152608, filed April 27, 1982. Applicant: NICHOLSON TRUCKING, INC., 1532 S.E. 3rd Ave., Portland, OR 97214. Representative: Paul C. Nicholson (same address as applicant), 503–235–8375. Transporting *general commodities* (exept classes A and B explosives, and household goods), between points in AZ, CA, CO, ID, MT, NE, NM, NV, OK, OR, TX, UT, WA, and WY.

MC 159629, filed May 3, 1982. Applicant: CONSOLIDATED SHIPPERS, INC., P.O. Box 962, North Little Rock, AR 72115. Representative: James M. Duckett, 221 W. 2nd, Suite 411, Little Rock, AR 72201, (501) 375–3022. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AR, KS, KY, GA, AL, TN, MS, LA, OK, MO, TX, and CA.

MC 160859, filed April 30, 1982. Applicant: ABBOTT BROTHERS TRUCKING, INC., Route 8, Palm St., Paragould, AR 72450. Representative: James M. Duckett, Suite 411, 221 West 2nd, Little Rock, AR 72201, 501–375–3022. Transporting *lumber and wood products*, between points in Craighead County, AR, on the one hand, and, on the other, points in NE, TX, MO, IL, MS and FL.

MC 161788, filed April 30, 1982. Applicant: E. MAC TRANSPORTATION CO., INC., 38 West River St., Providence, RI 02904. Representative: Richard M. Passalacqua, 84 State St., Boston, MA 02109, 617–227–0420. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in MA and RI, on the one hand, and, on the other, points in ME, NH, VT, MA, RI, CT, NY, NJ, PA and NC.

MC 161799 (Sub-1), filed May 3, 1982. Applicant: DAVE R. GRANT HAY, INC., 910 W. 24th St., Ogden, UT 84401. Representative: Bruce W. Shand, 311 S. State St., Suite 280, Salt Lake City, UT 84111, (801) 531–1300. Transporting (1) *metal products* and (2) *lumber, wood products, and* (3) *building materials* (except those in (1) and (2) above), between points in AZ, CA, CO, ID, IL, MT, NM, NV, OR, TX, UT, WA, and WY.

MC 161809, filed May 4, 1982. Applicant: B & S TRANSPORTATION, INC., 915 Visco Drive, Nashville, TN 37210. Representative: Rebecca Lyford, J. C. Bradford Bldg., Suite 916, Nashville, TN 37219, (615) 255–0441. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), (a) between points in Williamsom, Rutherford, Dickson, Davidson, Wilson, Montgomery, Cheatham, Robertson, and Sumner Counties, TN, on the one hand, and, on the other, points in Chirstian, Todd, Caldwell, Muhlenberg, Hopkins, Webster, McLean, Henderson, and Daviess Counties, KY, and Vanderburg County, IN, (b) between points in Williamson, Rutherford, Dickson, Davidson, and Cheatham Counties, TN, on the one hand, and, on the other, points in Montgomery County, TN, and (c) between points in Christian, Todd, Caldwell, Muhlenberg, Hopkins, Webster, McLean, Henderson, and Daviess Counties, KY, on the one hand, and, on the other, points in Vanderburg County, IN.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–13461 Filed 5–18–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested only on the grounds that applicant is not fit, willing, and able to

provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP 3–71

Decided: May 11, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 41294 (Sub-3), filed April 28, 1982. Applicant: UNITED RIGGING & HAULING, INC., 6701 Ammendals Rd., Beltsville, MD 30705. Representaitive: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., N.W., Washington, D.C. 20004, (202) 737–1030. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 50185 (Sub-2), filed April 23, 1982. Applicant: CROZIER BROS. VAN LINES, INC., 460 Tarrytown Rd., White Plains, NY 10607. Representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, DC 20423. Transporting *shipments weighing 100 pounds or less,* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 157555, filed April 12, 1982. Applicant: E. CLAYTON OWEN, d.b.a. OWEN TRANSPORT, 3344 Good Hope Ln., Sparks, NV 89431. Representative: Robert G. Harrison, 4299 James Dr., Carson City, NV 89701, (702) 882–5649. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), betweeen points in the U.S. (except AK and HI).

MC 161665, filed April 23, 1982. Applicant: LYONS TRANSPORT, Route 1, Loyal, WI 54446. Representative: Michael J. Lyons (same address as applicant), (715) 255–9281. Transporting *food and other edible products and byproducts intended for human consumption,* (except alcoholic beverages and drugs) *agricutural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in WI, on the one hand, and, on the other, points in CA.

MC 161684, filed April 27, 1982. Applicant: SERVICE BROKERAGE, INC., P.O. Box 356, Oneida, TN 37841. Representative: Marshall Kragen, 1919 Pennsylvania Ave., N.W., Washington, DC 20006, (202) 466–3778. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161794, filed April 30, 1982. Applicant: R. J. BAKER, 112 S. Glenwood Ave., Aldan, PA 19018. Representative: R. J. Baker (same address as applicant), (215) 622–5158. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP4–171

Decided: May 11, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 161787, filed April 30, 1982. Applicant: EARL KEGLEY AND SAME WILLIAMS, d.b.a. KEGLEY DAIRY, P.O. Box 26, Front St., Piggott, AR 72454. Representative: Thomas B. Staley, 1550 Tower Bldg., Little Rock, AR 72201, (501) 375–9151. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161807, filed May 3, 1982. Applicant: M.C. NOLEN, d.b.a. PGA DISTRIBUTION, P.O. Box 820321, Dallas, TX 75382. Representative: M.C. Nolen (same address as applicant), (214) 494–4091. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161817, filed May 3, 1982. Applicant: WESTERN OVERSEAS CORPORATION, 2801 Temple St., Long Beach, CA 90806. Representative: Michael F. Dugan, (same address as applicant), (213) 595–0616. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP5–107

Decided: May 11, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 155779 (Sub-4), filed April 27, 1982. Applicant: DIAMONDHEAD FREIGHT SYSTEM, INC., P.O. Box 462, Decatur, IN 46733. Representative: Andrew K. Light, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204, (317) 638–1301. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 161818, filed May 3, 1982. Applicant: SEAPOOL, INC., 333 Flower St., Los Angeles, CA 90071. Representative: Milton W. Flack, 8484 Wilshire Blvd., #840, Beverly Hills, CA 90211, (213) 655–3573. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–13480 Filed 5–18–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. OP4–168]

Motor Carriers; Republications of Grants of Operating Rights Authority Prior to Certification; Permanent Authority Decision; Notice

May 12, 1982.

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the of his **Federal Register** notice. Such pleading shall address specifically the issue(s) indicated as the purpose for republication. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 103967 (Sub-28) (republication), filed January 5, 1982; published in the **Federal Register** issue of February 9, 1982; and republished this issue. Applicant: CARRIER VAN SERVICE, INC., 3041 Paseo, Kansas City, MO 64109. Representative: David Earl Tinker, Suite 1112, 1000 Connecticut Ave., N.W., Washington, DC 20036.

In a decision by the Commission, Review Board Number 2 decided April 22, 1982, and finds that performance by the applicant as *a common carrier,* by motor vehicle, in interstate or foreign commerce, over *irregular routes,* transporting *household goods,* (1) between points in Arizona, California, New Mexico, Oklahoma, Texas, Maryland, North Carolina, and South Carolina; and (2) between points in Kansas and Missouri, on the one hand, and, on the other, points in Arizona, California, New Mexico, Oklahoma, Texas, Maryland, North Carolina, and South Carolina; will serve a useful purpose, responsive to a public demand or need. Applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements.

Note.—The purpose of this republication is to include part 2 above, in the scope of authority granted.

MC 157457 (Sub-1) (republication), filed November 9, 1981; published in the **Federal Register** issue of December 1, 1981; and republished this issue. Applicant: CONGOLEUM CARTAGE CORPORATION, 2323 S. 17th St., Elkhart, IN 46514. Representative: H. Barney Firestone, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603, Phone: (312) 263–1600.

In a decision by the Commission, Review Board Number 3, decided April 7, 1981, and finds that performance by the applicant as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) furniture and fixtures; and (2) plastic products, between Seattle, WA; St. Louis, MO; Philadelphia, PA; Roanoke, VA; and Knoxville, TN; and points in Los Angeles County, CA; Marathon County, WI; Winston County, AL; Marion County, MS; and Logan County, OK; and points in Florida, North Carolina, Georgia, and Arkansas, on the one hand, and, on the other, points in Alabama, Georgia, South Carolina, Michigan, Florida, North Carolina, Arizona, Idaho, Oregon, Texas, Missouri, Kansas, Indiana, Mississippi, California, Pennsylvania, Virginia, Tennessee, Wisconsin, Illinois, Kentucky, Nevada, New York, Massachusetts, and Ohio; will serve a useful pubic purpose, responsive to a public demand or need. Applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements.

Note.—The purpose of this republication is to include points in Los Angeles County, CA, in the scope of authority.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–13479 Filed 5–18–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F–171

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, N.E., Atlanta, GA 30309.

MC 160466 (Sub-3–2TA), filed May 7, 1982. Applicant: FOLSOM TRUCKING COMPANY, INC., 101 Folsom Road, P.O. Box 98, McCalla, AL 35111. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Parkway, Birmingham, AL 35209–4786. *Contract* carrier: irregular: *Metal and metal articles, plastic and plastic articles* between the facilities of Folsom Metal Products, Incorporated in or near McCalla, AL on the one hand and on the other TX, LA, OK, MS and AL, under continuing contracts with Folsom Metal Products, Incorporated. Supporting shipper: Folsom Metal Products, Incorporated, P.O. Box 98, McCalla, AL 35111.

MC 145154 (Sub-3–17TA), filed May 7, 1982. Applicant: YOUNG'S TRANSPORTATION CO., 3401 Norman Berry Drive, Suite 246, East Point, GA 30344. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue, N.W., Washington, DC 20005. *Flexible steel*

conduit, copper wire, and armored cable, and materials and supplies used in the manufacture and distribution thereof, between points in Suffolk County, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Steelflex Electro Corp., 145 S. 13th Street, Lindenhurst, NY 11757.

MC 159964 (Sub-3–2TA), filed May 7, 1982. Applicant: VARALLO FOODS, INC., d.b.a. VARALLO TRANSPORT, P.O. Box 40424, Melrose Station, Nashville, TN 37204. Representative: D. R. Beeler, P.O. Box 482, Franklin, IN 37064. *(1) Metal cans, glass, paper, and plastic* between the facilities of American Recyclers at Nashville, TN on the one hand, and, on the other, Atlanta, GA; and *(2) rubber and vinyl products* between the facilities of Tennessee Mat Company, Inc. at Nashville, TN on the one hand, and, on the other, points in GA. Supporting shippers: American Recyclers, 237 Hermitage Ave., Nashville, TN 37210; Tennessee Mat Company, Inc., 1400 3rd Ave. S., Nashville, TN 37210.

MC 155013 (Sub-3–6TA), filed May 7, 1982. Applicant: FREIGHTMASTER, INC., P.O. Box 664, Taylorsville, NC 28681. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064. *Contract;* Irregular. *Metal products* from Anderson, IN to points in NC and Morristown, TN. Under continuing contract(s) with Barber Manufacturing Company. Supporting shipper: Barber Manufacturing Company, P.O. Box 2454, Anderson, IN 46018.

MC 161269 (Sub-3–1TA), filed May 11, 1982. Applicant: ARMSTRONG LOGGING, INC, Rt. 5, Box 279–A, Elizabeth City, NC 27909. Representative: George P. Armstrong, same address as applicant. *Contract,* Irregular: *Lumber, Wood Products, and Waste Paper,* Between Points in NC, VA, MD, NJ, NY, PA, WV, OH, MI, SC, TN, DE. Supporting shipper: Chesapeake Lumber Co., a division of Chesapeake Corp. of VA, West Points, VA 23181.

MC 161941 (Sub-3–1TA), filed May 11, 1982. Applicant: MICHALE G. MORRIS, d.b.a. MORRIS TRUCKING, P.O. Box 1034, Tupelo, MS 38801. Representative: Michael G. Morris same as Applicant. *Contract;* irregular; Finished clothing and unfinished clothing material between Verona, MS and Dallas, TX. Supporting shipper: WGW Clothing Company, P.O. Box 489, Verona, MS 38879.

MC 161942 (Sub-3–1TA), filed May 11, 1982. Applicant: UNIVERSAL TRUCKING OF SPARTANBURG, INC., P.O. Box 1241, Spartanburg, SC 29304. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. *Contract Carrier,* Irregular routes: *Aluminum ingots and sows and liquid aluminum, including materials, equipment and supplies,* between points in the United States in and east of MN, IA, MO, KS, OK, and TX, for the account of Batchelder Blasius, Inc. Supporting shipper: Batchelder Blasius, Inc., P.O. Box 5503, Spartanburg, SC 29304.

MC 151480 (Sub-3–2TA), filed May 11, 1982. Applicant: SUNBELT EXPRESS, INC., P.O. Drawer 13008, Florence, SC 29501. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. *Contract;* irregular; (1) *General Commodities, except household goods,* between points in the US, except AK and HI, under continuing contract with United Forwarding Inc., of Omaha, NE; (2) *General Commodities, except household goods,* between points in the US, except AK and HI under continuing contract with Southeastern Shippers Association, Inc., of Florence, SC; (3) *Fiberboard and pulpboard, waste paper, and materials, supplies and equipment used in the manufacture, sale or distribution of fiberboard or pulpboard,* between Florence, SC, on the one hand, and, on the other, points in the US, in and east of MN, IA, MO, AR and LA under continuing contract with Stone container Corp. of Florence, SC. Supporting shippers: United Forwading Inc., 7000 Building, Suite 445, Omaha, NE 68106, Southeastern Shippers Association, Inc., 1926 Damon Drive, P.O. Box 12262, Florence, SC 29504, Stone Container Corp., P.O. Box 4000, Florence, SC 29502.

MC 161617 (Sub-3–1TA), filed May 12, 1982. Applicant: ALYSON-AARON, INC., Route 3, Box 202, Kanuga Road, Hendersonville, NC 28739. Representative: Evelyn M. Barker (same address as applicant). *Passengers and their baggage in the same vehicle with said passengers, in special and charter operations;* from Hendersonville, NC to Knoxville, TN and return. Supporting shipper: Ramada Inn, I–26 and Hwy. 54E, P.O. Box 669, Hendersonville, NC 28739.

MC 161959 (Sub-3–1TA), filed May 12, 1982. Applicant: FRED MILLER, 9236 Sandler Road, Jacksonville, FL 32244. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Fixtures and supplies used by grocery stores,* between Jacksonville, FL on the one hand, and, on the other, points in GA, AL, MS, LA, TX, SC, NC, and TN. Supporting shipper: Load King Manufacturing Co., 1357 West Beaver Street, Jacksonville, FL 32209.

MC 161960 (Sub-3–1TA), filed May 12, 1982. Applicant: JOHNNY E. ROBINSON, Route 1, Box 74A, Fayette, AL 35555. Representative: Roger C. Williams, 2628 Eighth Street, P.O. Box 2690, Tuscaloosa, AL 35403. *Passengers, and their baggage (charter operations only)* between Fayette County, AL and various point in MS, GA, TN and FL. Supporting shipper: Piney Grove Baptist Church, 338 14th Street, N.W., Fayette, AL 35555.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, P.O. Box 17150, Fort Worth, TX 76102.

MC 109818 (Sub-5–11TA), filed May 10, 1982. Applicant: WENGER TRUCK LINE, INC., P.O. Box 3427, Davenport, IA 52808. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Plastic product and paper and related products and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk),* between the facilities of Trinity Paper and Plastic Corp. in Elizabeth, NJ; Plainfield, Will County, IL; Yulee, Nassau County, FL; and Remington, Fauquier County, VA, on the one hand, and, on the other, all pts in the U.S. (except AK and HI). Supporting shipper: Trinity Paper and Plastics Corporation, 529—5th Avenue, New York, NY 10017.

MC 121281 (Sub-5–1TA), filed May 11, 1982. Applicant: BIG MAC TRUCKING COMPANY, 2400 Augusta Dr., Suite 150, Houston, Texas 77057. Representative: Joe G. Fender, 9601 Katy Freeway, Suite 320, Houston, Texas 77024. *Prestressed concrete products* from points in Tarrant and Austin Counties, TX to points in AR, LA, and OK. Supporting shipper: Everman Corp. Everman. TX.

MC 128449 (Sub-5–2TA), filed May 10, 1982. Applicant: JIMMIE TUCKER TRUCKING, INC., P.O. Box 428, Broken Bow, OK 74728. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Potash (except in bulk),* from the facilities of KCL Sales, Inc., at or near Carlsbad, NM to points in AL, AR, CA, CO, FL, GA, KS, LA, MN, MS, MT, ND, OH, OK, TX, UT, VA and WY. Supporting shipper: KCL Sales, Inc., P.O. Box 990, Tyler, TX 75710.

MC 133194 (Sub-5–9TA), filed May 11, 1982. Applicant: WOODLINE MOTOR FREIGHT, INC., Airport Road, P.O. Box 1047, Russellville, AR 72801. Representative: Scotty D. Douthit, Sr., Same as applicant. *General commodities (except those of unusual value, classes A and B explosives,*

household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from facilities of Emerson Electric Company at Rogers, AR, to and from all points in OK and MO, and from the facilities of International Paper Company at Russellville, AR, to and from all points in OK and MO. Applicant intends to tack with existing authority and applicant intends to interline. Supporting shipper: Emerson Electric Company, 13 Street North, Rogers, AR 72756 and International Paper Company, P.O. Box 1588, Russellville, AR 72801.

MC 133802 (Sub-5–1TA), filed May 10, 1982. Applicant: EMPAK TRANSPORTATION COMPANY, P.O. Box 1974, Olathe, KS 66061. Representative: Arthur J. Cerra, P.O. Box 19251, Kansas City, MO 64141. Contract, irregular; *Plastic bottles* from the Commercial Zone of Creighton, PA, to the Commercial Zones of Chicago, IL; Detroit, MI, Tulsa, OK; and St. Louis and Kansas City, MO, under continuing contract(s) with Penn-Plastics, Inc., of Creighton, PA.

MC 139306 (Sub-5–3TA), filed May 11, 1982. Applicant: STANAGE TRANSPORTATION, INC., 121 Indian Springs Road, Hot Springs, AR 71901. Representative: James M. Duckett, 221 W. 2nd, Suite 411, Little Rock, AR 72201. Contract; Irregular. *Cullet Glass, in bulk,* between points in the U.S. (except AK and HI), under continuing contracts with Westinghouse Electric Corporation, Little Rock, AR.

MC 143165 (Sub-5–2TA), filed May 10, 1982. Applicant: McCLELLAN J. LUMBER TRANSPORTS, P.O. Box 73, Cuba, MO 65453. Representative: Charles W. McClelland, Same address as applicant. *Contract* irregular: *Lumber and lumber products,* between pts in the U.S. (except AK & HI), under contracts with Broadview Lumber Co., Inc., American Log Homes, Inc., Slanker & Co., Denney Lumber Company, Inc., and Binder & Son Lumber Co., Inc.

MC 146457 (Sub-5–6TA), filed May 10, 1982. Applicant: PAISLEY TRUCKING, INC., P.O. Box 208, Durango, IA 52309. Representative: James M. Hodge, 3730 Ingersoll Avenue, Des Moines, IA 50312. *Fertilizer,* From East Dubuque, IL to pts in Dubuque, Delaware and Jones Counties, IA. Supporting shippers(s): Swiss Valley Ag Service, Route 2, Monticello, IA 52310.

MC 146729 (Sub-5–5TA), filed May 10, 1982. Applicant: JAMES S. HELWIG & ALLEN L. GRIMLAND, d.b.a. H & G LEASING, 4525 Irving Blvd. Dallas, TX 75247. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. *Chemicals and allied products* (except Classes A and B explosives, radioactive materials and commodities in bulk) between points in TX on the one hand, and, on the other hand, points in DE, NJ, NY, OH, PA, MO, CA, KS, VA, IL and AL. Supporting shipper(s): Hancock Industries, Inc., 7144 Burns Street, Richland Hills, TX 76118.

MC 148378 (Sub-5–1TA), filed May 10, 1982. Applicant: STOVER TRUCK LINE, INC., 809 E. Court, Beloit, Ks. 67420 Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, Ks. 66612. *Cereal malt beverages and cooperages including empty pallets, empty kegs and empty bottles,* Between Beloit, KS on the one hand and the Commercial zones of St. Paul, MN and St. Louis, MO on the other hand. Supporting shipper: Pestinger Distributing Co., Inc., Hwy. 24, P.O. Box 11, Beloit, KS 67420.

MC 154405 (Sub-5–2TA filed May 11, 1982. Applicant: JAMES GOAD, d.b.a. JOPLIN PITTSBURGH EXPRESS, Route 2, Box 4, Liberal, MO 64762. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804. *General commodities (except Class A and B Explosives),* between pts in Jasper County, MO on the one hand and pts in Benton and Washington Counties, AR; and Montgomery County, KS on the other hand. Supporting shippers: Safeway Stores, Inc., 4525 North Cooper, Oklahoma City, OK 73118; Highway 66 Salvage, Inc., Route 6, Box 64, Joplin, MO 64801; Butler Paper Company, 410 Adele, Joplin, MO 64801; Pennington Drug Company, Fifth and Grand Street, Joplin, MO 64801; and Joplin Supply Company, Fourth and Michigan, Joplin, MO 64801.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6, Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 161824 (Sub-6–1TA), filed May 10, 1982. Applicant: ARIES TRANSPORTATION COMPANY, INC., 13932 E. Valley Blvd., City of Industry, CA 91744. Representative James Bowers (same as applicant). *General Commodities, excluding used household goods, Classes A & B Explosives, Shipments in bulk in tank vehicles,* between points and places in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA and WY for 270 days, an underlying ETA seeks 120 days authority. Supporting shippers: There are 6 supporting shippers. Their statements may be examined in the office listed above.

MC 161915 (Sub-6–1TA), filed May 10, 1982. Applicant: DAVID C. ARNIO, d.b.a. DAVID C. ARNIO TRUCKING, 1224 Granada, Casper, WY 82601. Representative: J. Maurice Andren, 1734 Sheridan Lake Rd., Rapid City, SD 57701. *(a) Mercer Commodities; (b) Machinery; and (c) Electrical Machinery, equipment and supplies,* between points in Richland and Yellowstone Counties, MT; Williams County, ND; and Natrona County, WY on the one hand, and on the other hand, points in CO, ID, KS, MT, NE, ND, OK, SD, TX, UT and WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Karst Enterprises, Inc., POB 1748, Casper, WY 82602; Woods Petroleum, 340 Energy 2 Bldg., 951 W. Werner Ct., Casper, WY 82601; Williams Exploration, 1252 S. Elk St., Casper, WY 82601; and Karst Rental Equipment, POB 1417, Mills, WY 82644.

MC 161913 (Sub-6–1TA), filed May 10, 1982. Applicant: BEN CREGGER, d.b.a. BEAR TRUCKING CO., 1945 Bonnie Brae, Casper, WY 82601. Representative: Robert Cregger (same as applicant). *Machinery, material, equipment and supplies used in, or in connection with the discovery, development, production, refining, manufacturing, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products,* between WY, CO, NM, AZ, UT, NV, ID, MT, ND, SD, KS, and OK, for 270 days. Supporting shipper: ERC Wellheads, P.O.B. 3102, Casper, WY 82602; Rocky Mountain Machinery, P.O.B. 617, Casper, WY 82602; The Western Company of North American, P.O.B. 9710. Casper, WY 82609; and Signal Oilfield Service, Inc., Drawer 79, Casper, WY 82602.

MC 133154 (Sub-6–3TA), filed May 10, 1982. Applicant: BELL TRANSPORT COMPANY, 14000 E 183rd St., La Palma, CA 90623. Representative: Lawrence V. Smart, Jr., 419 N W 23rd Ave., Portland, OR 97210. *Contract carrier:* Irregular routes: *pulp, paper and related products,* between points in OR, WA, CA, NV, ID, UT, AZ, MT, WY, CO, NM and TX, for 270 days. Supporting shipper: Superior Transportation Systems, Inc., 9450 S W Commerce Ct, Ste 400, Wilsonville, OR 97070.

MC 129219 (Sub-6–7TA), filed May 10, 1982. Applicant: C M D TRANSPORTATION, INC., 12340 S.E. Dumold Rd., Clackamas, OR 97045. Representative: Richard C. Shearer, P.O. Box 1970, Lake Oswego, OR 97034. *Contract Carrier,* Irregular routes: *Malt Beverages,* from the facility of General Brewing Company (Lucky Lager) at Vancouver, WA, to points in CA, OR, and WA, for the account of General Brewing Company (Lucky Lager), for 270 days. Supporting shipper: General

Brewing Company (Lucky Lager), 312 W. 8th St., Vancouver, WA 98660.

MC 146303 (Sub-6–2TA), filed May 10, 1982. Applicant: COLO-TEX INDUSTRIES, INC., 1325 Quincy Ave., Englewood, CO 80110. Representative: William J. Lippman, P.O. Box 6060, Snowmass Village, CO 81615. *Meat and meat products* from Garden City, KS to points in CT, IL, MI, MA, MS, MD, NH, NJ, NY, OH, PA and WI for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Kansas Process Beef, Inc., P.O. Box 957, Garden City, KS 67846.

MC 161930 (Sub-6–1TA), filed May 7, 1982. Applicant: FLEENOR BROS. LTD., 328 Panorama Crescent, Courtenay, B.C., CD V9N 6V2. Representative: George LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055. *Contract carrier*—irregular routes: (1) *Red cedar shakes and shingles* from the ports of entry on the international boundary line between the U.S. and CD located in WA, to points in TX, OK, MO, KS, AR, IA, NE and WY; (2) *Hazardous materials (Class A and B explosives)* from Carthage, MO, Caspter, WY, and Helliwell, KS, to the ports of entry on the international boundary line between the U.S. and CD located in WA, for 270 days. Supporting shippers: Watkins Sawmills Ltd., P.O.B. 3280, Mission, B.C. V2V 4J4; Canadian Explosives Ltd., 2150 Gull Ave., Comox, B.C. V9N 5P1.

MC 146024 (Sub-6–2TA), filed May 10, 1982. Applicant: G & R PETROLEUM, INC., 253 S.W. 4th Ave., Ontario, OR 97914. Representative: Timothy R. Stivers, P.O.B. 1576, Boise, ID 83701. *Contract Carrier,* Irregular routes: *Fertilizer,* from Kennewick and Finley, WA to points in Malheur County, OR and Ada, Canyon, Gem, Owyhee, Payette and Washington Counties, ID for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Agro-West, Inc., P.O.B. 594, Wilder, ID 83676 and Union Fertilizer, Inc., P.O.B. 816, Nampa, ID 83651.

MC 149036 (Sub-6–8TA), Filed May 10, 1982. Applicant: MAHAFFEY'S WAREHOUSE, INC., P.O. Box 317, Yellow Jacket, CO 81335. Representative: James F. Crosby & Associates, 7363 Pacific St., Suite 210B, Omaha, NE 68114. *Beer and wine,* from Fresno and Los Angeles, CA and Longview, TX (and points in their commercial zones) to Gallup and Farmington, NM (and points in their commercial zones), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Gallup Sales Company, 530 E. 66th Ave., Gallup, NM 87301.

MC 116045 (Sub-6–2TA), Filed May 10, 1982. Applicant: NEUMAN TRANSIT CO., INC., P.O. Box 38, Rawlins, WY 82301. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264. *Sulphuric acid, in bulk,* from Grants, Gallup and Waterflow, NM together with a fifteen mile radius of each and from Gila County, AZ to the facilities of Energy Fuels Nuclear, Inc., near Blanding, UT for 270 days. Supporting shippers: Energy Fuels Nuclear, Inc., Suite 900, 3 Park Central, 1515 Arapahoe, Denver, CO 80202; Western Nuclear, Inc., P.O. Box 71, Riverton, WY 82501; and Phillips Petroleum Company, 836 Adams Building, Bartlesville, OK.

MC 161917 (Sub-6–1TA), Filed May 10, 1982. Applicant: NORTHWEST MOTOR FREIGHT, 4216 S. 160th, Seattle, WA 98188. Representative: Richard H. Johnston (same as applicant). *Contract carrier,* irregular routes, *Such commodities as are dealt in or used by retail chain department stores.* Between points in WA, OR, and ID, for 270 days. Supporting shipper: Mariposa Warehouse Managers, P.O. Box 40, Woodinville, WA 98072–0040.

MC 161916 (Sub-6–1TA), Filed May 10, 1982. Applicant: SANDIA TRUCKING, INC., 4432 San Isidro NW., Albuquerque, NM 87107. Representative: James C. Ash, 2524 Vermont NE., Albuquerque, NM 87110. *Frozen offal in refrigerated vans requiring temperatures of 0°F. or below,* between Los Angeles County, CA and Potter County, TX for 270 days. Supporting shipper: Kal Kan Food, Inc., P.O. Box 58853, Vernon, CA 90058.

MC 148791 (Sub-6–14TA), Filed May 10, 1982. Applicant: TRANSPORT-WEST, INC., 2125 N. Redwood Rd., Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110. *Contract Carrier,* Irregular routes: *Salt and salt products* from points in UT, IA, MO, IL, and OH to points in the U.S., for the account of Domtar Industries, Inc. of Schiller Park, IL, for 270 days. Supporting shipper: Domtar Industries, Inc., 4825 N. Scott St., Schiller Park, IL 60176.

MC 113271 (Sub-6–14TA), Filed May 7, 1982. Applicant: TRANSYSTEMS, INC., P.O. Box 399, Black Eagle, MT 59414. Representative: Kenneth G. Thomas (same as applicant). *Agricultural fertilizer,* in bulk, from Conda, ID and its commercial zone to points in MT for 270 days. Supporting shippers: Peavey, Inc., 730 2nd Avenue So., Minneapolis, MN 55402; Great Plains Crop Management, Inc., P.O. Box 115, Glendive, MT 59446. An underlying ETA seeks 120 days authority.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-13482 Filed 5-18-82; 8:45 am]
BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 603–TA–7]

Certain Airtight Cast-Iron Stoves; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Termination of preliminary investigation.

SUMMARY: On January 4, 1982, at the request of the Division of Unfair Import Investigations, the Commission voted to institute a preliminary investigation pursuant to section 603 of the Trade Act of 1974 (19 U.S.C. 2482) into the possible existence of unfair methods of competition and unfair acts with respect to the importation into the United States and sale of stoves and the effects, if any, of such methods and acts. Notice of this investigation was issued on January 13, 1982, and published in the **Federal Register** on January 20, 1982 (47 F.R. 2946).

The scope of the investigation, as set forth in the Notice, was:

1. Passing off imported copies of domestic airtight cast-iron stoves and causing the consumer to believe that such imported stoves are the domestic stoves, the effect or tendency of which is to destroy or substantially injure the efficiently and economically operated airtight cast-iron stove industry in the United States.

2. Engaging in false and deceptive advertising for the purpose of furthering the belief on the part of the consumer that the imported stoves are the domestic stoves, the effect or tendency of which is to destroy or substantially injure the efficiently and economically operated airtight cast-iron stove industry in the United States.

3. Infringing the common law trademark protection provided to various airtight cast-iron stove companies because respondents' stovds are virtually identical copies, the effect or tendency of which is to destroy or substantially injure the efficiently and economically operated airtight cast-iron stove industry in the United States.

Having conducted an investigation into these matters, the Commission has determined that no further investigatory activity need take place at this time.

However, the Commission will continue to monitor the airtight cast-iron stove market and enforce the orders issued in Commission investigations *Airtight Cast-Iron Stoves*, No. 337–TA–69, and No. 337–TA–106, *Airtight Cast-Iron Stoves*. If the Commission determines that any of the aforementioned unfair acts and unfair methods of competition, or any other unfair acts, are occurring in the future, appropriate Commission action will be taken. The Unfair Import Investigations Division will continue to respond to inquiries from persons seeking advice on how they might comply with the Commission's actions and orders in this matter.

FOR FURTHER INFORMATION CONTACT: Donald R. Dinan, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0488.

Issued: May 13, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–13642 Filed 5–18–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No 337–PA–112]

Certain Cube Puzzles; Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in this case at 9:00 a.m. on May 21, 1982, in the Waterfront Center, Room 201, 1010 Wisconsin Avenue, N.W, Washington, D.C., and the hearing will commence immediately thereafter.

The purpose of the prehearing conference is to review the trial memoranda submitted by the parties, to stipulate exhibits into the record, and to discuss any questions raised by the parties relating to the hearing.

The Secretary shall publish this notice in the **Federal Register.**

Issued: May 11, 1982.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 82–13643 Filed 5–18–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–110]

Certain Methods for Extruding Plastic Tubing; Termination of Respondents

AGENCY: International Trade Commission.

ACTION: Termination of investigation as to respondents Pacific Orient Imports and ABC Jewelry Imports.

SUMMARY: The Commission has terminated the above-captioned investigation as to respondents Pacific Orient Imports (Pacific Orient) and ABC Jewelry Imports (ABC Jewelry) on the basis of motions filed by those respondents. The complainant and the Commission investigative attorney have not opposed the motions.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 U.S.C. 1337a and concerns alleged unfair trade practices in the importation into and sale in the United States of certain plastic bags allegedly made abroad in accordance with the claims of a method patent owned by the complainant in this proceeding, Minigrip, Inc. The motion to terminate the investigation as to Pacific Orient included an affidavit by the owner of Pacific Orient in which he stated that Pacific Orient is a small jewelry importer/wholesaler, which has not imported and does not intend to import the plastic bags involved in this investigation. The motion to terminate the investigation as to ABC Jewelry includes a sworn statement by its owner, which stated that ABC Jewelry has not and will not be in the business of the manufacture, distribution, or sale of the plastic bags involved in this investigation, except for those subject to a 1976 license obtained from complainant.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Neeley, Esq. Office of the General Counsel, telephone 202–523–0079.

Issued: May 10, 1982.

By order of the Commission.

Kenneth R. Mason.

Secretary.

[FR Doc. 82–13644 Filed 5–18–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–122]

Certain Miniature, Battery-Operated, All-Terrain, Wheeled Vehicles; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a compliant was filed with the U.S. International Trade Commission on April 23, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Schaper Manufacturing Co. Division of Kusan, Inc., 9909 S. Shore Drive, P.O. Box 1426, Minneapolis, Minnesota 55440, and A. Eddy Goldfarb, d/b/a A. Eddy Goldfarb and Associates, 19434 Londelius Street, Northridge, California 91324. The compliant alleges unfair methods of competition and unfair acts in the importation of certain miniature, battery-operated, all-terrain, wheeled vehicles ("vehicles") into the United States, or in their sale, by reason of alleged (1) infringement of the claims of U.S. Letters Patent 4,306,375 and (2) false designation of source by reason of the copying of complainant's vehicles. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation; during the investigation, to conduct expedited temporary relief proceedings and to issue (1) a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond, and (2) a temporary cease and desist order; and, after a full investigation, to issue (1) a permanent exclusion order and (2) a permanent cease and desisit order.

AUTHORITY: The authoirty for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

SCOPE OF INVESTIGATION: Having considered the compliant, the U.S. International Trade Commission, on May 12, 1982, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is reason to believe that there is a violation or whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain vehicles into the United States, or in their sale, by reason of alleged (1) infringement of the claims of U.S. Letters Patent 4,306,375, and (2) false designation of origin by reason of copying complainant's vehicles, the effect or tendency of which is to destroy or substantially injure an industry,

efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Schaper Manufacturing Co., Division of Kusan, Inc., 9909 S. Shore Drive, P.O. Box 1426, Minneapolis, Minnesota 55440

A. Eddy Goldfarb, d/b/a A. Eddy Goldfarb and Associates, 19434 Londelius Street, Northridge, California 91324

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

LJN Toys, Ltd., 200 Fifth Avenue, Suite 734, New York, N.Y. 10010

LJN Toys (Hong Kong), Ltd., Tung Ying Bldg., Suite 807, 100 Nathan Road, Tsimshatsui, Kowloon, Hong Kong

Universal International (Holdings) U.S.A., Ltd., 41 Madison Avenue, 18th Floor, New York, N.Y. 10010

Greenman Bros. Inc., 105 Price Parkway, Farmingdale, N.Y. 11735

Larco, Inc., 2413 San Fernando Road, Los Angeles, Calif. 90065

Pensick & Gordon, 6501 Flotilla Street, Los Angeles, Calif. 90040

Esco Imports of Texas, 5671 Business Park, San Antonio, Texas 78218

Soma Traders, Ltd., 417 J. Hotung Ho, 5 Hankow Road, Kowloon, Hong Kong

Fishel Toys, Ltd., 18 Fendwick Street, 5/f, Hong Kong

Milton D. Myer Co., Rothesay Avenue, Carnegie, Penn. 15106

Northern Specialties, 6635 North Baltimore, Portland, Oregon 97203

Novelty Distributing, 3100 West Fourth Street, Owensboro, Ky. 42301

M. W. Kasch Co., 5401 W. Donjes Bay Road, Mequon, Wisc. 53092

(c) M. Brooke Murdock, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 132, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer with instructions to issue a recommended determination as to whether there is a reasonable indication of violation of section 337 forty five days from the date of publication of the notice of investigation in the **Federal Register** and the Commission hereby shortens to five (5) days the period to be allowed for filing exceptions to the recommended determination and for filing alternative findings of fact and conclusions of law under § 210.54 of the Commission's Rules of Practice and Procedure.

(4) The presiding officer shall also establish a schedule for oral presentations concerning the remedy, bonding, and public-interest aspects of the investigation for the purpose of creating an administrative record to be certified to the Commission five (5) days after the recommended determination on violation is issued. In addition the presiding officer shall provide for a prehearing briefing schedule to be published in the **Federal Register** soliciting the written views of any persons interested in the temporary relief phase of the investigation. The transcript of the oral presentations, the prehearing briefs, and the other written comments will constitute the administrative record concerning remedy, bonding, and the public interest to be certified to the Commission. The Commission shall issue its determination on temporary relief thirty days (30) following certification of the record to the Commission.

Responses conforming to the requirements of § 210.21(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.21(b)) must be submitted by each named respondent. Such responses will be considered by the Commission if received not later than 10 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0176.

FOR FURTHER INFORMATION CONTACT: M. Brooke Murdock, Esq., Unfair Import Investigations Division, Room 132, U.S. International Trade Commission, telephone 202–523–0115.

Issued: May 14, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-13645 Filed 5-18-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-114]

Certain Miniature Plug-in Blade Fuses; Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in this case at 9:00 a.m. on June 2, 1982, in the Waterfront Center, Room 201, 1010 Wisconsin Avenue, N.W., Washington, D.C., and the hearing will commence immediately thereafter.

The purpose of the prehearing conference is to review the trial memoranda submitted by the parties, to stipulate exhibits into the record, and to discuss any questions raised by the parties relating to the hearing.

The Secretary shall publish this notice in the **Federal Register.**

Issued: May 11, 1982.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 82-13646 Filed 5-18-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-121]

Certain Plastic-Capped Decorative Emblems; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 13, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of D.L. Auld Company, 1209 North Fifth Street, Columbus, Ohio 43201. An amendment to the complaint was filed on May 3, 1982. The amended complaint (hereinafter, the complaint) alleges unfair methods of competition and unfair acts in the importation of certain plastic-capped decorative emblems into the United States, or in their sale, by reason of alleged direct infringement of the claims of U.S. Letters Patent 4,100,010, U.S. Letters Patent 4,139,654, and U.S. Letters Patent 4,259,388. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue an order excluding said emblems from entry into the United States for the life of the patents in issue and/or issue an order directing respondents to cease and desist from the unfair acts and unfair methods of competition complained of.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on May 12, 1982, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain plastic-capped decorative emblems in the United States, or into their sale, by reason of alleged direct infringement of the claims of U.S. Letters Patent 4,100,010, U.S. Letters Patent 4,139,654, and U.S. Letters Patent 4,259,388, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States,

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served.

(a) the complainant is—D.L. Auld Company, 1209 North Fifth Street, Columbus, Ohio 43201.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Craft Originators, Div. of Dennison Manufacturing Co. of Canada, Ltd., 41 Brockley Drive, Hamilton, Ontario, Canada L8E 3C3

Marklyn Co., Inc., 58 Oakwood Avenue, North Port Credit, Ontario, Canada L5G 3L8

John Brichetto, Jr., d.b.a. Motorsport Graphics, P.O. Box 720076, Atlanta, Georgia

John Brichetto, Sr., d.b.a. Autosport Medallions, P.O. Box 9553, Knoxville, Tennessee 37920

(c) Samuel Bailey, Jr., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation, and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: Samuel Bailey, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–1273..

Issued: May 13, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-13647 Filed 5-18-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-121]

Certain Plastic-Capped Decorative Emblems; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: May 13, 1982.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 82-13648 Filed 5-18-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-170 Through 173 (Preliminary)]

Certain Steel Products From the Republic of Korea

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigation and the scheduling of a conference to be held in connection with the investigations.

EFFECTIVE DATE: May 7, 1982.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 701–TA–170 through 173 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea of certain steel products upon which bounties or grants are alleged to be paid. The products covered in these investigation are as follows: Hot-rolled carbon steel plate, provided for in items 607.6615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated (1982) (TSUSA); hot-rolled carbon steel sheet, provided for in TSUSA items 607.6610, 607.6700, 607.8320, 607.8342, and 607.9400; cold-rolled carbon steel sheet, provided for in TSUSA items 607.8320 and 607.8344; and galvanized carbon steel sheet, provided for in TSUSA items 608.0730 and 608.1300.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Magrath, Office of Industries, U.S. International Trade Commission; telepnone 202–523–0342.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on May 7, 1982, by the United States Steel Corp. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petitions or by June 21, 1982 (19 CFR 207.17). The investigations will be subject to the provisions of part 207 of the

Commission's Rules of Practice and Procedure (19 CFR 207, 44 FR 76457), and particularly subpart B thereof.

Written Submissions

Any person may submit to the Commission a written statement of information pertinent to the subject of these investigations. A signed original and fourteen (14) true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission, Building, 701 E Street, NW., Washington, D.C. 20436, on or before June 7, 1982. All written submissions except for confidential business date will be available for public inspection.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 10:00 a.m., e.d.t., on June 1, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigations, Mr. Lynn Featerstone, telephone 202–523–0242, not later than May 27, 1982, to arrange for their appearance. It is anticipated that parties in support of the imposition of countervailing duties in the investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Record

The records of Commission investigations Nos. 701–TA–86 through 144 (Preliminary), 701–TA–146 (Preliminary), 701–TA–147 (Preliminary), 701–TA–155 through 163 (Preliminary), and 731–TA–53 through 86 (Preliminary), Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, Spain, the United Kindom, and West Germany, will be incorporated in the records of investigations Nos. 701–TA–170 through 173 (Preliminary).

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR 201). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12).

Issued: May 13, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–13651 Filed 5–18–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–46 (Final)]

Certain Steel Wire Nails From Korea; Change of Public Hearing Date

AGENCY: International Trade Commission.

ACTION: Change of date of public hearing in connection with investigation No. 731–TA–46 (Final).

SUMMARY: Notice is hereby given that the United States International Trade Commission has changed the date of the previously announced public hearing in the subject investigation (46 FR 16126). The hearing will now be held on June 22, 1982, beginning at 10:00 a.m., in the U.S. International Trade Commission Building, 701 E St., NW., Washington, D.C.

SUPPLEMENTARY INFORMATION: Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 2, 1982. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m., on June 4, 1982, in Room 117 of the U.S. International Trade Commission Building and must file prehearing statements on or before June 15, 1982. Any person may submit to the Commission on or before July 1, 1982, written statements of information pertinent to the subject matter of the investigation.

FOR FURTHER INFORMATION CONTACT: Judith Zeck, Office of Investigations, U.S. International Trade Commission, (202) 523–0339.

Issued: May 14, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–13652 Filed 5–18–82; 8:45 am]

BILLING CODE 7020–01–M

[Investigation No. 701–TA–164 (Final)]

Prestressed Concrete Steel Wire Strand From Spain

AGENCY: International Trade Commissioner.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 701–TA–164 (Final) to determine, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Spain of prestressed concrete steel wire strand (PC strand) provided for in item 642.11 of the Tariff Schedules of the United States (TSUS) upon which bounties or grants are alleged to be paid.

EFFECTIVE DATE: April 26, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Abigail Eltzroth, Office of Investigations, U.S. International Trade Commission; telephone 202–523–0289.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1981, a petition was filed with the Department of Commerce by counsel for American Spring Wire Corporation, Armco Inc., Bethlehem Steel Corporation, Florida Wire & Cable Company, and Shinko Wire American Inc., alleging that the government of Spain pays or bestows, directly or indirectly, bounties or grants upon the manufacture, production or export of PC strand within the meaning of section 303 of the Tariff Act of 1930 (the Act). As Spain was not at that time a "country under the Agreement" within the meaning of section 701(b) of the Act, there was no requirement for the Commission to conduct a preliminary material injury investigatiion pursuant to section 703(a). On April 12, 1982, Commerce issued a preliminary determination that the government of Spain is providing its manufacturers, producers, and exporters of PC strand with benefits that are bounties or grants.

On April 14, 1982, however, the United States Trade Representative announced that Spain had become a "country under Agreement" (47 FR 16697). As a result of this announcement, Title VII of the Act applies to all countervailing duty investigations of merchandise from Spain. According to section 102 of the Trade Agreements Act of 1979, once

Title VII becomes applicable, any pending investigation under section 303 must terminate. Where a preliminary but not a final determination has been made, the case is to be treated as if the preliminary determination were made under section 703 of the Act as of the date Title VII first applied to the country.

On April 26, 1982, Commerce notified the Commission that it had terminated its investigation under section 303, and that, in accordance with section 102(a)(2) of the Trade Agreement Act of 1979, it was changing the effective date of its preliminary determination to April 14, 1982. Accordingly, the Commission is instituting a final countervailing duty investigation, effective April 26, 1982, the date of receipt of notice from Commerce. The investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CRR 207 (1981), as amended by 47 FR 6190 (Feb. 10, 1982)), and particularly subpart B thereof.

Written Submissions

Any person may submit to the Commission on or before July 1, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen copies of such statement must be submitted. In the event that confidential treatment of the document is requested under § 201.6, at least one additional copy shall be filed in which the confidential business information shall have been deleted and which shall have been marked "nonconfidential" or "public inspection".

Any business information which a submitter desires the Commission to treat as confidential shall be submitted in conformance with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6 (1981)). Each sheet of information for which confidential treatment is desired must be clearly marked at the top "Confidential Business Data". All written submissions, except for confidential business data, will be available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

A staff report containing preliminary findings of facts will be made available to all interested parties on June 21, 1982.

Public Hearing

The Commission will hold a public hearing in connection with this investigation on July 12, 1982, in the Hearing Room of the U.S. International Trade Commission Building, beginning at 10:00 a.m. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 17, 1982. Persons desiring to appear at the hearing and make oral presentations may file a prehearing brief and should attend a prehearing conference to be held at 10:00 a.m., on June 21, 1982, in Room 117 of the U.S. International Trade Commission Building. Prehearing briefs must be filed on or before July 1, 1982.

Testimony at the public hearing is governed by section 207.23 of the Commission's Rules of Practice and Procedure (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to new information. All legal arguments, economic analyses, and factual materials relevant to the public hearings should be included in prehearing briefs in accordance with rule 207.22. Posthearing briefs will also be accepted within a time specified at the hearing.

For further information concerning the conduct of the investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207 (1981), as amended by 47 FR 6190 (Feb. 10, 1982, and part 201, subparts A through E (19 CFR Part 201 (1981), as amended by 47 FR 6188 (Feb. 10, 1982)).

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12 (1981)).

Issued: May 12, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-13649 Filed 5-18-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-95 (Preliminary)]

Stainless Steel Sheet and Strip From France

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 731-TA-95 (Preliminary) to determine, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France of stainless steel sheet, provided for in items 607.7610, 607.9010, and 607.9020 of the Tariff Schedules of the United States Annotated (TSUSA), and stainless steel strip (over 0.01 inch in thickness), provided for in TSUSA items 608.4300 and 608.5700 which are alleged to be sold in the United States at less than fair value.

EFFECTIVE DATE: May 10, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel F. Leahy, Jr., Office of Investigations, U.S. International Trade Commission; telephone 202-523-1369.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted following receipt of a petition filed by members of the Tool and Stainless Steel Industry Committee and the United Steelworkers of America. The Commission must make its determination in the investigation within 45 days after the date of receipt of petition, or by June 24, 1982 (19 CFR 207.17 (1981)). The investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR Part 207 (1981), as amended by 47 FR 6190 (Feb. 10, 1982)), and particularly subpart B thereof.

Written Submissions

Any person may submit to the Commission on or before June 9, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen copies of such statements must be submitted (19 CFR 201.8 (1981), as amended by 47 FR 6188 (Feb. 10, 1982)).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with the investigation for 10:00 a.m., e.d.t., on June 7, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the

conference should contact the investigator for the investigation, Mr. Daniel Leahy, telephone 202–523–1369, not later than June 1, 1982, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of the investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207, as amended by 47 FR 6188 (Feb. 10, 1982)), and part 201, subparts A through E (19 CFR Part 201, as amended by 47 FR 6188 (Feb. 10, 1982)). Further information concerning the conduct of the conference will be provided by Mr. Leahy.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12 (1981)).

Issued: May 13, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-13650 Filed 5-18-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-165 Through 169 (Preliminary)]

Welded Carbon Steel Pipes and Tubes From Brazil, France, Italy, South Korea, and West Germany

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The International Trade Commission hereby gives notice of the institution of investigations Nos. 701–TA–165 through 169 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, France, Italy, South Korea, and West Germany of welded carbon steel pipes and tubes, provided for in item 610.32 of the Tariff Schedules of the United States (TSUS) (1982), upon which bounties or grants are alleged to be paid.

EFFECTIVE DATE: May 7, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Abigail Eltzroth, Office of Investigations, U.S. International Trade Commission; telephone 202–523–0289.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted following receipt of petitions filed by U.S. Steel Corp. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petitions, or by June 21, 1982 (19 CFR Part 207.17). These investigations will be subject to the provisions of Part 207 of the Commission's Rules of Practice and Procedure (19 CFR Part 207, (1981) and 47 FR 6190, Feb. 10, 1982), and particularly subpart B thereof.

Written Submissions

Any person may submit to the Commission on or before June 7, 1982, a written statement of information pertinent to the subject matter of these investigations. A signed original and fourteen copies of such statements must be submitted. In the event that confidential treatment of the document is requested under § 201.6, at least one additional copy shall be filed in which the confidential business information shall have been deleted and which shall have been marked "nonconfidential" or "public inspection".

Any business information which a submitter desires the Commission to treat as confidential shall be submitted in conformance with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6 (1981)). Each sheet must be clearly marked at the top "Confidential Business Data." All written submissions, except for confidential business data, will be available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., on June 2, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the Investigator for the investigations, Ms. Abigail Eltzroth, telephone 202–523–0289, not later than May 26, 1982, to arrange for their appearance. Parties in support of the imposition of countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 201 (1981)), as amended by 47 FR 6190 (Feb. 10, 1982) and part 201, subparts A through E (19 CFR Part 201 (1981)), as amended by 47 FR 6188 (Feb. 10, 1982). Further information concerning the conduct of the conference will be provided by Ms. Eltzroth.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12 (1981)).

Issued: May 13, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-13653 Filed 5-18-82; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

National Crime Information Center Advisory Policy Board; Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on June 16 and June 17, 1982 from 9:00 a.m. until 5:00 p.m. at the Ramada Inn, Steamboat Village, Steamboat Springs, Colorado.

The major topics to be discussed include:

(1) Status of the first phase and format of the second phase of the Interstate Identification Index.

(2) Report of the pilot project on an unidentified dead file as maintained by the State of Colorado and status of pending legislation on establishment of a national file on the unidentified dead.

(3) Expansion of entry criteria of NCIC Wanted Person File to include delinquent juveniles who have escaped or absconded from custody.

(4) The presentation of proposals recommended by local and state users of the NCIC System to enhance the quality and completeness of records in the System.

The meeting will be open to the public with approximately 25 seats available for seating on a first-come first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. W. A. Bayse, FBI, at least

twenty-four hours prior to the start of the session. The notification may be by mail, telegram, cable or hand-delivered note. It should contain the name, corporate designation, consumer affiliation or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC, Federal Bureau of Investigation, Washington, D.C. 20535, telephone number 202–324–2606.

Dated: May 11, 1982.

William H. Webster,

Director.

[FR Doc. 82–13514 Filed 5–18–82; 8:45 am]

BILLING CODE 4410–05–M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting Addendum

May 13, 1982.

Additional changes have been made to the agenda for the May 24–25, 1982 meeting of the National Advisory Committee on Oceans and Atmosphere (NACOA) published in the **Federal Register** of May 10, 1982 (Page 20054). The revised tentative agenda is as follows:

Monday, May 24, 1982 (Room 416)

9:00 a.m.–12:30 p.m.—Plenary
9:00 a.m.–9:30 a.m.—Swear-In Ceremony for New Member; Edward N. Gladish, Manager, Land Services, Champlin Petroleum Co., CA
9:30 a.m.–12:30 p.m.—Review and Approval of Fisheries Panel Report
12:30 p.m.–1:30 p.m.—Lunch
1:30 p.m.–4:00 p.m.—Plenary; Weather Services Report Review of Conclusions
4:00 p.m.–5:00 p.m.—Panel meeting; Ocean Satellite Planning Session
5:00—Recess

Tuesday, May 25, 1982 (Room 416)

8:00 a.m.–9:30 a.m.—Panel Meeting; OCS Revenue Sharing, Chairman: Jack Van Lopik, Topic: Review Proposed Legislation and Refine Position
9:30 a.m.–12:30 p.m.—Plenary
9:30 a.m.–11:30 a.m.—Guest Speaker: ADM John B. Hayes, Commandant, U.S.C.G.
11:30 a.m.–12:30 p.m.—(To Be Announced)
12:30 p.m.–1:30 p.m.—Lunch
1:30 p.m.–3:00 p.m.—Plenary; Action Items and Panel Reports, OCS Revenue Sharing, Ocean Satellites Initiative, Annual Report Review
3:00 p.m.—Adjourn

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, DC 20235. The telephone number is 202/653–7818.

Dated: May 13, 1982.

Steven N. Anastasion,

Executive Director.

[FR Doc. 82–13483 Filed 5–18–82; 8:45 am]

BILLING CODE 3510–12–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82–27)]

Intent To Pay Senior Executive Service Performance Awards

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to pay Senior Executive Service performance awards.

SUMMARY: The National Aeronautics and Space Administration will give performance awards to career members of the Senior Executive Service (SES) as authorized under 5 U.S.C. 5384. The awards will be paid no earlier than June 1, 1982.

ADDRESS: Executive Personnel Management Program, NPD–31, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip D. Waller, telephone 202–755–8825.

James M. Beggs,

Administrator.

May 13, 1982.

[FR Doc. 82–13494 Filed 5–18–82; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Subpanel on Sensory Physiology and Perception; Amended Notice of Meeting

The Subpanel on Sensory Physiology and Perception of the Advisory Panel for Behavioral and Neural Sciences is meeting in Washington, D.C. on May 27–28, 1982. The agenda for this meeting is being amended to include an open session on May 28 from 1 p.m. to 2:30 p.m. For convenience, the meeting notice is being reprinted in its entirety.

Name: Advisory Panel for Behavioral and Neural Sciences Subpanel for Sensory Physiology and Perception
Date and time: May 27 and 28, 1982, 9:00 A.M. to 5:00 P.M.
Place: Room 634, at The National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550
Type of meeting: Part Open—Open 1:00 P.M. to 2:30 P.M. May 28; Closed 9:00 A.M. to 5:00 P.M., May 27; 9:00 A.M. to 1:00 P.M. & 2:30 to 5:00 P.M., May 28
Contact person: Dr. John K. Harting, Staff Associate, Developmental Neurosciences Panel, Room 320, National Science Foundation, Washington, D.C. 20550; telephone 202/357–7428
Summary minutes: May be obtained from the Contact Person, Dr. John K. Harting at the address listed above.

Purpose of panel: To provide advice and recommendations concerning support for research in developmental neuroscience.

Agenda

Open—Discussion of the future of the scientific field of developmental neurosciences.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(C), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

This notice originally appeared in the **Federal Register** on Friday, May 7, 1982, Volume 47, No. 89, page 19832.

M. Rebecca Winkler,

Committee Management Coordinator.

May 14, 1982.

[FR Doc. 82–13678 Filed 5–18–82; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on June 8, 1982, Room 1046, 1717 H Street, NW, Washington, DC. The Subcommittee will review the Department of Energy's Public Draft of the National Plan for Siting High-Level Waste Repositories and Environmental Assessment, the

NRC's FY 1984 and FY 1985 waste management research plans, advances in waste management practices, and other NRC waste management activities.

In accordance with the procedures outlined in the Federal Register on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommitte, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance. The agenda for the subject meeting shall be as follows:

Tuesday, June 8, 1982—8:30 a.m. until the conclusion of business.

Discussion of the topics noted above.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. John C. McKinley or the Staff Engineer, Ms. R. C. Tang (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., DST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: May 14, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–13660 Filed 5–18–82; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and of the full Committee, the following preliminary schedule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published April 13, 1982 (47 FR 15942). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. Those Subcommittee meetings for which it is anticipated that there will be a portion or all of the meetings open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the June 1982 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634–3267, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

**Qualification Program for Safety Related Equipment,* May 19 and 20, 1982, Albuquerque, NM. The Subcommittee will discuss three major program areas (Sandia Qualification Test Evaluation Program, Independent Verification Research Test Program, and Hydrogen Burn Equipment Survivability) conducted by Sandia Laboratory and continue its review of equipment qualification requirements. Notice of this meeting was published May 4, 1982.

**Midland Plant Units 1 and 2,* May 20 and 21, 1982, Midland, MI. The Subcommittee will review the Consumers Power Company application for an operating license for Midland Plant Units 1 and 2. Notice of this meeting was published May 4, 1982.

**Clinch River Breeder Reactor (CRBR),* May 24 and 25, 1982, Washington, DC. The Subcommittee will discuss seismic-related issues regarding the Clinch River Breeder Reactor Construction Permit review. Notice of this meeting was published May 6, 1982.

**Advanced Reactors,* May 26, 1982, Washington, DC. The Subcommittee will discuss the NRC Research Program on advanced reactors in conjunction with the ACRS Report on the NRC Long-Range Research Plan. Notice of this meeting was published May 7, 1982.

**Electrical Systems and Qualification Programs for Safety-Related Equipment,* May 27, 1982, Washington, DC. The Joint Subcommittees will discuss the NRC-sponsored research programs, proposed research funding for FY 1984 and FY 1985, and those parts of the Long-Range Research Plan which relate to the areas for which these two Subcommittees are responsible.

**Class 9 Accidents,* May 28, 1982, Washington, DC. The Subcommittee will discuss the Nuclear Regulatory Commission's Nuclear Plant Severe Accident Research Plan and related items.

**Human Factors,* June 1, 1982, Washington, DC. The Subcommittee will review the Nuclear Regulatory Commission's proposed FY 1984 and FY 1985 Research Programs and budget and will develop specific comments on the NRC's Long-Range Research Plan as each relates to the area of Human Factors.

**Clinch River Breeder Reactor (CRBR),* June 1 and 2, 1982, Washington, DC. The Subcommittee will discuss the seismicity and associated seismic design for the Clinch River Breeder Reactor.

**Safety Research Program,* June 2, 1982, Washington, DC. The Subcommittee will review the NRC Safety Research Program and budget for FY 1984 and FY 1985.

**Reactor Operations and Three Mile Island Unit 2 Action Plans,* June 2, 1982, Washington, DC. The Subcommittee will discuss with members of the NRC Staff and other interested parties two proposed regulations. The first concerns proposed rulemaking to clarify applicability of license conditions and technical specifications in an emergency and would be implemented by adding the necessary clarifications to 10 CFR 50.54, "Conditions of License" and to 10 CFR 50.72, "Notification of Significant Events". The other proposed rule deals with licensing requirements for pending operating license applications. This

proposed rule will modify 10 CFR 50.34 (contents of applications; technical information) and contains the basic requirements of NUREG–0737, "Clarification of TMI Action Plan Requirements".

**Metal Components,* June 7, 1982, Palo Alto, CA. The Subcommittee will be given a status report by nuclear reactor Steam Generator Owners Group on research results and any changes made in steam generator design/operation. Three Mile Island Unit 1 steam generator problems will also be discussed.

**Waste Management,* June 8, 1982, Washington, DC. The Subcommittee will review and comment on the Department of Energy's Public Draft of the National Plan for Siting High-Level Waste Repositories and Environmental Assessment; provide input for the Waste Management Chapter of the FY 1984 and FY 1985 Safety Research Program Review; review NRC Staff waste management activities; and discuss advances in waste management practices.

**Emergency Core Cooling Systems (ECCS),* June 16 and 17, 1982, Idaho Falls, ID. The Subcommittee will discuss General Electric Company's request for a change in 10 CFR Part 100, Appendix K requirements, the NRC Staff's code audit capability, the LOFT ATWS test Nuclear Steam Supply System vendor code predictions and results, and the NRC work on operator accident guidelines and procedures.

**Reactor Radiological Effects,* June 23, 1982, Washington, DC. The Subcommittee will discuss NRC Staff proposed revision to 10 CFR 20 and the use of potassium iodide for thyroid blocking in the event of a radiation accident.

**Washington Public Power Supply System Unit 2 (WPPSS),* June 23 and 24, 1982, Hanford, WA. The Subcommittee will continue the review of the application of Washington Public Power Supply System for an operating license for the WPPSS Nuclear Project Unit 2.

**Clinch River Breeder Reactor (CRBR) and Site Suitability,* June 24 and 25, 1982, Washington, DC. The Subcommittee will continue the site suitability review for the Clinch River Breeder Reactor.

**Perry Nuclear Power Plant Units 1 and 2,* June 28 and 29, 1982, Cleveland, OH. The Subcommittee will continue the review of the application of Cleveland Electric Illuminating Company for an operating license for the Perry Nuclear Power Plant Units 1 and 2.

**Systematic Evaluation Program,* June 30, 1982, Washington, DC. The Subcommittee will review the completion of the Systematic Evaluation Program review on Ginna.

**Grand Gulf Unit 1,* July 1, 1982, Washington, DC. The Subcommittee will continue the review of the Mississippi Power Company application for an operating license for Grand Gulf Unit 1.

**Extreme External Phenomena,* July 1, 1982, Washington, DC. The Subcommittee will review the Office of Nuclear Regulatory Research proposed FY 1984 and FY 1985 research funding and programs in this area for the Long-Range Research Plan.

**Reliability and Probabilistic Assessment,* July 1, 1982, Washington, DC. The Subcommittee will review the Office of Nuclear Regulatory Research proposed FY 1984 and FY 1985 research funding and programs for the Systems and Reliability Analysis (SARA) decision unit.

**Regulatory Activities,* July 6, 1982 (Tentative), Washington, DC. The Subcommittee will review proposed Regulatory Guides and Regulations.

**Safety Research Program,* July 7, 1982, Washington, DC. The Subcommittee will continue its review of the NRC Safety Research Program and budget for FY 1984 and FY 1985.

**Reactor Operations,* July 21 or 22, 1982, Washington, DC. The Subcommittee plans to discuss NRC's enforcement policy, the Inspection and Enforcement (IE) performance apprisal team inspection program and the IE regionalization program.

**Watts Bar,* Date to be determined (July), Washington, DC. The Subcommittee will continue the review of the application of Tennessee Valley Authority for an operating license for the Watts Bar Nuclear Power Plant Units 1 and 2.

**Safety Research Program,* August 11, 1982, Washington, DC. The Subcommittee will provide early input to the RES Staff for their preparation of the Long-Range Research Plan for FY 1985 through FY 1989.

**Transportation of Radioactive Materials,* Date and location to be determined. The Subcommittee will continue its review of the adequacy of the NRC procedures for certifying packages for transporting radioactive materials.

**Metal Components,* Date to be determined, Washington, DC. The Subcommittee will continue the review of pressurized thermal shock.

ACRS Full Committee Meeting

June 3–5, 1982: Items are *tentatively* scheduled.

**A. Midland Nuclear Plant*—Operating license.

**B. Quantitative Safety Goals*—Proposed NRC policy regard Quantitative Safety Goals for Nuclear Power Plants (NUREG–0880).

**C. Reactor Safety Research*—Proposed NRC Safety Research budget for FY 1984 and FY 1985.

**D. Reactor Pressure Vessel Integrity*—Proposed NRC action plan to resolve concerns regarding repressurization of reactor pressure vessels following rapid cooldown transients.

**E. NRC Regulations*—Proposed NRC regulations regarding safety related matters including Application of TMI–2 Lessons Learned to Operating Reactors (10 CFR 50.34); Applicability of License Conditions and Technical Specifications in an Emergency (10 CFR 50.54/50.72); Accreditation of Testing Organizations (10 CFR 50.49(a)); and Evaluation of Alternate Decay Heat Removal Systems (Task Action Plan A–45).

**F. ACRS Subcommittee Activities*—Discuss the status of designated ACRS Subcommittee activities regarding safety related matters including consideration of seismic events in emergency planning; and proposed changes in seismic design methodology.

**G. Meeting with NRC Commissioners (Tentative)*—Discuss ACRS activities regarding quantitative safety goals for nuclear power plants, integrity of reactor pressure vessels, ACRS plans for review of the CRBR, the NRC Long-Range Research Program Plan, and instrumentation for detection of inadequate core cooling.

**H. Three Mile Island Nuclear Plant Unit No. 1*—Briefing regarding causes of and status of steam generator tube damage.

July 8–10, 1982: Agenda to be announced.

August 12–14, 1982: Agenda to be announced.

Dated: May 14, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-13861 Filed 5-18-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Arkansas Power & Light Co. (Arkansas Nuclear One, Unit 1); Exemption

I

The Arkansas Power and Light Company (the licensee) is the holder of Facility Operating License No. DPR–51, which authorizes operation of Arkansas Nuclear One, Unit No. 1. This license provides, among other things, that it is subject to all rules, regulations and

Orders of the Commission now or hereafter in effect.

The facility uses a Babcock and Wilcox pressurized water reactor at the licensee's site located in Pope County, Arkansas.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 5048 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G, is the subject of this Exemption. Subsection III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any mofications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 19, 1981, Arkansas Power and Light Company requested exemption from meeting the schedule requirements for those items as outlined in 10 CFR 50.48(c). The NRC staff discussed the March 19, 1981, request with Arkansas Power and Light Company and it was understood that Arkansas Power and Light Company was requesting exemption from meeting the schedule requirements for those items (of Appendix R Sections III.G and L) as outlined in 10 CFR 50.48(c). By letter dated January 15, 1982, Arkansas Power and Light Company indicated that they were unable to commit to any firm schedule for submitting technical exemptions and design details.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to reexamine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determined whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, Arkansas Nulear One, Unit No. 1 had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of most of these items as documented in letters to Arkansas Power and Light Company. The FPSER supported the issuance of amendment [1] to the operating license of Arkansas Nuclear One, Unit No. 1 which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications except those associated with an alternate safe shutdown capability have been completed. Therefore, Arkansas Nuclear One, Unit No. 1 has had upgrading to a high degree of fire protection already and the extensive reassessment involved in the request for exemption from the schedular dates of § 50.48(c) is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G to Appendix R of 10 CFR Part 50.

In the letter dated January 15, 1982, Arkansas Power and Light Company stated that they were unable to commit to any firm schedule for submitting exemption requests and design details.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Arkansas Nuclear One, Unit No. 1 in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already-completed upgrading of this facility, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on July 1, 1982. This date is based upon the response of all the licensees with regard to the time needed to perform the reassessment required and the redesign of plant features if necessary. All but a few licensees indicated submittal dates prior to July 1, 1982, and many have already made their submittals. Arkansas Power and Light Company did not

[1] Arkansas Nuclear One, Unit No. 1—Operating License No. DPR–51 Amendment 35 supported by FPSER issued August 22, 1978.

indicate a submittal date. Therefore, an exemption should be granted to allow only such time for completion as is consistent with the time needed by other licensees for similar efforts. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G of Appendix R to 10 CFR Part 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to July 1, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to July 1, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3 [1] as required by § 50.48(c)(5) is extended to July 1, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) are calculated, is extended to July 1, 1982;

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the NRC staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to Generic Letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to Generic Letter 81–12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the NRC staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 10th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82–13655 Filed 5–18–82; 8:45 am]

BILLING CODE 7590–01–M

[1] By implication, this includes III.L which specifies the criteria for meeting III.G.3.

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 47 and 70 to Facility Operating License Nos. DPR–71 and DPR–62 issued to Carolina Power & Light Company (the licensee) which revised the Technical Specifications for operation of the Brunswick Steam Electric Plant, Units Nos. 1 and 2 (the facility), located in Brunswick County, North Carolina. The amendments are effective as of the date of issuance.

The amendments revise the Technical Specifications to permit certain, specific core alterations to be performed when the source range nuclear instrumentation are indicating below the otherwise required threshold value.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to this action, see (1) the application for amendments dated April 30, 1982, (2) Amendment Nos. 47 and 70 to License Nos. DPR–71 and DPR–62, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Southport-Brunswick County Library, 109 West Moore Street, Southport, North Carolina 28461. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 7th day of May 1982.

For the Nuclear Regulatory Commission.

Philip J. Polk,

Acting Branch Chief, Operating Reactors Branch #2, Division of Licensing.

[FR Doc. 82–13656 Filed 5–18–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-289]

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit No. 1); Exemption

I

The General Public Utilities Nuclear Corporation (the licensee) and three co-owners are the holders of Facility Operating License No. DPR-50 which authorizes operation of the Three Mile Island Nuclear Station, Unit No. 1 (TMI-1). This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises a pressurized water reactor at the licensee's site located in Dauphin County, Pennsylvania.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these 15 subsections, III.G, is the subject of this Exemption. Subsection III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 19, 1981, as supplemented August 17, 1981, December 15, 1981, and April 15, 1982, the licensee requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

(1) Extend from March 19, 1981, to October 1, 1982, the date for submittal of plans and schedules to achieve compliance with III.G.2 required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to October 1, 1982, the date for filing additional exemptions from Section III.G pursuant to § 50.12(a) and § 50.48(c)(6);

(3) Extend from March 19, 1981, to October 1, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, if such are necessary;

(4) Extend from February 17, 1981, to October 1, 1982, the date from which the installation schedules established in § 50.48(c) (2) and (3) are calculated; and

(5) Exemption from additional fire suppression system protection as required by Section III.G.2 where redundant safe shutdown equipment is located in the same fire area/zone.

Exemption (5) above is under review by the NRC staff, and we have requested that the licensee provide additional information to support that exemption request. Hence, the request for Exemption (5) is not being addressed by this Exemption.

With regard to the other exemption requests, when this fire protection rule was approved by the Commission, it was understood that the time required for each licensee to reexamine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR Part 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the fire protection rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81-12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, TMI-1 had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5-1 (BTP 9.5-1). The BTP 9.5-1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. Several items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in five supplements to the FPSER. The FPSER and its supplements supported the issuance of amendments to the operating license of TMI-1 [1] which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5-1. All of these modifications with the exception of five items which are related to safe shutdown (Section III.G) have been completed. Therefore, TMI-1 has been upgraded to a high degree of

[1] Three Mile Island Unit No. 1—Operating License No. DPR-50: Amendment No. 44 supported by FPSER issued September 19, 1978; Amendment No. 50 supported by Supplement 1 to FPSER issued March 16, 1979; Supplement 2 to FPSER issued April 14, 1979; Supplement 3 to FPSER issued July 21, 1980; Supplement 4 to FPSER issued September 19, 1980; Supplement 5 to FPSER issued November 19, 1980.

fire protection already. With respect to items related to safe shutdown, with the issuance of Appendix R, an extensive reanalysis of the Fire Hazards Analysis for TMI–1 was undertaken and is still in progress. GPU Nuclear with contractor support is applying a significant effort to complete the reassessment and determine modifications which may be necessary to conform with Section III.G. The additional time requested will allow time to quantify in detail the plant specific changes needed to comply with Section III.G. We note also that TMI–1 has not operated since early 1979 due to the July 2, 1979 Commission Order and, in any case, there will be no plant operation before October 1, 1982. Thus, the licensee concludes that the delays requested impose no additional risk to the public.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at TMI–1 in conformance with the requirements of the fire protection rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. However, the Commission has decided to grant an extension for areas (1) through (4) above only until July 1, 1982. It is our position that an extension until July 1, 1982, provides sufficient time for licensees to complete the reassessment required and redesign of modifications, if required. Since all but a few licensees have either indicated submittal dates prior to July 1, 1982, or have already made their submittals, we cannot conclude that sufficient effort has been applied by the licensee towards meeting the requirements of 10 CFR 50.48(c) and Appendix R. Accordingly, we find that because of the already-completed upgrading of this facility and since TMI–1 is not operating, there is no undue risk to the health and safety of the public caused by delay of this reassessment until July 1, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by generic letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G of Appendix R to 10 CFR Part 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to July 1, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to July 1, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G as required by § 50.48(c)(5) is extended to July 1, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) are calculated, is extended to July 1, 1982;

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, as required by § .50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to generic letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to generic letter 81–12 dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the Exemption. If such violation occurs, imposition of a civil penalty will be considered under section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the Exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the NRC staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 10th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation

[FR Doc. 82–13657 Filed 5–18–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant); Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–59 which authorizes operation of the James A. FitzPatrick Nuclear Power Plant. This license provides, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility is comprised of one boiling water reactor at the licensee's site located in Oswego County, NY.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on Feburary 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Two

of these fifteen subsections, III.G. and III.J, are the subject of this Exemption. Section III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3.) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 19, 1981, as supplemented by letters dated June 22, 1981, January 11, 1982, and January 19, 1982, the licensee requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Appendix R as follows:

(1) Extend from March 19, 1981, to June 22, 1981, the date for submittal of an action plan to evaluate the requirements of Section III.G and to provide plans and schedules for the implementation of Section III.J or any exemptions thereto; and

(2) Extend from March 19, 1981, to December 28, 1981, the date for submittal of plans and schedules to implement the requirements of Section III.G or exemption thereto;

(3) Extend to October 31, 1982, the date for completion for plant modifications to satisfy the requirements of Section III.J;

(4) Extend from March 19, 1981, to February 18, 1982, the date for submittal of plans and schedules to implement the requirements of Section III.G.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR Part 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be forumlated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3. of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to Januray 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, where deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the FitzPatrick Plant had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applciations for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued as amendment number 47 to Facility Operating License No. DPR–59 on August 1, 1979. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in supplements to the FPSER. The FPSER and supplementary letters approved modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of appendix A to BTP 9.5–1. All of these modifications have been completed. Therefore, the FitzPatrick plant has upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G to Appendix R to 10 CFR Part 50.

As mentioned earlier there are 14 other subsections which contain criteria for other aspects of fire protection features. One of these, Section III.L., provides the criteria for Alternative Safe Shutdown capability and thus affects the final reassessment and redesign, if necessary, of this feature at the FitzPatrick plant. Another of these, Section III.J, requires that Emergency Lighting be installed. However, modifications in areas where there is access during normal plant operation have not been implemented as required by § 50.48(c). The emergency lighting for areas inaccessible during plant operation is not required until the next extended outage, presently planned for Fall 1983. Other than the above this means that compliance with the remaining applicable sections of Appendix R have been or will be completed on or before the implementation dates required by the Fire Protection Rule.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at the FitzPatrick plant in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. and III.J. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation during our assessment of the licensee's submittal dated February 26, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by generic letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this exemption that requires all such

information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Appendix R to 10 CFR Part 50:

(1) The date, March 19, 1981, for submittal of an action plan to evaluate the requirements of Section III.G and to provide plans and schedule for the implementation of Section III.J as required by § 50.48(c)(5) is extended to June 22, 1981;

(2) The date, March 19, 1981 for filing exemption requests for the requirements of Section III.G as required by § 50.48(c)(6) which includes a tolling provision is extended to February 18, 1982.

(3) The date, March 19, 1981, for submittal of design descriptions of alternate or dedicated shutdown systems to comply with Section III.G.3 as required by § 50.48(c)(5) is extended to February 18, 1982, and

(4) The date, Febraury 17, 1981, from which installation schedules for completion of modifications associated with Section III.G.2 as established in § 50.48(c)(2) and (3) are calculated, is extended to February 18, 1982;

(5) The date for completion of plant modifications to satisfy the requirements of Section III.J is extended to October 31, 1982 except for areas where the installation of the emergency lighting would require or risk plant shutdown. For these latter areas, the required completion date is prior to return to operation from an extended outage as defined in 10 CFR 50.48(c) except that the date for computing the schedules, February 17, 1981, is extended to the date of this exemption.

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in section 8 of Enclosure 1 to generic letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to Generic Letter 81–12 dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be a considered under section 234 of the Atomic Energy Act, as amended. Such a violation will be continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration an environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 10th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc 82–13658 Filed 5–18–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station); Exemption

I

The Vermont Yankee Nuclear Power Corporation (the licensee) is the holder of Facility Operating License No. DPR–28 which authorizes operation of the Vermont Yankee Nuclear Power Station (VY). This license provides, among other things, that it is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

The Facility is a boiling water reactor at the licensee's site located near Vernon, Vermont.

II

Section III.G.3 of Appendix R to 10 CFR Part 50 requires that a fixed fire suppression sstem be installed in an area, room or zone under consideration for alternative, safe shutdown modifications. In the Case of VY, under this provision a fire suppression system would be required in the control room.

The licensee indicated in its February 17, 1982 letter that the fire protection features currently installed in the control room are equal in effectiveness to a fixed fire suppression system and, therefore, requested an exemption from the requirement to install a fixed suppression system in the control room. The licensee's exemption request is based on the following:

—The control room is continually manned.

—Fire detection equipment has been installed generally throughout the control room including in cabinets and other areas not readily visible to operators.

—All electrical penetrations into the control room are sealed.

—Fire dampers have been provided on ventilation lines.

—Portable extinguishers are immediately available to operating personnel.

The modifications, which the licensee's exemption request is based on, are required by Appendix R to 10 CFR Part 50. Therefore, the above modifications alone do not justify an exemption from the requirement to install a fixed fire suppression system in areas where redundant divisions are located. However, the control room is a unique area of the plant that is required to be continually occupied by the operators. In the event of a fire, manual fire suppression would be effective and prompt. Because the operators provide a continuous fire watch in the control room, a fixed suppression system is not necessary to achieve adequate fire protection in the control room. This is similar to the concept reflected in the staff's acceptance, on a short-term basis, of a continuous fire watch as an alternative to fixed suppression systems in other locations when fire protection systems become unavailable (See Section 3.7.7.2 of the BWR Standard Technical Specifications, NUREG–0123, Rev. 3, as an example).

Based on our evaluation, we conclude that the licensee's fire protection features for the control room meet the objectives of Section III.G, "Fire Protection of Safe Shutdown Capability," of Appendix R to 10 CFR Part 50 and, therefore, the licensee's request to be exempted from the requirement to provide a fixed fire suppression system in the control room should be granted.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12 an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption:

With respect to the control room, the licensee is exempt from the requirement of Section III.G.3.b of Appendix R to 10 CFR Part 50 for a fixed fire suppression system.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland, this 10th day of May 1982.

for the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-13659 Filed 5-18-82; 8:45 am]

BILLING CODE 7590-01-M

Abnormal Occurrence; Blockage of Coolant Flow to Safety-Related Systems and Components

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following recurrence of certain incidents was determined to be an abnormal occurrence using the criteria published in the Federal Register on February 24, 1977 (42 FR 10950). Example I.D.4 ("For All Licensees") in Appendix A notes that recurring incidents, and incidents with implications for similar facilities (generic incidents), which create major safety concern can be considered an abnormal occurrence. The following description of the incident also contains the remedial actions taken.

Date and Place—The NRC has received notifications from several nuclear power plant licensees indicating that the heat transfer capabilities in some safety-related and non-safety-related cooling systems were degraded by unanticipated blockage of the coolant flow paths. Table 1 lists several incidents of a generic nature with varying degrees of safety significance. The incidents are listed by date of discovery. The incident discovered at Brunswick Unit 1 was the most significant from the safety standpoint due to the total loss of both redundant trains of the residual heat removal system. The other incidents, which were of lesser safety significance, are other recent examples of the recurrent nature of flow blockage problems which have been experienced. The principal cause for the flow blockage in many of these situations was a buildup of biological organisms.

TABLE 1.—INCIDENTS INVOLVING COOLANT FLOW BLOCKAGE TO SAFETY SYSTEMS AND COMPONENTS

Date, plant, location, and licensee	Event description
1. Sept. 3, 1980; Arkansas Nuclear One; Units 1 and 2; Pope County, Arkansas; Arkansas Power and Light Company (see note 1).	Coolant flow in the service water systems was blocked due to debris from Asiatic clams growing in the system and from a buildup of silt and corrosion products. Containment coolers, high pressure safety injection pump bearing and seal coolers, and containment spray and low pressure injection pump seal water coolers were most significantly affected. Clam shells were also found in the Auxiliary Cooling Water System (ACWS) which serves non-safety-related equipment in the turbine building. Due to design differences, Unit 2 had more severe problem than Unit 1.
2. Mar. 18, 1981; Rancho Seco Unit 1; Sacramento County, California; Sacramento Municipal Utility District (see note 2).	During a refueling outage, the licensee observed that the inlet plenum of the safety-related lube oil cooler on each of the high pressure injection pumps was 80 to 90% clogged with corrosion products. The cause was attributed to excessive corrosion of the lube oil cooler cast steel heads. Routine surveillance testing did not previously verify performance of this equipment.
3. Apr. 25, 1981; Brunswick Units 1 and 2; Brunswick County, North Carolina; Carolina Power and Light Company (see note 3).	Coolant flow in the service water systems was blocked due to debris from marine organisms growing in the system. Species present included American oysters, blue mussels, barnacles, and tubeworms. The Residual Heat Removal (RHR) systems, which provide decay heat removal capability following normal shut downs and during post-accident recirculation cooling, at both units were affected. Some shells were also found in other safety and non-safety related component coolers such as the diesel generator heat exchangers, core-spray pump room cooler and the turbine building component cooling water heat exchangers. Three RHR heat exchangers (both of those on Unit 1 and one on Unit 2) had their baffle plates displaced, as a result of the high differential pressure caused by the change in flow rate, allowing the service water to bypass the heat exchanger tubes. Therefore, the heat exchangers were inoperable.
4. June 9, 1981; San Onofre Unit 1; San Diego County, California; Southern California Edison Company (see note 4).	Growth of gooseneck barnacles on the salt-water discharge pipe of the safety-related component cooling water heat exchangers caused a low coolant flow and the malfunctioning of a butterfly valve. This growth was noticed while making preparations to restart the plant following a 14-month protracted shutdown. No problems were noted previously when the plant was in normal operation with routine flushings of the system with heated water.
5. Aug. 28, 1981; Pilgrim Unit 1; Plymouth County, Massachusetts; Boston Edison Company (see note 5).	While conducting an inspection in conjunction with an NRC Information Notice 81-21, the Reactor Building Closed Cooling Water (RBCCW) heat exchanger baffle plate had deformed allowing water to bypass the heat exchanger tubes. Although the heat exchanger problem involved a design deficiency, the growth of mussels in the Salt Service Water (SSW) system contributed to the degradation of the SSW system capabilities. Pilgrim had experienced problems with mussels growing in the cooling system for several years. The RBCCW system cools both non-safety and safety-related systems. The degradation of the RBCCW heat exchanger affects the heat removal capability of the residual heat removal system, as well as safety-related pump lube oil and bearing coolers and safety-related area coolers. (Note.—The RBCCW heat exchanger design deficiency is being reviewed separately for generic implications as a possible common mode failure mechanisms.)
6. Jan. 14, 1982; Arkansas Nuclear One, Unit 2; Pope County Arkansas, Arkansas Power and Light Company (see note 1).	While the plant was shutdown a weekly surveillance flow test was being conducted of the containment fan cooler heat exchangers. For the "C" cooler, flow dropped from about 1800 gpm to 500-600 gpm within five minutes. A normal flush did not increase flow; however, a high velocity flush did get the flow through the "C" cooler back to about 1300 gpm (technical specification value is 1250 gpm). The "C" and "D" coolers were disassembled and about five gallons of Asiatic clams were removed from the "C" cooler inlet water box; some clams were also found in the "D" cooler inlet water box. Most of the clams were dead. Other coolers were inspected but no significant amount of clams were found.

Notes to table 1:

1. Arkansas Nuclear One, Units 1 and 2 utilize pressurized water reactors designed by Babcock & Wilcox and Combustion Engineering, respectively.
2. Rancho Seco Unit 1 utilizes a pressurized water reactor designed by Babcock & Wilcox.
3. Brunswick Units 1 and 2 both utilize boiling water reactors designed by General Electric.
4. San Onofre Unit 1 utilizes a pressurized water reactor designed by Westinghouse.
5. Pilgrim Unit 1 utilizes a boiling water reactor designed by General Electric.

* * * * *

Nature and Probable Consequence—In a nuclear power plant, it is imperative that the heat generated by the nuclear reactor and the components of safety systems be dissipated to the environs. This process is usually performed by transferring the heat being generated to various cooling systems via heat exchangers and then to a heat sink such as a river, lake or cooling tower. These processes are utilized during normal operations and subsequent to normal plant shutdownns or accidents. Failure to provide adequate cooling could result in severe damage to the safety-related components or systems designed to safely shut down the plant and to mitigate the consequences of a major occurrence (such as a loss of coolant accident, LOCA).

The events described in Table 1, although limited in actual consequence, clearly are precursors to a possible common cause failure that could lead to more serious consequences, particularly in conjunction with postulated accidents. The nature of aquatic fouling in piping systems is such that it may go unnoticed, or not severely degrade system performance, until the system is called upon to function following an incident. Some of the ways that this can be postulated to occur are described below.

a. During normal operation, particularly if an adequate control program is not being followed, fouling organisms can grow in large diameter piping if the flow velocity is low. A quantity of fouling organisms, sufficient to cause severe flow blockages in safety-related coolers under accident conditions, could accumulate in such piping without causing significant flow degradation under normal operating conditions. Therefore, a situation such as this could go undetected for a long time since a large accumulation of fouling organisms would be required before any noticeable flow degradation was observed. These fouling organisms may potentially be slowly swept into components requiring cooling water causing tube plugging and degraded performance. If additional service water pumps are started following an incident, the tendency for live organisms, marine shell fragments, and other debris to be swept down the piping into heat exchangers would increase due to the higher flow velocity.

b. Fouling organisms also thrive in stagnant runs of piping in operating systems or in piping systems which have been inactive for long periods of time. Particularly during initial construction or extended maintenance outages, systems that would normally be operating may be laid-up for months or even years without the implementation of an adequate control program, allowing fouling organisms ample time to become established in systems that otherwise might be unaffected during operation. The concern here is that plants could begin operation without the operators being aware of the fouling that could exist.

An example of this, that did not go undetected by the licensee, is the described occurrence at San Onofre Unit 1. This plant had been shutdown for steam generator tube repairs for over one year. During this time, the periodic flushing of the system with heated water (heat treatment) normally used by the licensee to control the growth of marine organisms, was curtailed. Due to the lack of periodic heat treatment the licensee discovered, after observing a low saltwater coolant flow rate, that gooseneck barnacles were present on the component cooling water heat exchanger discharge tubesheet and in the saltwater discharge piping. The growth of the barnacles effectively (1) reduced the flow area of the piping causing low flow and (2) caused the malfunctioning of a butterfly valve.

Fire protection systems using service water are also prime candidates for fouling by aquatic organisms since they inherently contain stagnant branch lines that are conducive to marine growth. Branch lines in fire protection sprinkler heads generally have orifices of one-half inch. These would be susceptible to plugging. In addition, live organisms or marine shell fragments would be swept toward the open sprinkler head in the event of a fire.

c. Seismically diked emergency ponds utilized by some power plants as the ultimate heat sink could also support the growth of Asiatic clams. If make-up to the pond is from a waterbody in which the Asiatic clams are known to be present, then it is likely that the clams will be found in the ultimate heat sink and possibly in the service water supply header leading to the plant from the ultimate heat sink.

Under design heat loads (e.g., post-LOCA) ultimate heat sink temperatures could reach 110 to 120°F during summer months. This is not enough to cause a substantial mortality of the clam population. Dead clams may be more of a problem than live organisms, since they are more easily swept along by the flow. Therefore, following a LOCA that resulted in high pond temperatures, service water system performance could be gradually degraded if the dead clams are swept into the system. Even if the temperature of the ultimate heat sink does not reach the point that causes clam mortality, clams residing in the service water supply header could still be swept along the piping if the flow velocity is sufficiently high. Since the service water supply headers can be quite long, even a moderately dense infestation may translate into a large volume of clams. A small percentage of these, if swept along the piping, could overburden automatic backwash service water strainers.

d. Although all nuclear power plants are designed to withstand a seismic event, the vibratory motion induced by such an event may cause fouling organisms such as oysters, that attach themselves to piping walls by a strong but brittle bond, to be broken loose in sufficient quantities by the pipe flexure to cause flow blockage in cooling water systems. In a similar manner, during a seismic event, piping severely encrusted with corrosion products may release a substantial amount of debris which can collect in equipment bearing or seal coolers blocking the cooling water flow. In both cases, the buildup of fouling organism or corrosion products may not noticeably degrade system performance during normal operation; however, the performance of redundant systems could be simultaneously degraded following a seismic event. Since the reactor coolant system is seismically designed, a LOCA is not postulated to result from a seismic event. A degradation of the service water system, in this case, would not be an immediate safety concern but may lengthen the time required to go to cold shutdown as a result of the unavailability or diminished heat removal capacity of the shutdown cooling system.

e. Seal coolers are generally provided on pumps that may be called upon to pump heated water from the containment sump following a LOCA; for example, such pumps include the high and low pressure injection pumps, containment spray pumps or residual heat removal pumps. Surveillance testing of these pumps is, by necessity, performed with water at ambient temperature. This is not representative of the temperatures of water encountered during the post-LOCA recirculation mode of operation. Therefore, if flow blockage existed in the pump seal coolers due to the growth of fouling organisms, or a buildup of silt or corrosion products, it could go unnoticed during pump surveillance testing unless flow measurements through the coolers were part of the test. There are two reasons for this: (1) Since the pumped fluid is at ambient temperature, seal cooling may not be necessary and no seal degradation

would be observed even after hours of running without cooling water; and (2) generally, surveillance testing is of such a short duration that no noticeable seal degradation would occur even if cooling flow were necessary for sustained operation. Since pumps required during the post-LOCA recirculation are generally located outside primary containment (in the auxiliary building) degraded pump seals would result in the leakage of radioactively contaminated water outside containment.

Similarly, pumps provided with bearing lube oil coolers could be susceptible to flow blockages due to fouling organisms or the accumulation of corrosion products or silt deposits. Flow blockages in these coolers could also go unnoticed during surveillance testing unless the cooling water flow was monitored. This could result in premature bearing failure when the pumps are needed to run for an extended period of time, e.g., following a LOCA.

The safety concern identified by these events is the possible degradation of the heat transfer capabilities of redundant safety systems to the point where system function is lost. Preventive measures and methods of detecting gradual degradation have been inadequate in certain areas to preclude the occurence. The above postulated events involve a common cause failure mode that can affect redundant systems. Aquatic organisms, mud silt and corrosion products have been the main source of flow blockage in the coolant piping system and associated heat exchangers where events have occurred.

Cause or Causes—A variety of causes lead to the events reported in Table 1. At Arkansas Nuclear One, the first event discovered September 3, 1980, the growth of Asiatic clams was unanticipated in the design and appropriate operational control features were not provided. The design and operational control features that did exist were inadequate to prevent the buildup of mud, silt, and corrosion products from becoming a major problem.

The second event at Arkansas Nuclear One, Unit 2 on January 14, 1982 assumes additional significance as compared to the other described events since it indicates that (1) although the corrective actions taken to prevent buildup of marine organisms may not be totally effective, the increased frequency of surveillance implemented as a result of the previous event allowed the licensee to detect the claim intrusion in its early stages,[1] and (2) the rate of accumulation of the organisms can be rapid. During the surveillance test, the flow dropped from 1800 gpm to approximately 600 gpm over a five minute interval, indicating a sizeable blockage. About six buckets of clams were removed. The event remains under investigation. The licensee is studying the service water piping to identify for inspection any portions of piping that may be conductive to Asiatic clam growth, and other long-term preventative measures; this study is planned to be complete prior to the refueling outage scheduled for October 1983.

At Rancho Seco, the corrosion occurred because the heads were cast steel. A corrosion resistant coating such as epoxy or copper/nickel cladding would have prevented the problem. Existing surveillance testing procedures, however, were also deficient in that the safety-related heat exchanger performance was not verified under appropriate accident conditions.

At Brunswick, the chlorination program, which was part of the program to control the growth of marine organisms, was stopped for approximately 14 months due to potential operational problems and environmental effects. Although operational and administrative controls were inadequate at Arkansas Nuclear One and Brunswick to detect early signs of the problem, the plants were shutdown when the technical specification limits could no longer be met. As previously discussed, the incident at Brunswick has the most safety significance of the incidents described in this report. Unit 1, which was shutdown on April 17, 1981 to begin a scheduled maintenance outage, experienced a total loss of the residual heat removal system on April 25, 1981. In order to provide residual heat removal capacity during the plant shutdown, an alternate cooling flow path had to be established. Because of the problems found on the Unit 1 RHR heat exchangers, the similar heat exchangers in the operating Unit 2 were examined. For RHR heat exchanger 2A, a higher than normal differential pressure at design flow was discovered; however, the baffle plate was not displaced. The baffle plate was found displaced for RHR heat exchanger 2B. Therefore, Unit 2 was shutdown using heat exchanger 2A at reduced capacity. After the unit was in cold shutdown, and alternate cooling flow path was established (as in Unit 1 described above) and the heat exchangers were taken out of service of repair.

At San Onofre, the growth of gooseneck barnacles was attributed to the termination of a heat treatment procedure that controls their growth. The treatment was terminated during a protracted plant shutdown of 14 months. The system problems were noted during routine operational checks.

At Pilgrim, the mussels apparently grew in the Salt Service Water System even though a back flusing and cleanout program was instituted to control their growth. Routine surveillance indicated a continuing problem due to decreasing heat transfer capabilities.

In general, the causes of the incidents above related to an inadequate surveillance and monitoring of the heat exchanger performance characteristics such as flow rates, fouling factors, heat transfer coefficients, etc.

Actions Taken To Prevent Recurrence

Licensees—The licensees of Arkansas Nuclear One, Rancho Seco, Brunswick, San Onofre Unit 1 and Pilgrim have cleaned and flushed the affected cooling water systems. The licensees have also committed to improving design features and detection techniques which are intended to preclude the development of significant fouling of safety-related cooling systems in the future.

NRC—The NRC conducted special inspections regarding the events at the facilities noted above. In addition, on April 10, 1981 the NRC's Office of Inspection and Enforcement issued IE Bulletin 81-03, "Flow Blockage of Cooling Water to Safety System Components by *Corbicula* sp. (Asiatic Clam) and *Mytilus* sp. (Mussel)". The Bulletin requested licensees to determine whether either species was present in the vicinity of their station and the extent of any fouling these organisms may have caused in fire protection or safety-related systems. The responses to the Bulletin have been received from all of the operating plants. The responses received represent 48 sites. Of these, 21 sites reported positive findings either in the plant or in the source or receiving waterbody. Eight sites have seen some evidence of Asiatic Clams in the plant and six sites have seen evidence of mussels in the plant. This has ranged from occasional findings of a few shell fragments in the main condenser to major infestations. An additional seven sites have reported that while Asiatic clams were not yet present in the plant, they were present in either source or receiving

[1] Inspection of other safety-related coolers showed only traces of Asiatic clams with no significant accumulation.

waterbodies and infestations at the plant were possible in the future.

The Bulletin also asked licensees to describe their methods for preventing and detecting any future fouling at their plants. A combination of chlorination, heat treatment, flushing, backflushing and the installation of strainers were the preventative actions taken by most of the affected plants. Many of them routinely inspect the intake canal, the pump discharge strainers and the main condenser, cleaning them out as needed. Detection methods included surveillance programs comprised of visual inspections and measurements of flow, differential pressure, and temperature at various system locations. These actions by the licensees can be expected to have varying degrees of effectiveness depending on the frequency with which they are performed and the severity of the infestation present at and around the plant.

IE Bulletin 81–03 addressed fouling by Asiatic clams and musseles only. Therefore, most plants discussed only these two species in their responses. Some plants however, mentioned the presence of other fouling organisms such as other species of clams, oysters, barnacles, tubeworms and algae to name a few. In addition, a number of plants reported problems caused by mud and silt. In some cases, they claimed this to be a bigger problem at the plant than marine fouling.

In July 1981, NRC issued IE Information Notice 81–21, "Potential Loss of Direct Access to Ultimate Heat Sink". The Notice described the loss of the normal decay heat removal system at Brunswick. It also emphasized the need for licensees to initiate appropriate actions, as described in IE Bulletin 81–03, for any marine organisms that could cause fouling at their plant.

A case study entitled "Report on Service Water System Flow Blockages by Bivalve Mollusks at Arkansas Nuclear One and Brunswick", was issued by the NRC's Office for Analysis and Evaluation of Operational Data in February 1982.

The NRC's Office of Nuclear Reactor Regulation (NRR) is conducting a generic study of service water system malfunctions. This study is being assisted through the Special Studies program at the Oak Ridge National Laboratory (ORNL). In the program, ORNL will investigate licensee event reports (LERs) from January 1979 through June 1981 on the partial or complete loss of service water systems and organize these results systematically. From this collection of events, ORNL will evaluate the safety significance of service water malfunctions and provide their recommendations for any corrective measures that they believe may be needed. NRR will attempt to correlate specific plant design features, surveillance programs and preventative measures with the magnitude and types of service water problems reported in LERs and the responses to IE Bulletin 81–03. Based on the results of this study, corrective actions will be recommended in order to improve the reliability of service water systems.

In addition to the service water study, NRR is reviewing the design of baffle plates in "U" tube heat exchangers similar to those used at Brunswick. This review is to determine if a generic problem exists and if the design is appropriate for the given application.

Future reports on the findings and investigations will be made, as appropriate, in the quarterly Report to Congress on Abnormal Occurrences (NUREG–0900 series.)

Dated at Washington, D.C. this 13th day of May 1982.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-13654 Filed 5-18-82; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act of 1974; Revised Supplemental Guidance for Conducting Matching Programs

May 14, 1982.

AGENCY: Office of Management and Budget.

ACTION: Issuance of Revised Guidance for Conducting Computerized Matching Programs

SUMMARY: This document revises and updates guidance to the agencies on conducting automated matching programs originally issued on March 30, 1979.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Robert N. Veeder, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20502; telephone (202) 395–4814.

SUPPLEMENTARY INFORMATION: The Guidelines were originally issued on March 30, 1979 (44 FR 23138). After evaluating agencies experiences operating under those Guidelines and considering comments from agencies and concerned groups such as the President's Council on Integrity and Efficiency in Government, OMB concluded that a revision was in order. Accordingly, the Guidelines were revised to clarify the language and to simplify, where possible, the administrative and procedural requirements.

The Revised Guidelines were signed by the Director of OMB on May 11, 1982, and became effective on that date. Their text is set forth below.

Brenda A. Mayberry,

Acting Budget and Management Officer.

May 11, 1982.

Memorandum for the Executive Departments and Establishments

From: David A. Stockman, Director.

Subject: Revised Supplemental Guidance for Conducting Matching Programs.

I am attaching a copy of our revised Guidelines on conducting computerized matching programs. This revision updates and simplifies earlier guidance issued on March 30, 1979. It is effective immediately.

The revision is the result of our evaluation of agencies' operating experiences under the original Guidelines. The new Guidelines incorporate many agency recommendations for clarifications and changes. In addition, they greatly simplify the notice and reporting requirements of the earlier version.

Direct comments or questions on these Guidelines to OMB's Office of Information and Regulatory Affairs.

Matching Guidelines

1. *Purpose*—These Guidelines supplement and should be used in conjunction with the "OMB Guidelines on the Administration of the Privacy Act of 1974," issued on July 1, 1975 and supplemented on November 21, 1975. They replace earlier guidance on conducting computerized matching programs issued on March 30, 1979. They are intended to help agencies relate the procedural requirements of the Privacy Act to the operational requirements of computerized matching. They are designed to address the concerns expressed by the Congress in the Privacy Act of 1974 that "the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information." These Guidelines do not authorize activities which are not permitted by law; nor do they prohibit activities expressly required to be performed by law. Complying with these Guidelines, however, does not relieve a Federal agency of the obligation to comply with the provisions of the Privacy Act,

including any provisions not cited in these Guidelines.

2. *Scope*—These guidelines apply to all agencies subject to the Privacy Act of 1974 (5 U.S.C. 552a), and to all matching programs:

a. Performed by a Federal agency, whether the personal records used in the match are Federal or non-Federal.

b. For which a Federal agency discloses any personal records for use in a matching program performed by any other Federal agency or any non-Federal organization.

3. *Effective Date*—These guidelines are effective on their date of issuance—May 11, 1982.

4. *Definitions*—For the purposes of these Guidelines:

a. All the terms defined in the Privacy Act of 1974 apply.

b. A "personal record" means any information pertaining to an individual that is stored in an automated system of records, e.g., a data base which contains information about individuals that is retrieved by name or some other personal identifier.

c. A "matching program" is a procedure in which a computer is used to compare two or more automated systems of records or a system of records with a set of non-Federal records to find individuals who are common to more than one system or set. The procedure includes all of the steps associated with the match, including obtaining the records to be matched, actual use of the computer, administrative and investigative action on the hits, and disposition of the personal records maintained in connection with the match. It should be noted that a single matching program may involve several matches among a number of participants.

Matching Programs do not include the following:

(1) Matches which do not compare a substantial number of records, e.g., comparison of the Department of Education's Defaulted Student Loan data base with the Office of Personnel Management's Federal Employee data base would be covered; comparison of six individual student loan defaultees with the OPM file would not be covered.

(2) Checks on specific individuals to verify data in an application for benefits done reasonably soon after the application is received.

(3) Checks on specific individuals based on information which raises questions about an individual's eligibility for benefits or payments done reasonably soon after the information is received.

(4) Matches done to produce aggregate statistical data without any personal identifiers.

(5) Matches done to support any research or statistical project where the specific data are not to be used to make decisions about the rights, benefits, or privileges of specific individuals.

(6) Matches done by an agency using its own records.

d. A "matching agency" is the Federal agency which actually performs the match.

e. A "source agency" is the Federal agency which discloses records from a system of records to be used in the match. Note that in some circumstances, a source agency may be the instigator and ultimate beneficiary of the matching program, as when an agency lacking computer resources uses another agency to perform the match. The disclosure of records to the matching agency and any subsequent disclosure of "hits" (by either the matching or the source agencies) must be done in accordance with the provisions of paragraph (b) of the Privacy Act.

f. A "hit" is the identification, through a matching program, of a specific individual.

5. *Guidelines for Agencies Participating in Matching Programs*—Agencies should acquire and disclose matching records and conduct matching programs in accordance with the provisions of this section and the Privacy Act.

a. Disclosing Personal Records for Matching Programs

(1) To Another Federal Agency—source agencies are responsible for determining whether or not to disclose personal records from their systems and for making sure they meet the necessary Privacy Act disclosure provisions when they do. Among the factors source agencies should consider are:

(a) Legal authority for the match;

(b) Purpose and description of the match;

(c) Description of the records to be matched;

(d) Whether the record subjects have consented to the match; or whether disclosure of records for the match would be compatible with the purpose for which the records were originally collected, i.e., whether disclosure under a "routine use" would be appropriate; whether the soliciting agency is seeking the records for a legitimate law enforcement activity—whichever is appropriate; or any other provision of the Privacy Act under which disclosure may be made;

(e) Description of additional information which may be subsequently disclosed in relation to "hits";

(f) Subsequent actions expected of the source (e.g., verification of the identity of the "hits" or follow-up with individuals who are "hits").

(g) Safeguards to be afforded the records involved, including disposition.

If the agency is satisfied that disclosure of the records would not violate its responsibilities under the Privacy Act, it may proceed to make the disclosure to the matching agency. It should ensure that only the minimum information necessary to conduct the match is provided. If disclosure is to be made pursuant to a "routine use" (Section (b)(3) of the Privacy Act), it should ensure that the system of records contains such a use, or it should publish a routine use notice in the Federal Register. The agency should also be sure to maintain an accounting of the disclosures pursuant to section (c) of the Privacy Act.

(2) To a Non-Federal Entity—Prior to disclosing records to a non-Federal entity for a matching program to be carried out by that entity, a source agency should, in addition to all of the considerations in 5a(1) above, also make reasonable efforts, pursuant to section (e)(6) of the Privacy Act, to "assure that such records are accurate, complete, timely, and relevant for agency purposes."

b. Written Agreements—Prior to disclosing to either a Federal or non-Federal entity, the source agency should require the matching entity to agree in writing to certain conditions governing the use of the matching file, e.g.: That the matching file will remain the property of the source agency and be returned at the end of the matching program (or destroyed as appropriate); that the file will be used and accessed only to match the file(s) previously agreed to; that it will not be used to extract information concerning "non-hit" individuals for any purpose; and that it will not be duplicated or disseminated within or outside the matching agency unless authorized in writing by the source agency.

c. Performing Matching Programs—

(1) Matching agencies should maintain reasonable administrative, technical and physical security safeguards on all files involved in the matching program.

(2) Matching agencies should insure that they have appropriate systems of records including those containing "hits," and that such systems and any routine uses have been appropriately noticed in the Federal Register and reported to OMB and the Congress as appropriate.

d. Disposition of Records—

(1) Matching agencies will return or destroy source matching files (by mutual agreement) immediately after the match.

(2) Records relating to hits will be kept only so long as an investigation, either criminal or administrative, is active and will be disposed of in accordance with the requirements of the Privacy Act and the Federal Records Schedule.

e. Publication Requirements—

(1) Agencies, prior to disclosing records outside the agency, will publish appropriate "routine use" notices in the **Federal Register**, if necessary.

(2) If the matching program will result in the creation of a new or the substantial alteration of an existing system of records, the agency involved should publish the appropriate **Federal Register** notice and submit the requisite report to OMB and the Congress pursuant to OMB Circular No. A–108.

f. Reporting Requirements—

(1) As close to the initiation of the matching program as possible, matching agencies shall publish in the **Federal Register** a brief public notice describing the matching program. The notice should include:

(a) The legal authority under which the match is being conducted;

(b) A description of the matching program including whether the program is one time or continuing, the organizations involved, the purpose(s) for which the program is being conducted, and the procedures to be used in matching and following up on the "hits";

(c) A complete description of the personal records to be matched, including the source(s), system of records identifying data, date(s) and page number(s) of the most recent **Federal Register** full text publication where appropriate;

(d) The projected start and ending dates of the program;

(e) The security safeguards to be used to protect against unauthorized access or disclosure of the personal records; and

(f) Plans for disposition of the source records and "hits."

Agencies should send a copy of this notice to the Congress and to the Office of Management and Budget at the same time it is sent to the Federal Register.

(2) Agencies should report new or altered systems of records as described in e (2) above as necessary.

(3) Agencies should also be prepared to report on matching programs pursuant to the reporting requirements of either the Privacy Act or the Paperwork Reduction Act. Reports will be solicited by the Office of Information and Regulatory Affairs and will focus on both the protection of individual privacy and the government's effective use of information technology. Reporting instructions will be disseminated to the agencies as part of either the reports required by section (p) of the Privacy Act or section 3514 of Pub. L. 96–511.

g. Use of Contractors—Matching programs should, as far as practicable, be conducted "in-house" by Federal agencies using agency personnel, rather than by contract. When contractors are used, however,

(1) The matching agency should, consistent with subsection (m) of the Privacy Act, cause the requirements of that Act to be applied to the contractor's performance of the matching program. The contract should include the Privacy Act clause required by FPR Amdt. 155, 41 CFR 1–1.337–5;

(2) The terms of the contract should include appropriate privacy and security provisions consistent with policies, regulations, standards and guidelines issued by OMB, GSA, and the Department of Commerce;

(3) The terms of the contrct should preclude the contractor from using, disclosing, copying, or retaining records associated with the matching program for the contractor's own use;

(4) Contractor personnel involved in the matching program should be made explicitly aware of their obligations under the Act, and of these guidelines, agency rules and any special safeguards in relation to each specific match performed.

(5) Any disclosures of records by the agency to the contractor should be made pursuant to a "routine use" (Section (b)(3) of 5 U.S.C. 552a).

6. *Implementation and oversight*— the Office of Management and Budget will oversee the implementation of these Guidelines and shall interpret and advise upon agency proposals and actions within their scope, consistent with section 6 of the Privacy Act.

[FR Doc. 82–13563 Filed 5–18–82; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

May 12, 1982.

The above named national securites exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Anacomp Incorporated
Common Stock, $1 Par Value (File No. 7–6214)

Cullinane Database Systems Incorporated
Common Stock, $.10 Par Value (File No. 7–6215)

Hitachi Limited
American Depositary Shares, 50 Yen Par Value (File No. 7–6216)

Kaiser Cement Corporation (Delaware)
Common Stock, $1 Par Value (File No. 7–6217)

L&N Housing Corporation
Common Stock, $.50 Par Value (File No. 7–6218)

L. E. Myers Company Group
Common Stock, $1 Par Value (File No. 7–6219)

Southmark Corporation (Georgia)
Common Stock, $1 Par Value (File No. 7–622)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 3, 1982 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–13498 Filed 5–18–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–18722; File No. SR–MSRB–82–5]

Municipal Securities Rulemaking Board; Self-Regulatory Organizations; Proposed Rule Change

Proposed Rule changes by Municipal Securities Rulemaking Board, relating to calculations. Comments requested on or before June 9, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1982, the Municipal Securities Rulemaking Board filed with

the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Municipal Securities Rulemaking Board (the "Board") is filing herewith certain amendments to rule G–33 on calculations. The text of the proposed rule changes is as follows:

Rule G–33.—Calculations.[1]

(a) through (d) No change.

(e) Day Counting.

(i) *Day Count Basis.* Computations under the requirements of this rule shall be made on the basis of a thirty-day month and a three-hundred-sixty-day year, or, in the case of computations, on ►securities paying interest solely at redemption◄ [municipal notes], on the day count basis selected by the issuer of the securities.

(ii) Day Count Formula. ►For purposes of this rule, c◄[C]omputations of day counts ►on the basis of a thirty-day month and a three-hundred-sixty-day year◄ [for purposes of this rule] shall be made in accordance with the following formula:

Number of Days = (Y2 − Y1) 360 + (M2 − M1) 30 + (D2 − D1)·For purposes of this formula the symbols shall be defined as follows:

"M1" is the month of the date on which the computation period begins;

"D1" is the day of the date on which the computation period begins;

"Y1" is the year of the date on which the computation period begins;

"M2" is the month of the date on which the computation period ends;

"D2" is the day of the date on which the computation period ends; and

"Y2" is the year of the date on which the computation period ends.

For purposes of this formula, if the symbol "D2" has a value of "31", and the symbol "D1" has a value of "30" or "31", the value of the symbol "D2" shall be changed to "30". If the symbol "D1" has a value of "31", [and the symbol "D2" has a value other than "31",] the value of the symbol "D1" shall be changed to "30". For purposes of this rule time periods shall be computed to include the day specified in the rule for the beginning of the period but not to include the day specified for the end of the period.

[1] Arrows ► ◄ indicate additions; [brackets] indicate deletions.

(f) No change.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) The Board has adopted the proposed rule changes to clarify the application of certain of the day counting provisions set forth in Board rule G–33 on calculations, and to correct an error in the statement of assumptions regarding securities dated or paying interest on the 31st of a month.

(b) The Board has adopted the proposed rule changes, and rule G–33 itself, pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which authorizes and directs the Board to adopt rules which are:

designed * * * to foster cooperation and coordination with persons engaged in * * * clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *

The Board is of the view that rule G–33 furthers the purposes of the Act inasmuch as it standardizes the methods of computing yield and dollar price on customer and inter-dealer transactions, and fosters the improvement of the accuracy of such computations. The Board believes that the proposed rule changes will further these ends since they clarify the application of certain provisions of the rule and ensure accuracy in the performance of day counts used in the computations prescribed in the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule changes will impose any burden on competition, inasmuch as they merely clarify the application of certain aspects of the rule to particular situations, and correct an error in one of the rule's provisions.

C. Self-Regulatory Organization's Statement of Comments Received on the Proposed Rule Changes Received From Members, Participants, or Others

The Board neither solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

On or before June 23, 1982, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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, 1100 L Street NW., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before June 9, 1982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 10, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13495 Filed 5-18-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18724; File No. SR-MSRB-82-6]

Municipal Securities Rulemaking Board; Self-Regulatory Organizations; Proposed Rule Changes

Proposed rule changes by Municipal Securities Rulemaking Board relating to calculations. Comments requested on or before June 9 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 5 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1982, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Municipal Securities Rulemaking Board (the "Board") is filing herewith certain amendments to rule G–33 on calculations. The text of the proposed rule changes is as follows:

Rule G–33.—Calculations[1]

(a) No change.

(b) Interest-Bearing Securities.

(i) Dollar Price. For transactions in interest-bearing securities effected on the basis of yield the resulting dollar price shall be computed in accordance with the following provisions:

(A) Securities Paying Interest ►Solely◄ at ►Redemption◄ [Maturity]. Except as otherwise provided in this section (b), the dollar price for a transaction in a security paying interest ►solely◄ at ►redemptio n◄ [maturity] shall be computed in accordance with the following formula:

$$P = \left[\frac{RV \left[1 + \left(\frac{DIR \text{ [DIM]}}{B} \times R\right)\right]}{1 + \left(\frac{DIR\text{-}A \text{ [DSM]}}{B} \times Y\right)}\right] - \left[\frac{A}{B} \times R\right]$$

For purposes of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from the beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

"B" is the number of days in the year (computed in accordance with the provisions of section (e) below);

►"DIR"◄ ["DIM"] is the number of days from the issue date to the ►redemption◄ [maturity] date (computed in accordance with the provisions of section (e) below);

["DSM" is the number of days from the settlement date of the transaction to the maturity date (computed in accordance with the provisions of section (e) below);]

"P" is the dollar price of the security for each $100 par value (divided by 100);

"R" is the annual interest rate (expressed as a decimal); [and]

►"RV" is the redemption value of the security per $100 par value (divided by 100); and ◄

"Y" is the yield price of the transaction (expressed as a decimal).

(B) Securities with Periodic Interest Payments. Except as otherwise provided in this section (b), the dollar price for a transaction in a security with periodic interest payments shall be computed as follows:

(1) For securities with six months or less to ►redemption◄ [maturity], the formula following shall be used:

$$P = \left[\frac{\frac{RV}{100} + \frac{R}{M}}{1 + \left(\frac{E\text{-}A \text{ [DSM]}}{E} \cdot \frac{Y}{M}\right)}\right] - \left[\frac{A}{B} \cdot R\right]$$

For purposes of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from the beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

"B" is the number of days in the year (computed in accordance with provisions of section (e) below);

["DSM" is the number of days from the settlement date to the redemption date (computed in accordance with the provisions of section (e) below);]

"E" is the number of days in the interest payment period in which the settlement date falls (computed in accordance with the provisions of section (e) below);

"M" is the number of interest payment periods per year standard for the security involved in the transactions;

"P" is the dollar price of the security for each $100 par value (divided by 100);

"R" is the annual interest rate (expressed as a decimal);

"RV" is the redemption value of the security per $100 par value; and

"Y" is the yield price of the transaction (expressed as a decimal).

(2) for securities with more than six months to ►redemption◄ [maturity], the following formula shall be used:

$$P = \left[\frac{RV}{\left(1 + \frac{Y}{2}\right)_{exp}^{N-1+\frac{E-A}{E}}}\right] + \left[\sum_{K=1}^{N} \frac{100 \cdot \frac{R}{2}}{\left(1 + \frac{Y}{2}\right)_{exp}^{K-1+\frac{E-A}{E}}}\right] - \left[100 \cdot \frac{A}{B} \cdot R\right]$$

For purpose of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from the beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

"B" is the number of days in the year (computed in accordance with the provisions of section (e) below);

"E" is the number of days in the interest payment period in which the settlement date falls (computed in accordance with the provisions of Section (e) below);

"N" is the number of interest payments (expressed as a whole number) occurring between the settlement date and the redemption date, including the payment on the redemption date;

"P" is the dollar price of the security for each $100 par value;

"R" is the annual interest rate (expressed as a decimal);

"RV" is the redemption value of the security per $100 par value; and

"Y" is the yield price of the transaction (expressed as a decimal).

[1] In the rule text, arrows ►◄ indicate additions: [brackets] indicate deletions. In the formulas, additions are indicated by arrows ►◄ and asterisks; deletions are indicated by [brackets] and asterisks.

For purposes of this formula the symbol "exp" shall signify that the preceeding value shall be raised to the power indicated by the succeding value; for purposes of this formula the symbol "K" shall signify successively each whole number from "1" to "N" inclusive; for purposes of this formula the symbol "sigma" shall signify that the succeeding term shall be computed for each value "K" and that the results of such computations shall be summed.

(C) and (D) No change.

(ii) Yield. Yields on interest-bearing securities shall be computed in accordance with the following provisions:

(A) Securities Paying Interest ►Solely◄at ►Redemption◄ [Maturity]. The yield of a transaction in a security paying interest ►solely◄at ►redemption◄[maturity] shall be computed in accordance with the following formula:

$$Y = \left[\frac{\left(>RV\not< [1\not]+\left(\frac{>DIR\not< [DIM]^{*}}{B} \times R\right)\right) - \left(P+\left(\frac{A}{B}\cdot R\right)\right)}{P+\left(\frac{A}{B}\cdot R\right)}\right] \times \left[\frac{B}{>DIR\text{-}A\not< [DSM]^{*}}\right]$$

For purposes of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from the beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

"B" is the number of days in the year (computed in accordance with the provisions of section (e) below);

►"DIR"◄["DIM"] is the number of days from the issue date to the ►redemption◄[maturity] date (computed in accordance with the provisions of section (e) below);

["DSM" is the number of days from the settlement date of the transaction to the maturity date (computed in accordance with the provisions of section (e) below);]

"P" is the dollar price of the security for each $100 par value (divided by 100);

"R" is the annual interest rate (expressed as a decimal); [and]

►"RV" is the redemption value of the security per $100 par value (divided by 100); and◄

"Y" is the yield on the investment if the security is held to ►redemption◄[maturity] (expressed as a decimal).

(B) Securities with Periodic Interest Payments. The yield of a transaction in a security with periodic interest payments shall be computed as follows:

(1) for securities with six months or less to ►redemption◄[maturity], the following formula shall be used:

$$Y = \left[\frac{\left(\frac{RV}{100}+\frac{R}{M}\right) - \left(P+\left(\frac{A}{E}\cdot\frac{R}{M}\right)\right)}{P+\left(\frac{A}{E}\cdot\frac{R}{M}\right)}\right] \cdot \left[\frac{M\cdot E}{>E - A\not< [DSM]}\right]$$

For purposes of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from the beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

["DSM" is the number of days from the settlement date to the redemption date (computed in accordance with the provisions of section (e) below);]

"E" is the number of days in the interest payment period in which the settlement date falls computed in accordance with the provisions of section (e) below);

"M" is the number of interest payment periods per year standard for the security involved in the transaction;

"P" is the dollar price of the security for each $100 par value (divided by 100);

"R" is the annual interest rate (expressed as a decimal);

"RV" is the redemption value of the security per $100 par value; and

"Y" is the yield ►on the investment if the security is held to redemption◄[price of the transaction] (expressed as a decimal).

(2) for securities with more than six months to ►redemption◄[maturity], the formula set forth in item (2) of subparagraph (b)(i)(B) shall be used.

(c) through (f) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) The Board has adopted the proposed rule changes which would make technical modifications to clarify or permit the use of the formulas for purposes of computing dollar prices or yields to a premium call or par option feature. In addition, the proposed rule changes slightly revise certain of the formulas to eliminate an extraneous variable and make other clarifying changes to certain of the references in the rule.

(b) The Board has adopted the proposed rule changes, and rule G–33 itself, pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which authorizes and directs the Board to adopt rules which are

designed * * * to foster cooperation and coordination with persons engaged in * * * clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

The Board is of the view that rule G–33 furthers the purpose of the Act inasmuch as it standardizes the methods of computing yield and dollar price on customer and inter-dealer transactions, and fosters the improvement of the accuracy of such computations.

The Board believes that the proposed rule changes will further these ends since they clarify the application of certain provisions of the rule, simplify certain of the formulas, and modify them to facilitate computations of dollar prices and yields to call or option features. The Board notes that these latter modifications will also facilitate compliance with certain of the pricing and yield disclosure requirements of Board rules G–12 and G–15.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Board does not believe that the proposed rule changes will impose any burden on competition, inasmuch as they merely clarify the application of certain aspects of the rule to particular situations.

C. Self-Regulatory Organization's Statement of Comments Received on the Proposed Rule Changes Received From Members, Participants or Others

The Board neither solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

On or before June 23, 1982, or within such longer period (i) as the Commissiion may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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, 1100 L Street, NW., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should be submitted on or before June 9, 1982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 10, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13496 Filed 5-18-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18726; File No. SR-PHILADEP 82-3]

Philadelphia Depository Trust Co.; Self-Regula;tory Organizations; Proposed Rule Change

Proposed rule change by Philadelphia Depository Trust Company relating to reorganization procedures. Comments requested on or before June 9. 1982.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 14, 1982, Philadelphia Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadelphia Depository Trust Company (PHILADEP) proposes to amend its Rule 6 (Services) to refer to participation in tender offers on behalf of participants and new PHILADEP tender offer procedures. PHILADEP wished to clarify and formalize procedures for participants to follow in the event any of their securities become subject to a mandatory exchange, and to set forth new procedures for members wishing to participate in voluntary exchange and tender offers through PHILADEP. Currently, for other than mandatory exchanges, PHILADEP participants must withdraw shares that they wish to exchange or tender. A fee of $10.00 per request will be assessed for the processing of voluntary exchange or tender offers.

Amended PHILADEP Rule 6 and new PHILADEP Reorganization Procedures are attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PHILADEP currently processes mandatory corporate actions, which include mandatory exchanges, cash redemptions, conversions, and name changes. PHILADEP is formalizing and clarifying the procedures for these types of actions. In the case of voluntary exchanges and tender offers, participants currently must withdraw the shares from PHILADEP that they wish to exchange or tender. By this amendment of Rule 6 and the implementation of an new procedure for voluntary offers, PHILADEP is offering to perform this service for participants at a charge of $10.00 per request for processing of voluntary exchanges and tender offers.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 (the Act) in promoting the prompt and accurate clearance and settlement of securities transactions for which SCCP is responsible, and in fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not perceive any impact on competition, negative or positive, resulting from the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change

Comments on the proposed rule change have been neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before June 23, 1982, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Referenced Section, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before June 9, 1,982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authoirty.

George A. Fitzsimmons,

Secretary.

Dated: May 10, 1982.

Exhibit A

(PHILADEP) Rule 6. Services

(New material indicated by arrows)

The Corporation, acting in accordance with duly authorized instructions from the Participant or Participants and the Pledgee or Pledgees, if any, having interest in the transaction, shall accept Eligible Securities from Participants for deposit with the Corporation; effect transfers by a Participant of its Deposited Securities to another Participant or Particiants; effect pledges by a Participant of its Deposited Securities to a Pledge or Pledgees and effect the release of such pledges; deliver to a Participant or its designee a Participant's Deposited Securities registered in the name of and endorsed by the Corporation's nominee or in the name of such Participant or its designee; deliver dividends, distributions, rights, securities, proxy material and other property or documents received by the Corporation in respect of a Participant's Deposited Securities or Pledged Securities; disburse money to, and receive money from Particiants and Pledgees on behalf of other Participants or Pledgees in connection with related securities transactions; ►participate in tender offers on behalf of participants◄ and acting on its own or by appropriate instruction, provide to Participants and Pledgees information and statements of account regarding their business with the Corporation. Such transactions shall be effected in accordance with the By-Laws, these Rules and the Procedures.

(The rest rest of Rule 6 remains unchanged)

PHILADEP Reorganization Procedures

Procedure for Mandatory Actions

Since becoming a limited-purpose trust company, PHILADEP has processed all mandatory corporate actions which include mandatory exchanges, cash redemptions, conversions and name changes. The PHILADEP Reorganization Department will continue to process all mandatory corporate actions in the following manner:

1. A mandatory exchange may include mergers, redemptions, revers splits, etc. PHILADEP will forward to all participants an "Important Notice" describing the mandatory exchange. The Important Notice will specify the processing cut-off dates based on the information available at the time the notice is prepared. Subsequent notices will follow should the terms of the exchange differ.

2. When the exchange is effective, the Reorganization Department will surrender to the processing agent the participant's ►unpledged position◄ in the security and obtain the new secruity and/or proceeds from the exchange. On the same day that PHILADEP submits the security to the processing agent for exchange, PHILADEP will reduce the participant's position for the security being exchanged and either increase the position in the new security, if eligible, or show the ineligible security as a transfer withdrawal on the transfer activity report. If cash proceeds or cash-in-lieu of fractional shares are payable to the participant, PHILADEP will prepare a separate check for this amount upon receipt of funds from the processing agent.

Note.—When the security being exchanged is used as collateral for a loan, it is the responsibility of the participant to release or substitute other securities for that security.

Procedure for Voluntary Offers

The current PHILADEP procedure for voluntary exchange and tender offers calls for participants to withdraw shares that they wish to exchange or tender. The new procedure is as follows:

1. Upon PHILADEP receiving notification of a voluntary offer, PHILADEP will prepare a Reorganization Important Notice describing the offer and advising of the processing cut-off date, which will be 48 hours prior to either the expiration of the offer or pro-ration date.

Note.—Since the information on corporate actions is received from various sources, PHILADEP cannot guarantee the completeness nor the correctness of the information supplied regarding corporate actions. Participants will be responsible for maintaining their own records and notification sources.

2. A copy of the Reorganization Important Notice will be distributed to all participants.

3. The eligibility of the security will be dependent upon the terms and conditions of the offer. Whenever possible, the security will remain eligible for all SCCP and PHILADEP book-entry services. If the security subject to the offer must be made ineligible for deposit only, the security will remain eligible for intra-PHILADEP book-entry MDO activity and CNS settlement activity. Inter-Depository MDO activity will be dependent on the eligibility of the security in other interfaced depositories. PHILADEP will cease to process all customer transfer requests for securities involved in voluntary offers during the period of the offer. Street withdrawal request will continue to be honored in accordance with procedure defined below.

4. It is the responsibility of each participant to release shares in pledged accounts prior to requesting other activity.

5. PHILADEP will only accept written instructions from its participants to tender all or part of their shares on deposit, according to the terms and conditions of the offer.

Note.—PHILADEP ►will not◄ tender any shares unless specifically authorized in writing to do so no later than the reported PHILADEP cut-off date which will appear on the Reorganization Important Notice.

6. Participants may tender their own shares by submitting a street withdrawal order form conspicuously marked "Attention: Reorganization Department." Street withdrawal order forms received prior to 10:00 a.m. will be processed that day. If proper denominations are not available to honor the withdrawal, PHILADEP will notify the participant. If necessary, PHILADEP will submit a letter of protest for those street withdrawals that could not be made because of denominational problems.

7. Upon receipt of funds and/or the new security, PHILADEP will receive the new security, if eligible, into the participant's depository account and payment of funds will be made either by

check or by credit adjustment to the participant's SCCP CNS account.

[FR Doc. 82-13499 Filed 5-18-82; 8:45 am]
BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

May 12, 1982.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

Cullinane Database Systems Inc.
Common Stock, $.10 Par Value (File No. 7-6221)

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 3, 1982 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13500 Filed 5-18-82; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-18725; File No. SR-SCCP 82-3]

Stock Clearing Corporation of Philadelphia; Self-Regulatory Organizations; Proposed Rule Change

Proposed rule change by Stock Clearing Corporation of Philadelphia relating to reorganization procedures. Comments requested on or before June 9, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 14, 1982, Stock Clearing Corporation of Philadelphia filed with the Securities and Exchange Commission the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Stock Clearing Corporation of Philadelphia (SCCP) proposes to amend its Rule 5 (Delivery of Securities) regarding tender offers to refer to new SCCP reorganization procedures. SCCP wishes to clarify and formalize procedures for participants to follow in the event any of their securities become subject to mandatory exchanges or voluntary offers.

Amended SCCP Rule 5 and new SCCP Reorganization Procedures are attached as Exhibit A.

II. Self-Regulatory Organization's Statement of 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 section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP's present rule relating to tender offers is very general, and is not backed by specific procedures. In order to describe more adequately the rights and responsibilities of both SCCP and its participants during the course of a tender offer or mandatory exchange of stock, SCCP has developed procedures setting forth delivery requirements, protection responsibilities with the transfer agent, cut-off times, etc.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 (the Act) in promoting the prompt and accurate clearance and settlement of securities transactions for which SCCP is responsible, and in fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not perceive any impact on competition, negative or positive, resulting from the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change

Comments on the proposed rule change have been neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before June 23, 1982, or within such longer period (i) as the commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, 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 Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before June 9, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 10, 1982.

George A. Fitzsimmons,

Secretary.

Exhibit A

(Deleted material bracketed; new material indicated by arrows)

(SCC) Rule 5. Delivery of Securities

Tender Offers

In connection with tender offers, Stock Clearing Corporation of Philadelphia will guarantee delivery to the buyer only those items purchased to settle no later than the date necessary to enable Stock Clearing Corporation to get the stock to the transfer agent [prior to the expiration date of the protection period as determined by the transfer agent] ►or protect shares with the agent in accordance with the SCCP reorganization procedures.◄

Sellers, upon notification that their [transaction] ►position◄ is participating in the [the] ►a◄ tender offer, are liable for any losses incurred by the buyer as a result of the seller's failure to make delivery to the Philadelphia office of the Stock Clearing Corporation [by settlement date] ►or protect the shares with the agent in accordance with the SCCP reorganization procedures.◄

SCCP Reorganization Procedures

Procedures for Mandatory Exchanges

On the sixth business day after the effective date of a merger, redemption or reverse split, SCCP will adjust all long-valued positions and short-valued positions to reflect the new security and/or funds. On and after the effective date, SCCP will only accept delivery of the new security.

Procedure for Voluntary Offers

1. Once a security becomes ineligible for PHILADEP deposit, participants will be responsible to cover open sales in CNS accounts by making physical delivery of the security directly to SCCP. Normal delivery requirements consistent with SCCP delivery rules will apply to securities subject to voluntary offers. Multiple certificates accompanied by one stock power are not acceptable.

2. Overdeliveries will not be accepted without prior approval of the Reorganization Department. SCCP will protect long positions if necessary only upon receipt of written notice from the participant which specifically requests protection. ►Such notice must be received by SCCP no later than 48 hours prior to either the expiration of the offer or the expiration of the proration period.◄ This circumstance should not be confused with the expiration of the protection period. SCCP business hours are from 9:00 a.m. to 5:00 p.m. Notice must be received prior to the close of business. After the SCCP/PHILADEP cut-off date, participants must protect for themselves any open long-valued positions remaining in their CNS account.

3. If SCCP is notified of a liability, every effort will be made to deliver shares to the long participant prior to the expiration of the offer. If the shares are in fail-to-receive, SCCP will notify the failing broker of their liability. The failing broker must either deliver the shares to the Philadelphia office of SCCP or protect the shares with the agent. In either case, the failing broker must notify the SCCP Reorganization Department of their course of action no later than 12:00 noon one business day prior to the expiration of the offer. SCCP will protect on shares in its possession when it is unable to deliver shares to participants having long-valued positions.

4. SCCP will continue to accept instructions to tender or exchange shares subject to a voluntary offer from participants maintaining margin account positions. SCCP must be notified in writing no later than 48 hours prior to the expiration of the offer.

5. Upon expiration of the voluntary offer, the security will again be made eligible for deposit in PHILADEP providing no further corporate action is pending. Participants will be notified by means of a Reorganization Important Notice of the eligibility of the security.

[FR Doc. 82-13497 Filed 5-18-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12432; (812-5145)]

American Shares, Inc.; Filing of Application for an Order Pursuant to Section 6(c) of the Act Granting Exemptions From Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 Thereunder

May 12, 1982.

Notice is hereby given that American Shares, Inc. ("Applicant"), P.O. Box 3942, 405 Central Avenue, St. Petersburg, FL 33731, registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company, filed an application on March 23, 1982, and an amendment thereto on April 16, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to value its assets using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a Maryland corporation that intends to offer initially two series of shares of capital stock. The series designated as "American Treasury Shares" (the "Fund") is the subject of this application and any exemptive order granted pursuant to this application will apply only to the Fund. Applicant states that the investment objective of the Fund is to attain high current income consistent with the preservation of capital and the maintenance of liquidity. Applicant further states that it will seek to achieve that objective by investing the Fund's assets primarily in United States Government securities that mature within one year from the date of purchase, including (1) a variety of securities that are issued by the United States Treasury, (2) securities that are backed, with regard to both principal and interest, by the full faith and credit of the United States, and (3) repurchase agreements relating to securities included in (1) and (2) above.

As here pertinent, Section 2(a)(41) of the Act defines "value" to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the investment company's board of directors. Rule 22c-1 provides, in part, that no registered investment company, or principal underwriter therefor, issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Rule 2a-4 provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption, and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further provides that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by

the board of directors. The Commission has expressed the view that, among other things, it is inconsistent with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments with over 60-day maturities on an amortized cost basis and that such valuation should be made with reference to market factors (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in pertinent part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such 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 Act.

In support of the exemptive relief requested, Applicant asserts that two features are helpful in attracting investment in a money market fund: (1) stability of principal and (2) steady flow of investment income. Applicant believes that by maintaining a portfolio of United States Government obligations it can provide these features to investors. Applicant states that its investment adviser's experience in the management of other investment companies indicates that, given the nature of Applicant's policies and operations with respect to the Fund, there will normally be a negligible discrepancy between the net asset value of the Fund calculated using the amortized cost method of valuation and that obtained using a market valuation method. Applicant represents that its board of directors has determined in good faith, in light of the characteristics of the Fund, that the amortized cost method of valuing portfolio securities is appropriate and preferable for the Fund, and reflects the fair market value of such money market instruments. Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

1. In supervising the Fund's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective with respect to the assets of the Fund, to stabilize the net asset value per share of the Fund, as computed for the purposes of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in consideration of current market conditions, to determine the extent of deviation, if any, of the net asset value per share of the Fund, as determined by using available market quotations, from the Fund's $1.00 amortized cost price per share, and maintenance of records of such review. To fulfill this condition, the Applicant intends to use actual quotations, or estimates of market value reflecting current market conditions chosen by its board of directors, in the exercise of its discretion, to be appropriate indicators of value. The quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments furnished by reputable sources.

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1%, the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes the extent of any deviation from the Fund's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or other unfair results, which action may include: selling portfolio securities prior to maturity to realize capital gains or losses, or to shorten the Fund's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain, with respect to the Fund, a dollar-weighted average portfolio maturity appropriate to the Fund's objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument for the Fund with a remaining maturity at the date of acquisition of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio instrument of the Fund results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest the Fund's available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain and preserve permanently in an easily accessible place, a written copy of the procedures (and any modification thereto) described in condition 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place), a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit the Fund's portfolio investments including repurchase agreements, if any, to those United States Government obligations which the board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any such action was taken, will describe the nature and circumstances of such action.

Applicant submits that the granting of its requested exemptive order is 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 Act.

Notice is further given that any interested person may, not later than June 7, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication

should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–13584 Filed 5–18–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 22497; (70–6630)]

The Connecticut Light & Power Co. et al.; Notice of Proposal To Amend Lease Agreement

May 13, 1982.

The Connecticut Light and Power Company ("CL&P"), The Hartford Electric Light Company ("HELCO"), and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, electric utility subsidiaries of Northeast Utilities ("NU"), and Northeast Utilities Service Company ("NUSCO"), Selden Street, Berlin, Connecticut 06037, a subsidiary service company, have filed an application-declaration and amendments thereto pursuant to Sections 9, 10 and 12(f) of the Public Utility Holding Company Act of 1935 ("Act").

Declarants propose to amend an Agreement of Lease ("Lease") dated as of July 1, 1966 under which CL&P, HELCO and WMECO are designated as the Lessors and NUSCO is designated as the Lessee. Under the Lease, the Lessors have leased the Connecticut Valley Electric Exchange ("CONVEX") owned by them including land, buildings and equipment located at Southington, Connecticut to the Lessee. NUSCO employs the leased CONVEX facilities to provide central dispatching services for the Northeast Utilities System ("System") and for five other utility systems in Connecticut and Western Massachusetts. The CONVEX facilities are also used in connection with the obligations of the participants under the New England Power Pool Agreement. The CONVEX participants are billed monthly by NUSCO on a system peak basis. The System comprises 77.4% of all billing, with 22.6% billed to the five other participants. At present CL&P owns all the property subject to the Lease. This property is in CL&P's rate base and its cost is being recovered as a cost of service.

On June 30, 1981, the Lessors installed an Automatic Generation Control and Supervisory Control and Data Acquisition System (AGA/SCADA) at the CONVEX facilities at a cost of $6,780,000. The total gross investment as of June 30, 1981 in the CONVEX facilities including the AGA/SCADA was $8.1 millon. The AGA/SCADA allows for better control and monitoring of generation and substation activity.

The Amendment to be dated as of June 1, 1981, is proposed in order to revise the rental terms to reflect more appropriately the Lessor's cost of capital for new facilities including AGA/SCADA and the Lessors' current accounting practices. In October 1980, the Connecticut Department of Public Utilities Control allowed CL&P to earn 14½% return on equity. However, CL&P stated that as of June 30, 1981 it had actually earned 7.04% and 10.45% on equity, based on the cost of capital method and net income method, respectively. Under the Amendment, from and after June 1, 1981, the Lessee would pay to each of the Lessors, as rental for the portion of the property leased from that particular Lessor, monthly rental installments equal to the sum of the investment return, associated income taxes, other taxes, depreciation and applicable leasing expense less any investment tax credits. The investment return is equal to the investment base, defined as the original cost of the leased facilities (less accumulated depreciation and certain deferred taxes), times the sum of the common equity, long term debt and preferred stock components of the elements of the investment base. The equity, long-term debt and preferred stock values of investments placed in service on or before December 31, 1980 are fixed by the Amendment at 10.2% except for changes in the common equity return, which will vary over the lease term; the values for investments placed in service after December 31, 1980 will vary over the lease term in accordance with the changes in the common equity return and weighted costs of long-term debt and preferred stock. The investment return for the period January through November 1981 is fixed at 10.2% and changes to 10.75% for the period December 1981 through December 1982 (assuming no change in the allowed rate of return on equity for 1982) on the investments placed in service on or before December 1980. The investment return for the AGA/SCADA equipment (an investment of a major addition (as defined in the Amendment) placed in service after December 1980) is fixed at 13.95% for the period July 1981 through November 1981 and changes to 14.5% for the period December 1981 through December 1982 (assuming no change in the allowed rate of return on equity for 1982). Under the original Lease, annual payments equaled the depreciation accrued on the property for the year, plus 6% of the depreciated original cost of the property, plus an appropriate allowance to cover related income taxes of the Lessor.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 7, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of any attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–13585 Filed 5–18–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 12433; (812–5152)]

JP Money Market Fund, Inc.; Filing of Application for an Order Pursuant to Section 6(c) of the Act Exempting Applicant From the Provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 Thereunder

Notice is hereby given that JP Money Market Fund, Inc. ("Applicant"), 101

North Elm Street, P.O. Box 21008, Greensboro, NC 27420, an open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on April 1, 1982, and an amendment thereto on April 26, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant's price per share for the purposes of sales, redemptions and repurchases to be calculated by means of the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it will operate as a "money market fund," and that its investment objective is to provide maximum current income consistent with liquidity and stability of principal. JP Investment Management Company will act as investment adviser to Applicant.

The application states that Applicant may not purchase any security which has a maturity date more than one year from the date of Applicant's purchase, unless purchased subject to a repurchase agreement requiring repurchase from Applicant in one year or less. It is asserted that Applicant's portfolio may be invested only in the following money market instruments: (i) Obligations issued or guaranteed by the United States Government or its agencies or instrumentalities; (ii) negotiable certificates of deposit and bankers' acceptances if they are obligations of a domestic bank or savings institution having total assets of at least $1,000,000,000 and which is a member of the Federal Deposit Insurance Corporation or Federal Home Loan Bank System and insured by the Federal Savings and Loan Insurance Corporation; (iii) commercial paper rated at least "A–1" by Standard & Poor's Corporation or at least "Prime–1" by Moody's Investors Services, Inc., or, if not rated, issued by companies which have an outstanding debt issue rated at least "AA" by Standard & Poor's Corporation, or at least "Aa" by Moody's Investors Services, Inc.; (iv) outstanding non-convertible corporate debt securities not issued as short-term obligations but which have at the time of purchase one year or less remaining to maturity and which at the time of purchase are rated at least "AA" by Standard & Poor's Corporation, or at least "Aa" by Moody's Investors Services, Inc.; and (v) repurchase agreements covering securities issued or guaranteed by the United States Government or its agencies or instrumentalities, certificates of deposit or bankers' acceptances described in (ii) above, or commercial paper described in (iii) above.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors. Rule 22c–1 provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security.

Rule 2a–4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant requests an exemption from Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant to value its portfolio by means of the amortized cost method of valuation.

Section 6(c) of the Act provides, in part, that the Commission upon application may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rules thereunder, if and to the extent that such 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 Act.

In support of the requested exemption, Applicant states its belief that the type of investors it seeks to attract prefers that the daily income dividends declared by Applicant reflect income as earned, and that Applicant's sales and redemption price remain fixed. Applicant's directors have determined in good faith that (i) the stable per-share value and the steady flow of investment income resulting from the foregoing policies will be helpful in attracting shareholders to Applicant and will provide such investors substantial benefits; and (ii) in light of the characteristics of Applicant the amortized cost method of valuation is appropriate and preferable for Applicant and will fairly reflect the fair value of each shareholder's interest in Applicant, and that Applicant will continue to use that method only so long as the board of directors believes that it fairly reflects the value of each shareholder's interest. Finally, Applicant represents that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

Applicant has agreed that the following conditions may be imposed in any order granting the exemptions it has requested:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adoped by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of

current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of directors will promptly consider what action if any should be initiated by it.

(c) Where the board of directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessble place) a written record of its board of directors' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than June 7, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request.

As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (If ordered) and any postponements thereof.

For the Commission, by the Division of Investment Mangement, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13586 Filed 5-18-82; 8:45 am]

BILLING CODE 8010-01-M

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the board of directors in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[Release No. 12431; (812-5158)]

MassMutual Liquid Assets Trust and MML Investors Services, Inc.; Filing of an Application for an Order Pursuant to Section 6(c) of the Act Exempting Applicants From the Provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 Under the Act May 12, 1982

Notice is hereby given that MassMutual Liquid Assets Trust (the "Trust"), a no-load, open-end, diversified, management investment company, registered under the Investment Company Act of 1940 (the "Act"), and MML Investors Services, Inc., 1295 State Street, Springfield, Massachusetts 01111, (the "Distributor") (collectively, the "Applicants"), the proposed principal underwriter of the Trust's shares and a wholly-owned subsidiary of Massachusetts Life Insurance Company, filed an application on April 6, 1982, and an amendment thereto on April 21, 1982, for an order of the Commission pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 under the Act to the extent necessary to permit the Trust to calculate its net asset value per share using the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the Trust is a "money market" fund organized as a Massachusetts business trust and that its investment objective is to maximize current income to the extent consistent with liquidity and the preservation of capital. The Trust invests in short-term debt instruments, including commerical paper, certificates of deposit, bankers' acceptances, obligations issued, guaranteed or sponsored by the government of the United States or its agencies or instrumentalities and repurchase and firm commitment agreements with respect to such securities. The Trust may enter into reverse repurchase agreements, with, and lend portfolio securities to financial institutions. Applicants state that when the Trust enters into a firm commitment

agreement it will maintain in a segregated account (not with a broker), beginning on the date the Trust enters into the firm commitment agreement, liquid assets equal in value to the purchase price due on settlement date under the firm commitment agreement in accordance with Investment Company Act Release No. 10666.

The Trustees of the Trust believe that it is in the best interest of the Trust's potential shareholders to adopt the amortized cost method of valuation. Amortized cost valuation will permit relatively steady daily dividends to shareholders and, at the same time, investors would have the convenience of being able to value their holdings simply by knowing the number of shares they own.

Rule 22c-1 adopted under the Act provides, in part, that no registered investment company issuing any redeemable security, and no principal underwriter of any such security, shall sell, redeem or repurchase any security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. The term "value" is defined in Section 2(a)(41) of the Act to mean the market value of securities for which market quotations are readily available, and for other securities and assets, the fair value as determined in good faith by the board of directors. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to current market value for portfolio securities with respect to which market quotations are readily available and for other securities and assets fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things, Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and it would be inconsistent generally with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 7986, May 31, 1977).

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security or transaction or class or classes of persons, securities or transactions, from any provision or provisions of the Act and rules thereunder, if and to the extent that such 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 Act.

Applicants submit that the issuance of the requested order is 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 Act. Applicants consent to the following conditions to an order of the Commission granting the relief requested in the application:

1. In supervising the Trust's operations and delegating special responsibilities involving portfolio management to the Trust's investment adviser, the Trustees of the the Trust undertake—as a particular responsibility within the overall duty of care owed to the Trust's shareholders—to establish procedures reasonably designed, taking into account current market conditions and the Trust's investment objectives, to stabilize the Trust's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the Trustees of the Trust shall be the following:

(a) Review by the Trustees of the Trust, as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the Trust's $1.00 amortized cost price per share and the maintence of records of such review.[1]

(b) In the event that such deviation from the trust's $1.00 amortized cost price per share should exceed ½ of 1%, a requirement that the Trustees will promptly consider what action, if any should be initiated by it.

(c) Where the Trustees determine that the extent of any deviation from the Trust's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, they shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or lossess, or to shorten the Trust's average portfolio maturity; suspending dividends; or utlizing a net asset value per share as determined by using available market quotations.

3. The trust will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Trust will not (a) purchase any instrument with remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. The Trust will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above; the Trust will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Trustees' considerations and actions taken in connection with the discharge of their reponsibilities, as set forth above, to be included in the minutes of the meetings of the Trustees. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. The Trust will limit its portfolio investments, including repurchase agreements and firm commitment agreements, to those United States dollar-denominated instruments which the Trustees determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of an instrument that is not rated, of comparable quality as determined by the Trustees.

6. If any action pursuant to condition 2(c) is taken the Trust will include in its quarterly report, as an attachment to Form N-1Q, a statement describing the nature and circumstances of such action.

The application states that, prior to its use, the Trustees will have made a

[1] To fulfill this condition, the Trust intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the Trustees in the exercise of their discretion to be appropriate indicators of value, which may include, *inter alias*, (1) quotations or estimates of market value for individual portfolios instruments, or (2) value obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, the Trust agrees that if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, the Trust will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

determination that, absent unusual circumstances, amortized cost value represents the fair value of the Trust's portfolio securities.

Notice is further given that any interested person may, not later than June 7, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearng upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–13587 Filed 5–18–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 18728; File No. SR–MSRB–82–8]

Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

May 12, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 5, 1982, the Municipal Securities Rulemaking Board ("MSRB") 1150 Connecticut Avenue, N.W., Suite 507, Washington, D.C. 20036, filed with the Securities and Exchange Commission a proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change deletes references in MSRB Rules G–8, G–12, and G–15 to "bonds" and "notes" and substitutes the phrase "municipal securities" in order to clarify the application of these three rules to all municipal securities. MSRB Rule G–8 prescribes recordkeeping requirements for municipal securities brokers and municipal securities dealers, MSRB Rule G–12 deals with the Uniform Practice requirements of such brokers and dealers, and MSRB Rule G–15 concerns customer confirmations of transactions in municipal securities. The MSRB states that these changes are necessary because of recent determinations by the Commission staff that certain financial instruments other than bonds or notes are municipal securities and subject to the MSRB's rules. The rule change is proposed pursuant to Section 15(B)(b)(2) of the Act which directs the MSRB to adopt rules with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act, as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the 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.

Interested persons are invited to submit written data, views and arguments concerning the submission on or before June 9, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR–MSRB–82–8. Copies of the submission, all subsequent amendments, all written statements with respect to the rule change which are filed with the Commission, and all written communications relating to the rule change between the commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–13588 Filed 5–18–82; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2037]

Mississippi; Declaration of Disaster Loan Area

Neshoba County and the adjacent counties of Leake and Kemper in the State of Mississippi constitutes a disaster area as a result of damage caused by a tornado which occurred on April 3, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 28, 1982, and for economic injury until January 28, 1983, at the addresses below: Small Business Administration, District Office, New Federal Building, Suite 322, 100 West Capitol Street, Jackson, Mississippi 39269 or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

Homeowners with credit available elsewhere—15⅝ percent
Homeowners without credit available elsewhere—7⅞ percent
Businesses with credit available elsewhere—16½ percent
Businesses without credit available elsewhere—8 percent
Businesses (EIDL) without credit available elsewhere—8 percent
Other (non-profit organization including charitable and religious organizations)—11½ percent

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96–302.

Information on recent statutory changes (Pub. L. 97–35, approved August 13, 1981) is available at the above-mentioned office.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 28, 1982.

J. C. Sanders,

Administrator.

[FR Doc. 82–13631 Filed 5–18–82; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2036]

Missouri; Declaration of Disaster Loan Area

Ozark County and the adjacent county of Howell in the State of Missouri constitutes a disaster area as a result of damage caused by high winds and tornadoes which occurred on April 2, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 21, 1982, and for economic injury until January 21, 1983, at the addresses below: SBA Disaster Office, c/o West Plains City Hall, North Highway Business 63, West Plains, Missouri 63121; and SBA Disaster Office, c/o Whites Grocery, Highway 160, Tecumseh, Missouri 63141 or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

Homeowners with credit available elsewhere—15⅝ percent
Homeowners without credit available elsewhere—7⅞ percent
Businesses with credit available elsewhere—16½ percent
Businesses without credit available elsewhere—8 percent
Businesses (EIDL) without credit available elsewhere—8 percent
Other (non-profit organizations including charitable and religious organizations)—11½ percent

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96–302.

Information on recent statutory changes (Pub. L. 97–35, approved August 13, 1981) is available at the above-mentioned office.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 22, 1982.

J.C. Sanders,

Administrator.

[FR Doc. 82–13632 Filed 5–18–82; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Customs Service

[TMK–2 CO:R:E:E]

Britches Great Outdoors; Application for Recordation of Trade Name

Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Britches Great Outdoors," used by Canterbury Tales, Inc., 1321 Leslie Drive, Alexandria, Virginia 22301.

The application states that the trade name is used in connection with the following merchandise which is manufactured in Hong Kong and Taiwan: Men's and women's clothing; shoes, slippers, down booties and shoe trees; umbrellas; key rings; brass accessories; gift items; wallets; leather goods; attaches; luggage; clocks, watches and watch bands; sunglasses; razors; smoker's accessories; knives; games; books; food products; pens and ink; fabric; camping equipment; and retail clothing store services, in U.S. Patent and Trademark Office Classes 3; 11; 22; 27; 39; 40; 46; and 101. Appropriate accompanying papers were submitted with the application.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Any such submission should be addressed to the Commissioner of Customs, Entry, Licensing and Restricted Merchandise Branch, Washington, D.C. 20229, in time to be received no later than July 19, 1982.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

Dated: May 13, 1982.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 82–13561 Filed 5–18–82; 8:45 am]

BILLING CODE 4820–02–M

Mead Johnson & Company, Application for Recordation of Trade Name

Application has been filed pursuant to §133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Mead Johnson & Company," a corporation organized under the laws of the State of Delaware, located at 2404 Pennsylvania Street, Evansville, Indiana 47721.

The application states that the trade name is used in connection with the following merchandise manufactured in numerous foreign countries: pharmaceuticals and medicines; chemicals; toiletries; vitamins; medical appliances; foods for infants and invalids and other nutritional foods. Appropriate accompanying papers were submitted with the application.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Any such submission should be addressed to the Commissioner of Customs, Entry, Licensing and Restrited Merchansise Branch, Washington, D.C. 20229, in time to be received no late than July 19, 1982.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–566–5765).

Notice of the action taken on the application for recordation of this trade name will be published in thee Federal **Register.** Dated: May 13, 1982.

A. Piazza,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 82–13560 Filed 5–18–82; 8:45 am]

BILLING CODE 4820–02–M

Office of the Secretary

Privacy Act of 1974; Reinstatement and Update of System of Records

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of reinstatement and update of Treasury/OS.196—Physical Security Information System.

SUMMARY: Under the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Director (Physical Security), Preparedness and Physical Security Deputy Division, Office of Administrative Programs, gives notice of intent to reinstate and update the system entitled "Physical Security Information System" (Treasury/OS.196), as last published in 41 FR 45200, October 14, 1976. This system is being updated to include a category of records that relates to (1) Treasury personnel with security clearances who attend security orientation on the implementation of Executive Order No 12065, which encompasses procedures for the handling and safeguarding of classified national security information and (2) those Treasury officials who do not have original classification authority for national security information who may control and/or decontrol officially limited information. Finally, the maintenance and disposition time on

reports within the system has been revised from quarterly to annually.

DATES: Comments must be received not later than June 18, 1982. If no comments are received, to which the Department publishes a revision to incorporate comments, this system will become effective on July 19, 1982.

ADDRESSES: Comments may be sent to: Dennis E. Southern, Deputy Director (Physical Security), Preparedness and Physical Security Division, Office of Administrative Programs, Room 706, 1331 G Street, NW., c/o Main Treasury Mailroom, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Dennis E. Southern, Deputy Director (Physical Security), Telephone: 202–376–0823.

SUPPLEMENTARY INFORMATION: This system of records was last published at 41 FR 45200, October 14, 1976. For management purposes, 48 systems of records (Treasury/OS.196 included) were consolidated into one system, Treasury/OS.001, published at 42 FR 49099, September 26, 1977. The latter system proved inadequate because the system failed to list all the routine uses and authorities of the separate systems it incorporated. Therefore, the consolidated system was deleted and the original systems were reinstated, published at 44 FR 7009, February 5, 1979. At the time this action was taken, Treasury/OS.196 was withheld from reinstatement because of the pending of the Physical Security Staff. Upon completion of the reorganization, the Building Pass function, formerly covered under OS.196, was transferred to the Security Operations Branch. A new system of records, Treasury/OS.006 Building Passes, published at 46 FR 57211, November 20, 1981, was established to cover the Building Pass function within the Security Operations Branch. This reinstatement and update of Treasury/OS.196 will cover the records still under the jurisdiction of the Physical Security Staff.

Dated: May 5, 1982.

Cora P. Beebe,

Assistant Secretary (Administration).

TREASURY/OS.196

SYSTEM NAME:

Physical Security Information System—Treasury/OS.196.

SYSTEM LOCATION:

Room 706, 1331 G Street N.W., c/o Main Treasury Mailroom, Washington, D.C. 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Treasury officials, who classify documents with a national security classification, i.e., Top Secret, Secret, or Confidential.

Each Department of the Treasury official, by name and position title, who has been delegated the authority to downgrade and declassify national security information. The authority is delegated only by an official authorized to exercise original classification authority for Top Secret information or an official acting in that position.

Each Department of the Treasury official, by name and position title, who has been delegated the authority for original classification of national security information as Confidential. This authority is delegated only by a Departmental official authorized to exercise original classification authority to Top Secret information or an official acting in that position.

Each Department of the Treasury official who does not have original classification authority for national security information who may control and/or decontrol officially limited information.

An alphabetical listing of Department of the Treasury employees who have valid security violations as a result of the improper handling, safeguarding, or storage of classified national security and officially limited information.

Department of the Treasury personnel concerned with classified national security and officially limited information who have participated in a security orientation program regarding the significant features of the security requirements and procedures for the handling and safeguarding of classified national security and officially limited information.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Data Index System for national security information, (2) Report of Authorized Downgrading and Declassification Officials, (3) Report of Authorized Classifiers, (4) Designation of Controlling/Decontrolling Officials, (5) Record of Security Violations, and (6) Physical Security Orientation and Acknowledgment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order No. 12065, dated June 28, 1978, the Information Security Oversight Office Directive No. 1, dated October 5, 1978, Title 31, Subtitle A, Part 2, and Treasury Directives Manual Chapters 71–05.A, dated September 11, 1981, and 71–20.A, dated 20 June, 1980.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is designed to (1) oversee compliance with Executive Order No. 12065 and Departmental programming and implementation, (2) prevent improper classification of national security information, (3) ensure prompt declassification of appropriate documents, (4) record details of valid security violations, (5) assist in determining the effectiveness of the physical security programs, and (6) provide a basis for administrative or judicial action, when such action is indicated. For additional routine uses, see Appendix AA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy paper files.

RETRIEVABILITY:

Manually filed and indexed by office or bureau, date, name of official and position title, where appropriate.

SAFEGUARDS:

Secured in security filing containers to which access is limited to personnel with the need-to-know.

RETENTION AND DISPOSAL:

With the exception of the Record of Security Violations, which is maintained for a period of two years, and the Data Index System cards for national security information, which are retained for one (1) year from the declassification date, the remaining records are destroyed and/or updated on an annual basis. Destruction is effective by shredding or other comparable means.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director (Physical Security), Preparedness and Physical Security Division, Office of Administrative Programs, Room 706, 1331 G Street N.W., c/o Main Treasury Mailroom, Washington, D.C. 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and types of records sought; (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment of similar information) to

the Chief, Disclosure Branch (See access below).

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 100, 1331 G Street N.W., c/o Main Treasury Mailroom, Washington, D.C. 20220

CONTESTING RECORD PROCEDURES:

See access above.

RECORD SOURCE CATEGORIES:

The sources of the information are office and bureau employees of the Department of the Treasury. The information concerning any security violation is reported by Department of the Treasury security officials and the U.S. Department of State security officials as concerns Department of the Treasury personnel attached to U.S. diplomatic posts or missions.

[FR Doc. 82-13506 Filed 5-18-82; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 97
Wednesday, May 19, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

[M-351, May 12, 1982]

TIME AND DATE: 9:30 a.m., May 19, 1982.

PLACE: Room 1012, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Discussions with Israel. (BIA)
2. Discussions with Germany. (BIA)
3. Discussions with Scandinavia. (BIA)
4. Discussions with China. (BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-735-82 Filed 5-14-82; 4:08 pm]

BILLING CODE 6320-01-M

2

CIVIL AERONAUTICS BOARD.

[M-353, May 13, 1982]

TIME AND DATE: 10 a.m., May 20, 1982.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C.

SUBJECT:

1. Ratification of Items Adopted by Notation.

2. Docket 39102, *Eastern Air Lines, Civil Penalties for Violation of Part 252*, BCCP petition for review of initial decision assessing $200 as the civil penalty for a Part 252 violation; Dockets 38747, 39464, and 39674, *United Air Lines, Compliance with Part 252 Enforcement Proceeding*, BCCP and airline petitions for review of initial decision assessing $500 in civil penalties for each violation of the smoking regulations. (Memo 1278, OGC)

3. Revision of the Board's rule implementing Title VI of the Civil Rights Act. (OGC)

4. Docket 40513, Petition of World Airways for rulemaking with regard to fare discounting. (OGC, BDA)

5. Board comments on draft Justice Department regulations prohibiting discrimination against the handicapped in Federally conducted programs. (Memo 1283, OGC)

6. Elimination of flight schedule filing requirements. (OGC, OC, BDA, BIA)

7. Part 384 Statement of Organization. (OGC, OCCCA, BCCA)

8. Docket 40176, Airport "slot" exchange agreement filed by the Air Transport Association of America. (BDA)

9. Docket 40545, CAB Recommendations to the FAA concerning the Interim Operations Plan. (OGC)

10. Docket 39864 and EAS-813, Western's notice to suspend service at Pierre, South Dakota. (BDA)

11. Docket 40470, Jamaire Inc's (name recently changed to Sunbelt Airlines, Inc.) notice of intent to suspend all service at University/Oxford, Mississippi, Memo 1287, BDA)

12. Docket 39374, Notice of Cochise Airlines to terminate service at Winslow, Arizona, and Blythe, California. (Memo 087-H, BDA)

13. Dockets 40533 and 40538, 90-day notice of Golden West Airlines to terminate service at numerous California EAS points and application for exemption from the notice requirements to trigger immediate subsidy payments. (Memo 1188-A, BDA)

14. Docket 40505, 90-day notice of Sky West airlines to terminate service at Cedar City, Utah, and Page, Arizona. (Memo 1288, BDA)

15. Dockets EAS-765 and EAS-792, Appeal of Berlin, New Hampshire and Newport, Vermont for inclusion in the small communities program under section 419(b) of the Act. (BDA)

16. Docket 40511, Application of North American Airlines for a Certificate to Provide Charter Air Transportation. (Memo 1285, BDA)

17. Dockets 40597 and 40598, Petitions of Hermens Air, Inc. and Cape Smythe Air Service, Inc., for a Temporary Mail Rate. (BDA)

18. Docket 36592, *All American Aviation, Inc. et al., (Agreement CAB No. 1041, as amended) Petition of Air Freight Haulage Co., Inc. (Air Cargo, Inc. Show-Cause Proceeding).*

19. Dockets 33361, 33362, 33363, Petition of Aeroamerica, Inc., for Reconsideration of Order 82-2-83. (BDA)

20. Employee Protection Program: Applications on Behalf of Employees of Aeroamerica (Dockets 38885 and 38979); Airlift International (Dockets 38418, 40342 and 40352); Air New England (Dockets 40201, 40251, 40349, 40529, and 40530); American (Dockets 38570 and 39115); Braniff (Dockets 38978 and 40280); Continental (Dockets 38720, 38816 and 39524); Delta (Docket 39700); Eastern (Docket 38586); Mackey International (Docket 39783); Overseas National (Dockets 34562 and 34711); Pan Am (Dockets 38883 and 40279); TWA (Dockets 38184, 38193, 38196, 38884, 39013 and 39032); and United (Dockets 38571, 38882 and 39525) for Determination of Qualifying Dislocation. (BDA)

21. Docket 32660, Agreement CAB 28655, R-1 through R-13, Agreement CAB 28665, IATA agreements amending resolutions dealing with fare construction rules and currency conversion procedures as well as other resolutions having worldwide application. (BIA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-736-82 Filed 5-14-82; 4:08 pm]

BILLING CODE 6320-01-M

3

COMMODITY CREDIT CORPORATION.

TIME AND DATE: 2 p.m., May 19, 1982.

PLACE: Room 200-A Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Executive Session, closed to the public.

MATTERS TO BE CONSIDERED: Agenda to be announced.

CONTACT PERSON FOR MORE INFORMATION: Edward D. Hews, Secretary, Commodity Credit Corporation, P.O. Box 2415, Room 3090-South Building, U.S. Department of Agriculture, Washington, D.C. 20013; telephone (202) 447-7583.

[S-738-82 Filed 5-17-82; 11:45 am]

BILLING CODE 3410-05-M

4

FEDERAL COMMUNICATIONS COMMISSION

The following item has been deleted at the request of the Chairman's office from the list of agenda items scheduled for consideration at the May 13, 1982, Open Meeting and previously listed in the Commission's Notice of May 5, 1982.

Agenda, Item No., and Subject

General—2—*Title:* Notice of Proposed Rulemaking to expand the frequencies available for use by Aural broadcast STL and Intercity relay stations. *Summary:* The Commission will consider the merits of RM-2697, filed by the National Association of Broadcasters (NAB), to reallocate the

942–947 MHz band back to the Broadcast Auxiliary Service and RM–3246, filed by Moseley Associates, Inc., to use unassigned UHF-TV channels for Broadcast Auxiliary Service. Additionally, the Commission will consider the merits of sharing the 2130–2150 MHz and 2180–2200 MHz bands, presently allocated to the Private Operational-Fixed Microwave Service, with the Broadcast Auxiliary Service.

Issued: May 13, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–6712–01 Filed 5–17–82; 11:46 am]

BILLING CODE 6712–01–M

5

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 20, 1982, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—*Title: Third East Coast Earth Station. Summary:* The Commission will consider whether to authorize the construction of 14/11 GHz and 6/4 GHz communications satellite earth station facilities in the vicinity of Bloomsburg, Pennsylvania, for operation with the INTELSAT satellite system.

Renewal—1—*Title:* License renewal application of Mid-Ohio Communications, Inc. for WBBY(FM), Westerville, Ohio, and mutually exclusive construction permit application of Metro Broadcasting, Inc., and transfer of control of Mid-Ohio Communications, Inc. *Summary:* Mid-Ohio Communications, Inc., filed for renewal of license for Station WBBY(FM) Westerville, Ohio. Metro Broadcasting, Inc. filed for a construction permit for an FM station in Westerville, Ohio, utilizing the facilities of WBBY(FM). In addition, an application was filed to transfer control of Mid-Ohio Communications, Inc. The Commission considers designating the Mid-Ohio and Metro applications for a comparative hearing and considers whether to grant the Mid-Ohio transfer application.

Television—1—*Title:* Petition filed by Eastern Carolinas Broadcasting Company, Inc. seeking reconsideration of Commission action granting the application of Clay Broadcasting Corporation for minor changes in the facilities of WWAY–TV, Channel 3, Wilmington, North Carolina. *Summary:* The Commission will consider whether the Commission properly denied Eastern's informal objection claiming UHF impact of Clay's proposed changes on WPDE–TV, Channel 15, Florence, South Carolina.

Television—2—Applications of Charleston, S.C. VHF television stations WCBD, WCIV, WCSC, and WITV to make changes in their facilities; petitions to deny. *Summary:* The Commission will consider whether grant of the applications will have an impact on UHF stations in Columbia and Florence, S.C., which would adversely affect the public interest.

Broadcast—1—*Title:* Revision of FM Assignment Policies and Procedures (BC Docket No. 80–130). *Summary:* A Notice of Proposed Rule Making and Notice of Inquiry was issued proposing new policies and procedures for FM channel assignment rule making cases. The Report and Order discusses and resolves the remaining issues in the proceeding.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 245–7674.

Issued: May 13, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–740–82 Filed 5–17–82; 11:46 am]

BILLING CODE 6712–01–M

6

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Thursday, May 20, 1982, following the Open Meeting which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

Hearing—1—Draft Decision in the Simon Geller, Gloucester, Massachusetts comparative FM renewal proceeding (Docket Nos. 21104 and 21105).

This item is closed to the public because it concerns adjudicatory matters (See 47 CFR 0.603(j)).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: May 13, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–741–82 Filed 5–17–82; 11:46 am]

BILLING CODE 6712–01–M

7

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 20909, Friday, May 14, 1982.

PLACE: Board Room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Marshall (202–377–6679).

CHANGES IN THE MEETING: The following item has been withdrawn from the open portion of the Bank Board Meeting:

Perfecting of Security Interest in U.S. Government Securities Collateralizing Retail Repurchase Agreements

[No. 34, May 17, 1982]

[S–743–82 Filed 5–17–82; 3:05 pm]

BILLING CODE 6720–01–M

8

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., May 27, 1982.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Report on Notation Items disposed of during April, 1982.
2. Report of the Secretary on times shortened for submitting comments on section 15 agreements pursuant to delegated authority during April, 1982.
3. Report of the Secretary on Applications for Admission to Practice approved during April, 1982, pursuant to delegated authority.
4. Agreement No. 10433: Space Charter Agreement between Societe Ivoirienne De Transport Maritime and Delta Steamship Lines, Inc.
5. Agreement No. T–3856: Mid-Gulf Seaports Marine Terminal Conference, the Terminal Operators Conference of Hampton Roads, and the South Atlantic Marine Terminal Conference—Request for hearing on order of conditional disapproval.
6. Docket No. 81–76: Proposed Amendment to General Order 4, Revised, for the Purpose of Implementing the Amendments to Sections 1 and 44 of the Shipping Act, 1916, made by Pub. L. 97–35—Consideration of Comments and proposed final rule.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523–5725.

[S–742–82 Filed 5–17–82; 2:49 pm]

BILLING CODE 6730–01–M

9

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

May 13, 1982.

TIME AND DATE: 10 a.m., Wednesday, May 19, 1982.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Closed (Pursuant to 5 U.S.C. 552(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Minerals Exploration Company, Docket No. WEST 81–189–RM; Petition for Interlocutory Review. (Consideration of the operator's petition concerning whether the judge erred in denying the operator's motion for disciplinary sanctions.)

2. Ozark-Mahoning Company, Docket No. VINC 79–173–PM; Petition for Review seeking relief from, or reconsideration of, final order of the Commission. (Issues include whether the operator should be allowed relief from a final Commission order against it.)

Vote.—Voting to Close the Meeting: Chairman Collyer, Commissioners Backley and Jestrab. Commissioner Lawson voted to hold Ozark-Mahoning open.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

[S–744–82 Filed 5–17–82; 3:21 pm]

BILLING CODE 6735–01–M

10

INTERNATIONAL TRADE COMMISSION.

[USITC SE–82–16A/18]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 F.R. 20244 May 11, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, May 19, 1982.

CHANGES IN THE MEETING: Change to the Agenda for the Meeting of Wednesday, May 19, 1982, and the Scheduling of a Meeting to be Held on Thursday, May 20, 1982, at 2:00 p.m.:

By action jacket SE–82–07, the United States International Trade Commission, in conformity with 19 CFR 201.37(b), voted to postpone item No. 7 (Investigation 337–TA–103 (Certain Stabilized Hull Units and Components Thereof and Sonar Units Utilizing Said Stabilized Hull Units)—briefing and vote) and reschedule it as item No. 1 for an emergency meeting to be held on Thursday, May 20, 1982, at 2:00 p.m.

Commissioners Alberger, Calhoun, Stern, Eckes, Frank, and Haggart determined by recorded vote that Commission business requires the change in schedule and affirmed that no earlier announcement of the change to the agenda was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–737–82 Filed 5–17–82; 10:30 am]

BILLING CODE 7020–02–M

11

NUCLEAR REGULATORY COMMISSION.

DATE: Week of May 17, 1982 (Changes).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTER TO BE DISCUSSED: Monday, May 17 (Additional Item):

3:30 p.m.:

Discussion of DOE Request for Reconsideration of CRBR Exemption (public meeting).

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Water Magee (202) 634–1410.

Walter Magee,

Office of the Secretary.

May 14, 1982.

[S–745–82 Filed 5–17–82; 3:28 pm]

BILLING CODE 7590–01–M

12

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 19508, May 5, 1982.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, April 30, 1982.

CHANGES IN THE MEETING: Additional meeting. The following items were considered at a closed meeting scheduled on Friday, May 14, 1982, at 11:00 a.m.:

Litigation matters.

Chairman Shad and Commissioners Loomis, Evans and Thomas determined by vote that Commission business required consideration of these matters and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Diane Klinke at (202) 272–2178.

May 17, 1982.

[S–746–82 Filed 5–17–82; 3:32 pm]

BILLING CODE 8010–01–M

federal register

Wednesday
May 19, 1982

Part II

Department of Agriculture

Agricultural Marketing Service

Milk in the Oklahoma Metropolitan and Certain Other Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments to Tentative Marketing Agreements and to Orders

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1106, 1126 and 1132,

[Docket Nos. AO-210-A43, etc.]

Milk in the Oklahoma Metropolitan and Certain Other Marketing Areas; Recommended Decision and Opportunity to File Written Exceptions to Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR parts	Marketing area	Docket Nos.
1106	Oklahoma Metropolitan	AO-210-A43.
1071	Neosho Valley	AO-227-A35.
1073	Wichita, Kansas	AO-173-A37.
1104	Red River Valley	AO-298-A30.
1126	Texas	AO-231-A48.
1132	Texas Panhandle	AO-262-A32.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends a merger of the Oklahoma Metropolitan, Neosho Valley, and Wichita marketing areas and the Oklahoma counties of the Red River Valley marketing area under one order. The combined "Southwest Plains" marketing area also would include all presently unregulated areas in the State of Oklahoma, and also the Oklahoma county of Beckham that is now a part of the Texas Panhandle marketing area. The provisions of the proposed merged order are patterned largely after those of the Oklahoma Metropolitan order with minor modifications. The decision recommends also that the Texas counties of the Red River Valley marketing area be added to the marketing area of the Texas order. The recommended changes, which are based on industry proposals considered at a public hearing in May 1980, are necessary to reflect current marketing conditions and to assure orderly marketing in the respective areas.

DATE: Comments are due June 18, 1982.

ADDRESS: Comments (five copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-4824.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act, this document is exempt from such requirements since this proceeding was initiated prior to January 1, 1981.

Prior documents in this proceeding: Notice of Hearing—Issued April 25, 1980, published April 30, 1980 (45 FR 28736).

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 orders regulating the handling of milk in the respective marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C., 20250, by June 18, 1982. Five copies of the exceptions should be filed. All written submissions made pursuant to the this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Oklahoma City on May 20-23 and May 27-29, 1980, pursuant to a notice issued April 25, 1980 (45 CFR 28734).

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed merged and/or expanded marketing areas is in the current of interestate commerce or directly burdens, obstructs or affects interstate commerce in milk or its products;

2. Whether any of the following proposed mergers of marketing areas or parts thereof should be included under one or more orders:

(a) Merger of the Oklahoma Metroplitan, Neosho Valley, Red River Valley, and Wichita marketing areas;

(b) Merger of the Oklahoma Metropolitan and Red River Valley marketing areas; and

(c) Merger of the Texas and Red River Valley marketing areas;

3. Whether the proposed Southwest Plains marketing area should be expanded to include additional counties in the State of Oklahoma; and

4. With respect to any of the aforesaid orders, or proposed combination thereof, what its provisions should be with respect to:

(a) Milk to be priced and pooled;

(b) Classification of milk;

(c) Class prices and location adjustments;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Character of Commerce.* The handling of milk in the proposed merged marketing area is in the current of interstate commerce and directly burdens or obstructs interstate commerce in milk and milk products.

The proposed merged marketing area, designated as the "Southwest Plains" marketing area, includes the present marketing areas of Order 71 (Neosho Valley), Order 73 (Wichita, Kansas), and Order 106 (Oklahoma Metropolitan); the Oklahoma portion of the present marketing area of Order 104 (Red River Valley); Beckham County, Oklahoma, which is in the marketing area of Order 132 (Texas Panhandle); and presently unregulated territory in the State of Oklahoma. The marketing area includes territory in three states (the entire State of Oklahoma, 52 counties in the State of Kansas and 4 counties in the State of Missouri).

Interstate commerce is involved in the procurement and sale of fluid milk products by handlers distributing milk in the proposed marketing area. Handlers regulated under the Oklahoma Metropolitan order who operate plants in the State of Oklahoma receive milk from out-of-state producers located in Arkansas, Kansas, Missouri, New Mexico, and Texas. Fluid sales by such handlers are made in Kansas, Missouri, Oklahoma and Texas. Also, fluid milk sales are made in Oklahoma by handlers who operate plants that are located in the States of Arkansas, Kansas, Missouri, and Texas.

2. *Need for merger of orders.* Marketing conditions in the Neosho Valley (Order 71); Wichita, Kansas (Order 73); Red River Valley (Order 104); and Oklahoma Metropolitan (Order 106) marketing areas justify a merger of the orders regulating the handling of milk in these areas. This single order, to be known as the "Southwest Plains" marketing area, is the most appropriate means of promoting orderly marketing conditions and thus effectuating the

declared policy of the Act. The merged order should include all of the territory included in the marketing areas of the four orders, except for seven Texas counties in the Order 104 marketing area. Such counties should be added to the Texas (Order 126) marketing area as handlers regulated under Order 126 are the primary distributors serving this area.

Associated Milk Producers, Inc. (AMPI), proposed the merged order that is adopted herein. AMPI operates a distributing plant and two manufacturing plants that are pooled under Order 106 and a manufacturing plant that was pooled at the time of the hearing under Order 73.[1] The cooperative represents more than 80 percent of the dairy farmers that would be producers under the merged order. Currently, AMPI markets milk on behalf of producers in each of the four order areas and is the principal supplier for handlers regulated under Orders 106 and 73. AMPI is also the principal cooperative association supplying the Order 104 market. However, a substantial volume of the market's milk is supplied by 40 dairy farmers who are not members of any cooperative association. In the Order 71 market, AMPI represents a relatively limited number of the producers who supply the market.

AMPI testified that the markets regulated by the four orders should be merged because they now represent one common market rather than the four separate and distinguishable markets contemplated by the existing regulations. AMPI contends that the increasing regionalization of milk marketing brought about by changes in both the procurement of raw milk supplies and in the distribution of finished products requires a single regulation to promote more orderly marketing conditions throughout the area under consideration. In effect, AMPI contends that each of the four orders was intended to reflect a local market situation that no longer exists in view of the expanding sales areas of fewer but larger distributing plants and the organization of the producer milk supply on a regional basis to effectively furnish and balance the fluid milk needs of such plants. AMPI testified that a regional order would: (1) Recognize the common sales area of distributing plants regulated under the respective orders; (2) eliminate competitive inequities among handlers that result from the application of different regulatory provisions in a common sales area; (3) provide for a more equal sharing of the Class I sales and the cost of maintaining the necessary reserve milk supply for such sales among all producers supplying the region's fluid milk needs; and (4) provide for a greater degree of blend price stability than that which is exhibited by the four separate orders.

Mid-America Dairymen, Inc., (Mid-Am) generally supported AMPI's proposed four-market merger, particularly the inclusion of the Order 71 marketing area. Mid-Am is the principal supplier of milk to handlers regulated under Order 71 and also represents producers who supply handlers regulated under Orders 73 and 106. Mid-Am testified that the main reason for including Order 71 in the merger is the significant degree to which the Order 71 procurement area overlaps with the procurement areas of handlers regulated under the other orders proposed to be merged.

Forty nonmember producers who are the primary suppliers of a distributing plant regulated under Order 104 opposed to the merger proposed by AMPI. These producers represent approximately 30 percent of the dairy farmers who supply the Order 104 market, or approximately 2 percent of the total number of dairy farmers that would be producers under the merged order. The nonmember producers were primarily concerned that their pay prices would be reduced if the merged order proposed by AMPI were adopted. For this reason they opposed AMPI's proposal and supported alternatives that they believed would have a lesser negative effect on their blend price.

Three alternative proposals were submitted by the 40 producers and were published in the hearing notice for consideration at the hearing. The three alternatives, in order of preference, were to: (1) Retain Order 104 as a separate order; (2) merge Orders 104 and 106; and (3) merge Orders 104 and 126.

At the hearing, a witness testifying on behalf of the 40 producers offered no support for the proposal to retain Order 104 as a separate order. Instead, he advocated that Order 104 be merged with one of the larger orders in the Southwest. The witness testified that in his opinion a strong economic basis exists for two merger alternatives, namely; (1) A merger of Orders 71, 73, 104, 106 and 126 into a single order; and (2) a merger of Orders 104 and 126 into a single order (and perhaps separately a merger of Orders 71, 73 and 106). Alternatively, the witness advocated the merger of Orders 104 and 106 as an interim step pending the five-market merger that the witness advocated.

In their post-hearing brief and proposed findings of fact, the 40 producers opposed the four-market merger proposed by AMPI. They advocated, as did their hearing witness, that if any merger is undertaken by the Secretary at this time, Order 104 should be merged with Order 126. They also supported merging Orders 104 and 106 as an intermediate step pending a five-market merger suggested by their hearing witness. In addition, they concluded that the record evidence supports the scheduling of a new hearing to consider the inclusion of Order 126 in a five-market merger while maintaining the status quo of the other four orders now under consideration. Their brief differed, however, from the position set forth by their witness at the hearing in that they do not believe that an economic basis exists for a separate merger of Orders 71, 73 and 106. In fact, they conclude that the two northernmost markets (Orders 71 and 73) are insufficiently associated with Orders 104 and 106. They contend that, on the basis of handler competition, the two northernmost markets have a greater association with markets not involved in this proceeding. For this reason, they conclude that Orders 71 and 73 should not be merged with Orders 104 and 106, a position which appears to be in conflict with their conclusion that the record evidence supports a hearing to consider a five-market merger.

In addition to their interest in the potential impact of any merger on their blend price, the 40 producers opposed the four-market merger on the basis that such a merger is an attempt by the major cooperatives to divide their sales areas in such a way as to lessen supply competition. The producers contend that their ability to continue to market milk as nonmembers hinges on the formation of a five-market merger or a merger of Orders 126 and 104. They claim that under either of such mergers AMPI would represent a lesser proportion of the total milk supply than under any of the other merger alternatives.

Three other interested parties commented on the merger issue in their briefs. The Order 104 handler who operates the distributing plant that is supplied by the 40 producers supported the merger proposals submitted by the nonmember producers as contained in the hearing notice. A cooperative association that represents producers who supply Orders 71 and 106 and a handler who operates a distributing plant pooled under Order 106 supported

[1] This plant, located at Hillsboro, Kansas, became pooled as a supply plant under the Texas order in September 1981. Official Notice is taken of the "List of Handlers September 1981" published by the market administrator of the Texas order.

a merger of markets that would best facilitate and foster supply competition. While neither of these two parties specified which markets should be merged, each expressed opposition to the four-market merger proposed by AMPI as well as to some of the terms and provisions proposed to be included in the merged order.

The current marketing areas of the four orders to be merged and the terms and provisions of such orders evolved from public hearings held to promulgate Federal milk order regulations in these areas. The merging of the four marketing areas and the marketing area expansion adopted herein would continue a trend of order consolidations and marketing area expansions that are already a part of the history of the development of Federal regulation in the area under consideration.

Federal regulation within the proposed merged marketing area was initiated in 1944 with the issuance of the Wichita, Kansas, order. After marketing area expansions in 1954 and 1959, the Wichita order was merged in 1966 with the Southwest Kansas order, which had been promulgated in 1954. At that time the combined marketing area was also expanded to include all of the territory comprising the marketing area of the current Wichita order. As a consequence of those regulatory actions, the marketing area of the Wichita order now encompasses 43 Kansas counties.[2]

The Neosho Valley order was promulgated in 1951 and its marketing area was expanded in 1960 to include an additional county in Kansas. Currently, the order encompasses four Missouri and nine Kansas counties in its marketing area.[3]

The Oklahoma Metropolitan order was issued in 1957 to merge the Oklahoma City order (promulgated in 1950 and marketing area expanded in 1951) and the Tulsa-Muskogee order (the Tulsa and Muskogee orders were promulgated in 1950 and 1951, respectively, and the orders were merged in 1953). The marketing area of the Oklahoma Metropolitan order was then expanded in 1960 to its current size. The marketing area currently includes one entire county plus 9 cities and other specified towns, townships and divisions that comprise parts of 12 other counties, all in the State of Oklahoma.[4]

The Red River Valley order was promulgated in 1958 and the marketing area was expanded in 1965. Currently, the marketing area of the order encompasses 17 Oklahoma counties and seven Texas counties.[5]

When the original orders were established they included marketing areas in which the handlers regulated by the individual orders were the primary distributors serving the respective markets. In most cases the distributing plants were supplied by local cooperative associations that assumed the burden of maintaining the reserve milk supplies for each of the separate and distinguishable markets. Although the original orders were expanded and merged over the years as local markets began to take on more regional characteristics, the four orders herein proposed to be merged do not currently reflect the extent to which further regionalization of milk marketing has occurred in the proposed Southwest Plains area. Technological developments have led to fewer but larger competing plants that distribute fluid milk products over wider areas. Also, local cooperatives have merged to form larger cooperative associations that organize milk supplies over a broad area for shipment to these distributing plants. Any decision to merge the several orders involves a consideration of how much more extensive the regionalization of milk marketing has become and whether this tends to reduce the ability of the separate orders to carry out the purposes of the Act.

In this regard, major recognition must be given to the marketing operations of AMPI, the major cooperative operating in the four-market area. Through its "Southern Region" subunit, AMPI markets milk not only in this area but in eight other Federal order markets located to the south, east and to the west of the four-market area. The northernmost of these markets are regulated by Orders 71 and 73 while the southernmost market is regulated by Order 126. The entire proceeds obtained from the sale of milk and dairy products throughout the 12-market region are combined and reblended by AMPI to make payments to the cooperative's producer members in this region. Such practice results in all AMPI members in the region sharing proportionately in both the cooperative's Class I sales in the region and its cost of maintaining the reserve milk supplies that are associated with such fluid milk sales.

With respect to the four markets to be merged, AMPI represented about 81 percent of the approximately 3.7 billion pounds of milk pooled under the four orders during the period of 1977 through 1979. About 83 percent of AMPI's 3 billion pounds of milk on these markets during this period was delivered to distributing plants regulated under the orders, primarily on a direct-shipped basis from farms to plants.

In addition to a distributing plant that is pooled under Order 106, AMPI operates two manufacturing plants that also are pooled under Order 106. The manufacturing plants are located at Oklahoma City and Tulsa, Oklahoma. A third manufacturing plant operated by AMPI that is located at Hillsboro, Kansas, was pooled under Order 73 at the time of the hearing. During 1977 through 1979, about 318 million pounds of milk were received at the three manufacturing plants. This volume of milk represented about 8.5 percent of the total four-market supply of producer milk. From these plants limited quantities of milk were shipped to distributing plants regulated under the four orders to supplement fluid milk needs. Minor quantities were also shipped to distributing plants regulated under other orders. Approximately 90 percent of the milk received at the plants, however, was used to produce manufactured dairy products.

Milk received at the three manufacturing plants represents the milk of AMPI's members which is not needed on certain days, such as holidays and weekends, and during the seasonal flush period by the distributing plants supplied by AMPI. Under AMPI's operating procedure, this milk is pooled under the order that regulates the manufacturing plant that receives the milk. Thus, although AMPI supplies milk to distributing plants for Orders 71 and 104, the reserve milk for these markets is pooled under Order 73 (or at times Order 126) and Order 106. For the 1977 through 1979 period, about 88 percent of the reserve milk for the four markets was pooled on Order 106 and 12 percent on Order 73. For the year 1979, when the Hillsboro plant first became regulated under Order 73, 57 percent of the reserve milk for this area was pooled on Order 106 and 43 percent was pooled in Order 73. It is noted that this milk represents a reserve supply not only for the four

[2] Official notice is taken of decisions issued by the U.S. Department of Agriculture on August 10, 1966 (31 FR 10825), April 23, 1959 (24 FR 3241), March 29, 19054 (19 FR 1823), and March 12, 1954 (19 FR 1463).

[3] Official notice is taken of decisions issued by the U.S. Department of Agriculture on June 17, 1960 (25 FR 5702) and October 15, 1951 (16 FR 10647).

[4] Official notice is taken of decisions issued by the U.S. Department of Agriculture on April 12, 1960 (25 FR 3324), March 28, 1957 (22 FR 2151), July 24, 1953 (18 FR 4424), October 11, 1951 (16 FR 10561), May 18, 1951 (16 FR 4807), March 16, 1950 (15 FR 1604) and March 8, 1950 (15 FR 1437).

[5] Official notice is taken of decisions issued by the U.S. Department of Agriculture on February 2, 1965 (31 FR 1289) and September 12, 1958 (23 FR 7221).

markets to be merged but also to some extent a reserve supply for other Federal order markets as well. On occasion, milk is shipped from the AMPI manufacturing plants to distributing plants regulated under Order 126, Order 108 (Central Arkansas), and Order 97 (Memphis, Tennessee).

AMPI's Hillsboro plant was pooled as a supply plant under Order 126 prior to August 1979 on the basis of shipments made to distributing plants regulated under that order. Significant changes in milk movements by AMPI resulted in the plant becoming regulated under Order 73 in August 1979. The plant was pooled under that order as a cooperative balancing plant through August 1981. Beginning with September 1981, the plant again became pooled under Order 126 as a supply plant. In either case, however, the plant was an outlet for reserve milk supplies associated with markets other than those where the plant was actually pooled.

In addition to the change in the regulation of the Hillsboro plant, AMPI also shifts producers among the various regulated markets to meet the fluid milk needs of handlers. As a result, some dairy farmers are often producers under more than one order during the same month. Of the dairy farmers that supplied the four markets to be merged, about 10 percent supplied more than one market during the month of December in 1977 and in 1978, with this number increasing slightly to 12 percent in December 1979. Also the data indicate that during these years there were substantial month-to-month fluctuations in the numbers of producers who supplied each of the four markets. Such changes in producer numbers reflect changes in market structures (e.g., plants going out of business or shifting from one order to another) as well as deliberate shifts of producers by AMPI and others to meet fluid milk needs.

These marketing arrangements by AMPI go considerably beyond the marketing concept envisioned for the individual orders. The separate orders were intended to reflect basically a local marketing situation where certain milk producers are regularly associated with a particular market and where those producers share in both that market's higher-valued Class I sales and the lower-valued reserve milk supplies that must be available. Because of AMPI's varied arrangements for supplying handlers and disposing of the reserve milk, however, many members of this regional cooperative have no regular association with a particular market. As noted, the returns from member milk sold in the various markets are reblended to its members. The price each member receives for his milk may or may not be closely related to the order uniform price announced for the market or markets to which his milk was delivered.

The incompatibility of the separate orders with current marketing practices is particularly evident with respect to the handling of reserve milk supplies. It is contemplated under the individual orders that each market pool carry the reserve milk supplies associated with the local market's fluid milk sales. However, the Order 71 and Order 104 markets do not have manufacturing facilities for handling the reserve milk. Although milk could be diverted from distributing plants in these markets to out-of-area manufacturing outlets, this is not the customary handling procedure. Instead, the reserve milk is received at AMPI's manufacturing plants regulated by Orders 106 and 73 and is pooled under these orders. This arrangement results in producers under Orders 71 and 104 who are not members of AMPI not bearing their proportionate share of the lower-valued reserve milk that necessarily must be associated with the Class I sales in those markets. This results in inequities between AMPI's members and the other producers on those markets.

Inequities also can prevail in the markets where the reserve supplies are actually pooled. Because of AMPI's reblending, pooling of reserve milk from other markets on the Order 106 market, for example, has a much lesser adverse impact on the blend price received by the cooperative's members on this market than on producers who are not members of AMPI. This pricing situation can result in disorderly marketing conditions and considerable unrest among the non-AMPI producers who are receiving the lower prices.

It might be argued that changes in operating procedures could be made so that a reasonable share of the reserve supplies is pooled under the orders that do not regulate the manufacturing plants. This can be difficult to do on a day-to-day basis, however, in the case of the Order 71 and Order 104 markets, which have very small volumes of Class I use. The Class I utilization and resulting blend prices can change dramatically in these markets in response to very minor changes in milk movements. For example, with a monthly pooled volume of approximately 500,000 pounds of producer milk, a change in the movement of less than two tanker loads (about 47,000 pounds per tanker) of milk a month would change the Order 71 Class I utilization by 10 percentage points. The Order 104 Class I utilization, with just over 3.5 million pounds of milk pooled under the order per month, would change by 10 percentage points in response to a change of about 10 tanker loads of milk a month. These circumstances tend to foster the regular pooling of the reserve supplies for these markets on the larger markets in AMPI's operating area.

Opponents of the four-market merger (the 40 nonmember producers who supply Order 104) cited AMPI's reblending practice and supply arrangements throughout its Southern Region area as two reasons why the four-market merger should not be adopted. In effect, they contend that the four markets should not be merged because they are only a part of a larger, inter-related market. They believe that consideration should be given to a broader merger that would include Order 126, which is by far the largest volume market in the Southwest.

The fact that AMPI markets milk over a 12-order area does not preclude the merger of several orders within the group. The organization of the milk supply system by AMPI, although encompassing a larger number of orders, clearly establishes a significant relationship among the four markets to be merged that makes it appropriate to consolidate the four marketing areas under one order. Any broader merger is beyond the scope of this proceeding. The four-order merger, which will promote a greater degree of market stability than is currently being achieved by the four separate orders, should not be forestalled until such time as a broader merger may be considered.

The 40 nonmember producers also contend that the two northernmost markets, Orders 71 and 73, have a greater association with other northern markets not involved in this proceeding and, therefore, should not be merged with Orders 104 and 106. This position is in conflict with the producers' conclusion that the record evidence supports a hearing to consider a five-market merger. It is also contradicted by the strong structural relationship among the four orders in terms of the organization of the supply system by AMPI over the entire region. All of the changes in milk movements by AMPI that were explored on the record establish that milk flows from Kansas to more deficit southern areas. For example, the Hillsboro manufacturing plant was pooled under Order 126 on the basis of milk shipments to distributing plants regulated under that order. Also, the subsequent pooling of such plant

under Order 73 resulted in further shifts in the producer milk supply whereby milk from Oklahoma was shifted to Texas outlets and Kansas supplies were shifted to outlets in Oklahoma.

The primary interest of the nonmember producers is the preservation of as high a blend price as is possible. They stated that a merger of Order 104 with any other order would have resulted in a blend price reduction for them but that the greatest reduction would have occurred under the four-market merger adopted herein.

Computations of blend prices that would result under different merger alternatives generally indicate that such merger order blend prices would have been lower than the Order 104 blend price. The somewhat higher Order 104 blend price, however, reflects a small local market situation that is no longer realistic in terms of the broader regional marketing practices applicable in the area. As noted, for example, reserve milk supplies for the Order 104 market are not being pooled on that market, which results in a blend price level higher than normally would be warranted. In addition, because the order does not reflect the regional supply-demand relationship, its blend price can vary significantly from the regional blend price that accrues to a substantial majority of the producers throughout the area. Also, because of the market's small size, the Order 104 blend price can fluctuate substantially in response to even relatively minor changes in regional marketing practices at the producer or processor level. Such price instability and the resulting lack of certainty over future prices is not conducive to long-run market stability and is contrary to the intent of Federal milk orders.

In this regard, significant Class I use and blend price disruptions have occurred in both the Order 104 and Order 71 markets as a result of structural changes in the distribution sector. Throughout the four-market area generally, distributing plants have declined in number and increased in size. There were five fewer plants regulated under the four orders in December 1979 than in December 1976. In total, there were 21 distributing plants regulated under the four orders in December 1979, with three under Order 71, eight under Order 73, two under Order 104, and eight under Order 106.[6]

[6] Official notice is taken of the commercial fact that since the hearing five additional distributing plants in the four-market area have ceased operations—two under Order 71 and three under Order 73.

As distributing plants have declined in number and increased in size, the market impact of plant closings or switches in regulation between orders has increased and is magnified in small volume markets.

The differences in the size of the four markets to be merged in terms of the yearly volume of producer milk pooled during 1976–1979 are indicated in Table 1. The Order 73 and Order 106 markets are by far the largest of the four markets, with the volume of milk pooled in these two markets during these years representing 90 percent of the total volume of producer milk pooled under the four orders. The Order 71 market is by far the smallest of the four markets.

TABLE 1.—PRODUCER MILK POOLED UNDER FOUR ORDERS TO BE MERGED, 1976–79

[1,000,000 pounds]

	Order 71	Order 73	Order 104	Order 106	Total
Years:					
1976	7	344	160	810	1,321
1977	7	343	131	834	1,315
1978	9	306	111	813	1,239
1979	30	318	63	760	1,171

For the years 1976 through 1978, the volume of milk pooled under Order 71 (equivalent to 12 to 16 tanker loads of milk per month) represented less than one percent of the total milk pooled under the four orders. In 1979, the volume of milk pooled under Order 71 increased to 3 percent of the total producer milk pooled under the four orders. In contrast, the volume of milk pooled under Order 104 has decreased steadily since 1976, when it represented 12 percent of the milk pooled under the four orders. By 1979, the milk pooled under Order 104 represented only 5 percent of the milk pooled under the four orders.

Because of the relatively small volume of milk pooled under Orders 71 and 104, these markets are susceptible to disruptive impacts caused by changes in the number of distributing plants regulated under such orders. These changes occur as a result of either plant closings or a switch in regulation of a plant between orders. Consequently, the producers supplying plants regulated under these orders and the handlers regulated under such orders have no assurance that the conditions under which they are marketing milk will not change significantly on a month-to-month basis. The extent of such changes is illustrated in Table 1 which shows that the volume of milk under Order 104 decreased by over 60 percent from 1976 to 1979 while the volume of milk pooled under Order 71 increased by over 300 percent during the same period.

Particular actions that led to significant changes in the Class I utilization of the two orders and the resulting impacts on the blend prices under the orders were identified on the record. As a point of reference, the yearly Class I utilization and blend prices under the four orders are indicated in Tables 2 and 3.

TABLE 2.—PERCENT OF PRODUCER MILK IN CLASS I UNDER FOUR ORDERS TO BE MERGED, 1976–79

	Order 71	Order 73	Order 104	Order 106	Combined
Year:					
1976	90	59	72	64	63
1977	91	60	71	66	65
1978	83	67	69	67	67
1979	39	66	76	74	71

TABLE 3.—AVERAGE BLEND PRICES UNDER FOUR ORDERS TO BE MERGED 1976–79

[Dollars per hundredweight]

	Order 71	Order 73	Order 104	Order 106
1976	$10.05	$9.58	$10.17	$9.83
1977	9.98	9.57	10.07	9.83
1978	10.75	10.51	10.91	10.68
1979	11.42	12.00	12.40	12.26

In May 1979, a distributing plant regulated under Order 104 ceased operations and the Class I sales and producer milk associated with the plant became associated with plants regulated under other orders, primarily Order 106. Since the plant had a higher than average Class II use, its closing had a significant impact on the Order 104 Class I utilization. As indicated in the yearly data in Table 2, the Class I use increased to 76 percent in 1979, after declining steadily during 1976 through 1978 to 69 percent. The yearly data, however, mask the actual impact of the plant closing. For the months of June through December 1979, which was right after the plant closed, the average Order 104 Class I utilization was 86 percent, compared to 70 percent during the preceding months of January through May. On a comparable basis, the Class I utilization under Order 106 was 75 percent for the months of June through December, 11 percentage points lower than the Order 104 utilization. For the years 1976 through 1978, the Class I utilization under Orders 106 and 104 had been converging as Class I use declined steadily under Order 104 and increased steadily under Order 106. For 1976, 1977, and 1978, the Class I utilization under the two orders differed by 8, 5, and 2 percentage points, respectively.

The increase in the percentage of milk utilized in Class I under Order 104 resulted in an increase in the blend

prices for producers who continued to supply the Order 104 market relative to the bland prices under adjacent orders. For example, the simple average of the Order 104 announced prices for the period of June through December 1979 was $12.83 per hundredweight, 37 cents above the average Order 106 blend price for the same period. During the same months of the previous year, the Order 104 average blend price exceeded the average Order 106 blend price only by 13 cents per hundredweight. Also, the average Order 104 blend price during the June through December 1979 period exceeded the average Order 126 blend price at Dallas, Texas, by 2 cents per hundredwieght. During the same period of the previous year, the Order 104 blend prices averaged 27 cents per hundredweight less than the Order 126 blend prices.

The increase in the Order 104 blend prices, relative to the blend prices under adjacent orders, provided a signal for the remaining Order 104 producers to increase production and an incentive for dairy farmers supplying adjacent orders to shift to the Order 104 market. However, there was no increase in the demand for fluid milk products in the market or by the two remaining distributing plants regulated under the order.

In May of 1979 when the Order 104 plant closed, that order's blend price was $12.23. Because of the plant closing, dairy farmers who continued to supply the Order 104 market received a blend price of $12.49 in June, a 26-cent per hundredweight increase. However, dairy farmers who continued to supply the same consumer market, but through plants regulated under Order 106, experienced a 15-cent reduction from May to June, as the Order 106 blend price was $12.08 in June. These changes in producer prices in terms of minimum order blend prices occurred even though there was no change in either the demand for fluid milk products or in the supply of milk.

It is also noted that monthly producer receipts under Order 104 were cut approximately in half when the plant closed (a reduction from 7.7 million pounds per month to 3.5 million pounds per month). The relatively small volume of milk remaining in the Order 104 pool makes the order even more susceptible to future blend price fluctuations as a result of various marketing activities or events.

Another significant market disruption occurred when a plant previously regulated under Order 106 became regulated under Order 71 in April 1979. This change caused Order 71 producer receipts to increase from 1.1 million pounds in March to 6.5 million pounds in April and Class I utilization to drop from 57 percent to 34 percent. As a consequence of this plant's shift in regulation, there was a 39-cent reduction in the Order 71 blend price from March to April while the Order 106 blend price dropped by only 6 cents. The plant then ceased operations in September 1979 and the Class I distribution of the plant was acquired by plants regulated under various other orders. However, the producer milk formerly associated with the plant became pooled under Order 106. In the month immediately following the plant's closing, the volume of Order 71 producer receipts declined to half a million pounds while Class I utilization under Order 71 increased from 23 percent to 76 percent, and the blend price of the order increased by 92 cents per hundredweight.

The magnitude of the effects of structural changes on these small-volume markets is evidenced also in the range in Class I utilization experienced by the Order 104 and Order 71 markets during the year 1979. The Class I utilization under Order 104 ranged from a high of 91 percent in October to a low of 67 percent in February (24 percentage points), while Class I utilization under Order 71 ranged from a high of 76 percent in October to a low of 16 percent in August (60 percentage points). These wide variations in the two markets are due, in part, to the size of the two markets. In contrast, the range in Class I use under Order 106, a much larger volume market, varied during 1979 from a high of 82 percent in January to a low of 67 percent in May (16 percentage points). This market, simply because of its size, experienced much less variation although it was directly affected by the structural changes that occured in the Order 71 and Order 104 markets. As previously noted, milk that was pooled under Order 106 became pooled under Order 71 when a plant switched regulation in April 1979. The Order 106 market then reacquired the volume of producer milk associated with the plant when it ceased operation. Also, much of the fluid milk sales of a distributing plant previously regulated under Order 104 and the reserve milk supplies associated with such sales were pooled under Order 106 when the distributing plant ceased operations.

Unless action is taken to merge the marketing areas of Orders 71 and 104 with other orders, the threat of further unstable marketing conditions will continue to persist. The widely fluctuating blend prices do not reflect the kind of price stability that is intended under Federal regulation. Such prices provide false signals to producers to make production and delivery adjustments in that such prices are a result of inter-order actions and structural changes in the market rather then changes in the actual supply of milk or the demand for fluid milk products. Incentives for producers to change their market or membership affiliation in response to false signals are not conducive to the maintenance of an efficient procurement and delivery system on either a local or regional basis.

Merging the marketing areas of Orders 71 and 104 with the marketing areas of Orders 73 and 106 will result in a blend price for the proposed Southwest Plains area that reflects a greater volume of milk and supply-demand conditions over a wider area. As such, the resulting blend price will be less susceptible to extreme fluctuations and will provide a stable climate in which dairy farmers will be able to plan their future production and marketing strategies with a greater degree of certainty than exists under current conditions. Also, a merger of these marketing areas under one order will result in a greater recognition of the broader structural relationship among markets in terms of the overall organization of the producer milk supply by AMPI. Separate regulations for these smaller local markets are no longer viable in that they cannot accommodate in an orderly manner, the inter-order movements of milk that occur because of the more regional outlook to milk marketing that is prevalent among a substantial majority of the producers. One order regulating a single, larger market will provide the potential for greater efficiencies in coordinating the movements of milk to distributing plants located throughout the area without causing distruptions in local areas that can occur under the current regulatory scheme.

Additional considerations involved in the marketing area merger issue concern the extent to which distribution areas of handlers regulated under different orders overlap, and also the extent of overlapping procurement areas. Both of these criteria, which were relied upon by both proponents and opponents of the four-market merger, can be important indicators of the extent to which there has been an integration of the marketing structures of two or more markets. Such overlaps, which may represent a potential for or the existence of disorderly marketing, may have a bearing on which markets can or should be merged.

AMPI testified that the sales areas of distributing plants regulated under the

four orders overlap to such a degree as to warrant combining the marketing areas under one order, except for the seven Texas counties of the Order 104 marketing area. With respect to these counties, AMPI's proposal as contained in the hearing notice would have excluded such counties from all Federal orders. At the hearing, however, AMPI revised its position and proposed that the seven Texas counties be added to the Order 126 marketing area on the basis of fluid milk sales in such counties by distributing plants regulated under Order 126.

The 40 nonmember producers contended that there is insufficient overlap of sales between the group of distributing plants regulated under Orders 71 and 73 and the group of distributing plants regulated under Orders 104 and 106 to justify the four-market merger proposed by AMPI. However, they testified that there is enough sales overlap between distributing plants regulated under Orders 104, 106 and 126 to justify a merger of the Order 104 marketing area with either the Order 106 or Order 126 marketing areas. However, they also testified that there is a greater overlap between the procurement areas of Orders 104 and 126 than between the procurement areas of Orders 104 and 106 and, therefore, there is a stronger basis for a merger of Orders 104 and 126.

As previously stated, the primary basis for merging the four orders is to provide a greater degree of market stability than exists under the current regulation of the area with four milk orders. The four separate orders do not reflect the more regional marketing approach of AMPI, which represents a substantial majority of the producers supplying the proposed Southwest Plains area. Also, the lack of blend price stability under the small-volume orders, as a result of structural changes in the distribution sector or even relatively minor changes in the movement of raw milk supplies, can best be rectified by a consolidation of the marketing areas under one order. Under these circumstances, the degree of market commonality that is evidenced by sales and procurement overlaps among these markets is of somewhat lesser importance in the need to merge these orders. Nevertheless, the sales and procurement overlaps do have a bearing on the extent to which there is greater regionalization in the marketing of milk. A more detailed discussion of the overlaps and their implications in this proceeding follows, beginning with the procurement of raw milk supplies and concluding with the distribution of fluid milk products.

An overlap of the procurement areas of handlers regulated under different orders is evidence of a structural relationship among markets. The application of different order blend prices in the same general procurement area can be expected to result in disorderly marketing conditions since producers seek the more remunerative outlet for their milk. A shifting of producers among markets can upset the supply arrangements of regulated handlers and result in transportation inefficiences in obtaining the necessary fluid milk supplies for the various markets. This is particularly true if there are significant and frequent fluctuations in blend price relationships that cause continuing unrest among neighboring farmers. The reblending of the proceeds from the sale of milk in more than one market by a cooperative association has a stabilizing influence in the supply area as different order blend prices are not reflected in producer returns. The likelihood of supply distruptions because of changes in order blend prices is significantly reduced to the extent that a uniform pay price accrues to a substantial number of the dairy farmers. However, when more than one market is supplied by a cooperative that reblends the proceeds from total sales, such markets, in essence, already represent a single market for the cooperative and its producer members.

The reblending of proceeds from sales in several markets by a cooperative association cannot totally solve the problems of blend price differences among adjacent orders. Differences between the local market blend price and the cooperative's pay price can continue to cause dissatisfaction among producers and provide the incentive for market affiliation changes that can disrupt the orderly flow of milk to where it is needed. If the cooperative's pay price exceeds the local market blend, there may be an incentive for other producers on the market to seek different marketing arrangements, which can disrupt the supply arrangements of handlers who serve the fluid milk needs of the local market. If the local market blend exceeds the cooperative's pay price, there may be an incentive for the cooperative to return a higher price to its members supplying that market even though the relevant regional market, from the point of view of the cooperative, might not indicate such a price. In the absence of a higher price, there may be an incentive for the cooperative's members to change their cooperative affiliation or market, which works against the ability of the cooperative to manage the movement of milk on a regional basis.

In such circumstances, it is reasonable to consolidate the marketing areas on the basis of their reliance on a common procurement area. This broader sharing of the fluid milk sales and the application of a uniform price throughout the milkshed provides for greater equity among all dairy farmers as well as the opportunity for the development of more efficient and stable supply systems by the cooperative association and by handlers that obtain milk from other than a regional cooperative association.

There is an overlap of the procurement areas of the four separate markets proposed to be merged. There are also overlaps with the procurement areas of adjacent Federal order markets which is to be expected with the increased mobility of milk from farm to plant.

In total, milk produced in Kansas and Oklahoma represents the primary source of supply for handlers regulated under the four orders. Of the total amount of milk pooled under the four orders in 1979, 37 percent originated in Kansas and 55 percent was produced in Oklahoma. The remaining eight percent of the milk pooled under the four orders during 1979 was produced in the States of Arkansas, Missouri, Nebraska, New Mexico, and Texas. A general description of the 1979 procurement areas of each of the individual orders follows, with a comparison with the source of supply in 1976.

During 1976, 42 percent of the total amount of milk pooled under Order 71 originated in Kansas and 58 percent was produced in Missouri. For 1979, 62 percent was from Kansas, 32 percent from Missouri and six percent from Oklahoma. The addition of the Oklahoma milk in 1979 was a result of the distributing plant regulation change previously discussed. When the plant ceased operations, milk from Oklahoma was no longer pooled under the order.

Order 73 handlers receive their milk supplies primarily from Kansas. Kansas milk represented about 94 percent of the total milk pooled under Order 73 in 1976 and 99 percent in 1979. Minimal supplies were received from Nebraska and Oklahoma in 1976 and 1979 and from Arkansas, Missouri and Texas in 1979.

Oklahoma basically represents the entire source of supply for Order 104 handlers, accounting for more than 99 percent of the total milk pooled under the order in 1976 and 1979. Texas was a minor source of supply in 1976 while

Missouri was a minor supply source in 1979.

Oklahoma also represents the primary source of supply for Order 106 handlers, accounting for about 76 percent of the total amount of milk pooled under the order in both 1976 and 1979. In 1976, Arkansas, Kansas and Missouri accounted for about eight percent, 10 percent and seven percent, respectively, of the Order 106 total supply. In 1979, the proportion of the total supply produced in Arkansas declined to three percent, while the proportions produced in Kansas and Missouri increased to 13 percent and 8 percent, respectively.

As previously stated, opponents of the four-market merger contend that there is an insufficient supply association between the two northernmost orders and the two southernmost orders and that Order 126 has a greater supply overlap with Order 104 than that which exists between Orders 104 and 106. In this connection, it is noted that Texas represents the primary supply area for Order 126, accounting for over 88 percent of the producer milk in 1976 and over 91 percent in 1979. In 1979, Kansas and Oklahoma represented five percent and two percent, respectively, of the Order 126 total supply. In 1979, the proportion of the Order 126 total supply attributable to Kansas declined to about two percent while the Oklahoma proportion increased to over four percent.

As these data indicate, a gradual change in supply arrangements occurred during the period, resulting in less Kansas milk being pooled under Order 126. Such supplemental milk supplies for Order 126 handlers were replaced by milk produced in Oklahoma, which then resulted in the need for a greater quantity of Kansas milk to become associated with Order 106. These changes are more clearly indicated by supply data for the month of October for the years 1977, 1978 and 1979. The monthly volume of Oklahoma milk pooled on Order 126 increased consistently from 7.0 million pounds in 1977 to 11.6 million pounds in 1978, and to 16.6 million pounds in 1979. At the same time, the volume of Kansas milk declined consistently, from 15.5 million pounds in 1977 to 10.1 million pounds in 1978. In October 1979, no Kansas milk was pooled under Order 126. Also, the amount of Kansas milk pooled under Order 106 increased consistently: 6.4 million pounds in 1977, 11.0 million pounds in 1978, and 11.3 million pounds in 1979. The 11.3 million pounds pooled under Order 106 in October 1979 represented 17.7 percent of the Order 106 total supply while the Oklahoma proportion declined to 69 percent.

These changes in milk movements resulted in changes in the degree to which supply areas overlapped among Orders 73, 104, 106, and 126. The Order 126 procurement area included 32 Oklahoma counties in October 1979, compared to 14 such counties in 1977. The Order 104 procurement area declined from 20 Oklahoma counties in 1977 to 16 such counties in 1979. The number of common counties between the two orders, however, increased from three in 1977 to 12 in 1979. The Order 106 procurement area included 55 Oklahoma counties in October 1977 and declined to 48 counties in 1979. Also, the common procurement counties between Orders 104 and 106 declined from 16 to eight during the same period. It is also noted that the common Oklahoma procurement counties between Orders 106 and 126 increased from six in 1977 to 13 in October 1979.

The decline in the volume of Oklahoma milk associated with Order 106 resulted in an expansion of the procurement area into Kansas as the volume of such milk pooled under Order 106 increased from 81 million pounds in 1976 to 102 million pounds in 1979. The number of Kansas counties that served as a source of supply for Order 106 handlers increased from eight in December 1976 to 26 in October 1979. The number of common counties between Orders 73 and 106 increased from five to 16 over the same period. Also, the number of common procurement counties between Order 64 (Greater Kansas City marketing area) and Order 73 was 16 in October 1979, down from 19 in December 1976.[7] It is also noted that the volume of Kansas milk pooled under Order 64 decreased from 461 million pounds for the year 1976 to 434 million pounds in 1979.

The gradual change in the milksheds of the various orders from 1976 to 1979, which basically resulted in a greater amount of Kansas milk being pooled under Order 106 and a greater amount of Oklahoma milk being pooled under 126, did not involve Order 71. However, the regulated handlers in the Order 71 market operate relatively small distributing plants and thus do not require a large volume of milk. The procurement area for the market is difficult to identify since the area shifts constantly and is interwined with the procurement areas of other markets. As evidence of the shifting procurement area, Order 71 handlers received milk from three Kansas counties and three Missouri counties in October 1976; four Kansas, two Missouri and three Oklahoma counties in 1977; one Kansas and eight Missouri counties in 1978; and four Kansas and four Missouri counties in 1979. In October of each of these years, only Crawford County, Kansas, and Jasper County, Missouri, were consistent sources of supply. However, throughout the entire period every county from which milk was received, except one, was also a source of supply for Order 106 handlers. Thus, the Order 106 procurement area nearly envelops the supply area of Order 71 handlers.

Contrary to opponent's contention, there is almost a complete overlap of the milksheds of Orders 71 and 106 throughout the data period and, in terms of the most recent data, a significant overlap between the milksheds of Orders 73 and 106. However, in prior years there was a greater supply overlap in Kansas between Orders 64 and 73 than between Orders 73 and 106. Also, opponent's contention that there is a greater supply overlap in Oklahoma between Orders 104 and 126 than between Orders 104 and 106 is supported in terms of the most current data in the record. However, this was not the case in prior years.

Primary changes occurred in the milksheds of the various markets as a result of the shifting of the regulation of AMPI's Hillsboro plant from Order 126 to Order 73 and the 111 million-pound reduction in the amount of Kansas milk pooled under Order 126 from 1976 to 1979. Further changes in milk movements resulted in a 21 million-pound increase in the amount of Kansas milk pooled under Order 106 from 1976 to 1979 and a 65 million-pound increase in the amount of Oklahoma milk pooled under Order 126 during the same time period. These shifts in milk movements varied the overlaps amoung the procurement areas of different markets at different times and are primarily a function of changes in milk movements by AMPI, which represents a substantial proportion of the dairy farmers throughout the region. It would be expected that changes in market procurement area overlaps would continue as AMPI redirects available supplies of milk to the various markets the cooperative supplies. Consequently, any lack of evidence of a strong supply-source association among these markets in terms of overlapping procurement areas should not be overriding consideration in determining whether the proposed four-market merger is justified. The proportion of the milk

[7] December 1976 is used for the procurement area comparison because October data were not presented for Order 64 and also because 1977 "Sources of Milk" data on a county basis for all Federal order markets were not published.

produced by AMPI members, the manner in which AMPI markets such milk, and the impact of marketing changes on the procurement areas of the separate orders is evidence of an integrated supply management system throughout the area that virtually assures a supply area commonality among the four orders proposed to be merged.

Opponents of the four-market merger further contended that such a merger would generally result in a blend price reduction in the southern portion of the milkshed (Oklahoma) and a blend price increase in the northern portion of the milkshed. They contended that this would result in market disorder, particularly in Oklahoma where the Order 126 blend price has generally been very competitive with the Order 104 blend price. In this connection, it is noted that during the most recent period following the increase in Class I utilization under Order 104 because of the closing of a distributing plant, the Order 104 blend prices have, for the most part, exceeded the Order 126 blend prices in Oklahoma.

One of the functions of an order blend price is to encourage an orderly allocation of available milk supplies among markets in accordance with fluid milk needs. A merger of the four marketing areas under one order will result in a more stable blend price that reflects the same supply-demand relationship over a wider, common procurement area than the blend prices reflected under the four separate orders. The Order 126 blend price is presently stabilized by the larger volume of milk associated with that market (well over 3 billion pounds of milk per year). Thus with two large-volume markets, dairy farmers in these areas would be basing their production and marketing decisions on more stable regionalized supply-demand situations.

The marketing area of a Federal milk order is established primarily on the basis of the sales areas of the distributing plants that would be regulated under the order. The marketing area boundaries are intended to encompass the area in which regulated handlers account for most of the Class I sales and minimize the extent to which regulated handlers compete for sales with unregulated dealers or handlers regulated under other orders. Sales area overlaps among handlers regulated under different orders is thus an indication that the individual regulated markets do not represent separate markets for particular groups of producers. Consequently, sales area overlaps can be an important factor in determining the need to redefine marketing area boundaries or to merge the marketing areas of two or more orders. Handlers that compete with each other for most of the sales in a common distribution area should be subject to the same regulatory provisions. In addition, dairy farmers who supply the milk requirements of a common distribution area should share equally the benefits of the Class I sales throughout such area as well as the cost of maintaining the reserve milk supplies associated with such sales.

As previously stated, there has been a general decline in the number of fluid milk processing plants. The volume of milk processed at the fewer plants has increased and the sales areas have been extended to other consumption centers. The general sales area expansion of fewer but larger distributing plants, which is particularly evident with respect to distributing plants regulated under Order 106, has led to sales area overlaps among distributing plants regulated under the four orders herein proposed to be merged, and between such plants and distributing plants regulated under adjacent orders.

Of the 21 distributing plants regulated under the four orders in December 1979, seven distributed fluid milk products in two of the four marketing areas, one plant had sales in three of the marketing areas, and one plant had distribution in all four marketing areas. In addition to the three distributing plants that were regulated under Order 71 in December 1979, sales were made in the Order 71 marketing area by one plant regulated under Order 73 and one plant regulated under Order 106. With respect to the Order 73 market, sales were made in the marketing area by the eight distributing plants regulated under that order and by two plants regulated under Order 106. Class I sales in the Order 104 marketing area were made by the two Order 104 distributing plants and by six distributing plants regulated under Order 106. Sales in the Order 106 marketing area in December 1979 were made by the eight distributing plants regulated under that order and by one plant regulated under Order 73 and by one plant regulated under Order 104.

Also, in December 1979, 11 of the 21 distributing plants regulated under the four orders had sales in nonfederally regulated territory. Most of such sales were within the State of Oklahoma. Of the 11 plants, eight were regulated under Order 106, two were regulated under Order 73 and one was regulated under Order 104. Also, eight of the 21 distributing plants had sales within the marketing areas of one or more adjacent Federal orders. In total, nine of the 21 distributing plants had sales only within the marketing area of the order regulating the plant in December 1979. These nine plants included the three plants regulated under Order 71, four plants regulated under Order 73, one plant regulated under Order 104 and one plant regulated under Order 106.

Fluid milk products are also distributed within the marketing areas of the four orders proposed to be merged by distributing plants regulated under other orders. In December 1979, six plants regulated under such other orders—three plants regulated under Order 62 (St. Louis-Ozarks marketing area) and three regulated under Order 64—distributed fluid milk within the Order 71 marketing area. Seven other order plants outside the four-market area had sales within the Order 73 marketing area in December 1979. Five were regulated under Order 64, one was regulated under Order 65 (Nebraska-Western Iowa marketing area), and one was under Order 126. Similarly, nine other order plants had sales within the Order 104 marketing area, with eight being regulated under Order 126 and one under Order 132 (Texas Panhandle marketing area). Class I sales in the Order 106 marketing area were made by five plants regulated under other orders in December 1979, three under Order 62 and two under Order 126.

In view of the preceding description, it is apparent that there would continue to be an overlap of the sales areas of distributing plants under the four-market merger proposed herein and distributing plants under other orders. Sales overlaps would continue under any market merger since it is impossible to define a marketing area which completely encompasses the sales area of regulated plants, and at the same time excludes all territory in which sales are made by plants regulated under other orders. The greatest overlaps between plants that would be regulated under the merged order and other order plants, however, occur in the current marketing areas of Orders 71 and 104. This is indicated by sales data for the years 1976 through 1979 that are contained in the record in terms of the proportion of total sales by handlers in and out of the marketing areas as well as the proportion of total sales within the marketing area by all handlers.

During 1976 through 1978, handlers regulated under Order 71 distributed over 90 percent of their total sales within the marketing area and less than 10 percent outside the marketing area. In 1979, however, the proportion of regulated handler sales in the marketing

area declined to 63 percent of total sales while sales outside the marketing area increased to 37 percent. The increased out-of-area sales were made in nonfederally regulated areas and in the Order 106 marketing area. This change was a result of a plant switching from being regulated under Order 106 to Order 71. As previously noted, such plant has gone out of business. Upon the plant's closing, the Order 71 marketing area covered the majority of the sales area of the distributing plants regulated under the order. As indicated earlier, all of the fluid milk sales of Order 71 distributing plants were within the marketing area in December 1979.

Although over 90 percent of the sales by Order 71 handlers were made within the marketing area, such sales only represented between seven and nine percent of total fluid milk sales in the marketing area by all handlers during 1976 through 1978 because of the small volume of milk processed by the three distributing plants regulated under Order 71. Most of the sales in the marketing area were made by handlers regulated under Orders 62, 64, 73 and 106, with Order 62 handlers accounting for over 67 percent of the total marketing area sales in 1979, up from 51 percent of sales in 1976. Order 64 handlers' percentage of the total sales in the Order 71 marketing area declined from 24 percent in 1976 to 12 percent in 1979. The proportion of sales by Order 73 handlers declined from two percent to less than one percent of total sales in the marketing area from 1976 to 1979. Order 106 handlers' proportion of total sales increased from 12 percent to 14 percent from 1976 to 1978 and then declined to six percent in 1979 because of the plant regulation change previously discussed.

Although Order 62 handlers represent a substantial proportion of the total fluid milk sales in the Order 71 marketing area, there are over-riding considerations for proceeding with the merger of the Order 71 marketing area with the marketing areas of the other three orders as proposed herein. Because of the smallness of the Order 71 market, it is essential that Order 71 be included in a merger with other orders at this time to eliminate the market disorder previously discussed. There was no opposition expressed by any other handlers to the inclusion of the Order 71 marketing area in the merger herein adopted. Also, no alternative proposal was submitted by any party to include the Order 71 marketing area with any other marketing area. Furthermore, because of the small sales volume of fluid milk products in the Order 71 marketing area (approximately 6 million pounds per month) even limited sales by a handler of any significant size would represent a large proportion of the total milk sales in the market. It may well be that sales in the area by other handlers represent a minor proportion of their total fluid milk sales, even though such sales appear to be significant in terms of the small-volume Order 71 market.

While other order handlers have substantial sales in the Order 71 marketing area, the Order 71 market does have a significant linkage with the Order 106 market due to the switching of regulation of a distributing plant between the two orders. Also, for the years 1976 through 1978, Order 106 handlers accounted for more sales in the Order 71 marketing area than Order 71 regulated handlers. There is also a substantial procurement area overlap between Orders 106 and 71 as previously discussed. In view of all these considerations, Order 71 should be merged with Order 106 as it is the only alternative available at this time to establish orderly marketing conditions.

During 1976 through 1979, handlers regulated under Order 73 distributed more than 80 percent of their fluid milk sales within the Order 73 marketing area. The actual percentage of in-area sales declined slightly from 82 percent in 1976 to 81 percent in 1979. Most of the sales outside the marketing area were in other order areas (about 13 percent of sales during 1976 through 1979) and included sales in the Order 71 and Order 106 markets as well as in five other order areas not involved in this proceeding.

The in-area Class I sales by Order 73 handlers accounted for most of the total sales of fluid milk products in the marketing area although the proportion of total sales declined somewhat from 1976 to 1979. Order 73 handlers accounted for 87 percent of the total sales in the marketing area in 1976, and 82 percent in 1979.

Most of the remaining sales of fluid milk products in the Order 73 marketing area were made by handlers regulated under Orders 106 and 64. During 1976 through 1979, annual sales by Order 64 handlers ranged between six and eight percent of the total fluid milk sales in the Order 73 marketing area. Sales by Order 106 handlers increased from five percent to nine percent of the total sales of fluid milk products in the Order 73 marketing area from 1976 to 1979.

To a large degree the Order 73 marketing area represents the sales area of handlers operating distributing plants under the order. Such handlers also represent a substantial portion of the total fluid milk sales in the marketing area. Consequently, it is appropriate to include the entire Order 73 marketing area in the merged order.

There has been a significant sales area expansion by handlers operating distributing plants regulated under Order 106. While such distributing plants continued to account for a substantial proportion of the total fluid milk sales in the marketing area, the proportion of sales made in the area by Order 106 handlers declined. For example, the proportion of the Order 106 handlers' sales within the marketing area declined steadily from 71 percent in 1976 to 64 percent in 1979. However, such sales represented 93 percent of the total fluid milk sales in the Order 106 marketing area in 1976 and 89 percent of the total in-area sales in 1979.

In addition to accounting for most of the sales in the Order 106 marketing area, the proportion of the Order 106 handlers' sales outside the marketing area increased from 29 percent in 1976 to 36 percent in 1979. The proportion of such handlers' total sales in nonfederally regulated areas increased from 16 percent in 1976 to 19 percent in 1979 while the proportion of sales in other order areas increased from 12 percent to 17 percent over the same period. In December 1979, seven of the eight distributing plants regulated under Order 106 had sales in nonfederally regulated territory and six had sales within the marketing area of other Federal orders. Order 106 handlers had sales in each of the marketing areas of the other three orders proposed to be merged and their proportion of total sales in the Order 73 and Order 104 marketing areas almost doubled from 1976 to 1979. Only in the Orders 71 marketing area did the proportion of sales by Order 106 handlers decline (from 12 percent in 1976 to six percent in 1979). As previously stated, the decline resulted when a fluid milk plant previously regulated under Order 106 became regulated under Order 71. Order 106 handlers also distributed fluid milk products in the marketing areas of Orders 64, 126, and 132.

In contrast to the sales area expansion of Order 106 handlers, there has been a contraction in the sales areas of handlers regulated under Order 104. Of the total sales of Order 104 handlers, the proportion within the Order 104 marketing area increased from 71 percent in 1976 to 85 percent in 1979. While the proportion of out-of-area sales decreased from 29 percent to 15 percent, it is significant that the proportion of the Order 104 handlers' total sales in

nonfederally regulated areas increased from 5 percent in 1976 to 11 percent in 1979. These sales were made in the nonfederally regulated area of Oklahoma, primarily in competition with handlers regulated under Order 106. The proportion of sales by Order 104 handlers in other order areas decreased from 24 percent in 1976 to 3 percent in 1979. Such sales were made in only the Order 106 and Order 132 marketing areas in 1979.

Although Order 104 handlers distributed an increasing proportion of their sales within the Red River Valley marketing area from 1976 to 1979, such sales represented a smaller proportion of the total fluid milk sales in the marketing area. The Order 104 handlers' share of the total sales within the marketing area declined steadily from 56 percent in 1976 to 30 percent in 1979. During the same period, the proportion of total Class I sales in the Order 104 marketing area by Order 106 handlers increased from 20 percent to 39 percent and sales by Order 126 handlers increased from 22 percent to 30 percent.

As the result of changes in their distribution areas, handlers regulated under Orders 104, 106 and 126 now account for almost all of the fluid milk sales in the Order 104 marketing area. The greatest degree of overlap is between handlers regulated under Orders 106 and 104. However, the largest portion of the Order 104 market's fluid milk requirements is supplied by handlers regulated under Order 106. Furthermore, the out-of-area sales by Order 104 handlers are in nonfederally regulated areas in Oklahoma in competition with Order 106 handlers.

The record evidence indicates that the Order 104 marketing area does not represent the basic sales area of handlers regulated under the order. The current marketing area, which consists of 17 Oklahoma counties and seven Texas counties, contains two primary sales areas. The 17 Oklahoma counties are supplied primarily by handlers regulated under Orders 104 and 106. The seven Texas counties are supplied primarily by handlers regulated under Order 126.

The boundary line separating the two areas, i.e., the Red River, is a natural geographic boundary that forms the dividing line between the States of Texas and Oklahoma. The existence of this natural boundary is probably the most valid reason why there are limited sales in the 17 Oklahoma counties by handlers regulated under the Texas order and a corresponding lack of sales in the seven Texas counties by Oklahoma handlers that are regulated by the Red River Valley and Oklahoma Metropolitan orders.

During November 1978 and May and November 1979, the only months for which data were available at the hearing, most of the sales in the Oklahoma counties of the Order 104 marketing area were made by Order 104 and Order 106 handlers. During the same period, most of the sales in the Texas counties of the Order 104 marketing area were made by Order 126 handlers. With the exception of the Order 104 handler that ceased operations in May 1979, sales in the Oklahoma and Texas counties of the Red River Valley marketing area were made by the same handlers during each of the three months. The sales were made by eight Order 126 distributing plants, six Order 106 distributing plants and three Order 104 distributing plants (two in November 1979).

For the three months combined, handlers regulated under Orders 104 and 106 distributed over 28.9 million pounds of fluid milk products in the Order 104 marketing area. Of this total 82.5 percent was distributed in the Oklahoma counties and only 17.5 percent was distributed in the Texas counties. For the most recent month (November 1979), over 85 percent of such handlers' sales was in the Oklahoma counties while less than 15 percent was in the Texas counties.

The eight Order 126 handlers distributed over 9.8 million pounds of fluid milk products for the three months combined in the Order 104 marketing area. Of this total, only 1.7 million pounds, or 17.9 percent of the Order 126 hander's sales, were in Oklahoma while over 8 million pounds, or 82.1 percent, were distributed in the Texas counties. For the most recent month (November 1979), less than 16 percent of such handlers' sales was in the Oklahoma counties while over 84 percent was in the Texas counties.

In view of the limited intermarket relationship between handlers with sales in the 17 Oklahoma counties and handlers with sales in the seven Texas counties, the Order 104 marketing area should not be merged in its entirety with the marketing areas of the other three orders proposed herein to be merged. Instead, only the 17 Oklahoma counties should be merged with the marketing areas of Orders 71, 73 and 106. The seven Texas counties should be added to the marketing area of the Texas order. This division of the Order 104 marketing area and the merger of the Texas portion with the marketing area of the Texas order will result in an expanded marketing area that covers the basic sales area of handlers regulated under the Texas order. Similarly, the inclusion of the 17 Oklahoma counties in the marketing area of the Southwest Plains order will result in a marketing area that is supplied primarily by handlers who would be regulated under such order.

The Texas counties of Archer, Baylor, Clay, Hardeman, Montague, Wichita and Wilbarger that are to be added to the marketing area of Order 126 should be included in a minus 12-cent per hundredweight zone under Order 126. This will result in a Class I differential of $2.20 at plants located in the seven-county area. Such location pricing is indentical to that currently provided under Order 126 for this area.

The merged order adopted herein continues the use of the part number for the present Oklahoma Metropolitan order, Part 1106. The amended Part 1106, upon issuance, would supersede Parts 1071, 1073, and 1104.

Although the present four orders would no longer exist upon effectuation of the Southwest Plains order, this merger action is not intended to preclude the completion of those procedures that would otherwise have existed under the separate orders with repect to milk handled prior to the effective date of the merger. Such procedures, which would need to be carried out after the merger date, include the announcement of certain class prices and butterfat differentials, submission of reports, computation of uniform prices, payment of obligations, and verification activities. The provisions of the merged order would apply only to that milk handled after the effective date of the merger.

3. *Additional territory to be regulated.* The merged Southwest Plains marketing area should be expanded to include all territory within the State of Oklahoma. All territory occupied by government (municipal, State or Federal) reservations, installations, institutions or other similar establishments, if any party thereof is within any of the designated counties of the Southwest Plains marketing area, likewise should be a part of such marketing area. Such marketing area expansion involves all or portions of Oklahoma counties. Twelve of the 59 counties are partially within the Oklahoma Metropolitan marketing area and one county (Beckham) is in the Texas Panhandle marketing area. The 46 remaining counties are not part of any Federal order marketing area.

The population of Oklahoma as of April 1, 1980, was slightly over 3

million.[8] Of this total, about 63 percent was within the marketing areas of Orders 104, 106 and 132.[9] The population of the unregulated territory to be added is estimated to be 1.1 million, or about 37 percent of the State's population. About 30 percent of the State's population is in the 46 totally unregulated counties and 7 percent is in the unregulated parts of the 12 counties that are partly within the Order 106 marketing area.

AMPI proposed that the entire State of Oklahoma be included within the marketing area because handlers regulated under the four orders to be merged are the primary distributors of fluid milk products throughout the State. Also, AMPI proposed that the marketing area be defined in terms of the entire area within the State rather than in terms of the major population centers, as is currently provided under Order 106.

The unregulated territory in Oklahoma should be added to the marketing area of the merged order because handlers who would be regulated under the merged order are the principal distributors of fluid milk products in such unregulated area. At the time of the hearing, 11 handlers regulated under the four orders to be merged distributed fluid milk products in the unregulated area of Oklahoma. Eight of the handlers were regulated under Order 106, two were regulated under Order 73 and one was regulated under Order 104.

Data concerning the extent to which handlers regulated under the four orders distribute fluid milk products in unregulated territory were presented in terms of two groups of counties—28 counties in eastern Oklahoma and 23 counties in western Oklahoma. The 28 eastern counties included the following:

Adair	Muskogee
Atoka	Nowata
Cherokee	Okfuskee
Choctaw	Okmulgee
Craig	Osage
Creek	Ottawa
Delaware	Payne
Haskell	Pittsburg
Kay	Pushmataha
Latimer	Rogers
Le Flore	Sequoyah
Mayes	Tulsa
McCurtain	Washington
McIntosh	Wagoner

[8] Official notice is taken of "Advance Reports: 1980 Census of Population and Housing", PHC80–V–38, Bureau of the Census, U.S. Department of Commerce, issued March 1981.

[9] Official notice is taken of "Federal Milk Order Market Statistics, 1980 Annual Summary," Statistical Bulletin Number 670, Agricultural Marketing Service, U.S. Department of Agriculture, issued July 1981.

Handlers regulated under the four orders proposed to be merged account for over 81 percent of the total fluid milk sales in the 28 counties.[10] Most of the remaining sales are made by three Order 62 (St. Louis-Ozarks) handlers who account for just over 15 percent of the total fluid milk sales in the 28-county area.

On an individual county basis, handlers regulated under the four orders account for 55 percent or more of the total sales in 22 of the 28 counties. In the remaining six counties (Adair, Delaware, Haskell, LeFlore, McCurtain and Sequoyah), handlers under the four orders had less than 50 percent of the sales in such counties.

In Le Flore and McCurtain Counties, it is estimated that handlers regulated under the four orders account for 38 and 40 percent, respectively, of the total fluid milk sales. the proportion of sales in these counties by handlers regulated under the four orders is greater than the proportion of sales made by any other group of handers. In Le Flore County, Order 62 handlers' sales are estimated to represent 29 percent of the total county sales and a handler regulated under Order 102 (Ft. Smith, Arkansas) accounts for 30 percent of the total sales. In McCurtain County, it is estimated that an Order 126 handler accounts for 24 percent of the sales while three plants operated by handlers who are not fully regulated under any Federal order account for 34 percent of the sales.

The percentage of sales in the remaining four counties by handlers regulated under the four orders is estimated at 35 percent of the total sales in Adair, Delaware, and Haskee Counties and 30 percent in Sequoyah County. It is estimated that Order 62 handlers account for 60 percent of the sales in Adair County, 65 percent in Delaware County, 50 percent in Haskell County and 46 percent of the sales in Sequoyah County. It is also estimated that an Order 102 handler accounts for 24 percent of the sales in Sequoyah County.

The entire 28-county area represents a substantial distribution area of handlers regulated under the four orders and all of the territory within this area that is now regulated under any order should be included in the Southwest Plains marketing area. Inclusion of the entire area in the Southwest Plains order will result in an easily identifiable marketing area boundary and will encompass all of the principal sales areas of regulated handlers.

[10] The 28-county area includes some territory that is currently in federally regulated marketing areas. Choctaw and Pushmataha Counties are currently in the Order 104 marketing area and Tulsa County is in the Order 106 marketing area. Also, parts of Cherokee, Creek, Kay, Muskogee, Osage, Payne, and Pittsburg Counties are in the Order 106 marketing area.

The inclusion of the 28-county area would result in a dairy located at Mena, Arkansas, becoming a partially regulated distributing plant under the Southwest Plains order. Also, two plants located at Texarkana, Texas, have sales in portions of the 28-county area and on the basis of evidence in the record would be partially regulated distributing plants under the Southwest Plains order as a result of including the 28 counties in the marketing area.

There was no testimony offered at the hearing in opposition to including the entire 28-county area in the Southwest Plains marketing area. However, in his brief, a handler who indicated his plant would be partially regulated under the Southwest Plains order opposed including in the marketing area the six counties in which regulated handlers under the four orders do not have a majority of the sales. The handler contends that there is no evidence of disorderly marketing conditions that would necessitate including these counties in the Southwest Plains marketing area.

Evidence in the record indicates that the opposing handler distributes fluid milk products in only one of the six counties, namely McCurtain. Furthermore, the record indicates that the handler's sales in the county would not be sufficient to result in full regulation of the handler's plant under the merged order. Consequently, there is no compelling reason to exclude these counties from the marketing area.

The previously mentioned 23-county area in western Oklahoma also should be added to the Southwest Plains marketing area.[11] These counties are:

Alfalfa	Harmon
Beaver	Harper
Beckham	Kingfisher
Blaine	Logan
Canadian	Major
Cimarron	Noble
Custer	Roger Mills
Dewey	Texas
Ellis	Washita
Garfield	Woods
Grant	Woodward
Greer	

Fluid milk sales in each of the above counties are made primarily by handlers regulated under Orders 73 and 106. A handler regulated under the Texas Panhandle order distributes in two of the counties (Cimarron and Texas) but such sales would not result in the

[11] Parts of Garfield and Logan Counties are currently included in the Order 106 marketing area.

handler becoming regulated under the Southwest Plains order.

Beckham County is currently in the marketing area of the Texas Panhandle order. However, no handlers regulated under that order distribute fluid milk products in Beckham County. Most of the sales in the county are by handlers regulated under Order 106. On this basis, it is concluded that Beckham County should be removed from the marketing area of the Texas Panhandle order and included in the marketing area of the Southwest Plains order. The other 22 counties of the 23 counties in western Oklahoma should also be included in the Southwest Plains marketing area because the counties are within the distribution areas of Order 106 and Order 73 handlers who would be regulated under the proposed order.

In addition to the 28 counties and the 23 counties previously mentioned, 11 additional Oklahoma counties should be included in the Southwest Plains marketing area.[12] These counties are:

Cleveland	Oklahoma
Coal	Pawnee
Garvin	Pontotoc
Hughes	Pottawatomie
Lincoln	Seminole
McClain	

The 11 counties are completely surrounded by territory that would be included in the marketing area. Under such circumstances, it is reasonable to assume that sales in such area would be made primarily by handlers who would be regulated under the merged marketing order. Accordingly, the 11-county area should be included in the merged order. Accordingly, the 11-county area should be included in the merged marketing area.

Although some of the route disposition of regulated handlers will extend beyond the boundaries of the merged marketing area, it is neither practical nor reasonable to extend the regulated area to cover all areas where a handler has or might develop some route disposition. Nor is it necessary to do so to accomplish effective regulation under the order. The marketing area herein proposed is a practical one in that it encompasses the great bulk of the fluid milk sales areas of handlers that would be regulated under the merged order. On the basis of the record evidence, the inclusion of Beckham County, Oklahoma, and the presently unregulated territory in the State of Oklahoma in the merged marketing area would not result in the full regulation of any additional plants.

[12] Parts of Cleveland, Oklahoma, and Pottawatomie Counties are currently in the Order 106 marketing area.

All producer milk received at regulated plants must be made subject to classified pricing under the order, however, regardless of whether it is disposed of within or outside the marketing area. Otherwise, the effect of the order would be nullified and orderly marketing would be jeopardized.

If only a regulated handler's "in-area" sales were subject to classification, pricing and pooling, a regulated handler with Class I sales both inside and outside the marketing area could assign any value he chooses to his outside sales. He thereby could reduce the average cost of all his Class I milk below that of other regulated handlers having all, or substantially all, of their Class I sales within the marketing area.

Unless all milk of such a handler were fully regulated under the order, he in effect would not be subject to effective price regulation. The absence of effective classification, pricing and pooling of such milk would disrupt orderly marketing conditions within the regulated marketing area and could lead to a complete breakdown of the order. If a pool handler were free to value a portion of his milk at any price he chooses, it would be impossible to enforce uniform prices to all fully regulated handlers or a uniform basis of payment to the producers who supply the market. It is essential, therefore, that the order price all the producer milk received at a pool plant regardless of the point of disposition.

4(a) *Milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the merged order. This is accomplished by providing definitions to describes the persons, plants and milk to which the applicable provisions of the order relate.

The following definitions included in the order will serve to identify the specific types of milk and milk products to be subject to regulation and the persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are "route disposition," "plant," "distributing plant," "supply plant," "pool plant" and "nonpool." Definitions of persons include "producer," "handler," "producer-handler" and "cooperative association." Definitions relating to milk and milk products include "producer milk," "fluid milk product," "fluid cream product," "filled milk" and "other source milk." A number of these definitions were of particular issue at the hearing and are discussed below.

Route disposition. A "route disposition" definition should be provided in the merged order. The definition provided in each of the four orders to be merged varies slightly. The definition proposed for the merged order by AMPI includes any delivery (including any delivery by a vendor or disposition at a plant store) of any fluid milk product classified as Class I milk other than a delivery to a plant.

The definition adopted herein is essentially the one proposed by AMPI. The principal change is that the definition has been expanded to clarify what constitutes a delivery. As adopted herein, route disposition means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

Plant. A plant defintion should be provided for the purpose of designating the type of milk handling facilities to which the order provisions would apply. None of the four orders now contains a definition of a plant.

The plant definition adopted herein was proposed by AMPI. As provided herein, a plant would be the land, buildings, facilities, and equipment constituting a single operating unit at which milk products are received, processed or packaged. Separate facilities which are used only as a reload point for transferring bulk milk from one tank truck to another would not be a plant. Similarly, separate facilities used as intermediary distribution points in the disposition of packaged fluid milk products would not be plants.

Under the provisions adopted herein, producer milk would be priced at the plant where it is physically received. It is necessary, then, to have guidelines for determining whether or not certain milk handling facilities should be considered as a plant. It is not intended under this order that facilities used only for the reloading of milk from one tank truck to another be the pricing point for milk so handled. Thus, milk that has been picket up at the farm, brought to a reload point and transferred to an over-the-road tanker for movement to a processing plant would be priced at the processing plant.

Distributing plant. The order should define a distributing plant as a plant that is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption and in which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month. The definition adopted herein is essentially the same as the one proposed by AMPI.

Three of the four orders to be merged presently define a distributing plant. A definition of a distributing plant should be provided in the merged order to describe the activities conducted at such plant and to distinguish this type of plant operation from others. Such definition is also helpful in referring to this particular type of plant throughout the order.

Supply plant. The orders should define a supply plant as a plant approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption from which fluid milk products are transferred or diverted to a distributing plant(s) during the month. Three of the four orders to be merged define a supply plant. The definition adopted herein is patterned after one proposed by Kraft, a proprietary handler that operates a pool supply plant on the Oklahoma Metropolitan market. This definition differs from the one suggested by AMPI in that the definition encompasses diversions from a supply plant to a distributing plant. As discussed in the section dealing with the qualification standards of a pool supply plant, a supply plant operator would be permitted to divert a portion of the plant's regular source of supply directly from the farms to a distributing plant in meeting the qualification standards for a pool supply plant. Consequently, it is necessary that the supply plant definition be broad enough to encompass such diversions.

Pool Plant. Essential to the operation of a marketwide pool is the establishment of minimum performance requirements to distinguish between those plants substantially engaged in serving the fluid needs of the regulated market and those plants that do not serve the market in a way or to a degree that warrants their sharing (by being included in the pool) in the Class I utilization of the market. The pooling standards for distributing plants and supply plants that are contained in the attached order would carry out this concept under present marketing conditions.

The following discussion sets forth the pooling standards that should apply to both types of plants. To facilitate the discussion, it is convenient to note at this point that the pooling standards for a distributing plant or a supply plant provide that the plant's required association with the market shall be measured in terms of the proportion of its receipts that is disposed of from the plant. In this case, such receipts should include producer milk that is diverted from the plant to other plants.

The Wichita order includes diversions made by the plant operator and cooperative association from pool distributing plants and pool supply plants to nonpool plants as receipts of the plant from which diverted in the application of the pool plant provisions. The Red River Valley and Oklahoma Metropolitan orders include in the receipts of a distributing plant and a supply plant only those diversions that are made by the plant's operator to nonpool plants and that qualify as producer milk. The Neosho order includes in the receipts of a distributing plant the diversions made from such plant by the plant operator to another plant if such milk movements are claimed as diversions by the diverting handler. The Neosho order does not include diversions from a supply plant as a receipt of such plant in the application of the pool plant provisions.

AMPI supported the adoption of provisions that would include diversions from pool distributing plants and pool supply plants that are made by the plant operator to nonpool plants as producer milk as receipts of the diverting plant in the application of the pool plant provisions. Kraft suggested no specific provisions with regard to pool distributing plants but proposed that receipts of a supply plant should include diversions from the supply plant to nonpool plants and other pool plants. However, diversions received at the supply plant from other plants would be excluded from the supply plant's receipts in the application of the pool plant provisions.

Milk that a cooperative bulk tank handler diverts from a pool plant to another plant also should be included in the pool plant's receipts for purposes of determining the plant's pool status. Requiring all diverted milk to be included as a receipt at pool plants from which diverted in determining their pool status will insure the integrity of the order by requiring all producer milk to be associated with pool plants.

Although diverted milk is not physically received at the plant from which diverted, it is, nonetheless, an integral part of the plant's supply of milk. Furthermore, unless producer milk is associated with a pool plant, the pooling standards are weakened. Such standards are intended to insure that the milk supplies eligible to share in the Class I proceeds in the pool are those that have a reasonable association with the Class I market. Diverted milk that is not associated with a specific plant is, in effect, a "floating" supply of milk that may be used for manufacturing irrespective of the limitations that the pooling standards are intended to place on the amount of milk that may be associated with the pool for other than Class I uses. Thus, when referring herein to a plant's receipts used in computing pooling percentages, it is intended that such receipts include producer milk diverted from the plant.

Along that same line, milk diverted to a supply plant from another plant should not be included as a receipt of milk at the supply plant for the purpose of determining whether the plant qualifies as a pool plant. Since such milk would be considered a part of the total supply of milk at the plant from which diverted, it should not be included in the supply plant's receipts. This will permit milk to be diverted to a supply plant with manufacturing facilities for processing without affecting the pool status of the supply plant. A pool supply plant with manufacturing capabilities may represent the nearest available outlet for milk surplus to the fluid needs of this or another Federal order area.

No similar accommodation needs to be made when milk is diverted to a distributing plant. Since these plants are essentially fluid bottling plants, there really is no reason to divert milk to these plants for any reason other than for bottling purposes. Hence, all milk physically received (including milk diverted to such plant) at the plant should be considered in the plant's total receipts for the purpose of determining whether the distributing plant qualifies as a pool plant.

A proposal by Kraft, which is adopted herein, would structure the Southwest Plains order to exclude from the pool plant definition a facility which is physically separated from the portion of a pool plant approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption. Kraft's spokeman indicated that Kraft now operates a plant with Grade A and non-Grade A facilities at Bentonville, Arkansas, and the Grade A portion of the plant is pooled as a supply plant under the Oklahoma Metropolitan order.

AMPI opposed the adoption of such a provision in the merged order. It took the position that a Grade A operation and a non-Grade A operation conducted within a plant should be considered as a single plant operation.

It is noted that the market administrator of the Oklahoma Metropolitan order has treated the Bentonville facility as two separate plant operations under the current provisions of the Oklahoma Metropolitan order in the absence of specific provisions requiring a different

treatment. The record does not provide a basis for departing from this pooling treatment of a "dual" operation if the two types of operations can be kept separate for accounting purposes under the order. It is thus concluded that the requested exclusion should be provided in the merged order. Under the provision adopted, the term "pool plant" would not apply to a facility that is physically separated from the portion of a plant that is approved by a duly constituted regualtory agency for the receiving, processing, or packaging of any fluid milk product approved for fluid consumption.

Pool distributing plant. Under the adopted pooling standards, any distributing plant approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption would be a pool plant if during the month at least 50 percent of its receipts of fluid milk products is disposed of as route disposition. Also, the plant's route disposition in the marketing area must equal at least 10 percent of such receipts. The receipts of fluid milk products to which these percentages should apply are receipts (including allowable diversions) from producers, cooperatives acting as bulk tank handlers, other pool plants and nonpool plants.

The pooling standards for distributing plants adopted herein are essentially the standards proposed by the cooperative advocating the merger of the four orders. The provisions are patterned after the related provisions in the Oklahoma Metropolitan order except that the in-area route disposition requirement is established at 10 percent of the plant's receipts of fluid milk products instead of 15 percent of the plant's total route disposition. In addition, the plant's receipts would include all milk that is diverted from the plant as producer milk instead of only that milk which is diverted as producer milk by the plant operator. There was no opposition to the pooling standards proposed. Furthermore, there is no indication that the adopted pooling standards would cause any distributing plant now regulated under the four orders to lose its status as a fully regulated plant.

Requiring that a pool distributing plant dispose of on routes at least 50 percent of its receipts of fluid milk products is consistent with the general supply situation for the area under consideration. Except during the months of seasonally heavy milk production, milk supplies in the Southwest Plains market are somewhat short relative to the demand in the area for Class I milk. It is essential in this circumstance that available milk supplies in the market be channeled primarily into fluid uses. For this reason, a pool distributing plant in this market should be primarily engaged in the fluid milk business and not in the manufacture of milk products.

A plant distributing less than 10 percent of its receipts inside the marketing area should not be a fully regulated plant under the merged order. The plant with a limited degree of association with the market is not a major competitive factor for fully regulated handlers whose sales are largely or entirely in the marketing area. Hence, full regulation of such plant is not necessary to assure the orderly marketing of milk in the proposed market. Payment provisions applicable to such a plant are contained in the attached order to assure that route disposition in the marketing area from such a plant is treated in such a way as to minimize any building advantage on raw milk that this plant might have relative to fully regulated handlers. The order would require a pool payment on such sales equal to the difference between the order's Class I and uniform price. As an alternative, the plant could pay its dairy farmers the classified use value for all receipts or purchase from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area. These payment arrangements have been applicable under each of the four orders for many years.

It is possible that a distributing plant may meet the pooling requirements of two orders during the same month. As under the present orders, the merged order whould provide certain guidelines for determining under which order the plant should be regulated.

A distributing plant that has route disposition in two marketing areas should be regulated in the market in which it has the greater route sales. However, if a plant regulated under the merged order should have greater sales in another market, the plant should remain regulated under the merged order until the third consecutive month in which it has greater route disposition in the other marketing area. This should limit the casual, disruptive shifting between orders on a month-by-month basis that can occur when intermarket distribution results in qualifying a distributing plant for pooling under more than one order. This procedure, which was proposed by the merger proponent, is now provided in the Wichita, Red River Valley and Oklahoma Metropolitan orders. The Neosho Valley order exempts the plant from regulation the first month in which it disposes of more Class I milk in another marketing area.

The possibility that a plant pooled under the Southwest Plains order might become pooled under one of the adjacent orders does exist. The "lock-in" provision now provided in three of the four orders to be merged should be included in the merged order to limit the month-to-month shifts in order regulation for a plant with intermarket distribution. In addition, the merged order should contain a provision now in the Red River Valley and Oklahoma Metropolitan orders that allows a handler to exclude military contract sales in computing route dispositions within Federal order marketing areas. The provisions should provide that if the operator of a distributing plant files a written application at least 15 days prior to the date for which a determination is to be effective, the Secretary may determine that for pooling purposes the route dispositions in the Southwest Plains marketing area from the plant shall exclude (for a specified period of time) route disposition made under limited-term contracts to government bases and insititutions. The adoption of such provision will limit the shifts in order regulations that might otherwise occur for a plant that acquired a short-term government contract.

Pool Supply plant. Any plant approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption that does not qualify as a pool distributing plant should be a pool plant in any month in which 50 percent or more of its receipts of milk from dairy farmers (including the milk diverted from the plant as a producer milk but excluding milk diverted to such plant) and cooperative associations acting as bulk tank handlers is transferred (or diverted within specified limits) in the form of fluid milk products to pool distributing plants. However, any supply plant that is pooled during each of the months of September through January should continue to qualify as a pool plant during each of the following months of February through August without meeting the 50 percent requirement if at least 20 percent of its receipts is shipped to pool distributing plants. A plant not meeting the 20 percent shipping requirement during any month of the February-August period should qualify as a pool supply plant in any remaining month of such period only by shipping not less than 50 percent of its receipts to pool distributing plants.

The order also should provide that the Director of the Dairy Division (Agricultural Marketing Service, U.S. Department of Agriculture) may temporarily increase or decrease the supply plant shipping percentages by up to 10 percentage points during any month if it is determined that any additional shipments are needed or that excessive shipments are likely to be made.

In addition, the order should permit the operator of a plant that is located within the marketing area or in a county adjacent to the marketing area to include as qualifying shipments from a supply plant milk that is diverted by the plant operator from such plant to pool distributing plants. However, a supply plant operator should only be permitted to meet up to 60 percent of the qualifying shipments for each month of the year by diverting producer milk from the supply plant to pool distributing plants. The remaining qualifying shipments for each month would have to be met by transferring milk from the supply plant to pool distributing plants.

The four orders now require that 50 percent of a supply plant's receipts from dairy farmers must be shipped to pool distributing plants if the supply plant is to qualify as a pool plant. The Neosho Valley and Wichita orders provide for automatic pool plant qualification for supply plants during the months of flush production for plants that qualified as pool supply plants during the immediately preceding months of short production. The Red River Valley and Oklahoma Metropolitan orders provide that a supply plant that qualified as a pool plant during each of the months of September–December shall be pooled during the following months of January–August if at least 20 percent of the plant's receipts are shipped to pool distributing plants during each of such months.

AMPI proposed that a supply plant be a pool plant in any month in which 60 percent or more of its receipts of milk directly from dairy farmers (including diversions of milk as producer milk by the plant operator) is moved to pool distributing plants. Under the proposal, a supply plant that qualified as a pool plant during each of the months of September through January would continue to qualify as a pool supply plant in the succeeding months of February through August if its shipments to pool distributing plants exceeded 40 percent of its receipts during each month. A plant that did not meet the 40 percent shipping requirement during any month of February–August would not be a pool supply plant in any subsequent month of such period unless the plant shipped 60 percent of its receipts to pool distributing plants.

AMPI's representative stated that higher shipping standards for pool supply plants are needed during the months of September–January because distributing plants have the greatest need for milk during such months. During the subsequent months of February–August, the cooperative's spokesman indicated, a lower shipping standard should be established. He held that the minimum shipping standard for such months should be at least 40 percent of the plant's producer receipts since it has been necessary during these months for AMPI to ship a much higher percentage of its producer milk to pool distributing plants to meet their fluid milk requirements.

Kraft opposed the 60 percent shipping standard proposed by AMPI on the grounds that such level of performance could result in supply plants being required to furnish a greater proportion of their receipts to supply the market's fluid needs than is required of distributing plants with a high Class II and Class III use. In addition, Kraft testified that a higher performance level could inhibit the possible entry of new dairy farmer suppliers to the market. In support of its position, Kraft contended that as dairy farmers who furnish the current manufacturing grade milk supply at its manufacturing plant in Bentonville, Arkansas, convert to the production of Grade A milk, such milk will be available as a potential reserve supply for Federal order markets. Kraft contended that an increase in the performance standards, as proposed by AMPI, would preclude this new production as a supply for the merged market as long as the dairy farmers continue to supply Kraft since Kraft would not be able to meet the higher shipping standard.

Kraft proposed that the current provisions of the Oklahoma Metropolitan order for pooling a supply plant be continued in the merged order. Kraft proposed, in addition, during any month in which a 50 percent shipping standard must be met that any supply plant be permitted to meet up to 60 percent of such shipping percentage by shipments directly from the farm to pool distributing plants. In support of its position, Kraft noted that its supply plant at Bentonville, Arkansas, receives milk from producers located in southwestern Missouri, northwestern Arkansas and southeastern Kansas for shipment to a pool distributing plant located at Ponca City, Oklahoma. Kraft's representative noted that 50 percent or more of the supply plant's Grade A receipts could move directly from the farm to the distributing plant, when needed, at a substantial savings in hauling costs and energy use. The actual mileage that could be saved by moving milk in this manner was estimated by Kraft to be 9,200 miles per month.

Kraft noted that under current provisions milk produced on farms located between a supply plant and the distributing plant to which such milk is shipped must be picked up at the producers' farms, hauled from the farms to the supply plant (located in the opposite direction of the distributing plant), received at the supply plant, and reloaded for transportation to the distributing plant. In addition to minimizing hauling costs, Kraft indicated that direct shipments from farms to distributing plants would eliminate the expense of unloading milk at the supply plant for the purpose of associating such milk with the market.

Although Kraft held that the current shipping standards for supply plants under the Oklahoma Metropolitan order represent an adequate association with the market, it suggested that the Director of the Dairy Division be given the authority to adjust the supply plant performance standards upward or downward by 10 percentage points in the event that at some future time an adjustment was needed. Kraft noted that the use of such provision would provide greater flexibility in dealing in a timely manner with any potential changes in supply-demand relationships that could not be predicted at the time of the hearing.

During December 1979, the most recent month for which data were available, there was only one supply plant associated with the orders proposed to be merged. The supply plant, which was operated by Kraft, was a pool plant under the Oklahoma Metropolitan order.

The purpose of pooling standards for supply plants is to distinguish between those plants substantially engaged in serving the fluid milk needs of the regulated market and those plants that do not serve the market to a degree that warrants their sharing, through pooling, in the market's Class I returns. The standards also must assure that supply plants associated with the market will ship milk to distributing plants at the times and in the quantities needed to meet fluid use requirements. However, supply plant standards should not be so high as to encourage the shipment of substantial quantities of milk in excess of fluid milk needs.

The record of this proceeding indicates that the current standards for pooling supply plants under the Oklahoma Metropolitan order are appropriate for the merged order with minor exceptions. The months when supply plants are required to make increased shipments to pool distributing plants should be expanded to include January. In addition, the plant's receipts upon which shipping percentages are based should include all milk diverted from the plant as producer milk but should not include milk that is diverted to such plant. Furthermore, the order should provide for the temporary upward or downward adjustment of the shipping percentages by the Director of the Dairy Division.

The pool supply plant shipping standards adopted herein generally meet the objectives of Kraft and AMPI. In general, the standards reflect the standards proposed by Kraft. At the same time, the inclusion of a provision providing for a temporary upward adjustment in shipping percentages in the event that distributing plants need additional milk supplies would allow the standards for the months of September–January to be adjusted upward to the level proposed by AMPI. For the months of February–August, the pooling standards adopted herein could be adjusted upward to within 10 percentage points of the level proposed by AMPI. The need for a higher level of shipments can be reviewed at a later time after an opportunity to gain marketing experience under the merged order.

Pool supply plants should be required to make qualifying shipments during the month of January at the same level required during September-December. The month of January is also a month in which the fluid milk requirements of handlers are greater than average. Market statistics reveal that for the four markets combined the average daily Class I sales by all pool plants during January of 1978 and 1979 were greater than the average daily sales for each of these years. Also, the Class I utilization of producer milk in January was greater than yearly Class I use during 1978 and 1979, indicating a somewhat tighter than average supply-demand relationship. Because the month of January is one of the months in which production is somewhat short relative to Class I sales, it should be included in that time period when shipments at the higher level are required. Such change would provide greater assurance of the availability of pool supply plant milk to meet the fluid milk needs of distributing plants. Furthermore, the application of the higher performance standards during the months of September-January would provide greater consistency with other provisions that are also based, in part, on a distinction between the relatively short and heavy production seasons. For example, the diversion provisions adopted herein provide greater limits on the quantity of milk that may be diverted to nonpool plants during the months of September through January with lesser limits applicable during other months of the year.

The performance standards for pool supply plants adopted herein provide for a temporary upward or downward adjustment of the shipping percentages for supply plants if the Director of the Dairy Division determines that additional supplies are needed at distributing plants or that fewer shipments to such plants are needed. The adjustment should be limited to not more than 10 percentage points.

Under this provision the Director would investigate the need for revision, either on his own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director would issue a notice stating that a temporary revision of the shipping requirements is being considered and inviting views of interested persons concerning the proposed revision. After evaluating such views, the Director would then decide whether a temporary revision is warranted.

As indicated previously, there is no compelling reason to increase the performance standards on a permanent basis. However, short-term changes in supply or demand could result in the need to adjust the performance standards on short notice. Under current provisions, changes in performance standards for supply plants can be accomplished only through a time-consuming amendment proceeding or by suspension.

Furthermore, changes accomplished through suspension are limited because of procedural requirements to relaxing rather than increasing the shipping standards. Inclusion of a provision to adjust temporarily supply plant shipping standards will enhance the ability of the order to deal in a timely manner with short-run changes in supply-demand conditions that cannot now be perdicted. However, any such temporary revision of shipping standards is intended only to meet an emergency situation in meeting Class I needs of distributing plants and, therefore, should be of short duration.

Kraft's proposal to permit a supply plant operator to move part of the plant's milk supplies directly from farms to distributing plants and count them as part of the plant's shipments should be adopted with minor modifications. Such provision should apply each month of the year and its application should be limited to a supply plant located within the marketing area or a county adjacent to the marketing area. As adopted herein, the movement of milk directly from the farm to pool distributing plants would be limited to 60 percent of the supply plant operator's qualifying shipments. The remaining 40 percent of such operator's qualifying shipments would have to be transferred from the supply plant to pool distributing plants. Under such limits, a plant that must ship 50 percent (or the alternative shipping percentage established by the Director of the Dairy Division) of its total receipts to pool distributing plants would be permitted to utilize diversions amounting to not more than 30 percent (or 60 percent of the alternative shipping standard) of the supply plant's total receipts in partial fulfillment of its qualifying shipments for the month. In the case of a supply plant which qualified as a pool plant during the months of September-January and which must ship 20 percent of its receipts to pool distributing plants to qualify as a pool plant during February-August, such supply plant would be permitted to utilize diversions amounting to not more than 12 percent (or 60 percent of the alternative shipping standard) of the supply plant's total receipts in partial fulfillment of its qualifying shipments in any month would have to be transferred from the supply plant to pool distributing plants.

AMPI supported Kraft's proposal that direct shipments from the farm be used to qualify a supply plant. The cooperative's support of the proposal, however, was conditioned upon the establishment of pool supply plant shipping percentages of 60 percent in the months of short production and 40 percent in all other months of the year.

Kraft's proposal as modified and adopted herein will enable Kraft's Bentonville plant, which is located in a county that adjoins the marketing area, to discontinue some of the uneconomic milk shipments that the plant has been required to make to achieve pool plant status under the Oklahoma Metropolitan order. Under the provisions adopted herein, the milk supply that is located between the pool supply plant and the distributing plant can be delivered directly from the farm to the pool distributing plant and be considered as qualifying shipments of the supply plant.

The adoption of the direct-shipment method of qualifying a supply plant for

pool plant status should be accompanied by a geographical plant location limit to insure that the milk pooled at the plant is reasonably associated with the market. In the absence of such limit, a milk manufacturing plant located in territory remote from the production area could be pooled primarily on the basis of direct shipments of milk from the nearby production area. Thus, without some appropriate limitation on the area within which a plant can pool on the basis of direct shipments from the farm, there would be a possibility of milk pooled that is produced in an area remote from the market which is not a practicable source of milk supply for pool distributing plants. This could in turn detract from the basic purpose of the pooling provisions, which is to aid in insuring that adequate milk supplies will be made available to pool distributing plants. Accordingly, the option of pooling a plant on the basis of direct shipments should be limited to those plants located within the nearby production areas which include the marketing area and those counties adjacent to the marketing area. This limitation would not preclude, however, a supply plant located outside such production areas from being able to qualify as a pool plant on the basis of transfers of milk from the plant to pool distributing plants.

Kraft's proposal that a pool supply plant be permitted to count as qualifying shipments for pooling purposes fluid milk products that are transferred to fluid milk plants not fully regulated under the order should not be adopted. Under Kraft's proposal, qualifying shipments would include transfers to producer-handler plants, to partially regulated distributing plants and to other order plants. Its representatives held that the adoption of such provision would remove an artificial barrier which discourages the movement of milk where needed and which denies producers under the order the benefit of additional Class I sales.

One of the primary purposes in establishing shipping standards for pool supply plants is to assure that pool distributing plants receive a sufficient supply of milk to meet their fluid milk demands. Under Kraft's proposal, a supply plant that delivers only a token shipment to a pool distributing plant could be pooled by shipments to plants whose distribution area is outside the Southwest Plains marketing area. Such provisions might be appropriate for a market in which there are ample milk supplies and limited Class I outlets. Such conditions, however, are not characteristic of this market. Because of this, milk supplies that are being pooled on the market should be available to handlers who are engaged in processing milk for fluid use in the market. Under Kraft's proposal, there would be no assurance that a sufficient supply of milk would be made available at all times to meet the fluid milk needs of such handlers.

It should be noted that the provisions adopted herein would not preclude pool supply plants from making milk available to producer-handlers, partially regulated distributing plants or other order plants for Class I use (and producers would benefit from such additional sales). However, the supply plant, in meeting the pooling requirements, would also have made a minimum amount of milk available to distributing plants fully regulated under the Southwest Plains order.

Kraft also proposed that the order provide pool plant status for a "supply unit". A "supply unit" would be the facilities and equipment that are used when milk of two or more designated producers is physically picked up on one or more farm tank trucks and delivered to pool distributing plants. The operator of the unit would be limited to a person who operates a pool plant, or a nonpool plant located within an area consisting of the marketing area plus an additional area extending 100 miles from the nearest edge of the marketing area. The operator of the unit could also be a person who provides to the satisfaction of the market administrator that he has sufficient assets to pay producers. To qualify as a pool plant, the supply unit would need to deliver during September–January 60 percent of its receipts to pool distributing plants. During February–August the supply unit would be required to deliver 40 percent to its receipts to pool distributing plants. In addition, the delivery requirements could be increased or decreased by 10 percentage points by the Director of the Dairy Division if he finds that such revision is necessary.

The spokesman for Kraft pointed out that the basic difference in pooling milk through a supply unit and a supply plant is that it would eliminate the need for milk to be physically received at a supply plant and reloaded onto a truck solely for the purpose of qualifying for pool participation. Furthermore, the adoption of the provision would eliminate the need to construct a Grade A receiving operation and to qualify such plant as a pool supply plant in order for the Grade A producers supplying such operator to participate in the pool.

Any need for adopting the "supply unit" concept as a method of pooling is very minimal in view of the revisions made in the pool supply plant qualification standards. Under the changes adopted herein, the operator of a pool supply plant could deliver up to 60 percent of the qualifying shipments that a supply plant needs to make a pool distributing plants by diverting milk directly from the farm to the pool distributing plant.

The pool supply plant standards adopted herein will permit Kraft, as the operator of a pool supply plant at Bentonville, Arkansas, to associate Grade A milk that is currently being delivered to the handler's nonpool plant at Berryville, Arkansas, with the Bentonville plant. With the exception of one day's production per month, the milk of the Berryville dairy farmers that Kraft wants to associate with the pool could be delivered directly from farms to pool distributing plants supplied by Kraft's supply plant. As previously noted, the volume of milk that could be delivered directly from farms to pool distributing plants and used to qualify a supply plant would be limited to 60 percent of the qualifying shipments that the supply plant would be required to make to pool distributing plants during such month. At least one day's production of the producers whose mild is diverted must be received at the Bentonville plant each month in order to assure that the producers whose milk is used to qualify the Bentonville plant have at least a minimal association with such plant. On those days when the milk from the Berryville dairy farmers is not needed at the pool distributing plant, the milk could then be diverted directly from the farms to the nonpool plant at Berryville as a diversion from the Bentonville supply plant.

Under the circumstances, there is no need to burden the order with additional pooling provisions that are not needed under current marketing conditions. Accordingly, the "supply unit" pooling provision should not be adopted at this time.

The order language adopted herein excludes the pooling of a supply plant that meets the pooling requirements of this order and of another Federal order of greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this order. Such provision is contained in the Oklahoma Metropolitan milk order and was proposed by AMPI for inclusion in the merged order. The inclusion of such provision will eliminate the conflict that would otherwise exist if a supply plant

qualifies as a pool plant under this order and another order.

The order language adopted herein also excludes the pooling of a supply plant which has automatic pooling status under another Federal order and which also meets the performance standards for pooling under this order. The plant could be pooled under this order, however, if the plant operator elects to relinquish pool plant status under the other order. In the absence of any such action by the plant operator, a conflict would exist with regard to which of the two orders would regulate such plant. Adoption of the modification, which was proposed by AMPI, would eliminate such conflict by allowing the plant to continue as a pool plant under the order in which it has automatic pooling status.

Cooperative balancing plants. A cooperative should be permitted to qualify a balancing plant located in the marketing area as a pool plant as long as 50 percent of the producer milk marketed by the cooperative association is delivered to pool distributing plants. The producer milk marketed by the cooperative should include the producer milk of the cooperative's members as well as the producer milk of nonmembers and the producer milk of any other cooperative that is marketed by such cooperative. The producer milk could be moved by the cooperative in its capacity as a bulk tank handler directly from the farms of producers to pool distributing plants. The producer milk could also be delivered to pool distributing plants from pool supply plants and pool balancing plants operated by the cooperative association.

A provision for pooling a balancing plant operated by a cooperative is now provided under the Oklahoma Metropolitan order for a plant located within 50 miles of Tulsa or Oklahoma City, Oklahoma. To qualify a balancing plant as a pool plant under the current order, a cooperative must deliver to pool distributing plants a quantity of fluid milk products (except filled milk) that is in excess of 50 percent of the total milk of member producers. Such fluid milk products may be transferred to pool distributing plants from such cooperative association plant(s) or may be received directly from the farms of member producers.

AMPI and Kraft proposed that provisions be provided under the merged order for pooling a cooperative's balancing plant if such plant is located within the marketing area. AMPI proposed that pool plant status be accorded a balancing plant if the cooperative operating such plant requests that the plant be pooled and 60 percent or more of the producer milk of members of the cooperative is physically received at pool distributing plants. Such receipts at pool distributing plants could be received directly from the farms of members of the cooperative or by transfers from the cooperative's balancing plant or from the cooperative's pool supply plant(s).

Kraft's proposal to pool a cooperative's balancing plant differed from the one proposed by AMPI in three respects. Kraft would reduce from 60 percent to 50 percent the producer milk that members of the cooperative association must deliver to pool distributing plants. Under Kraft's proposal, however, the 50 percent would apply not only to a cooperative's own member producer milk but also to the producer milk of nonmembers and the producer milk of another cooperative association of such milk is marketed by the cooperative operating the balancing plant. In addition, Kraft proposed that a cooperative be permitted to count as qualifying shipments producer milk that the cooperative delivers to plants of producer-handlers, partially regulated distributing plants (limited to the quantity of milk so transferred that is classified as Class I milk) and distributing plants fully regulated under other orders (would not apply to milk shipped for agreed upon Class II or Class III use or to the quantity of milk that was in excess of the plant's shipment to pool distributing plants).

The provisions adopted herein for pooling balancing plants operated by cooperative associations are patterned after the provisions proposed by AMPI with two exceptions. A cooperative should be required to deliver to pool distributing plants 50 percent or more of the milk that the cooperative markets as producer milk under the order. While the percentage adopted herein is 10 percentage points less than was proposed by AMPI, it is also noted that the cooperative proposed a 60 percent shipping standard for a pool supply plant. Since the lower shipping standards (50 percent) were deemed appropriate for pool supply plants, it is concluded that the same percentage should also apply in establishing performance standards for balancing plants. In addition, the performance standards for a cooperative's balancing plant should be based not only on the producer milk marketed by the cooperative for its members but also on nonmember milk and member milk from any other cooperative that the cooperative also markets as producer milk. Unless the performance standards apply to all producer milk marketed by the cooperative, there is the possibility that substantial quantities of milk could be associated with the Southwest Plains order. In the absence of the limits adopted herein, the only limit on the quantity of milk that a cooperative could associate with the market would be the manufacturing capacity of the plant operated by the cooperative.

Nonpool plants. A definition of "nonpool plant" is provided to facilitate formulation of the various provisions of the order as they apply to such a plant. The four separate orders now contain comparable nonpool plant definitions with the exception of the Oklahoma Metropolitan order which defines a "governmental agency plant" as a nonpool plant. The other three orders do not specifically define a governmental agency plant under the nonpool plant definition. The definition adopted herein is essentially the same as the definition proposed by the merger proponent.

The nonpool plant definition of the merged order should define a "governmental agency plant" as a plant which is owned and operated by a governmental agency from which fluid milk products are distributed in the marketing area. The definition adopted herein will exempt governmental institutions such as Oklahoma State University and the several other state institutions which have their own herds and package milk primarily for use within their own institutions from all the provisions of the merged order. In general, the operation of a governmental agency plant has little, if any, effect upon the marketing of milk within the marketing area.

Such self-contained operation which operates its own dairy farm and processing plant and which distributes the milk from such operation either on a college campus or otherwise within the institution should not be fully regulated under the order. These operations are normally not a competitive factor in the overall market and for this reason should not be pooled. Accordingly, as suggested by the merger proponent, nonpool status should apply to such plants.

Handler. The impact of regulation under an order is primarily on handlers. The handler definition identifies persons who will have responsibility for filing reports and making payments for milk under the merged order.

Accordingly, the order should designate handler status for the following persons:

(1) Any person who operates one or more pool plants;

(2) A cooperative association with respect to milk of producers that is diverted for its account;

(3) A cooperative association with respect to bulk tank milk of producers picked up at the farm for delivery to the pool plant of another handler;

(4) The operator of a partially regulated distributing plant;

(5) A producer-handler; and

(6) The operator of an other plant from which milk is disposed of in the marketing area.

The current handler definition of the Oklahoma Metropolitan order is appropriate for the merged order with two principal exceptions. The order should not include the current proviso which states that, in the case of recognized divisions of a corporation which are operated as separate business units, each such division shall be deemed to be a handler. The deletion of this provision, which is not contained in the other three orders involved in the merger, was proposed by the merger proponent.

This provision, if continued, would have no applicability since no corporation that would be regulated under the merged order operates any divisions as separate business units. In the absence of any indication that the provision is needed, the proposed change is adopted.

The other revision would permit a pool plant operator to be the responsible handler on bulk tank milk moved by the cooperative from the farm to the plant if both the cooperative and the pool plant operator notify the market administrator prior to the movement of such milk that they have agreed to such handling arrangement. Also, the plant operator must agree to purchase the milk on the basis of weights and tests determined at the farm. Under this arrangement the pool plant operator would be responsible for the milk in the same manner as for producer milk that he procures from individual producers and receives at his plant directly from the farm.

Under the terms of the merged order, the pool plant operator's obligation on milk purchased from a cooperative as a "bulk tank handler" would be the same as for producer milk received directly from the farm of an individual producer. The plant operator must account to the pool for the milk according to the classification assigned to the milk based on the plant's utilization. The pool operator in turn settles with the cooperative on the basis of the uniform price for the milk. Under this arrangement, the pool plant operator is obligated to the producer-settlement fund, the administrative fund and the cooperative on the quantity of milk the cooperative delivers to such handler's pool plant directly from the farms of producers. The cooperative, in turn, is obligated to the producer-settlement fund and administrative fund on only that portion of milk picked up at the farm for its account that exceeds the quantity delivered to pool plants.

This accounting and payment procedure for bulk tank milk received from a cooperative will simplify the accounting for such milk by the pool plant operator. It will facilitate the administration of the order with respect to such items as financial responsibility, enforcement, and subsequent audit adjustments that may arise. Since the actual use of milk reflects the receiving pool plant's operation, it is reasonable that the responsibility for the accounting and payment of such milk be placed directly on such pool plant operator.

The merged order also provides that a cooperative could be a handler of the milk of a producer which it diverts for its account from a pool plant to a nonpool plant. This handling arrangement will facilitate the movement of milk not needed for fluid use to nonpool plants for manufacturing. It also will assist cooperatives in balancing supplies among several distributing plants serving the market.

Under this handling arrangement, the diverting cooperative would be obligated to the producer-settlement and administrative expense funds on the diverted milk. Conversely, the operator of the nonpool plant that received the milk from the diverting cooperative would not incur an obligation on such milk under the order.

A pool plant operator receiving farm bulk tank milk from a cooperative also should be responsible for paying to the market administrator the administrative assessment on such milk. The audit and verification activities of the market administrator relate essentially to the operation of the pool plant where the milk is processed. As in the case of the producer milk which he receives from individual producers, the plant operator thus should pay his pro rata share of the administrative costs on milk received from the cooperative in its capacity as a bulk tank handler.

When the cooperative assumes its role as the responsible handler on farm bulk tank milk, the pool plant operator may buy such milk on the basis of weights and butterfat tests determined at the plant rather than on the basis of measurements determined at the farm. Usually, the quantity of milk picked up at the farm slightly exceeds the quality ascertained as actually received at the plant. In such cases, the difference in quantity between the farm and plant measurements should be considered as a receipt of producer milk by the cooperative association at the location of the pool plant where the milk in the tank truck was delivered. The cooperative should be obligated to settle with the producer-settlement fund and to pay the administrative assessment on the difference in the quantity of milk involved in the two measurements.

The merged order should afford all cooperatives in the market flexibility in the arrangements under which they sell milk to pool plants or dispose of reserve supplies. If it so chooses, a cooperative should be able to pick up the milk of nonmembers producers along with the milk of its members for delivery to pool plants or for diversion to nonpool plants. This procedure will enable the cooperative to act as the marketing agent for a nonmember producer who has contracted with the cooperative to act as the marketing agent for his or her milk. Nothing the order would require a cooperative to pick up the milk of nonmember producers. It would provide, however, that when a cooperative does pick up milk of nonmember producers on trucks under its control, it must assume varying degrees of responsibility with respect to such milk, depending on the handling arrangements made.

The Capper-Volstead Act provides the criteria by which cooperative associations are determined to be qualified cooperatives under the Agricultural Marketing Agreement Act. With the adopted handler definition, the merged order would be consistent with that provision of the Capper-Volstead Act which recognizes that cooperatives may "deal in the products of nonmembers" and which limits such dealing to amounts not greater in value than are "handled by it for members."

Producer-Handler. The merger order should provide for the exemption of a "producer-handler" from the pooling and pricing provisions of the order. As adopted herein, a producer-handler would be any person who operates a dairy farm and a processing plant and who receives no fluid milk products from sources other than his own farm production and by transfer from pool plants and other order plants. A producer-handler could not dispose of any other source milk in the form of a fluid milk product except receipts from other order plants and nonfat milk solids used only to fortify fluid milk products. To qualify as a producer-handler, such person would have to provide proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

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Presently, the four orders to be merged define a producer-handler as a dairy farmer who operates a distributing plant and who receives no milk from other dairy farmers. Each of the four orders allows producer-handlers to buy unlimited supplemental suppliers of fluid milk products from pool plants. With the exception of the Oklahoma Metropolitan order, each of the orders also allows producer-handlers to obtain supplemental supplies from other order plants. Currently, only the Wichita order provides that such person provide proof satisfactory to the market administrator that all the resources necessary for his own production of milk and the management and operation of the processing plant be the personal enterprise and risk of such person.

The producer-handler definition adopted herein is identical to the definition proposed initially by the merger proponent, as reflected in the hearing notice. At the hearing, however, AMPI took the position that all persons operating plants with route disposition in the marketing area should be either fully or partially regulated by the order. Proponent stated, though, that if it is the Department's policy to exempt from regulation a person who basically distributes only his own production on routes in the marketing area, then it supported adoption of its initial proposal.

The four separate orders now exempt a producer-handler from full regulation and such exemption should be continued under the merged order. Congress has on several occasions reaffirmed the action of the Secretary in exempting producer-handlers from full regulation as handlers under Federal milk orders. Although the term "producer-handler" is not mentioned in the original Agricultural Marketing Agreement Act of 1937, subsequent amendments in 1965, 1968, 1970 and 1973 referred directly to producer-handlers. In each case, Congress indicated that the legal status of producer-handler under milk marketing orders should be left unchanged.

Experience under Federal orders over many years generally has demonstrated that effective regulation can be insured without the full regulation of individuals who produce, process, and distribute substantially only milk produced on their own farm and who buy no milk from other dairy farmers. Individuals who assume a dual role of producer and handler and who carry their own balancing supplies generally have no economic advantage either as a producer or a handler. As a dairy farmer such person maintains control of his milk until ultimate disposition and therefore his situation is quite different from the regular producer whose milk is marketed through a handler. The protection of the minimum price provisions of the order have little significance to the producer-handler in his capacity as a dairy farmer.

On the other hand, in his capacity as a handler, the producer-handler competes in the retail market with regulated handlers. In such role he does have the advantage of not paying the administrative assessment and of marketing his milk at a price without regard to costs associated with milk priced under the order. As a result of these advantages, he may receive a greater margin of profit than regulated handlers handling similar quantities of milk. However, a producer-handler has the disadvantage of balancing his own supply against his demand. Also, in disposing of his surplus he may not equalize his costs of milk used for manufacturing purposes through payments from the producer-settlement fund.

The exemption from pricing and pooling of producer-handlers should be limited to bona fide producer-handlers. Without appropriate safeguards, milk distributors with own-farm production might be encouraged to seek producer-handler status. Various business arrangements may be used to give the appearance of a true producer-handler operation. To preclude the use of such devices, the order should provide that the producer-handler must provide proof satisfactory to the market administrator that the maintenance, care and management of the dairy animals and all other resources used to produce the milk as well as the resources required for the distribution of the milk are each the personal enterprise and the personal risk of the person who claims producer-handler status.

A producer-handler who needs supplemental supplies of fluid milk products to supply his customers should be required to purchase such supplies from pool plants or other order plants. Under the provisions adopted herein, such requirement will assure that the producers supplying the market from which the producer-handler acquires the milk receive a Class I price for such milk to compensate them for carrying the necessary reserve milk supplies for the market. As a further condition for exempt status, a producer-handler should be precluded from reconstituting or converting milk products into fluid milk products. If such activities were permitted, the producer-handler would have a significant competitive advantage over regulated handlers since the milk products used by the producer-handler would have only a surplus value. However, a producer-handler should be permitted to increase the nonfat milk solids content of the milk produced on such person's own farm or purchased from pool plants and other order plants by fortifying a fluid milk product. In addition, a producer-handler should be permitted to buy Class II and Class III milk products from any source for distribution along with such handler's fluid milk products.

Producer. The term "producer" defines those dairy farmers who constitute the regular source of supply for the merged market. The producer definition provided herein follows closely the definition proposed by the proponent of the merged order.

Producer status under the merged order should be provided for any dairy farmer who produces milk approved by a duly constituted regulatory agency for disposition in the marketing area and whose milk is received at a pool plant directly from the dairy farmer or received by a cooperative association as a farm bulk tank handler. Producer status also should be accorded a dairy farmer who has an established association with the market and whose milk is diverted to nonpool plants on occasion for surplus disposal by cooperatives or pool plant operators.

The merged order would provide an exemption for producer-handler operations and for plants operated by a governmental agency. Since these operations are exempt from the order's pricing and pooling provisions, milk which is excess to the needs of such operators should not be treated as producer milk when it is moved directly from the farms of such operators to a pool plant. Accordingly, the producer definition adopted herein would specifically exclude producer-handlers and governmental agency plants. Any such milk delivered to a pool plant from such operations would be other source milk.

In addition, the merged order should preclude the possibility of a dairy farmer being a producer under two orders with respect to the same milk. In this regard, the producer definition should continue the provisions of the present order that exclude (1) a person with respect to milk which is diverted from a pool plant regulated under another order to a pool plant regulated under this order if such person is a producer under the other order with respect to such milk and it is allocated by agreement to Class II or Class III use

under this order, and (2) a person with respect to milk which is diverted to another order plant from a pool plant regulated under this order if any portion of such person's milk is assigned to Class I milk under the other order.

Also, the merged order should exclude from the producer definition any dairy farmer with respect to milk produced by him during the months of February through July if the same person (cooperative association or pool plant operator) caused more than one-third of the monthly milk production from the same dairy farm to be associated with another market during any one of the immediately preceding months of September through November. The exclusion was proposed by the merger proponent.

This provision should be adopted to prevent cooperative associations and pool plant operators from pooling on the proposed Southwest Plains market during the months of February through July, when milk supplies are more than adequate, milk that could be reasonably considered as a reserve supply for another market. Such provisions would not apply to dairy farmers coming onto the market from another market if different persons were directing the delivery of the milk in each market, or to dairy farmers delivering milk to a pool plant that was a nonpool plant within the September-November period. In such instances, the milk of dairy farmers delivered to the market during the February-July period does not necessarily represent reserve supplies associated with another market and these dairy farmers should be allowed to obtain producer status under the order during this period.

This provision is not intended to prevent a dairy farmer from obtaining the approval of a duly constituted regulatory agency for the production of milk for fluid consumption and becoming a producer on the market during the months of February through July. It is only designed to prevent a handler from pooling milk of producers on some other fluid market during the months of September through November and then pooling the milk of that same group of producers on the Southwest Plains market during the months of February through July.

If a handler causes the milk of a dairy farmer to be moved to another market as other than producer milk during the months when supplies are in greatest demand, producers regularly supplying the Southwest Plains market should not have the burden of sharing their pool proceeds with such other dairy farmers during the flush production months when the handler finds their milk to be surplus to the needs of the other market. A handler associating a dairy farmer with another market during the short-production season should not be able to have the dairy farmer qualify as a producer on the Southwest Plains market in other months when supplies are much more plentiful relative to demand. Permitting a hander to shift dairy farmers back and forth between markets in this manner would take supplies away form the Southwest Plains market at a time when they are needed and then would reassociate such supplies with the market at a time when they are not needed. This procedure would not be conducive to the orderly marketing of milk of producers regularly supplying the Southwest Plains market.

Under the provisions adopted herein, milk received at a pool plant during the months of February through July from a "dairy farmer for other markets" would be designated as other source milk and allocated to the extent possible to Class III milk. As such, this milk would be accounted for in a manner similar to receipts of fluid milk products from a producer-handler or a governmental agency plant that has non-producer status.

Kraft opposed the "dairy farmer for other market" provision on the basis that the provision would make it difficult for handlers to move producers between markets. The provision is designed to inhibit the movement of producers among markets under only certain specified conditions. The provision is intended to require a handler to pool the reserve milk supplies of a diary farmer in the market that the producer supplied with milk during the months of short production. To accomplish that result, it is necessary that the movement of producers among markets be restricted in the manner provided herein.

Producer milk. The "producer milk" definition is intended to define the milk that would be priced and pooled under the merged order. The definition adopted herein carries out the basic objectives set forth by the merger proponent.

As provided herein, producer milk would include milk received during the month directly from a producer at a pool plant by the plant operator. It also would include milk of a producer that is received during the month by a cooperative association as a bulk tank handler for delivery to a pool plant. Milk picked up by a handler at the farm in a bulk tank truck but not received at a plant until the next month would be producer milk in the month in which picked up. Under the adopted provisions, producer milk also would include milk of producers that is diverted from pool plants to nonpool plants under specified conditions.

Under the present accounting procedures, bulk tank milk that is picked up at the farm but not physically received at a plant until the following month is treated as a receipt of producer milk in such following month. This procedure has presented substantial accounting problems, particularly when milk passes through a reload facility and a portion of the load on the pick-up tanker is transferred to an over-the-road tanker and received at a plant that month, while the remainder is held at the reload facility for delivery to a plant the next month. While administrative guidelines have been adopted to promote uniform accounting procedures for bulk milk receipts, the procedures have not fully resolved the accounting problems to the satisfaction of affected parties. Further, individual producers have not understood the deferred settlement for milk that results when milk picked up in the current month is not physically received at a plant during that month.

Dairy farmers need not be required to wait one and a half months before receiving the uniform price for milk that is picked up at their farms on the last day of a month but is not received at a plant until the following month;. The accounting procedure will be simplified and should be more readily accepted if milk is pooled in all cases in the month in which it is picked up at a farm. The changes adopted herein will permit the pooling of producer milk in the month it is picked up at the farm if the milk is received at a plant in the current or the following month. Milk received in the following month will be included in the responsible handler's end-of-month inventory and will be priced at the location of the plant where the milk is physically received in the following month. Since this milk reasonably will be received at a plant on the 1st or 2nd day of the following month, the handler will know the location of the plant of actual receipt in time to include this information in his monthly report, which he mails by the 7th day of the following month. If, however, none of the milk in the pick-up tanker is received at a plant, such milk will not be included in the handler's report and he will have no pool obligation on it. This conforms with the present provisions which tie the producer milk provisions to its receipts at a plant.

If the operator of a pool plant is the responsible handler, he will account for this producer milk as part of his end-of-month inventory and will be charged the

Class III price in the month it is picked up at the farm. In the following month, this milk will be treated in the same manner as other fluid milk products he had in inventory.

If a cooperative association bulk tank handler is the responsible handler, such cooperative will account will account for the milk in transit as end-of-month inventory. The cooperative will be charged the Class III price for such milk and will be credited at the blend price. Additional conforming changes are needed to implement this procedure to insure that in the following month the cooperative is credited for its pool obligation on such milk in the preceding month. In such following month, this milk is included in the obligations of the pool plant handler who physically received it and he will account to the market administrator for this milk at the classified prices. Such monies would be deposited in the producer-settlement fund, but since the milk was pooled in the preceding month it would not be included in the pool computation of the current month.

It should be noted here that bulk tank milk being diverted by a cooperative from another handler's pool plant to a nonpool plant should not be included in the cooperative's ending inventory if the milk is in transit at the end of the month. Instead, the final accounting for the milk should be in the month in which it is picked up at the farm. The inventory accounting procedure is not necessary in this case since the cooperative is the only accountable handler under the order for such milk. The milk is received by the cooperative, of course, at the time it is picked up at the farm.

Diversions of producer milk from a pool plant to a nonpool plant that is not a producer-handler plant, for the account of the handler operating the pool plant, are recognized with specific limitations. Similar diversions could be made for the account of a cooperative from the pool plant of another handler.

Diversion provisions are desirable to facilitate the orderly and efficient disposition of the market's reserve milk supplies. When producer milk is not needed in the market for Class I use, its movement to nonpool plants for manufacturing without loss of producer milk status should be accommodated. It is necessary, however, to safeguard against the association with the market of unneeded milk supplies through the diversion process. Accordingly, certain limitations should apply with respect to diversions of producer milk to nonpool plants.

The merger proponent proposed that during each month of the year cooperatives be permitted to divert to nonpool plants, except producer-handler plants, a quantity of milk not in excess of one-half of the quantity of member producer milk that is received at pool plants during the month. The operator of a pool plant (other than a cooperative association) would be allowed to divert to nonpool plants, except producer-handler plants, any non-member milk. The quantity of milk that the plant operator would be permitted to divert could not exceed one-half of the quantity of milk received at such pool plant from such non-member producers during the month. AMPI also indicated that it would support a diversion limitation equal to the reciprocal of supply plant shipping requirements if shipping standards of 60 percent in September–January and 40 percent in February–August were adopted. Diversions in excess of the proposed quantities would not be eligible for pooling under this order and the diverting cooperative or pool plant operator would be required to specify the dairy farmers' milk which would not be eligible for diversion. If the cooperative or handler fails to designate the dairy farmers whose milk is not eligible for diversion, then none of the milk diverted by the cooperative or handler, respectively, would be eligible for pooling.

The cooperative also proposed that milk of a producer would not be eligible for diversion unless at least 15 percent of the total monthly milk production of such person is received at a pool plant.

Kraft proposed that diversions of producer milk to nonpool plants for each of the months of September–January by cooperatives and pool plant operators be limited to the quantity of milk physically received at pool plants from those producers for which the handler is eligible to divert. During each of the months of February–August, Kraft proposed that diversions to nonpool plants by such handlers not exceed twice the quantity of milk physically received at pool plants from those producers for which the cooperative or the plant operator, respectively, is eligible to divert. In the event of over-diversions, the diverting handler may designate the dairy farmer deliveries that would not be producer milk. If the handler failed to designate the milk that was over-diverted, Kraft proposed that milk diverted on the last day of the month, then the second to last day of the month, and so on, be excluded until all diversions in excess of the prescribed limits are accounted for.

Kraft proposed that in any month of September–January milk of a producer not be eligible for diversion unless at least one day's production from such producer is physically received at a pool plant during the month. In the event a dairy farmer loses his producer status (except at a result of a temporary loss of Grade A approval), Kraft proposed that the milk of such producer not be eligible for diversion until milk of such producer is physically received once again as producer milk at a pool plant.

The handler's spokesman pointed out that milk of certain distant producers may not be needed every day of the month, especially, during the season of flush production. In the event there is need to divert reserve milk supplies to nonpool plants for manufacturing, he indicated that a handler should have the opportunity to move such milk in the most efficient manner. For this reason, he proposed that during the months of September through January only a minimal association with the market be required in order for milk of a producer to be diverted and that the main limit on the quantity of milk that may be diverted be based upon the aggregate quantity of producer milk physically received at pool plants. In Kraft's opinion, such diversion provisions would promote efficiency by permitting the milk of the more distant producers to be diverted every day of the year except for one day's production during each of the months of September through January.

To insure that each producer whose milk is being diverted maintains his established association with the market, at least one day's production of his milk should be received at a pool plant each month. If a dairy farmer loses his producer status under the order (except for temporary loss of approval from a duly constituted regulatory agency for the production of milk for fluid consumption), his milk should be reassociated with a pool plant before it is eligible for diversion. For transitional purposes, a dairy farmer who held producer status under any of the four orders merged herein during the month preceding the effective date of the merged order could have his milk diverted under the merged order without being received first at a pool plant under the merged order. However, at least one day's production from such dairy farmer would have to be received at a pool plant sometime during the month for any milk of the producer to be eligible for diversion during such month. These requirements will assure that only the milk of producers who have established as association with the market's fluid needs is eligible for diversion to nonpool plants.

There is no need to require that at least 15 percent of an individual dairy

farmer's production be delivered to a pool plant each month in order for any milk of such producer to be eligible for diversion. Such requirement would unnecessarily limit a handler's ability to divert efficiently the milk of producers. While a minimal individual "touch-base" requirement is necessary, the primary limits should be established on the basis of the aggregate quantity of producer milk that the handler caused to be received at pool plants. Such method will provide adequate safeguards on diversions to nonpool plants and provide handlers greater flexibility in moving excess milk supplies to nonpool plants. For example, the provisions adopted herein will enable a handler to divert more often the milk of those producers whose farms are more distant from his plant than those located closest to his plant, thereby reducing the cost of hauling milk. On days when the milk of distant producers is not needed at the central market, it can be diverted to nearby manufacturing plants.

The total quantity of producer milk that may be diverted monthly to nonpool plants by a cooperative association during each of the months of September through January should not exceed one-half of the producer milk that the cooperative association caused to be delivered to and was physically received at all pool plants. During each of the months of February through August, the quantity that may be so diverted should not exceed the quantity of producer milk that is so moved by the cooperative.

The operator of a pool plant should be able to divert any milk that is not under the control of a cooperative association that is diverting milk during the month. The total quantity of milk so diverted during each of the months of September through January should not exceed one-half of the producer milk physically received at pool plant(s) as producer milk for which the plant operator is the handler. During each of the months of February through August, such diversions should not exceed the quantity of producer milk that was physically received at pool plant(s) as producer milk of the plant operator.

Any milk diverted by handler in excess of the quantity limitations should not be producer milk. The diverting handler should be permitted to designate the dairy farmer deliveries to nonpool plants that would not be producer milk. Otherwise, the milk last diverted during such month, in lots of an entire day's production, should be excluded first in determining which milk would not be producer milk.

As provided herein, milk diverted from a pool plant would be included in the plant's receipts for purposes of determining whether or not the plant meets the applicable pooling standards. It is necessary under this procedure to safeguard against a pool plant not meeting the pooling standards because too much milk was diverted from the plant by a cooperative, perhaps without timely knowledge of this by the plant operator. Accordingly, whatever quantity of milk diverted by a cooperative from a pool plant that would cause such plant to become a nonpool plant should not be considered as producer milk. In such event, the cooperative should be permitted to designate the dairy farmer deliveries to nonpool plants that would not be producer milk. Otherwise, the milk last diverted by the cooperative from the pool plant, in lots of an entire day's production, should be excluded first in determining the milk of dairy farmers that would not be producer milk.

The limit on diversions adopted herein would permit up to one-third of the producer milk of a handler to be diverted off the market during the months of September through January. Such limit comports with the limit proposed by proponent cooperative for all months of the year and should accommodate any needed diversions by handlers during the months when milk production declines seasonally. In that regard, the greatest diversions during 1978 and 1979 for the months of January and September-December occurred in December 1979. In that month, 5.3 percent of the total producer milk on the four markets was diverted to nonpool plants.

During the months of February through August when the demand for fluid milk is less and the supply of producer milk is more plentiful than during other months of the year, handlers will find it necessary to divert greater quantities of milk to nonpool plants than during the months of September through January. Accordingly, during the months of February through August, handlers should be permitted to divert producer milk to nonpool plants in an amount equal to the quantity of producer milk physically received at pool plants. As a practical matter, there is no reason to have the order provide that the operator of a pool distributing plant may divert any greater quantity than the amount adopted herein. The same would be true for a pool supply plant that is required to ship at least 50 percent of its producer receipts to pool distributing plants during such months. If such handlers were to divert more milk to nonpool plants for manufacturing than was received at their plants, they would be unable to meet the pooling standards for pool distributing plants and pool supply plants that are provided herein.

As proposed by the merger proponent, all diverted milk should be priced at the location of the plant to which the milk was diverted. Pricing diverted milk at the location of the plant where such milk is physically received removes the possibility of subsidizing distant producers when their milk is diverted to distant manufacturing plants. This would occur if such producers received a blend price f.o.b. the city plant (as if the milk had actually moved to the city) when in fact no transportation cost to the city had been incurred because the milk was diverted to a manufacturing plant located near the producer's farm.

Kraft, Inc., proposed that the order provide for diversions between pool plants. This proposal was a corollary change to its proposal to allow supply plants to qualify for pool status on the basis of direct shipments of milk from producers' farms to distributing plants.

Since the merged order would allow limited quantities of milk that is diverted to count as qualifying shipments for the purposes of pooling a supply plant, the order also should provide for diversions between pool plants. This will provide the technical means under the order for milk to be delivered by supply plant operators directly from producers' farms to pool distributing plants and still count as shipments from the supply plant. Also, it will allow the operator of any pool plant to divert milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk. Without this provision, a plant operator who wants to retain regular producers on the plant's payroll for the entire month would have to physically receive the milk of such producers into the plant (so that it will be considered "producer milk"), then pump it back into the truck and deliver it to the other pool plant. Such milk would then be considered a transfer from one plant to another with the transferor-handler accounting to the pool for the milk and paying those producers as well.

This practice is obviously uneconomic, resulting in unnecessary and costly movements of milk. In addition, the unnecessary pumping of milk is damaging to its quality. Permitting diversions of milk between pool plants will promote the efficient handling of milk.

In the case of diversions between pool plants, the question arises as to whether such diversions should be considered as a receipt at the divertor plant, the divertee plant, or both for the purpose of

determining whether such plants have met the requirements for pooling under the order. As adopted herein, such diversions would be treated in the same manner as transfers between pool plants.

The individual orders provide that milk which is transferred from one distributing plant to another shall be included in the receipts of both the transferor plant and the transferee plant. Diversions between pool distributing plants should be treated in the same way.

Milk that is transferred from a pool supply plant to a pool distributing plant is included in the receipts of both the supply plant and the distributing plant. Accordingly, diversions from a pool supply plant to a pool distributing plant should be considered in the receipts of both plants.

Fluid milk products that are transferred from a pool distributing plant to a pool supply plant are included in the receipts of the distributing plant but are excluded from the receipts of the supply plant. Diversions from a pool distributing plant to a pool supply plant should also be treated this way.

(b) *Classification of milk.* The uniform classification plan adopted August 1, 1974, for each of the four orders under consideration for merger (along with 35 other milk orders) should be continued under the merged order. The plan provides for the classification of milk according to use, including rules for determining the classification of milk moved from one plant to another. The plan also sets forth a procedure for allocating a handler's receipts of milk and milk products from various sources to the utilization of such receipts in each class in order to determine the classification of producer milk.

The classification provisions of the four orders to be merged are generally identical to such provisions of the proposed merged order. Consequently, adoption of the proposed provisions in the merged order will not result in any change in regulation for handlers currently regulated by the separate orders.

(c) *Class prices and location adjustments.* The Class I price for the Southwest Plains market should be established for the Oklahoma City area, or "Zone I," with prices applicable at plants in other areas to be determined through the use of location adjustments. Such Class I price should be the basic formula price for the second preceding month plus a Class I differential of $1.98.

For purposes of applying location adjustments, the marketing area should be divided into six pricing zones. The location adjustment for each zone, the resulting Class I differential (shown parenthetically) and the counties in Oklahoma, Kansas and Missouri that should be included in each zone are as follows:

Zone I—no adjustment ($1.98)

In the State of Oklahoma

Caddo	McClain
Canadian	McIntosh
Cleveland	Okfuskee
Coal	Oklahoma
Garvin	Pittsburg
Grady	Pontotoc
Haskell	Pottawatomie
Hughes	Seminole
Latimer	Sequoyah
Le Flore	

Zone II—plus 7 cents ($2.05)

In the State of Oklahoma

Alfalfa	Jefferson
Atoka	Johnston
Beaver	Kiowa
Beckham	Love
Bryan	Major
Carter	Marshall
Choctaw	McCurtain
Cimarron	Murray
Comanche	Pushmataha
Cotton	Roger Mills
Custer	Stephens
Dewy	Texas
Ellis	Tillman
Greer	Washita
Harmon	Woods
Harper	Woodward
Jackson	

Zone III—minus 10 cents ($1.88)

In the State of Oklahoma

Adair	Muskogee
Blaine	Noble
Cherokee	Nowata
Craig	Okmulgee
Creek	Osage
Delaware	Ottawa
Garfield	Pawnee
Grant	Payne
Kay	Rogers
Kingfisher	Tulsa
Lincoln	Wagoner
Logan	Washington
Mayes	

Zone IV—minus 33 cents ($1.65)

In the State of Kansas

Allen	Labette
Bourbon	Montgomery
Chautauqua	Neosho
Cherokee	Wilson
Crawford	

In the State of Missouri

Barton	Newton
Jasper	Vernon

Zone V—minus 18 cents ($1.80)

In the State of Kansas

Barber	Marion
Barton	McPherson
Butler	Pawnee
Comanche	Pratt
Cowley	Reno
Edwards	Rice
Ellis	Rush
Harper	Russell
Harvey	Sedgwick
Kingman	Stafford
Kiowa	Sumner

Zone VI—minus 13 cents ($1.85)

In the State of Kansas

Clark	Lane
Finney	Meade
Ford	Morton
Gove	Ness
Grant	Scott
Gray	Seward
Greeley	Stanton
Hamilton	Stevens
Haskell	Trego
Hodgeman	Wichita
Kearny	

The cooperative proposing the merged order proposed that the basic formula price now used under the separate orders be continued. There was no opposition to this proposal.

The present basic formula price in each of the separate orders is based on pay prices for manufacturing grade milk at plants in the States of Minnesota and Wisconsin. This basic formula price is used in setting Class I prices under all Federal orders. Its continued use under the merged order will assist in the maintenance of adequate supplies for the market. Also, Class I price changes under this order will remain coordinated with those under all other orders.

The cooperative also proposed that the Class I price for the Southwest Plains order be established for the Oklahoma City area, with prices applicable at plants in other areas to be determined through the use of location adjustments. Under its proposal, as discussed at the hearing, the Class I price at Oklahoma City would be the basic formula price for the second preceding month plus $.198. Under the hearing proposal, the present price relationships between plants fully regulated by the separate orders would be continued with the exception of a minor change for a portion of the Red River Valley marketing area.

Basically, the Class I price for the Southwest Plains market should be established at a level which, in conjunction with the Class II and Class III prices, will result in returns to producers sufficient to insure an adequate supply of pure and wholesome milk for the market. The adequacy of milk supplies for the merged area has been dependent upon the Class I prices applicable under the separate orders to be merged. The minimum Class I price levels now applicable within this area, as expressed in terms of the Class I differentials of the separate orders, are as follows:

Oklahoma Metropolitan	$1.98
Red River Valley	$2.20
Neosho Valley	$1.65
Wichita	$1.80

The Class I differentials of these separately regulated markets reflect in a

generally uniform manner a portion of the cost of moving milk from the upper Midwest to these markets. This accounts for the graduated price levels in the separately regulated markets. The gradation of prices reflects to a large degree a transportion rate of 1.5 cents per hundredweight per 10 miles. The regional price structure reflected by these Class I differentials in the separately regulated areas should be maintained in the merged market. This will continue the current alignment of prices at plants regulated by the merged order with Class I prices at plants regulated under adjacent Federal milk orders.

Only one Class I price should be announced under the order and that price should be applicable only at plants located in a specified portion of the marketing area. The Class I price at plants located outside this territory, defined herein as Zone I, should be the announced Class I price adjusted for the location of the plant.

Zone I should include the Oklahoma City area of the current Oklahoma Metropolitan order. This area has the largest population concentration of the proposed market and, thus, should be the focal pricing point within the Southwest Plains market. Counties in the general vicinity of the Oklahoma City area (including the counties of Caddo and Grady) and eastward to the Arkansas line should also be included in Zone I. In Zone I, a Class I differential of $1.98 should apply. Such Class I differential currently applies at plants in the Oklahoma City area under the Oklahoma Metropolitan order.

Zone II should encompass the Oklahoma counties of the present Red River Valley marketing area, except for the counties of Caddo and Grady. In Zone II, a plus location adjustment of seven cents should apply. This would result in an effective Class I differential of $20.05 which is seven cents higher than the one applicable at Oklahoma City. The differential adopted herein represents a reduction of three cents from the differential of $2.08 that currently applies at a plant located in Lawton, Oklahoma. Zone II should extend eastward to the Arkansas border and should also include the unregulated counties in western Oklahoma and in the Oklahoma Panhandle area as well as Beckham County, Oklahoma.

Zone III should include the area comprising the Tulsa-Muskogee portion of the Oklahoma Metropolitan order. The current differential in such area is $1.88. Under the minus 10-cent location adjustment adopted herein, this Class I differential would be continued in the Tulsa-Muskogee area. The unregulated Oklahoma counties and territory in the northeastern part of the State should also be in Zone III.

Zone IV should encompass the current Neosho Valley marketing area. In such area, a minus location adjustment of 33 cents should apply. Such adjustment would maintain the Class I differential that is currently effective in that general area.

Zones V and VI should be the current Zones I and II, respectively, of the Wichita marketing area. Location adjustments of minus 18 cents and minus 13 cents should apply Zones V and VI, respectively, of the Southwest Plains market. Such adjustments would provide Class I differentials for such zones that are the same as those now provided under the Wichita order.

Previously unregulated territories in Oklahoma and Beckham County should be included in a zone so that the resulting Class I differential at a plant located in such territory would be comparable with other plants that presumably would be the plant's primary competitors. On this basis, the territory near the Oklahoma City area and eastward to the Arkansas line should be included in Zone I. All of the territory in northeastern Oklahoma (the principal cities in such area, Tulsa and Muskogee, are currently included in the Oklahoma Metropolitian marketing area) should be included in Zone III. The other Oklahoma counties in the western part of the State and in the Oklahoma Panhandle should included in Zone II. The inclusion of such area in Zone II will establish a Class I differential which is less than the Class I differential in the Texas Panhandle area and slightly more than the Class I differential in portions of the Southwest Plains market that are located to the north and east of the currently unregulated territory.

Out-of-area location adjustments. Provision should be made also for location adjustments at plants located outside the Southwest Plains marketing area. The Class I price at plants located in most of the territory in seven states (Louisiana, Texas, New Mexico, Colorado, Kansas, Missouri and Arkansas) surrounding the Southwest Plains marketing area should be adjusted for location on a zone pricing basis. The location adjustments adopted herein for the zones essentially would provide in the outlying areas a level of Class I prices under this order that is applicable in those areas under other Federal orders.

No location adjustments should apply at plants located in certain portions of the States of Arkansas and Colorado. For plants located outside any designated zone in the State of Texas, plus location adjustments to the Zone I price should apply at the rate of 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the city hall in Oklahoma City, Oklahoma. Such distance would be computed on the basis of the shortest hard-surfaced highway distance as determined by the market administrator. At all other out-of-area plants, a minus location adjustment to the Zone I price should apply at the rate of 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the city halls in Tulsa or Ponca City, Oklahoma. The distance between such points should be based on the shortest hard-surfaced highway distance as determined by the market administrator.

Except for the State of Arkansas and Bowie and Cass Counties in Texas, the out-of-area location adjustment provisions adopted herein are identical to those that were proposed by AMPI. AMPI testified that its proposed out-of-area location adjustments essentially would provide Class I prices under the merged order in those areas at levels currently prescribed by the four orders proposed to be merged or by adjacent Federal milk orders.

AMPI testified that such adjustments would be needed in the event milk is diverted to nonpool plants located outside the marketing area or milk is received at pool plants from producers and nonpool plants located in such areas.

AMPI proposed that the Southwest Plains Class I differential be increased for plants located to the south and west of the marketing area and decreased for plants located north of the marketing area. In Louisiana, three pricing zones would be established to reflect generally higher differentials established under the Greater Louisiana order. In Texas, 16 pricing zones would be established to reflect the higher differentials established under the Texas, Lubbock-Plainview, Texas Panhandle, and Rio Grande Valley orders. In New Mexico, two pricing zones would be established to reflect the higher differentials established under the Rio Grande Valley order. In Colorado, four pricing zones would be established to reflect the differentials established by the Eastern Colorado, Western Colorado and Rio Grande Valley orders. In Kansas, three pricing zones would be established to reflect the differentials established under the Wichita, Neosho Valley, and Greater Kansas City orders. In Missouri, three pricing zones would be established

to reflect differentials established under the Greater Kansas City and St. Louis-Ozarks orders.

In the State of Arkansas, AMPI proposed that location adjustments be applied in the manner currently provided under the Oklahoma Metropolitan order. Under current provisions, the Class I differential at any plant in Arkansas is $1.88 per hundredweight, minus 1.5 cents for each 10 miles that such plant is located from the nearer of Ponca City or Tulsa, Oklahoma.

Kraft opposed the use of the current Oklahoma Metropolitan location adjustment provision as a means of establishing a location value for milk received at plants in the State of Arkansas. A Kraft witness testified that AMPI's proposed pricing in Arkansas is inconsistent with the rest of AMPI's proposal to establish specific pricing zones in six states. In that regard, the witness held that the proposal failed to take into account the location value of milk at plants in Arkansas as determined under other Federal orders.

Kraft operates a supply plant located in Benton County, Arkansas that is currently pooled under the Oklahoma Metropolitan order. The current Class I differential applicable at the supply plant under the Oklahoma Metropolitan order is $1.685 per hunderdweight. Kraft testified that the appropriate Class I differential at such location is $1.77 per hundredweight because the Arkansas counties of Benton, Boone, Marion and Washington are currently included in a $1.77 zone under the St. Louis-Ozarks Federal order.

Kraft further testified that a distributing plant located in Washington County, Arkansas is currently regulated under the St. Louis-Ozarks order. If such plant were to become regulated under the Southwest Plains order, the Class I price at such plant under AMPI's proposal would decrease by approximately seven cents per hundredweight. Also, a plant located in Sebastian County, Arkansas that is currently regulated under the Fort Smith, Arkansas order would have its Class I price reduced approximately 25 cents per hundredweight in the event that such plant were to become regulated under the Southwest Plains order.

Class I prices established at pool plants regulate under Federal orders have been determined through the hearing process to be the minimum prices necessary to attract an adequate supply of milk to such locations. Should a plant located in Arkansas, or in other neighboring markets, become regulated under the Southwest Plains order, this would not change the minimum price necessary to attract an adequate supply of milk to that plant on a regular basis. For this reason, AMPI's proposal to establish Class I prices outside the marketing area that reflect Class I prices under other orders at such locations should be extended to include the State of Arkansas. On this basis the Arkansas counties of Benton, Boone, Marion and Washington should be included in a minus 21-cent zone. Such zone pricing would result in a $1.77 Class I differential at all plants in these counties. The same differential is applicable currently under the St. Louis-Ozarks order at such county locations.

The order also should include Carroll County, Arkansas, in the same minus 21-cent location adjustment zone. This is necessary in order to provide the same location value for producer milk that Kraft diverts to its nonpool plants located at Bentonville in Benton County and at Berryville in Carroll County. Carroll County adjoins Benton County on the west and Boone County on the east. Because Benton and Boone Counties would be in a minus 21-cent zone, Carrol County should also be included in the same pricing zone. This will result in the same location value for producer milk that Kraft diverts from its pool supply plant at Bentonville to either of Kraft's two nonpool plants in northwestern Arkansas. Thus, when it is necessary for Kraft to divert milk to one of its nonpool plants, producers would receive the same price for their milk whether such milk is received at the Bentonville or Berryville plant locations.

An additional modification should be made to AMPI's proposed out-of-area location adjustments for the two southwestern Arkansas counties of Little River and Miller. Under AMPI's proposal, minus adjustments would apply at plants in the two Arkansas counties on the basis of mileage from Tulsa, Oklahoma. Using a mileage of 270 miles from Tulsa, this would result in a Class I differential of $1.475 per hundredweight at a plant located in Texarkanna, Arkansas. The two Texas counties of Bowie and Cass that adjoin the Arkansas counties of Little River and Miller, however, would be included in a plus 40-cent zone. This would result in a Class I differential of $2.38 in these counties. Consequently, under AMPI's proposal, there could be a different in Class I prices at plants in the adjoining Texas and Arkansas counties of 90.5 cents per hundredweight.

There are two distributing plants located at Texarkanna, Texas, that are partially regulated under the Texas order. One of the plants is also partially regulated under the Central Arkansas order and it is expected that both plants would be partially regulated under the Southwest Plains order.

A handler that operates one of the Texarkana, Texas, plants testified that the plant would be partially regulated under the Central Arkansas, Southwest Plains and Texas orders. The handler opposed AMPI's proposed $2.38 differential for the Texas counties of Bowie and Cass. The witness stated that the proposed pricing could result in inequities between the two Texarkana plants in the event that they were fully regulated under different orders. For example, the witness testified that if one of the plants distributed 10 percent of its receipts in the Central Arkansas marketing area and became fully regulated under that order while the other plant became fully regulated under the Southwest Plains order on the same basis, the plants could be in competition with one another on 90 percent of their sales with Class I prices that differed by 21.5 cents per hundredweight. The witness computed the Class I price difference on the basis of the $2.38 differential AMPI proposed for the Texarkana area under the Southwest Plains order and a $2.165 differential that AMPI had proposed to be applicable at such location under the Central Arkansas order.[13]

The witness also noted that the Texas order provides for a $2.23 differential at Texarkana. The witness supported a Class I differential of $2.165 at Texarkana based on mileage from Little Rock, Arkansas.

In its brief, APMI revised its position with respect to a location adjustment for plants at Texarkana. The cooperative association stated that the Texas counties of Bowie and Cass should be in a plus 25-cent zone which would establish a $2.23 differential at plants located in such counties.

The entire four-county area (Little River and Miller in Arkansas and Bowie and Cass in Texas) should be included in the same price zone under the Southwest Plains order. These counties should be in a plus 25-cent zone to result in a Class I differential of $2.23. This differential will be identical to the Class

[13] Prior to April 1, 1982, the Central Arkansas order provided for a $1.82 differential at Texarkana. On the basis of amendments that became effective April 1, 1982, the order now provides for a plus location adjustment at Texarkana at the rate of 1.5 cents per 10 miles from Little Rock. On this basis the Class I differential at Texarkana would be $2.15 since Texarkana is 140 miles from Little Rock. The actual differential at the Texarkana plant would depend on its distance from Little Rock. Official notice is taken of an amended order for the Central Arkansas marketing area that was issued by the U.S. Department of Agriculture on February 23, 1982 (47 FR 8319).

I differential in these four counties under the Texas order.

Class I prices under the Texas order represent an alignment of prices among the various pricing zones that were found necessary to attract an adequate supply of milk to regulated plants that furnish the fluid milk needs of the market. In addition, it was found that prices in the eastern Texas area must reflect the location value of milk at various locations relative to the price of milk in Houston. The Class I prices established under the Texas order reflect increasingly higher Class I prices from north to south that are necessary to obtain an adequate supply of milk at various locations in the eastern part of Texas. It was concluded that a $2.23 Class I differential at Texarkana would result in a reasonable price alignment among distributing plants in the Texarkana area and at Marshall, Tyler and Houston and intermediate locations.[14]

Since location adjustments under the Southwest Plants order would recognize the alignment of Class I prices within the Texas marketing area, it is reasonable also for the Southwest Plains order to recognize the Class I price alignment between the Texas marketing area and the unregulated area around Texarkana. This is best accomplished by including the previously mentioned Texas and Arkansas counties in a location adjustment zone that will match the Southwest Plains Class I price with the Texas order Class I price in such counties.

It is not necessary to specify a fixed location adjustment for the remaining counties in the State of Arkansas in order to recognize the appropriate location value of milk in such areas under the Southwest Plains order. This is because the location value of milk in an East-West direction from Memphis, Tennessee to Oklahoma City, Oklahoma, is almost identical. Class I differentials established under current Federal orders are $1.94 at Memphis, Tennessee and Little Rock, Arkansas; $1.95 at Fort Smith, Arkansas; and $1.98 at Oklahoma City, Oklahoma. Consequently, it is only necessary to specify that no location adjustments should be applied to the Southwest Plains Class I price in the State of Arkansas, except for the six counties mentioned previously. This will result in a Class I differential at plants in all other counties in Arkansas of $1.98 and will provide appropriate price alignment with the Class I differentials established in such area under other orders.

There was no opposition to the remaining portions of AMPI's out-of-area pricing proposals and no alternative provisions were explored on the hearing record. Basically, the proposal provides for recognizing under the Southwest Plains order the Class I prices established under other Federal orders. The method of accomplishing this objective is set forth in the attached order provisions. A general description of the pricing zones established in various states and the other order Class I differentials that are reflected in the Southwest Plains location adjustments set set forth as follows.

In the State of Louisiana, three location adjustment zones should be established under the Southwest Plains order to reflect the higher location values of milk established under the Greater Louisiana order. The zones and location adjustments (with the Class I differential in parenthesis) are:

(1) The area comprising Zone I of the Greater Louisiana marketing area—plus 49 cents ($2.47).

(2) The area comprising Zone II of the Greater Louisiana marketing area and Zone 2 of the New Orleans-Mississippi marketing area—plus 68 cents ($2.66).

(3) The area comprising Zone III of the Greater Louisiana marketing area and Zone 1 of the New Orleans-Mississippi marketings area—plus 87 cents ($2.85).

In the State of Texas, 16 locations adjustments zones (in addition to the pricing zone that includes Bowie and Cass Counties as previously discussed) should be established under the Southwest Plains order to reflect higher location values of milk established by the Texas, Texas Panhandle, Lubbock-Plainview and Rio Grande Valley orders. The zones and location adjustments (with the Class I differential in parenthesis) are:

(1) The area comprising the Texas Panhandle marketing area, plus the counties of Lipscomb and Parmer—plus 27 cents ($2.25).

(2) The area comprising the Lubbock-Plainview marketing area—plus 44 cents ($2.42).

(3) The area comprising the Texas Counties of the Red River River Valley marketing area—plus 22 cents ($2.20).

(4) The areas comprising the following zones of the Texas marketing area:

(a) Zone 1 plus that portion of Hill County, Texas, in Zone 3—plus 34 cents ($2.32).

(2) Zone 2—plus 40 cents ($2.38).

(c) Zone 3 with the exception of territory in Hill County, Texas—plus 49 cents ($2.47).

(d) Zone 4—plus 52 cents ($2.50).

(e) Zone 5—plus 54 cents ($2.52).

(f) Zone 6—plus 59 cents ($2.57).

(g) Zone 7—plus 64 cents ($2.62).

(h) Zone 8—plus 70 cents ($2.68).

(i) Zone 9—plus 76 cents ($2.74).

(j) Zone 10—plus 87 cents ($2.85).

(k) Zone 11—plus 100 cents ($2.98).

(l) Zone 12—plus 109 cents ($3.07).

(5) The Texas portion of Zone I of the Rio Grande Valley marketing area plus 37 cents ($2.35).

Location adjustments under the Southwest Plains order should also be provided in all of the remaining Texas counties that are not specifically included in any of the previous pricing zones. All of such remaining counties are located in southwestern Texas and are not included within the boundaries of any Federal marketing area. The Class I price under the Texas order at any plant in this area is the Class I price applicable at the nearer of Midland, San Angelo, San Antonio nor Corpus Christi, Texas. Under the Southwest Plains order, the Class I price at any plant in this area shoud be the Zone I (Oklahoma City) price plus an additional 1.5 cents per 10 miles from Oklahoma City to the plant. Such price structure will reflect the increase in value of milk from north to south and maintain an approximate alignment of prices in such area with Class I prices in other Texas locations.

In the State of New Mexico, two location adjustment zones should be established under the Southwest Plains order to reflect the location value of milk provided under the Rio Gande Valley order in such areas. The zones and location adjustments (with the Class I differential in parenthesis) are as follows:

(1) The area comprising the New Mexico portion of Zone I of the Rio Grande Valley marketing area, plus Catron and Hidalgo Counties—plus 37 cents ($2.35).

(2) The area comprising Zone III and the New Mexico portion of Zone II of the Rio Grande Valley marketing area plus Colfax and Union Counties—plus 22 cents ($2.20).

In the State of Colorado, four location adjustment zones should be established under the Southwest Plains order to reflect the location value of milk established by the Eastern Colorado, Western Colorado and Rio Grande Valley orders. The zones and location adjustments (with the Class I differential in parenthesis) are as follows:

(1) The area comprising the Colorado portion of Zone II of the Rio Grande

[14] Official notice is taken of Departmental decision merging 5 Texas markets issued on May 2, 1975 (40 FR 20004).

Valley marketing area—plus 22 cents ($2.20).

(2) An area consisting of a north-south band of 21 counties of the Eastern Colorado marketing area in central and east central Colorado—plus 32 cents ($2.30).

(3) An area consisting of a north-south band of 12 counties in eastern Colorado along the western boundaries of Kansas and Nebraska—plus 10 cents ($2.08).

(4) All remaining counties in western Colorado—no adjustment ($1.98). Application of the Southwest Plains Zone I Class I differential in these counties approximates the $2.00 Class I differential provided under the Western Colorado order.

In the State of Kansas, three location adjustment zones should be established under the Southwest Plains outside the marketing area. Such adjustments reflect the location value of milk established by the Neosho Valley; Wichita, Kansas; and Greater Kansas City orders. The zones and location adjustments (with the Class I differential in parenthesis) are as follows:

(1) An area comprising 18 north central and northwestern Kansas counties—minus 18 cents ($1.80).

(2) The area comprising the Kansas portion of the Greater Kansas City marketing area plus the six nonfederally regulated counties of Anderson, Chase, Coffey, Franklin, Lin and Osage—minus 24 cents ($1.74).

(3) The three nonfederally regulated counties Elk, Greenwood, and Woodson that are located between the current Neosho Valley marketing area and Zone I of the Wichita, Kansas Marketing area—minus 23 cents ($1.75).

In the State of Missouri, the Southwest Plains order should provide for three location adjustment zones to reflect the location value of milk established by the Greater Kansas City and St. Louis-Ozarks orders. The zones and location adjustments (with the Class I differential in parenthesis) are as follows:

(1) The area comprising the Missouri portion of the Greater Kansas City marketing area plus 40 additional central and northern nonfederally regulated counties—minus 24 cents ($1.74).

(2) The area comprising Zone II of the St. Louis-Ozarks marketing area-minus 31 cents ($1.67).

(3) The area comprising the Missouri portion of Zone I of the St. Louis-Ozarks marketing area plus an additional 26 nonfederally regulated counties in Southern Missouri—minus 38 cents ($1.60).

In addition to the previously described location adjustment zones, the Southwest Plains order should provide for location location adjustments at any plants that might be located beyond such zones on the same basis that is currently provided under the Oklahoma Metropolitan order. The Class I price at any such plant should be the Zone I price ($1.98) minus 10 cents less an additional 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the city halls in Tulsa or Ponca City, Oklahoma. Such distance should be based on the shortest hard-surfaced highway distance as determined by the market administrator.

Plants that might be subject to this adjustment generally would be expected to be located in areas north of the marketing area and previously described location adjustment zones. Location adjustments computed at this rate for northern plants will reflect the lesser location value of milk for this market at the more distant northern plants relative to plants nearer the marketing area. Such adjustments will provide uniform pricing to handlers for milk received at the market from distant plant locations and will reflect the appropriate economic value of milk to producers in consideration of the point of delivery of their milk.

Location adjustment credit. Location adjustment credit should apply under the merged order to skim milk in Class I milk received in bulk from transferor-pool plants with certain limitations relative to the Class I use and receipts of milk at the transferee-distributing plant. The quantity of skim milk in Class I at the transferee-distributing plant should be increased by five percent after allocating the volume of skim milk assigned as Class I to receipts of fluid milk products from other order plants and unregulated supply plants and subtracting the pounds of skim milk in receipts of packaged fluid milk products from other pool plants. The quantity of skim milk in Class I at the transferee-distributing plant should then be reduced by the pounds of skim milk in receipts of milk from producers, 9(c) handlers and milk received by diversion from other pool plants. Any remaining quantity of skim milk in Class I would be eligible for assignment of Class I location adjustment credit to skim milk in Class I received in bulk from transferor-plants. Any assignment of Class I location adjustment credit should be made first to the transferor-plant at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies. Location adjustment credit for butterfat should be computed separately but in the same manner as set forth for skim milk.

The Neosho Valley and Oklahoma Metropolitan orders provide for assignment of location adjustment credit to that quantity of Class I milk received from transferor-pool plants that does not exceed an amount equivalent to 105 percent of the Class I disposition at the transferee-plant minus the volume of milk received directly from producers and 9(c) handlers and the volume assigned as Class I to receipts from other order plants and unregulated supply plants. The Wichita order limits location adjustment credit on transfers between pool plants to the quantity of Class I disposition at the transferee-plant in excess of the volume of milk received from producers and 9(c) handlers in addition to the volume of receipts from other order plants and unregulated supply plants assigned to Class I. The Red River Valley order has location adjustment credit provisions similar to the Wichita order except that 95 percent of the receipts of milk received from producers instead of 100 percent are subtracted from the plant's Class I disposition in determining the quantity of milk which would be eligible for location adjustment credit.

AMPI proposed that a location adjustment credit apply to receipts of skim milk from other pool plants only to the extent that the quantity of skim milk assigned to Class I milk available for such assignment exceeded 95 percent of the pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers of bulk tank milk plus the pounds of skim milk in receipts of packaged fluid milk products from other pool plants. Any assignment of Class I location adjustment credits would be made first to pool plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies.

Class I location adjustment credit on bulk milk transferred between pool plants should be limited. In the absence of any limits, the pool obligation of the transferor-plant operator for producer milk transferred to a pool distributing plant as Class I milk would be the Class I price adjusted for the location of such transferor-plant. The order should provide, however, that if the transferee-distributing plant has sufficient milk from local direct ship producers to cover all of its Class I sales, the transferor-plant would not receive location adjustment credit on the milk transferred because such milk was not

needed for Class I use at the distributing plant.

Class I location adjustment credits should be limited in order to encourage distributing plant operators to use locally-produced milk first for their Class I needs. If a handler were permitted to bring in distant milk from a pool plant for Class I use and channel the local supply into lower-valued uses, this would result in a lowering of returns to producers on the market. This is because the Class I milk involved would not be priced at the location of the distributing plant but rather at the supply plant location where the Class I price is lower. This would subvert the intent of the Class I price level at the distributing plant, which is to attract milk to that location for Class I use. It is this price, then, that must be reflected in the returns to producers.

Under the provisions of each of the current orders, a disallowed location adjustment credit results in the application of the central market f.o.b. Class I price at the transferor-plant even though both the transferor-plant and the transferee-plant may be located in areas where minus location adjustments are applicable. However, milk transferred to a pool distributing plant in Zone III (minus 10-cent location adjustment zone) from a pool plant with a greater minus adjustment (minus 33 cents, for example) should reflect the $1.88 location value when the usual location adjustment credit is disallowed rather than the higher $1.98 location value applicable in the central market. The provisions adopted herein would carry out that concept.

Under the merged order, the pricing of transferred milk that does not receive a location adjustment credit will reflect its value at the location of the transferee-plant. In order to accomplish this objective, the computation of any location adjustment credit that may be assigned should be based on the difference between the order's Class I prices applicable at the transferor-plant and the transferee-plant rather than at the difference between the Class I price at the transferor-plant and the central market Class I price as is provided under the current orders.

In addition, under the provisions adopted herein, the transferor-plant would have to account for such transferred milk at the Class I price applicable at the transferee-plant. For example, if milk were transferred from a plant in the no location adjustment zone to a plant in Zone II (plus 7-cent adjustment zone) and there was no location adjustment credit allowed for the transferor-handler, then the transferor-handler would have to account to the pool for such transferred Class I milk at the Class I price at the transferee-plant, i.e., a Class I differential of $2.05. Since the location value of milk in this example is the Class I differential price of $2.05, the order should not provide a credit for transportation on any of the transferred milk since the milk was not needed for Class I purposes at the distributing plant.

The intent of the limitation provided is to insure that producers on the market do not have their returns lowered through the granting of price credits on milk unnecessarily moved between pool plants for other than Class I use. In this connection, location adjustment credits should not apply to Class I milk shipped to pool plants in lower-priced zones. Although such shipment would not be a usual movement of milk, it could occur. For example, a plant in Zone I with receipts in excess of its fluid milk requirements might ship such excess to handlers in Wichita, Kansas, a lower-priced area. The Class I price level established under the order in Zone I and in the plus location adjustment zones are intended to attract milk to these areas for Class I use at such plant locations and not for reshipment to lower-priced zones. Such reshipments should not be encouraged through the granting of price credits on such milk movements. If the prices provided tend to attract greater quantities of milk than are needed locally, then consideration should be given to whether a lower price should be provided.

At the hearing, Kraft suggested two modifications to the location adjustment provisions concerning the assignment of location adjustment credits to milk transferred to distributing plants from supply plants. One modification would increase Class I use at a distributing plant from 105 to 115 percent prior to the assignment of location adjustment credit to milk received from supply plants. The other modification would provide for a pro rata assignment of location adjustment credits to transfers from two or more supply plants to a distributing plant without regard to the location of supply plants. Kraft stated that the modifications are necessary to help defray the cost of transporting milk from supply plants to distributing plants.

The fact that testimony on the record indicated that location adjustments do not fully cover the cost of hauling milk does not provide a sufficient basis for adopting Kraft's modifications. Both modifications are concerned with the manner in which available location adjustment credits are assigned to receipts from various sources rather than the rate of location adjustments that are provided under the order. With respect to the manner in which adjustment credits are assigned, both modifications are in conflict with the intent of the current provisions of the four separate orders. As previously stated, the current provisions limit the assignment of location adjustment credits to discourage the shipment of milk between pool plants for other than Class I use. To the extent that shipments between pool plants are necessary to meet Class I needs, location credits are limited to the nearest available alternative source of supply.

In determining the amount of location adjustment credit it must be recognized that it is impossible for a distributing plant to utilize 100 percent of its receipts in Class I uses. There are certain unavoidable Class II and Class III uses associated with a fluid milk operation and such uses are recognized in three of the four orders to be merged. In the Assignment of location adjustment credit, three orders provide for a five percent allowance for unavoidable Class II and Class III uses in the processing of fluid milk products. This five percent allowance should be continued under the merged order.

Under the three orders, two different methods are used to recognize the five percent unavoidable Class II and Class III uses in computing the amount of location adjustment credits assigned to bulk milk shipments from pool plants to distributing plants. The Red River Valley order subtracts 95 percent of producer receipts from a distributing plant's Class I disposition to determine the remaining amount of milk received from pool plants that may receive a location credit. The Neosho Valley and Oklahoma Metropolitan orders, on the other hand, multiply the distributing plant's Class I disposition by 105 percent before subtracting the receipts of milk from producers and other sources. Any remaining Class I disposition is then eligible for a location adjustment credit. The latter method was proposed by Kraft while the former method was proposed by AMPI.

Both methods are intended to reflect approximately the same amount of Class II and Class III uses. It is recognized, however, that the two methods can result in slight differences in the amount of location adjustment credits assigned.

In the record of this proceeding, the only marketing experience relative to this issue involved transfers between pool plants under the Oklahoma Metropolitan order. Under this order, Class I disposition is increased by five percent rather than by reducing receipts

by five percent in the computation of location adjustment credits. A handler who testified regarding the application of the location adjustment credit provisions of the Oklahoma Metropolitan order to the operation of his pool supply plant stated that such provision resulted in little, if any, disallowed location adjustment credit. In view of the current operating situation, this method should be continued under the merged order rather than adopting an alternative method at this time.

In addition to the above change, the procedure for computing location adjustment credits should be modified slightly to take into account that the merged order would permit milk to be received at a distributing plant by diversion from other pool plants. Milk that is diverted from a pool plant to a pool distributing plant moves to market in the same manner as direct-shipped producer milk. For this reason, the diverted milk should receive the same priority as direct-shipped milk in the assignment of location adjustment credits to transfers from pool plants. To the extent that there are sufficient receipts of milk from producers to meet fluid milk needs, shipments from pool plants are unnecessary to supply the Class I needs of distributing plants.

Pricing milk not needed for Class I use. The Class II and Class III prices established under each of the orders proposed to be merged are identical. Such prices should be continued under the merged order.

The identical Class II and Class III prices that are now applicable under each of the four orders are based primarily on two proceedings. One of these was the 39-market classification proceeding referred to earlier in this decision. The other proceeding, which was initiated after the closing of this hearing, was held to consider proposals to revise the method of calculating and announcing the Class II price under 29 orders, including the four orders proposed to be merged. The hearing, which was held on August 12–14, 1980, was a reopening of this proceeding with respect to the Class II pricing issue. Each of the four orders have subsequently been amended on the basis of the 29-market hearing. It is concluded that the Class II pricing procedure under each of the four orders is equally appropriate for the merged order for the identical reasons set forth in the Assistant Secretary's decision of July 8, 1981 (46 FR 36151) and such decision is adopted as part of this decision as if set forth in full herein.

Butterfat differential. A single butterfat differential should apply under the merged order. It should be computed by multiplying the average Chicago 92-score butter price for the month by 0.115, rounding such amount to the nearest 0.1 cent. The differential should be announced by the market administrator by the 5th day after the end of the month to which it applies. This differential is now applicable under the separate orders and was adopted in conjuction with the uniform classification plan now in use.

(d) *Distribution of proceeds to producers.* A marketwide pool should be used under the merged order as a means of distributing among all producers in the market the total proceeds derived from the use of their milk by all regulated handlers. Under marketwide pooling, a uniform price is paid to all producers regardless of how a particular producer's milk is utilized by the handler to whom it is delivered. By receiving payment at the uniform price, each producer shares in the higher-valued Class I milk in the market as well as the lower-valued Class II and Class III uses of milk. This type of pooling is now being used in each of the four markets and was proposed for use under the merged order.

The base-excess provisions for distributing returns to producers that were scheduled at the time of the hearing to become effective under the separate orders should not be included in the merged order. Proponent cooperative initially proposed that such provisions be continued in the merged order. However, the cooperative's representative testified that the cooperative did not want the base-excess provisions included in the event such provisions were terminated prior to the issuance of a decision on the proposed merger. The provisions were terminated in an order issued by the Assistant Secretary on June 12, 1980, and published in the **Federal Register** on June 27, 1980 (45 FR 43369). Accordingly, the base-excess provisions have not been included in the merged order.

Computation of uniform price. Under the order adopted herein, a uniform price for the preceding month would be computed and announced prior to the 11th day of the month. It would be computed by adding together the classified use value (or total pool obligation) of all the handlers in the market. This total value would then be divided by the amount of milk in the pool to arrive at a "uniform price" for producers.

In order to compute the uniform price the market administrator must first receive a report of receipts and utilization from each of the handlers in the pool. Under the proponent cooperative's proposed order, handler reports of receipts and utilization would have to be postmarked on or before the 7th day of each month.

Three of the four orders currently provide that handlers must submit a report of their receipts and utilization on or before the 7th day after the end of the month. The Wichita order specifies the 8th day as the due date. Under each of the orders, the market administrator announces the uniform price by the 12th day of the month.

The dates for handlers to submit reports, for the market administrator to announce prices and for handlers to pay order obligations need to be structured so that sufficient time is available for each regulatory function to be performed. Also, many of the regulatory functions cannot be performed until a report has been submitted or an announcement of prices has been made.

Before the market administrator can announce the uniform price for the month that must be paid to producers, he must announce the class prices that handlers are to pay for receipts of producer milk. He must also obtain a report of each handler's receipts and utilization early in the month. This is necessary so that the market administrator has sufficient time to review and correct the report for obvious errors, compute each handler's value of milk at classified prices, compute the uniform price and announce such price. It is only after the uniform price is available that obligations to and from the producer-settlement fund can be determined and payments made to producers and cooperatives. Thus, in order for producers to receive payment at the earliest practicable date, the uniform price should be announced as soon as possible.

The timing for announcing the uniform price is dependent primarily upon when the handlers' reports of receipts and utilization are received by the marketing administrator. When consideration is given that such reports needs not be mailed until the 7th of the month and that the market administrator's office is not customarily open on weekends or holidays, it is concluded that the date for the announcement of the uniform price should be on or before the 11th day of the month. While the date for the announcement of the uniform price under the merged order is one day earlier than the date provided under the separate orders, the earlier date is necessary to minimize the impact of a change in the timing by which payments by a handler must be made to the market administrator. In that regard, as

discussed later in this decision, a handler's obligation to the producer-settlement fund would have to be received by the market administrator by the due date (the 14th day of the month under the merged order) instead of postmarked by the due date (the 13th under the individual orders).

An equalization (producer-settlement) fund should be used to enable all handlers in the market to pay the minimum uniform price to their producers. Under this arrangement, part of the money due producers from handlers with higher than market-average Class I utilization is used in paying producers supplying handlers with less than market-average Class I utilization. As adopted herein, payment by handlers into the producer-settlement fund must be received by the market administrator by the 14th day of each month so that the market administrator could make payments out of the producer-settlement fund by the 15th day of each month. In the event that the balance in the producer-settlement fund on the 15th is insufficient to make the required payments out of the fund, the market administrator would reduce uniformly such payments. However, the market administrator would complete such payments to handlers as soon as the necessary funds become available.

The order should also provide that if the due date by which payment must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payment shall not be due until the next day on which the market administrator's office is open for public business. Also, in the event the application of such provision should result in a delay in payment to the market administrator, the corresponding payments by the market administrator to handlers, cooperative associations and producers may be delayed by the same number of days. Likewise, if payment from the producer-settlement fund by the market administrator to a handler is delayed, the handler may delay making the final payment to producers by the same number of days.

Payments to handlers by the market administrator from the producer-settlement fund should be made by the 15th of the month, the day after payments from handlers to the fund must be received by the market administrator. Currently, the separate orders require that payments from the producer-settlement fund be made by the 14th day of the month. The payment date by which the market administrator can make payments from the producer-settlement fund, however, is contingent upon the date that payments from handlers are credited to the producer-settlement account maintained by the market administrator. Thus, in order to assure that the market administrator could make payment from such account by the 15th of the month, it is necessary that the merged order provide that handler payments to the account be physically received by the market administrator on the preceding day, the 14th of the month.

Handler payments for producer milk. Handlers under the merged order should be required to make a single partial payment and a final payment for milk received from producers. Partial payments to producers for milk received during the first 15 days of the month should be mailed (postmarked) or delivered to producers on or before the last day of the month. Lump-sum partial payments to cooperative associations for the milk of producers for whom the cooperative is marketing such milk (including 9(c) milk and plant milk) should be made two days earlier. For all milk received during the month, handlers should be required to pay the uniform price for such milk. Payments of the uniform price by handlers to producers should be mailed (postmarked) or delivered to the producer by the 17th of the month and to cooperative associations 2 days earlier. Handlers also should be required to pay a cooperative for 9(c) milk and plant milk by the 15th of each month.

Under the Wichita order, partial payments to producers are due on the 27th of the month. Under the other three orders, partial payments to producers are due on the last day of the month. Partial payments to cooperatives are due on the 24th of the month under the Wichita order, the 27th under the Red River Valley and Oklahoma Metropolitan orders and the 2nd day before the end of the month under the Neosho Valley order. The amount of the partial payment due each producer is determined by multiplying the rate of such payment by the hundredweight of milk received from such producer during the first 15 days of the month. The rates of partical payments are discussed later.

The final payment to producers under the four orders is determined by multiplying the uniform price for milk adjusted by the butterfat differential and location adjustments to producers by the respective hundredweights of milk received from each producer during the month. The payments are then reduced by the amount of the partial payment made for milk received during the first 15 days of the month.

AMPI proposed that final payment to producers be at the uniform price(s) for the applicable month adjusted for the butterfat content of the milk and the location of the receiving plant. Deductions from the final payment to producers would be made for two partial payments, any authorized deductions, and marketing services performed on behalf of such producers.

For milk delivered during the first 15 days of the month, the cooperative proposed that a handler make a partial payment to the market administrator for such milk by the 23rd of the month. If the handler received milk directly from producers and a cooperative was not marketing their milk, the handler could make payment to the individual producers on or before the 23rd of the month in lieu of making such payments to the market administrator.

AMPI proposed that on the 24th of the month, the market administrator transmit handler payments for milk of producers to cooperative associations on behalf of their member producers and to a handler who elects to make payment to individual producers. In making such payments the market administrator would remit to the cooperative and such handler partial payments received from handlers for milk delivered during the first 15 days of the month. Handlers receiving payment from the market administrator to pay individual producers would be required to make such partial payment on or before the 25th of the month. On the 25th of the month, the market administrator would then make partial payment to producers who are not receiving payment from either a cooperative association or a handler.

For milk received during the second half of the month, the cooperative proposed that a handler make partial payment for such milk on or before the 8th of the following month to the market administrator or to the individual producers. On the 9th of the following month, the market administrator would transmit to a cooperative association the partial payment due its members. A handler who elects to pay individual producers would also have the option of transmitting to the market administrator by the 8th day of the following month the second partial payment due the individual producers. The market administrator would then return such funds to the handler by the 9th day. The market administrator and the handler receiving partial payment funds from the market administrator to pay producers would be required to make payment to the individual producers on the 10th of the following month.

The cooperative proposed that a final payment for producer milk received during the month be made to the market administrator by the 20th of the following month. A handler who elects to pay individual producers directly instead of making such payment to the market administrator could do so by making final payment to such producers by the 20th of the following month. On the 21st of the following month, the market administrator would pay a cooperative the amount due the members of the cooperative and pay to the handler who elects to pay individual producers the amount due the individual producers. The market administrator and the handler receiving payment funds from the market administrator would then make the final payment to individual producers on the 22nd of the following month.

Two key elements of AMPI's proposed method of paying producers and cooperative associations for milk are not adopted herein. As set forth in detail under the next heading, handlers would not be obligated to pay all order obligations for milk to the market administrator, who in turn would distribute such money, in terms of the uniform price, to producers, cooperative associations and handlers who elect to pay producers. In addition, handlers would not be required to make 2 partial payments and a final payment to producers and cooperative associations. In lieu of such proposed changes, as also discussed in detail under the next heading, it is concluded that except for a handler who fails to make payment of any order obligation on a timely basis, handlers should be permitted to pay producers and cooperative associations directly for milk received from them. Payments to producers and cooperatives would consist of a partial payment for milk received during the first 15 days of the month and a final payment at the uniform price for all milk received during the month less the partial payment.

Under the payment plan adopted herein, the payment schedule is predicated on the filing of handler reports by the 7th day of the month and the announcement of the uniform price by the 11th day of the month. After the uniform price is announced, handlers' obligations to the producer-settlement fund can then be computed. Handlers would be required to make payment of their obligation to the producer-settlement fund so that it is received by the market administrator by the 14th day of the month. The market administrator then would make payment from the producer-settlement fund on the following day to handlers with less than market-average Class I utilization. Handlers then would be required to make final payments to producers by the 17th day after the end of the month. In those cases where a cooperative is collecting the payment for milk of producers, handlers would be required to make final payment two days prior to the date payments are due individual producers. Handlers would make partial payments to producers on or before the last day of each month for milk received during the first 15 days of the month. The remainder of the handler's obligation for milk received during the month from producers and cooperatives would be made by the handler in his final payment on the 17th of the following month. If a cooperative is collecting the payments for milk of producers, handlers would be required to make payment two days prior to the date paymments are due individual producers.

The partial payment date adopted herein, the last day of the month, is the same date provided for such payment to producers under three of the separate orders. With respect to payments to cooperative associations, such payments should be made two days prior to the last day of the month to enable the cooperatives to pay producers for whom they are marketing milk on the last day of the month, the same date payments are due to other producers who are paid directly by handlers.

The final payment date adopted herein, the 17th day after the end of the month, is the earliest practicable date for handlers to make payment to producers. Payment at any earlier date would not be feasible since handlers who operate plants with less than market-average Class I utilization should not be expected to make payment to producers prior to receipt of funds due them from the producer-settlement fund. Even then, final payment on or before the 17th is only practical if the market administrator has funds available to dispense from the producer-settlement fund on the 15th of the month.

To insure that payments may be made from the producer-settlement fund on the 15th day of the month, the order should provide that a handler who is required to make an "equalization" payment to the producer-settlement fund (the amount by which the handler's utilization value of producer milk receipts at his plant exceeds the market-average utilization value of all producer milk) shall make payment in such manner so that it is received by the market administrator on or before the 14th day of the month. It is necessary that the market administrator have physical possession of these funds on or before the due date in order for the market administrator to make payment from the producer-settlement fund on the following day to handlers whose utilization value of producer milk receipts is less than the marketwide utilization value of all producer milk.

The order should also provide that a handler who fails to pay an order oligation within 3 days of the due date, and as a consequence is then required to pay all order obligations due producers and cooperative associations to the market administrator, shall make such payments in a manner so that they are received by the market administrator at least one day prior to the date by which the handler would otherwise be required to pay such obligations to payees. This is necessary since the market administrator is required under the order to make payment on behalf of such handler to producers and cooperative associations on the following day. Payment by the market administrator on such dates would coincide with the date the handler would otherwise be required to make such payments under the order. Such payment obligations of the "delinquent" handler would include the partial and final payments to producers and cooperatives for producer milk (including milk from a plant operated by a cooperative) and payment to a cooperative association for marketing services performed on behalf of producers.

All other order obligations of handlers may be mailed to the payee and shall be deemed to have been made on a timely basis if postmarked by the U.S. Postal Service on or before the due date. Payment of such obligations would include amounts due the market administrator for administrative expenses, deductions from payments to producers for marketing services performed by the market administrator and audit adjustments. In the case of a handler who is current in the payment of all order obligations, it would also include the partial and final payments due producers, the amounts deducted from payments to producers which are due cooperative associations for marketing services performed on behalf of such producers, and audit adjustments due producers and cooperative associations. Likewise, any payment of order obligations by the operator of a partially regulated distributing plant shall be deemed to have been made on a timely basis if postmarked by the U.S. Postal Service on or before the due date.

Under the terms of the order, the market administrator would have the authority to make rules and regulations to effectuate the terms and provisions of the order. Should there be an urgent need for greater specificity with respect to the procedures for making payment, this may be accommodated through the promulgation of appropriate administrative rules with the approval of the Director of the Dairy Division and in consultation with the local industry.

Under the adopted payment procedure, there is no time provided for checks to clear and, hence, it is imperative that the payments received by the market administrator from handlers represent sound money. This is necessary, of course, under the present payment arrangement. However, with the payment schedule herein, the market administrator will need to make payments from the producer-settlement fund of the order to certain handlers the day after the payments are due the fund. Such payments will have to be made with the belief that the checks received from handlers and deposited in the producer-settlement fund are, in fact, good. Time will not permit the clearance of such checks through the banks prior to the withdrawal of money from the producer-settlement fund.

Also, in the event payments by handlers regulated under the order are more than 3 days late, such handlers would be required to channel their payment for producer milk through the market administrator. Under such procedure substantially greater amounts of money would be transferred in and out of accounts maintained by the market administrator and, as a consequence, the receipt of a bad check of a substantial sum could render such an account insolvent.

The attached order does not prescribe the specific means by which handlers shall make payment to the market administrator. The need for such specificity should be based on actual experience in the market. As long as handlers make full payment by the prescribed payment dates and their checks are good, there is no problem. However, if the market administrator, because of prior experience or for other reasons, does not have reasonable assurance that payment tendered would represent sound money, it is necessary that he have the administrative discretion to prescribe the means of acceptable payment.

Method of paying producers and cooperative associations. The merged order should provide that producers be paid by the handlers receving their milk in the same manner as now provided in the four separate orders. However, the order should provide that any handler who is more than 3 days late in the payment of any obligation under the order shall then be required to pay all order obligations for producer milk to the market administrator who, in turn, would distribute such money (in terms of the uniform price) to producers and cooperative associations.

Each of the four orders provides for the payment of producers by the handlers who receive their milk. Under this arrangement, part of the money due producers from handlers with higher than market-average Class I utilization is used in paying producers supplying handlers with less than market-average Class I utilization. As previously discussed, this exchange of money is accomplished through a "producer-settlement fund" maintained by the market administrator.

AMPI proposed that the market administrator collect from handlers all order payments due producers. However, handlers could elect to pay the individual producers supplying them with milk. As proposed by the cooperative, any handler who was not delinquent with respect to any of his payment obligations under the order and who wished to pay individual producers would pay his full obligation to the market administrator. Upon receipt of the proper payment, the market administrator then would transfer sufficient money to the handler so that he could pay producers. Alternatively, the handler could make payment to individual producers prior to the time such amount is payable to the market administrator. In such instance, the handler would then offset such amounts paid to individual producers against any obligation due the market administrator for such producer milk.

The cooperative proposed that payment not be made to any handler by the market administrator if he determines that the handler is or was delinquent with respect to any payment obligation under the order. Once the market administrator determines that a handler is delinquent (one day or more late) in the payment of any order obligation, payments to producers and cooperatives supplying milk to the handler would then be made by the market administrator until such handler had once again demonstrated his ability to meet his financial obligations by having paid all payment obligations prescribed under the order to the market administrator on or before the due dates for 3 consecutive months. In this regard, the cooperative proposed that the market administrator consider not only payments from the handler to the market administrator but whether payments by the handler to the individual producers had been made by the specified due dates.

The cooperative requested that a producer-settlement fund be used as a mechanism to receive the money due producers from handlers. The fund would serve as a conduit to move money from handlers to the market administrator who would then transmit such funds to producers and cooperative associations.

The cooperative proposed that the market administrator make payment to a cooperative association that so requests with respect to those producers for whom it markets milk. It also proposed that the market administrator make payment to those producers for whom the cooperative association is not collecting payments unless the handler receiving the producer's milk requests that such payments be made to him for subsequent payment to producers.

Proponent urged the adoption of its proposed payment arrangements on the basis that it would provide handlers with a stronger incentive for making prompt payment of their order obligations. The cooperative claimed that since handlers tend to pay the market administrator on a timely basis all producer monies should be channeled through him rather than allowing handlers to pay producers directly. Also, proponent contended that late payments by certain handlers result in an inequitable situation for those handlers making timely payments. This is because the delinquent payers are using money due producers to overcome cash flow problems while the prompt payers must borrow money or use their own capital.

A representative of a handler that operates a pool supply plant regulated under the Oklahoma Metropolitan order opposed the adoption of such payment requirements under the merged order. In his opinion, the evidence presented by the merger proponent did not establish conclusively that handlers were "delinquent" in paying their obligations to the market administrator, producers and cooperative associations under the four individual orders merged herein.

A spokesman for the Milk Industry Foundation (MIF), on behalf of nearly one-half of the handlers regulated under the four individual markets, proposed that handlers be required to make payment of their order obligations through the market administrator only under certain conditions. He also proposed that a handler who is up to 3 days late on three occasions in paying his order obligations during the immediately preceding 12-month period

be required to make all prescribed payments to the market administrator for 3 consecutive months. A handler who makes any payment more than 3 days late would be required to pay immediately all of his order obligations for producer milk to the market administrator for 3 consecutive months.

If the order is to serve its intended purpose of promoting orderly marketing in the marketing area, it is essential that handlers under such order pay their obligations on a timely basis. Currently, handlers have the use of producer milk for considerable periods of time before any payments for such milk are due. Producers should not be expected to wait beyond the scheduled times for their milk payments. Delayed payments not only foster uncertainty and discontent among producers but also place then in a difficult position with respect to meeting their own financial obligations on a timely basis.

From the standpoint of handlers, also, it is necessary that all order obligations be paid on a timely basis. Otherwise, handlers who are in compliance would be at a competitive disadvantage with delinquent handlers who are using monies due producers as a source of funds for operating purposes.

For these reasons, the order should be structured to encourage prompt payment by handlers of order obligations. While the institution of late-payment charges under the order should provide a strong incentive for handlers to pay their order obligations when due, some further incentive should be provided. In this regard it is noted that the principal cooperative association has been imposing a late-payment charge on accounts that are overdue. However, the incidence of late payments to the cooperative has continued. On the basis of that experience, it is concluded that the order should provide a special payment arrangement for a handler who might otherwise decide to use money due producers as a source of funds and thus intentionally pay his order obligations late.

The special payment arrangement for delinquent handlers proposed by MIF should be provided under the merged order. Any handler who is more than 3 days late in the payment of any order obligation would not be permitted to pay producers and cooperative associations directly for 3 consecutive months. During those 3 months the handler would be required to pay all of his obligations for producer milk to the market administrator who, in turn, would pay the producers and cooperatives supplying the handler. Except for the length of time involved before this payment arrangement is invoked, the proposal on behalf of handlers is essentially the same as the payment arrangement proposed by the merger proponent.

Producers and handlers in the four markets are in general agreement that the adoption of a provision requiring a handler who is late in paying any order obligation to relinquish his right to pay producers directly would be an effective tool for obtaining compliance with the order's payment provisions. Hence, the order should provide that handlers who are more than 3 days late in the payment of an order obligation must channel payments to producers through the market administrator. This payment procedure is needed to deter handlers who fail to make a payment by the due date from deferring such payment until the next month's due date. In the absence of such a requirement, there would be little incentive for a handler to pay an overdue account since no additional penalty would apply under the charge on overdue accounts until the same day of the next month. By structuring the merged order in this fashion, handlers will have two incentives for complying with the order's payment provisions. Thus, if a handler pays his obligation by the due date, he avoids a charge on overdue accounts and he may continue to pay producers and cooperative associations directly. On the other hand, if the handler does not pay an order obligation by the due date, he will be subject to a charge on overdue accounts. If such handler pays his order obligation within 3 days after the due date, he may continue to pay producers and cooperatives. However, if the handler does not make payment within 3 days after the due date, he would not only be subject to the charge on overdue accounts but he would forfeit his right to pay producers and cooperatives directly.

Also, the payment plan adopted herein tends to be self-policing, since a handler would not be permitted to make payment directly to producers and cooperative associations if he fails to pay any order obligation within 3 days of the due date. Under this procedure, a producer or cooperative association would be aware immediately that the handler who is buying his milk has failed to pay an order obligation and thus may represent a financial risk with respect to future milk deliveries.

Presently, under the separate orders a handler may pay all producers the blend price and at the same time fail to pay an amount due the producer-settlement fund. In the absence of any knowledge of the handler's financial difficulties, producers presumably would continue to ship milk to the handler. Only when the handler's financial problems become so great as to result in nonpayment to his producers would the producers realize the possible need for seeking a different outlet for their milk. Under the adopted payment procedure, producers would be aware of the handler's financial difficulty in the first month that such handler has failed to pay an order obligation on a timely basis (within 3 days of the due date—a time limit suggested by a representative of handlers as a basis for determining when a handler should forfeit his right to pay producers for a temporary period). Producers then would be able to consider on a more timely basis the possible need for making other arrangements for the sale of their milk before their loss as a result of nonpayment amounts to the point that they would be placed in a severe economic bind.

Partial payments to producers and rate of such payments. The merged order would provide for a handler to make one partial payment each month for milk received from producers. The rate of the partial payment for the months of March–July would be the Class III price for the preceding month and during the months of August–February would be the Class III price for the preceding month plus one dollar. The rate of payment during the months of August–February would be further adjusted by the location adjustment applicable at the receiving plant. Both the partial and final payment to producers could be reduced by the amount of deductions authorized in writing by the producers. Also, a handler would not be required to make a partial payment to any producer who quits delivering milk prior to the 25th day of the month.

AMPI proposed the use of two partial payments and a final payment in settlement for milk received from producers instead of the one partial and final payment provided under the four individual orders. As previously noted, proponent cooperative proposed the revised payment procedure as a means of requiring handlers to pay producers for milk on a more current basis. Its spokesman indicated that under the present payment plan producers are now paid from 15 to 30 days late for milk produced during the first 15 days of the month. At the time of final payment, producers are paid from 15 to 45 days late for milk produced during the preceding month. The cooperative held that producers should not be required to wait such lengthy periods of time for the money due them from handlers. The spokesman stated that under the current

payment plan producers have to forego the use of funds invested in the dairy operation or pay interest upon the money borrowed for such capital investment. For this reason, proponent held that an accelerated rate of payment by the handler for milk received from producers was warranted.

Kraft opposed the addition of a second partial payment because it would accelerate the handler's payments to producers. Kraft's witness noted that, while both producers and handlers are faced with cash flow problems, handlers are burdened with a disproportionate share of such problems. He indicated that an economic slow-down and rising interest rates have significantly delayed payments to milk handlers while producers have continued to receive timely payments because of payment dates prescribed by the milk order and enforced by the Federal government.

A spokesman for MIF opposed the requirement that handlers make two partial payments to producers for their milk each month. The primary basis of the handlers' opposition to the proposed requirement was that it would create a cash flow problem for them. The handlers contended that they would be required to make payment to producers prior to the time in which they could receive, package, distribute, invoice and collect for the milk products sold. The spokesman for handlers noted that if the proposals were adopted processors would either have to use their own cash reserves or borrow the funds needed to meet the accelerated payment procedure. The increased cost to the handler would then be passed on to the consumers. Handlers also claimed that the extra partial payment would increase their office costs due to the increased reporting requirements and require additional audit work by the market administrator.

The hearing evidence does not support the adoption of the proposal for a second partial payment. There is no indication that marketing conditions are such that it is necessary that the order require more than one partial and a final payment to producers each month.

While the Act authorizes the setting of payment dates under an order, it does not specify how frequently handlers must pay producers. The payment dates are customarily established under an order on the basis of prevailing marketing conditions, including payment practices already existing in an area or new payment practices that handlers and producers may find mutually agreeable. On this basis, each of the four orders now provides for one partial payment and one final payment by handlers to producers each month.

Under the proposal being considered, handlers would be required each month to make a second partial payment to producers. While the proposal by AMPI was not opposed by an producers, none of the handlers under the four orders to be merged supported the proposal. All handler representatives who testified at the hearing opposed a second partial payment to producers. Because there are conflicting opinions between producers and handlers as to whether a different payment arrangement between these parties is desirable under the order, more burden is placed on proponents to show that a second partial payment for milk is essential to the maintenance of orderly marketing in the merged marketing area and that the order must be structured to provide that a second partial payment be made to producers by regulated handlers.

In general, the argument advanced by proponent cooperative for more frequent payments was the need to improve the cash flow of producers. Proponent contended that producers are required to make payment for production facilities and supplies prior to using such items and should be paid more frequently so that they will be more able to meet their financial commitments on a timely basis. It is evident from the record, however, that the cash flow of members of the cooperative most likely would not be affected by structuring the order to require handlers to make more frequent payments. The spokeman for the cooperative indicated that the cooperative had no plans to change the current dates on which members of the cooperative are paid.

The cooperative's spokesman also stated the cooperative at times makes payment to producers in advance of the date on which it collects payment from handlers for such milk. This, however, is a business practice that has been in existence for some length of time and does not by itself provide sufficient reason to require that handlers make a second partial payment to producers.

AMPI proposed that the partial payment rate for the months of March–July be the Class III price for the preceding month. For the months of August–February, the cooperative proposed that the rate be the Class III price for the preceding month plus one dollar. The rate for the months of August–February would be further adjusted by the location adjustment applicable at the receiving plant.

The partial payment rate for each month under the Neosho Valley, Red River Valley and Oklahoma Metropolitan orders is the Class III price for the preceding month. Under the Wichita order, the partial payment rate is 110 percent of the previous month's Class III price.

AMPI proposed that the partial payment rate during the months of August–February be higher than the rate for the months of March–July as a means of providing two fairly equal payments for dairy farmers for milk delivered to pool plants during the month. The cooperative's witness contended that the use of the Class III price for the preceding month plus $1.00 would approximate the uniform price during the months of August–February. A lower payment rate was proposed for the months of March–July because of the possibility that the uniform price under the merged order might not exceed the Class III price for the preceding month by one dollar.

The spokesman for MIF opposed the proposed $1.00 per hundredweight increase in the partial payment rate for the months of August–February. He opposed the increase on the basis that it would require plants with a high Class II/Class III operation to pay in excess of their obligations at the class prices under the order and would accelerate handler payments to producers.

Kraft also opposed any increase in the partial payment rate for the months of August–February. Kraft's witness contended that the rate increase would accelerate handler payments to producers and thereby cause a cash flow problem for handlers.

Producers under the Wichita order have been receiving partial payments since November 1978 in excess of that proposed for the merged order. Because Wichita producers receive a partial payment amounting to not less than 110 percent of the previous month's Class III price, they received a partial payment of $11.20 per hundredweight (110 percent of the October 1978 Class III price of $10.18) in November 1978 or $1.02 per hundredweight in excess of the previous month's Class III price. Because the Class III price has exceeded $10.00 in each succeeding month, the partial payment for each month since November 1978 has exceeded the previous month's Class III price by more than the $1.00 per hundredweight that AMPI proposed for the months of August–February.

The proposed partial payment rate represents a compromise among the partial payment rates that apply under the four orders and should be adopted. For the months of March–July, the payment rate would be unchanged from the one that currently applies under the

Neosho Valley, Red River Valley and Oklahoma Metropolitan orders. For the Wichita area, the proposed rate for such months would represent a nine percent reduction (percentage change in reducing rate from 110% to 100%) in the current rate. For the months of August–February, the partial payment rate adopted herein represents a $1.00 per hundredweight increase for the Neosho Valley, Red River Valley and Oklahoma Metropolitan orders. For the Wichita area, the proposed rate for the months of August 1979–February 1980 would have averaged 13 cents per hundredweight less than the partial payments made to producers under that order during such months. This decrease amounts to one percent of the average blend price that prevailed during such period.

An objection raised by handlers to the partial payment rate for the months of August–February was that a handler operating a plant with a high Class II or Class III utilization could be assessed a partial payment in excess of the utilization value of the milk at the class prices during the first 15 days of the month. The possibility of such overpayment is quite unlikely since proprietary handlers usually operate plants with Class I utilizations in excess of the marketwide average.

The merged order should provide that handlers need not make a partial payment to any producer who no longer is delivering milk to the market on the 25th of the month. In the absence of such provision, the possibility exists that a handler might over-pay a producer. This could result if a producer ceased delivering milk to a handler shortly after the 15th of the month and the butterfat content of the milk delivered by such dairy farmer averaged consideredly less than 3.5 percent for the month. Under the provisions adopted herein, such producer would receive no partial payment if he quits delivering milk to a handler prior to the 25th of the month. If he quits delivering on or after the 25th of the month, such handler would have received in most instances a minimum of 10 days' production in addition to the 15 days' production initially received from such producer. In such circumstance, if the handler overpaid for the butterfat in the milk received during the first 15 days of production, he could recover such overpayment in making payment for that milk received after the 15th of the month.

The merged order should provide for deductions authorized in writing to be made from both the partial and final payments to producers. Only those amounts to assignees that have been paid by the handler prior to the date payment is otherwise due the producers may be deducted from the amounts due producers.

AMPI proposed that deductions authorized by the producer be made from the two partial payments that the cooperative proposed to be used in paying for milk received from producers. While provisions for a second partial payment are not adopted herein, the intent of AMPI's proposals can be accommodated by permitting the authorized deductions from payments for milk delivered during the last half of the month to be deducted from the final payment to the producers.

Kraft supported AMPI's proposal that handlers be permitted to make authorized deductions from both the partial and final payments to a producer. Its spokesman noted that this would result in a producer receiving two relatively equal payments during the month. Currently, producers under the orders which permit deductions for assignments only from the final payment to producers receive one large payment and one small payment each month. A further reason advanced by Kraft for permitting deductions to be made from both the partial and the final payment to producers is that it would allow a producer to assign to creditors a greater proportion of the monthly payment that is due the producer.

Kraft's proposal that assignments to creditors from the partial and final payment be paid to assignee only at the time of the final payment should not be adopted. Kraft contended that the majority of the bankers preferred receiving only one assignment check per month. Some of the bankers who receive assignments twice a month put the first check in a hold file until the second check is received and then credit the assignee's account. Even though assignees may prefer one payment per month, there appears to be no reason why handlers should have the use of money that is assigned to creditors by a producer. It is concluded, therefore, that only those deductions that have been paid to an assignee by the date of the partial or final payment may be deducted from payments due a producer, as AMPI proposed.

Payments by handlers for milk received from a pool plant operated by a cooperative association. The merged order should specify that any handler who receives bulk fluid milk or bulk fluid cream products during the month from a pool plant operated by a cooperative association shall make a partial and final payment to the cooperative for such purchases. Such handlers would be required to make a partial and final payment to the cooperative for such plant milk by the same dates such a handler would be required to pay a cooperative for milk received directly from producers' farms when the cooperative moves the milk to such plant as a bulk tank handler. The same partial payment rates used by handlers to pay cooperatives for milk received in their capacity as a bulk tank handler should be applicable in paying the cooperative for milk and/or cream purchased from the cooperative's pool plant. However, the buying handler should be permitted to adjust the partial payment rate in any month to reflect the butterfat content of the milk purchased, if he so desires. The final payment should be determined by multiplying the quantity of all bulk fluid milk products and/or bulk cream products received during the month from the cooperative's plant that were classified in each class by the applicable class prices as adjusted by the butterfat differential, less the amount of the partial payment. The Class I price applicable to such transfers would be the Class I price at the buying handler's plant. The buying handler also would be responsible for paying the administrative assessment applicable to such milk.

Payments for such milk by the buying handler should be made directly to the cooperative association unless the market administrator determines that such handler was more than 3 days late in making any payment obligation under the order. In that event, the payment would be made through the market administrator who, in turn, would transmit the money to the cooperative. The handler would be required to make all of his payment obligations to the market administrator for 3 consecutive months before he would again be permitted to pay the cooperative directly.

The proponent cooperative suggested that payment for such plant milk be made on the same basis it proposed for the payment for all other producer milk under the merged order, i.e., all order obligations of handlers for milk received from producers would be paid to the market administrator who, in turn, would pay producers. Proponent also suggested that two partial payments be made to producers on such milk shipments. Since the proponent's payment arrangement has not been adopted under the merged order for the reason previously set forth in this decision, this aspect of the cooperative's proposal need not be discussed further at this point.

Most of the milk marketed by the proponent cooperative under the four

orders proposed herein to be merged is moved to distributing plants directly from the farm. Some milk under the Wichita, Kansas, order is shipped to pool distributing plants, either on a regular basis or a supplemental supply basis, from the cooperative's supply plant at Hillsboro, Kansas.

Irrespective of the supply arrangements used, the producers involved are supplying milk for fluid markets and should be assured of receiving payment for their milk. Such assurance is essential to the orderly marketing of milk and the maintenance of an adequate supply of milk for consumers. The incorporation within the merged order of specific payment requirments by handlers for such shipments received from a cooperative association's plant will enhance the ability of the cooperative association to collect for such plant shipments. By providing specific payment dates under the merged order, applying a late-payment charge on any payment that is not made on or before the due date, and requiring any handler who is more than 3 days late in making any payment obligation under the order to channel all of his payment for producer milk through the market administrator, there should be considerable incentive under the order for the buying handler to comply with the order's payment provisions.

The order should provide that the buying handler may adjust the partial payment rate during any month to reflect the butterfat content of the milk purchased if he desires to do so. This option will permit handlers who buy skim milk from a cooperative's pool plant to adjust the applicable price level downward for milk containing less than 3.5 percent butterfat. If the price were not adjusted to reflect the lower butterfat content of the skim milk, the handler would be paying in excess of the classified use value for all such plant milk shipments during the first half of the month. At the time of the final settlement on all such shipments the handler then would be due a credit from the cooperative. Such a situation can be avoided by allowing a handler to adjust his partial payment to reflect the butterfat content of milk purchased from a cooperative's pool plant.

With regard to the Class I price to be used in computing a handler's final monthly settlement for plant milk received from a cooperative, AMPI proposed that such price should be the higher of the Class I prices applicable at the plant of the buying handler or the cooperative's selling plant plus the applicable administrative assessment. Under such pricing arrangement, the Class I price applicable at the location of the transferee-plant would apply if milk were transferred from a lower-price zone to a higher-price zone. Conversely, the Class I price applicable at the location of the transferor-plant would apply if milk were transferred from a higher-price zone to a lower-price zone. Proponent contended that payment at the higher of the two prices is necessary to be consistent with the Act which states in part that a cooperative that is reblending the proceeds from the sale of its milk may not sell milk to any handler in any market at less than the class prices applicable under the order.

The cooperative's proposal to require payment at the higher of the prices applicable at the transferee-plant or the transferor-plant should not be adopted. Rather, payment by handlers for milk transferred from a cooperative's plant should reflect the Class I price applicable at the location of the transferee-plant regardless of whether the milk is shipped to a higher-price zone or a lower price zone. The buying handler also should be responsible for paying the applicable administrative assessment.

Under normal circumstances, transfers of Class I milk from a cooperative's plant to a distributing plant would be from a lower-price zone to a higher-price zone. In such case, the distributing plant operator should be required to pay the cooperative directly for such milk at the Class I price applicable at the distributing plant. This price would generally reflect the order value of milk at the cooperative's pool plant plus the cost of transporting it to the distributing plant. This is the same price that would apply to Class I milk received at the distributing plant directly from the farms of producers or from a cooperative acting as a bulk tank handler.

Although it is unlikely in this merged market, Class I milk could be transferred from a cooperative's pool plant located in a higher-price zone to a pool distributing plant in a lower-price zone. For this type of milk movement, the cooperative in its capacity as a pool plant operator receiving milk at its plant should be required to account to the pool at the Class I price applicable at its plant. However, it would be inappropriate for the order to enforce such price in the final settlement for such milk between the distributing plant operator and the cooperative association. This would result in the distributing plant operator having to pay a higher Class I price for milk received from producers via the cooperative's plant than for milk received from producers either directly or by delivery from a cooperative acting as a bulk tank handler. Also, the order Class I price on such transfers would be higher at the receiving handler's plant than the order Class I price applicable to milk received from producers by other regulated handlers at the same general location as the transferee-handler. This would result in nonuniform class prices to handlers. Requiring payment to the cooperative at the Class I price applicable at the location of the transferee-plant satisfies the requirement that a cooperative association may not sell milk at less than class prices.

It is recognized that requiring the cooperative association to account to the pool at the higher Class I price applicable at its plant in this case probably would make the transfer uneconomic to the cooperative. The cooperative would have to decide, of course, if it should undertake this kind of milk handling arrangement.

(e) *Administrative provisions:*

Charges on overdue accounts. The order should provide for the application of a charge on handler obligations that are overdue. The charge should be one percent per month (12 percent annually) and should apply on the first day the payment is past due and on the same day of each succeeding month until the obligation is paid. Payments subject to the charge would be those due from handlers to the producer-settlement fund, to producers and cooperative associations, for order administration, for marketing services and for audit adjustments.

Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. Also, the order should provide that all late-payment charges shall accrue to the administrative expense fund.

Currently, the Wichita and Red River Valley orders provide for charges on overdue accounts. Such charges accrue to the account that is overdue. The Neosho Valley and Oklahoma Metropolitan orders contain no provisions for charges on overdue accounts. The two orders with charges on overdue accounts provide that the unpaid obligation of a handler shall be increased one-half of one percent on the 1st day of each succeeding month until such obligation is paid. Under each of the two orders, the charges apply on

handler obligations due the producer-settlement fund, on certain handler obligations resulting from audit adjustments and on the handler's pro rata share of the expense of administering the order. Under the Red River Valley order, a late-payment charge also applies on the amount that handlers deduct from payments due producers to cover the cost of providing marketing services if such amounts are not transmitted by such handler to the party performing the marketing service by the date specified in the order.

AMPI proposed that any unpaid obligation of a handler that is due producers, cooperative associations and the market administrator be increased one percent per month, beginning on the first day after the due date, and on each date of subsequent months following the day on which such obligation is due. The cooperative proposed that late-payment charges accrue to the fund to which payment is due except that charges resulting from late payment of producers should accrue to those producers who are paid late. Proponent held that payment of late-payment charges to the producers who are paid late is justifiable on the basis that the producers who have to wait for payment should be reimbursed for having to forego the use of such money. In the event the individual producers involved cannot be identified, the cooperative proposed that the late-payment charges for producers' receipts should accrue to the producer-settlement fund for distribution among all producers on the market.

The spokesman for AMPI contended that the institution of a charge on overdue obligations of handlers is necessary to encourage prompt payments of order obligations by regulated handlers. He pointed out that unless a charge is provided under the order, a handler who fails to pay his order obligation by the due date has a competitive advantage over those handlers who are making payments by the due date.

A representative of MIF, on behalf of nearly one-half of the handlers in the four markets, proposed the adoption of a two-tiered charge for accounts that are overdue (one of MIF's members, Kraft, testified in opposition to any charges on overdue accounts). MIF proposed that if payment is not received by the date specified in the order but is received on or before the third day following the date due, a "late payment charge" of 0.05 percent of the unpaid balance for each day payment is not received be assessed. If payment is not received on or before the third day following the due date, he proposed that a "delinquent payment charge" of 1.5 percent of the unpaid balance be assessed on each 30-day anniversary of the payment due date.

In support of the proposed minimal daily rate for the first three days a payment is overdue, proponent contended that it is possible for a late payment to be made unintentionally. In his opinion, payment a few days late on an occasional basis is much different than payment several days late on a regular basis.

The spokesman for MIF also proposed that any late-payment charges accrue to the administrative expense fund. He contended that the charges should be channeled to the administrative expense fund in order to reimburse it for the costs incurred by the market administrator in collecting the late payments.

Data presented at the hearing confirm that handlers have been late in making payments for producer milk under each of the four orders. Also, handlers have been late in making payments to the producer-settlement funds and to the administrative and marketing service funds of the separate orders. The data illustrated a wide range of payment practices by handlers. Some handlers were paying their obligations on time while other handlers were paying their obligations more than 15 days late.

Several handlers took the position at the hearing that not all payments listed as being paid from 1 to 5 days late should be considered as late payments. The argued that the data presented at the hearing should have listed all payments made by mail that were postmarked on or before the due date as being made on time. Instead, in the tabulation of the data such payments were listed as being late because payment was not considered to have been made until it was received by the addressee. In that regard, payment made by a handler to a bank's postal lock box for the account of a cooperative was tabulated as being received when the bank posted such payment to the cooperative's account.

Even if one were to accept the handers' premise that all payments postmarked on or before the due date were made on time, one would eliminate at the most only the payment listed as being overdue from 1–5 days. However, one would presume that those payments listed as being overdue from 6–10 days, 11–15 days and more than 15 days were most likely postmarked after the due date and, consequently, were overdue by the handlers' own standards for timeliness.

It is essential to the effective operation of the order that all handler payments for obligations under the order be made promptly. Under the merged order, handlers with higher than market-average Class I utilization would pay any excess of the value of their producer milk over its value at the uniform price into this fund. Payments into this fund must be made on a timely basis since the market administrator must immediately transmit such funds to handlers with a lower than market-average Class I utilization to enable them to include such payment in the uniform price they pay to producers.

Under the merged order, it is also necessary that handlers make partial and final payments to producers and cooperative assocations on a timely basis. Producers should not be expected to wait beyond the scheduled time for their milk payments. Delayed payments not only foster uncertainty and discontent among producers but also place them in a difficult position with respect to meeting their own financial obligations on a timely basis.

The prompt payment of accounts relating to the administrative expense fund and to the marketing service fund of the merged order is essential to the performance by the market administrator of the various administrative functions prescribed by the order. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties in a timely and efficient manner.

Payment delinquency also results in an inequity among handlers. Handlers who pay producers late are in effect borrowing money from producers. In the absence of any late-payment charge, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

Without a late-payment charge handlers have little incentive to make payment to the market administrator on time. Enforcement action may be taken, of course, to seek strict handler compliance with the payment dates. However, this is a cumbersome administrative route and the practicality of such action becomes questionable in the case of handlers who are only several days late. While the charge adopted herein may not result in strict compliance by all handlers, it should provide handlers substantial inducement to make their payments to the market administrator, producers and cooperative associations on time.

The effectiveness of the late-payment charges that currently apply under the Wichita and Red River Valley orders is

nullified to a large extent by the relatively small penalty charge (½ of 1 percent per month of the unpaid obligation) and the fact that the charge does not apply until the 1st of the month following the due date. If the charge on overdue accounts is to have any impact on encouraging prompt payments, it should be an amount that is more nearly what a delinquent handler would be charged by commercial banks for money borrowed for short-term purposes. Otherwise, handlers who may have financial problems would be encouraged to delay their payments, knowing that the charge under the order is cheaper than borrowing money commercially at a higher loan rate. The late-payment charge should be established at the rate of one percent per month of the unpaid balance, the rate proposed by the proponent of the merged order. While this charge on a per annum basis is below the prime rate of interest being charged, the charge when applied to a payment that is less than a month late would be, in effect, at a higher rate. The rate adopted herein in conjunction with the application of such rate on the 1st day that an obligation is past due should be sufficient to encourage prompt payment of such obligation under the merged order.

The MIF proposal that all late-payment charges accrue to the administrative expense fund maintained by the market administrator should be adopted. Proponent supported this proposal on the basis that handlers who are prompt in meeting payment obligations are, in effect, being assessed for expenses incurred by the market administrator in obtaining compliance by delinquent handlers. In addition, proponent contended that in case of late payments to producers there would be an incentive on the part of the producers or cooperative associations to continue delivery of milk to a delinquent handler if the dairy farmer or the cooperative thought they would benefit by the delay in payment.

In the event a handler is delinquent in the payment of an obligation, money must be spent by the market administrator in determining the amount of late-payment charges and in collecting such payments. The money to cover the cost of these activities comes from the administrative assessment fund. Thus, the competitors of the noncomplying handlers who pay assessments to this fund are bearing the administrative costs of dealing with the delinquent handler. Therefore, it is reasonable that the late-payment charges assessed on noncomplying handlers be used to help defray these administrative costs.

As an inducement for handlers to make payments to producers and cooperatives on time, it is appropriate that the charge on overdue accounts payable to such persons also accrue to the administrative assessment fund. If the late-payment charge were added to the amount handlers owed producers and cooperatives, it would likely result in such producers being less concerned whether they are paid on time and more concerned with the possibility of earning additional money by extending credit. This could be counterproductive to the purpose sought to be achieved by the late-payment charge. Moreover, if a charge of 1 percent were made with respect to a payment that was only a few days late, it would represent a higher value than the cost of money borrowed from commercial sources for the short time span. Thus, producers might prefer to be paid a few days late in order to receive a late-payment charge and thus not be inclined to press handlers for timely payment. Since the late-payment charge is to be an inducement to meet the payment date, the charges on obligations that are overdue to producers and cooperatives should accrue to the administrative assessment fund of the market administrator who is charged with the responsibility of administering the payment transaction rather than to be paid to the producers who were not paid on time, as the merger proponent suggested.

As proposed at the hearing, the merged order should require that a late-payment charge apply on overdue obligations of a handler operating a partially regulated distributing plant. Under certain conditions such a handler may be required to make payments to the producer-settlement and administrative expense funds. In the absence of any late-payment charge, a partially regulated handler could have an advantage on his order obligations relative to fully regulated handlers who are subject to the additional charge when they fail to make timely payments. Also, as pointed out earlier, prompt payments to the administrative expense fund are essential to the market administrator's performance of his duties.

In addition, the charge on late payments should apply beginning the day following the date on which payment of the obligation is due and on the same day of each succeeding month until the obligation is paid. The current provisions of the Wichita and Red River Valley orders which provide that a charge on overdue accounts shall not apply until the 1st of the month following the due date provide no incentive for handlers to make payment of order obligations by the due date. Payment of order obligations by the due date can be fostered best by applying a late-payment charge on the 1st day after the due date.

While present economic conditions might warrant the adoption of a late-payment charge greater than one percent per month, AMPI did not propose any higher rate. However, it should be noted that the late-payment charge adopted herein would be the same whether payment is one day, three days or a month late. If a handler decides to delay payment for up to 3 days, the charge of 1 percent of the unpaid balance would be much more than the handler would be charged by a commercial bank for money borrowed for such period of time. If, however, a handler delays more that 3 days in paying his obligation, he would then be required under the merged order, as discussed elsewhere in this decision, to channel his payments to producers through the market administrator. Such payment requirement in conjunction with a late-payment charge should be a sufficient inducement for handlers to make payment by the due date.

The MIF proposal to apply the late-payment charge on a daily basis for the first three days that a payment is overdue should not be adopted. If late-payment charges were treated on a money market basis, the order would represent a banking service for handlers who desire to use order obligations as a source of borrowed funds. This is not the intended purpose of the late-payment charge. Rather, it is to be a charge on overdue accounts which is sufficiently large to induce handlers to pay their obligations under the order on time.

A further reason for not adopting the proposed two-tiered charge on overdue accounts is that the payment plan under which such charges would apply would not be compatible with the use of fixed dates in the payment of producers. Under the "flexible" payment schedule proposed by a representative of MIF, a handler would have the option of paying an order obligation within 3 days after the "due" date and being assessed a nominal charge for the credit extended for such period of time. However, a lag of up to 3 days in the "due" date would require that a similar lag be incorporated in the scheduled payment dates for producers. Producers have been accustomed to receiving payment on a fixed schedule and, to the extent

possible, such producers should continue to receive payment on a fixed schedule. For this reason, fixed dates should be continued for handlers to make payment of their obligations under the order so that producers may continue to receive payments on a fixed schedule.

The spokesman for MIF requested the payments be considered as having been made for purposes of meeting the payment requirement if received by an agent mutually agreeable to the handler, the cooperative or producers and the market administrator. The provisions of the merged order do not preclude the use of an agent as an intermediary under the conditions proposed by the handlers' spokesman. Under these circumstances, there is no reason to modify the order as proposed.

Administrative assessment. The maximum rate of payment by handlers for the cost of administering the merged order should be 6 cents per hundredweight.

The current maximum rates of assessment for order administration are 4 cents per hundredweight under the Wichita and Oklahoma Metropolitan orders and 5 cents per hundredweight under the Neosho Valley and Red River Valley orders.

The merger proponent proposed that the maximum rate for administrative assessment each year be determined as soon as possible after the beginning of each year by multiplying the simple average of the monthly uniform prices for producers milk for the preceding calendar year by 0.6 percent. The cooperative proposed a formula method be used to set the rate annually as a means of tying the assessment fee to the rate of inflation. Such method, it was claimed, would avoid the need for calling a hearing to raise the maximum rate at some future date due to inflation.

Kraft proposed, on the other hand, that the rate be established at 5 cents per hundredweight, which represents a 1-cent increase over the rate under the Oklahoma Metropolitan order under which Kraft's plant is currently regulated. The spokesman pointed out that 5 cents is the highest rate now prevailing in any of the orders and he believed that such rate would be sufficient under the merged order.

The Act requires handlers to pay the cost of operating an order through an assessment on milk handled. The actual assessment rate, which may not exceed the maximum specified in the order, is established by the market administrator at a level which results in a reserve fund sufficient to cover projected operating expenses for 6 months. The reserve fund normally would be needed to carry out the market administrator's responsibilities in the event an order is withdrawn for any reason. If the reserve fund exceeds the projected 6-month operating expenses, the administrative assessment may be suspended or the rate may be lowered until the reserve fund has been reduced to the desired level.

Except for the month of September 1977 when the assessment was waived in all 4 markets, the administrative assessment under each of the orders has been at the maximum permitted under such orders since January 1, 1976. During 1975 the rate was 4 cents per hundredweight in each of the 4 markets. The ending reserves for the 4 markets for the years 1975–1979 varied from a low of 69 percent in 1978 to a high of 82 percent in 1976 of the expenses incurred for the year.

Since October 1977, it has been necessary for the market administrator to collect the maximum administrative assessment permitted under each of the separate orders in order to have sufficient funds available to meet the monthly expenses of administering the four orders and to maintain a 6-month contingency reserve fund plus an additional reserve to cover a portion of the costs of separating the market administrator and the employees of such person from the government work force in the event an order is withdrawn for any reason. On this basis, it is concluded that the maximum assessment rate under the merged order should be established at a higher level than the prevailing maximum rates under the separate orders. This will give the market administrator the necessary flexibility to increase the assessment rate at some future time in the event of a decline in milk receipts by handlers, a shift in regulation by a handler under this order to another order, a decline in the number of handlers regulated under the order, or increased in the cost of administering the order as a result of inflationary pressures.

The maximum rate should be established at six cents per hundredweight. This would amount to an increase ranging from 20 percent to 50 percent in the rates effective for the separate orders. Such increase should provide sufficient funds for the market administrator to carry out his duties and to provide a sufficient reserve for the market administrator to carry out his responsibilities in the event the order is withdrawn for any reason. If experience indicates that the administration of the order plus the maintenance of an adequate reserve can be accomplished at a lesser rate than the maximum, provision is made whereby the Secretary may lower the rate at any time without the necessity of a hearing.

Handlers should be required to make payment to the market administrator for the administrative assessment fund on or before the 15th day after the end of the month. In this regard, handler payments postmarked by the 15th will be considered to have been made by the due date. The 15th is now the specified date for making such payment under the Oklahoma Metropolitan and Red River Valley orders. In the Wichita order the due date is the 14th and in the Neosho Valley order the due date is the 16th of the month. Under the circumstances, it is concluded that the use of the 15th as the due date will have the least disruptive effect on handlers. Furthermore, such due date is the same as the due date adopted herein for handlers to remit marketing service deductions to the party performing such service. As discussed in the next section dealing with marketing service deductions, the use of the 15th as the due date will allow a handler who is required to transmit the marketing service deductions to the market administrator to make a single payment in settlement of such obligation and the handler's obligation to the administrative expense fund.

Marketing service deduction. The Southwest Plains order should provide for a maximum deduction of 7 cents per hundredweight from payments to producers to cover the cost of marketing services that are performed by the market administrator for certain producers.

The current maximum rates of deductions for marketing services are 5 cents per hundredweight under the Red River Valley and Oklahoma Metropolitan orders and 6 cents per hundredweight under the Neosho Valley and Wichita orders.

The merger proponent proposed that the maximum rate of deduction for marketing services that would apply during the year be determined, as soon as possible after the beginning of the year, by multiplying the simple annual average of the monthly uniform prices for producer milk for the preceding calendar year by 0.7 percent. The formula method for setting the rate was proposed as a means of tying the rate to the rate of inflation. Proponent noted that the formula method would eliminate the need for calling a hearing to adjust the rate upward in the event that inflationary pressures cause an increase in the cost of performing marketing services.

Kraft proposed that the maximum rate for marketing services be established at 6 cents per hundredweight.

The marketing service deduction under each of the orders has been at the maximum permitted under such orders since January 1, 1975, the earliest year for which data were presented at the hearing. The ending reserves for the 4 markets, except for 1976 and 1979, have varied from 23 to 35 percent of the expenses incurred for the year. In 1976 the ending reserves amounted to 60 percent of the annual expenses while in 1979 such reserves amounted to about 10 percent of the annual expenses.

The marketing service fund can be operated with a lower level of reserves than is required for the administrative expense fund. In the case of marketing services, the expenses of performing such services ceases as soon as service is no longer provided. However, some reserve is needed to assure that funds are available to meet the month-to-month operational costs of providing marketing services, for the expense of maintaining an inventory of needed supplies, and to provide a contingency reserve to cover a portion of the costs of separating the marketing administrator and the employees of such person from the government work force in the event an order is withdrawn for any reason. In view of the steady decline in the ending reserves for the four markets—from a high of 60 percent in 1976 to 10 percent in 1979, it is concluded that the maximum marketing service rate for the merged order must be established at a higher rate than the prevailing maximum rates of the separate orders to fund the marketing service operation. Such higher rate will give the market administrator the necessary flexibility to increase the rate in the future to meet any increased cost resulting from inflationary pressures.

The new maximum rate should be 7 cents per hundredweight. Such rate would amount to an increase ranging from 17 percent to 40 percent in the rates effective for the separate orders. Such increase should provide a sufficient reserve to assure the operation of a satisfactory marketing service program. If experience indicates that the services can be performed at a lesser rate than the maximum rate, provision is made whereby the Secretary may adjust the rate downward without the necessity of a hearing.

The date by which handlers are required to make payment to the market administrator for the marketing service fund (or to a cooperative association that is performing marketing services for the producer for whom it is marketing milk) should be on or before the 15th day after the end of the month. In this regard, handler payments postmarked by the 15th will be considered to have been made by the due date.

The 15th is now the specified date for making such payment under three or the four orders. In the Wichita order, the due date is the 14th. Under these circumstances, it is concluded that the use of the 15th as the due date will have the least disruptive effect on handlers. A further reason for choosing the 15th as the due date is to have it correspond with the due date for making payment to the administrative assessment fund. This will enable handlers who are required to make payment to the market administrator for the 2 funds to make a single payment in settlement of such obligations.

Merger of the administrative expense, marketing service, and producer-settlement funds. To accomplish the merger of the orders effectively and equitably, the reserves in the administrative expense funds that have been accumulated under the four separate orders should be combined. Similar procedures should be followed with respect to the marketing service fund reserves and the producer-settlement fund balances of these individual orders. Any liabilities of such funds under the individual orders should be paid from the appropriate new fund under the merged order. Similarly, obligations that are due the several funds under the individual orders should be paid to the appropriate combined fund under the merged order.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. It is anticipated that all handlers currently regulated under the individual orders will continue to be regulated under the merged order. In view of this, it would be an unnecessary administrative and financial burden to allocate back to handlers the reserve funds under the individual orders and then accumulate an adequate reserve for the merged order. It is more efficient to combine the administrative monies accumulated under the individual orders and to pay any liabilities against such funds from the consolidated fund of the merged order.

The money accumulated in the marketing service funds of the four orders is that which has been paid by producers for whom the market administrator is performing services. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the Southwest Plains market. The consolidation of the reserves in the individual marketing service funds is therefore appropriate in view of the continuation of the marketing service program for these producers under the merged order.

The producer-settlement fund balances in the four orders should be combined so that the producer-settlement fund under the merged order may be continued without interruption. The producers currently supplying the individual markets are expected to continue to supply milk for the merged market. Thus, monies now in the producer-settlement funds of the individual orders would be reflected in the uniform prices of the producers who will benefit from the merged order. The combined fund would also serve as a contingency fund from which money would be available to meet obligations (resulting from audit adjustments and otherwise) accruing under one or the other of the separate funds.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

A brief filed on behalf of one interested party contended that certain of the payment provisions provided herein cannot be adopted since the provisions would increase the returns to producers and no economic data upon which the Secretary may make the analysis and findings required by § 608c(18) of the Act in support of such increase were placed in evidence by the proponent cooperative association. Although the payment provisions of the merged order provide for an increase during the months of August through February in the partial payments to producers relative to such payments under three of the current orders, the final payments to producers would be decreased by a corresponding amount. As a consequence, the total monthly compensation to be paid producers would not be increased. Thus, the issue raised in the handler's brief is moot.

A ruling of the Administrative Law Judge to which a specific objection was taken in a brief has been reviewed. An

objection was raised by the attorney representing the 40 nonmember producers to the Administrative Law Judge excluding the admission of an exhibit offered by the attorney as evidence. The exhibit was proffered as an offer of proof that the Administrative Law Judge erred in excluding the exhibit and it was marked for identification to accompany the record.

The exhibit consisted of various documents pertaining to proceedings before the United States District Court For The Western District of Missouri involving the U.S. vs. Associated Milk Producers, Inc., (Supplemental to: No. 74 CV 80–W–1). According to arguments presented at the hearing and in the brief, the exhibit should have been received in evidence to show the history of certain terms of sale announced by AMPI (as indicated in other exhibits that were received in evidence) and to demonstrate that such terms of sale are subject to judicial scrutiny. The attorney for AMPI objected to the exhibit on the basis that the material was irrelevant to this proceeding.

The Administrative Law Judge ruled that the exhibit was irrelevant to this proceeding in that the facts concerning the actual terms of sale were contained in other exhibits previously received. The Judge indicated that parties would be able to rely on the proferred document for the purpose of arguments or demonstration in the same manner that they draw upon documents in any other proceedings that have been adjudicated in the Courts.

The Administrative Law Judge's ruling has been reviewed in light of the arguments presented. The ruling, for the reasons stated by the Administrative Law Judge on the record, is hereby affirmed.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and deteminations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreements, the Southwest Plains order (which merges and amends the Oklahoma Metropolitan, Red River Valley, Wichita and Neosho Valley orders), and the Texas Panhandle and Texas 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 each of the aforesaid marketing areas and the minimum prices specified in the tentative marketing agreements, the merged Southwest Plains order, and in the Texas Panhandle and Texas 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;

(c) The tentative marketing agreements, the merged Southwest Plains order, and the Texas Panhandle and Texas 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;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreements, the merged Southwest Plains order, and in the Texas Panhandle and the Texas orders, as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that for the merged Southwest Plains order the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 6 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1106.85 of the tentative marketing agreement and the Southwest Plains order.

Recommended Marketing Agreements and Order Amending the Orders

The recommend marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the merged Southwest Plains order and in the Texas Panhandle and Texas orders, as hereby proposed to be amended. The following order regulating the handling of milk in the respective marketing areas of these orders is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

PART 1106—MILK IN SOUTHWEST PLAINS MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

1106.1 General provisions.

Definitions

1106.2 Southwest Plains marketing area.
1106.3 Route disposition.
1106.4 Plant.
1106.5 Distributing plant.
1106.6 Supply plant.
1106.7 Pool plant.
1106.8 Nonpool plant.
1106.9 Handler.
1106.10 Producer-handler.
1106.11 [Reserved]
1106.12 Producer.
1106.13 Producer milk.
1106.14 Other source milk.
1106.15 Fluid milk products.
1106.16 Fluid cream product.
1106.17 Filled milk.
1106.18 Cooperative association.
1106.19 [Reserved]
1106.20 Product prices.

Handler Reports

1106.30 Reports of receipts and utilization.
1106.31 Payroll reports.
1106.32 Other reports.

Classification of Milk

1106.40 Classes of utilization.
1106.41 Shrinkage.
1106.42 Classification of transfers and diversions.
1106.43 General classification rules.
1106.44 Classification of producer milk.
1106.45 Market administrator's reports and announcements concerning classification.

Class Prices

1106.50 Class prices.
1106.51 Basic formula price.
1106.51a Basic Class II formula price.
1106.52 Plant location adjustments for handlers.
1106.53 Announcement of class prices.
1106.54 Equivalent price.

Uniform Price

1106.60 Handler's value of milk for computing uniform price.
1106.61 Computation of uniform price.
1106.62 Announcement of uniform price and butterfat differential.

Payments for Milk

1106.70 Producer-settlement fund.
1106.71 Payments to the producer-settlement fund.
1106.72 Payments from the producer-settlement fund.
1106.73 Payments to producers and to cooperative associations.
1106.74 Butterfat differential.
1106.75 Plant location adjustments for producers and on nonpool milk.
1106.76 Payments by handler operating a partially regulated distributing plant.
1106.77 Adjustment of accounts.
1106.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1106.85 Assessment for order administration.

1106.86 Deduction for marketing services.

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

Subpart—Order Regulating Handling

General Provisions

§ 1106.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1106.2 Southwest Plains marketing area.

The "Southwest Plains marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the following counties, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

Zone I.—In the State of Oklahoma

Caddo	McClain
Canadian	McIntosh
Cleveland	Okfuskee
Coal	Oklahoma
Garvin	Pittsburg
Grady	Pontotoc
Haskell	Pottawatomie
Hughes	Seminole
Latimer	Sequoyah
LeFlore	

Zone II.—In the State of Oklahoma

Alfalfa	Jefferson
Atoka	Johnston
Beaver	Kiowa
Beckham	Love
Bryan	Major
Carter	Marshall
Choctaw	McCurtain
Cimarron	Murray
Comanche	Pushmataha
Cotton	Roger Mills
Custer	Stephens
Dewey	Texas
Ellis	Tillman
Greer	Washita
Harmon	Woods
Harper	Woodward
Jackson	

Zone III.—In the State of Oklahoma

Adair	Muskogee
Blaine	Noble
Cherokee	Nowata
Craig	Okmulgee
Creek	Osage
Delaware	Ottawa
Garfield	Pawnee
Grant	Payne
Kay	Rogers
Kingfisher	Tulsa
Lincoln	Wagoner
Logan	Washington
Mayes	

Zone IV.—In the State of Kansas

Allen	Labette
Bourbon	Montgomery
Chautauqua	Neosho
Cherokee	Wilson
Crawford	

In the State of Missouri

Barton	Newton
Jasper	Vernon

Zone V.—In the State of Kansas

Barber	Marion
Barton	McPherson
Butler	Pawnee
Comanche	Pratt
Cowley	Reno
Edwards	Rice
Ellis	Rush
Harper	Russell
Harvey	Sedgwick
Kingman	Stafford
Kiowa	Sumner

Zone VI.—In the State of Kansas

Clark	Lane
Finney	Meade
Ford	Morton
Gove	Ness
Grant	Scott
Gray	Seward
Greeley	Stanton
Hamilton	Stevens
Haskell	Trego
Hodgeman	Wichita
Kearny	

§ 1106.3 Route disposition.

"Route disposition" means any delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of any fluid milk product classified as Class I milk.

§ 1106.4 Plant.

"Plant" means the land, buildings, facilities and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1106.5 Distributing plant.

"Distributing plant" means any plant:

(a) Approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption;

(b) In which fluid milk products are processed or packaged; and

(c) From which there is route disposition in the marketing area during the month.

§ 1106.6 Supply plant.

"Supply plant" means a plant approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption from which fluid milk products are transferred or diverted to a distributing plant(s) during the month.

§ 1106.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which during the month there is:

(1) Total route disposition (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at such plant, including producer milk diverted from the plant; and

(2) Route disposition (except filled milk) in the marketing area in an amount not less than 10 percent of such receipts.

(b) A supply plant from which during the month not less than 50 percent of the total quantity of milk that is received from dairy farmers (including producer milk diverted from the plant pursuant to § 1106.13, but excluding milk diverted to such plant) and handlers described in § 1106.9(c) is transferred or diverted pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) of this section, subject to the following:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through January shall continue to so qualify in each of the following months of February through August until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) of the section are not less than 50 percent of receipts or diversions, as previously specified.

(2) The operator of a supply plant that is located in the marketing area or in a county adjacent to the marketing area may include milk diverted pursuant to § 1106.13(c) from such plant to plants described in paragraph (a) of this section as qualifying shipments in meeting the supply plant's monthly shipping percentages. Diversions in excess of three-fifths of the shipping requirement shall not be included as qualifying shipments.

(c) Any plant located in the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested by the

cooperative association and 50 percent of more of the producer milk of members of the cooperative association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received during the month in the form of bulk fluid milk products at plants specified in paragraph (a) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(d) The shipping standards in paragraphs (b) and (c) of this section may be increased or decreased temporarily up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding the Director shall investigate the need for revision, either at the Director's initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and iniviting data, views, and arguments. If a plant which would not otherwise qualify as a pool plant during the month qalifies as a pool plant because of a reduction in shipping standards pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator files a written request for nonpool plant status with the market administrator at the time the report is filed for such plant pursuant to § 1106.30.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or governmental agency plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, neverthless, fully regulated under such other Federal order;

(4) A supply plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part;

(5) A plant qualified pursuant to paragraph (b) of this section which has automatic pooling status under another Federal order; or

(6) That portion of a plant that is not approved by a duly constituted regulatory agency for the receiving, processing or packaging of any fluid milk product for fluid disposition and is physically separated from the portion of the plant having such approval.

§ 1106.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a distributing plant that does not qualify as a pool plant and is not an other order plant, a governmental agency plant, or a producer-handler plant.

(d) "Unregulated supply plant" means a nonpool plant, except an other order plant, a governmental agency plant, or a producer handler plant, from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1106.7.

(e) "Governmental agency plant" means a plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk that is distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1106.9 Handler.

"Handler" means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative association with respect to the milk of producers which it causes to be diverted pursuant to § 1106.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered.

(d) Any person who operates a partially regulated distributing plant;

(e) Any person who is a producer-handler; and

(f) Any person who operates an other order plant described in § 1106.7(e).

§ 1106.10 Producer-handler.

"Producer-handler" means any person:

(a) Who operates a dairy farm and a processing plant from which there is route distribution in the marketing area;

(b) Who receives no fluid milk products from sources other than his own farm production, pool plants, and other order plants;

(c) Who disposes of no other source milk as Class I milk except receipts from other order plants and by increasing the nonfat milk solids content of the fluid

milk products received from his own farm production, pool plants, or other order plants; and

(d) Who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

§ 1106.11 [Reserved]

§ 1106.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for fluid consumption by a duly constituted regulatory agency and whose milk is:

(1) Received at a pool plant or by a handler described in § 1106.9(c); or

(2) Diverted pursuant to § 1106.13 by a handler for his account.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) A governmental agency that operates a plant exempt pursuant to §1106.8(e);

(3) Any peson with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1106.44(a)(8)(iii) and the corresponding step of § 1106.44(b);

(4) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; or

(5) Any person with respect to milk produced by him during the months of February through July that is caused to be delivered to a pool plant by a cooperative association or a pool plant operator if during any of the immediately preceding months of September through November more than one-third of the milk from the same farm was caused by such cooperative association or pool plant operator to be delivered to plants as other than producer milk (except milk that is not producer milk as a result of a temporary loss of approval from a duly constituted regulatory agency for the fluid consumption of such milk or the application of § 1106.13(d)(4) and (5)) unless such pool plant was a nonpool plant during any of such immediately preceding months.

§ 1106.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk from a producer that is:

(a) Received by the operator of a pool plant directly from such producer. Any milk picked up from the producer's farm tank in a tank truck owned and operated by, or under the control of, the operator of a pool plant but which is not received at a plant until the following month, shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month. The paragraph shall apply in like manner to milk received by the operator of a pool plant who, in accordance with § 1106.9(c), is the handler for such milk.

(b) Received by a handler described in § 1106.9(c).

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant, without limit in any month. Such milk shall be priced at the location of the plant to which diverted.

(d) Diverted by the operator of a pool plant or by a cooperative association from a pool plant to a nonpool plant (other than a producer-handler plant), subject to the following conditions:

(1) In any month, milk of a producer shall not be eligible for diversion from a pool plant under this section unless at least one day's production from such producer is physically received at a pool plant during the month;

(2) The total quantity of milk diverted by a cooperative association in any month of September through January shall not exceed one-half of the producer milk that such cooperative caused to be delivered to and was physically received at pool plants during the month, and in any month of February through August, such diversions shall not exceed the total quantity of producer milk that the cooperative association caused to be delivered to and was physically received at pool plants during the month;

(3) The operator of a pool plant other than a cooperative association may divert any milk that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (d)(2) of this section. The total quantity of milk so diverted in any month of September through January shall not exceed one-half of the producer milk that was physically received at pool plant(s) as producer milk for which the plant operator is the handler. In any month of february through August, the total quantity of milk so diverted shall not exceed the total quantity of milk that was physically received at pool plant(s) as producer milk for which the plant operator is the handler;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (3) of this section shall not be producer milk. In such event, the diverting handler may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to so designate, milk diverted on the last day of the month, then the second-to-last-day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limits are accounted for;

(5) The quantity of milk diverted for the account of a cooperative association from a pool plant of another handler that would cause the pool plant to become a nonpool plant shall not be producer milk. In such event, the diverting handler may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to so designate, milk diverted on the last day of the month, then the second-to-last-day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for;

(6) If a dairy farmer loses his producer status under this order (except as a result of temporary loss of approval from a duly constituted regulatory agency for the production of milk for fluid consumption), his milk shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant; and

(7) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1106.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1106.40(b)(1) from any source other than producers, handlers described in § 1106.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1106.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1106.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1106.40(b)(1)) for which

the handler fails to establish a disposition.

§ 1106.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1106.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1106.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifers, or flavoring) resemble milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1106.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales or marketing milk or milk products for its members.

§ 1106.19 [Reserved]

§ 1106.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 11061.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

Handler Reports

§ 1106.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1106.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1106.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully

regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1106.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report for each of the handler's plants with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1106.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1106.9 (a), (b) and (c) who pays producers pursuant to § 1106.73 shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month;

(1) The name and address of each producer;

(2) The amounts paid each producer; and

(3) The dates such payments were made.

(b) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1106.76(b) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated the following information for such month;

(1) The name and address of each dairy farmer;

(2) The total pounds of milk received from each dairy farmer;

(3) The average butterfat content of such milk;

(4) The amount and nature of any deductions, as authorized in writing by the dairy farmer, from the payment for such milk; and

(5) The rate of payment per hunderdweight and the net amount paid each dairy farmer.

§ 1106.32 Other reports.

(a) On or before the 21st day of each month, each handler described in § 1106.9(a) who is required pursuant to § 1108.71(c) to make payments to the market administrator for milk received from producers and cooperative associations shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month;

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of milk received from such producer;

(3) The amount and nature of any deductions, as authorized in writing by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1106.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(b) On or before the 7th day after the end of each month, each handler described in § 1106.9 (a), (b), and (c) shall report to the market administrator the following information with respect to its receipts of milk during such month.

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer, its average butterfat content and the total pounds of milk diverted to each plant that is not a pool plant;

(3) Except in the case of producer milk for which a cooperative association is collecting payments, the amount and nature of any deductions, as authorized in writing by the producer, to be made from the final payment for such milk;

(4) The total pounds of skim milk and butterfat received from a handler described in § 1106.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(c) On or before the reporting dates specified in paragraphs (a) and (b) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred to pool plants of other handlers within the time periods described in paragraphs (a) and (b) of this section shall report to each such pool plant operator and to the market administrator the name and location of the transferror-plant and the total pounds and butterfat content of the bulk fluid milk products transferred from the plant.

(d) In addition to the reports required pursuant to paragraphs (a) through (c) of this section and §§ 1106.30 and 1106.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(e) Each handler who causes milk to be diverted shall, prior to such diversion, report to the market administrator his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

Classification of Milk

§ 1106.40 Classes of utilization.

Except as provided in § 1106.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1106.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraph (b) and (c) of this section; and

(2) Not specifically accounted for the Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid from other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition.

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1106.15; and

(6) In skrinkage assigned pursuant to § 1106.41(a) to the receipts specified in § 1106.41(a)(2) and in shrinkage specified in § 1106.41(b) and (c).

§ 1106.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1106.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat;

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1106.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurements at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1106.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1106.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1106.44(a)(12) and the corresponding step of § 1106.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1106.44(a)(7) or the corresponding step of § 1106.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilitization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1106.44(a) (11) or (12) or the corresponding steps of § 1106.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the

conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1106.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1106.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) *Transfers by a handler described in § 1106.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1106.9(c) to another handler's pool plant shall be classified pursuant to § 1106.44 pro rata with producer milk received at the transferee-handler's plant and the value thereof at the class prices shall be included in the pool plant handler's value of milk pursuant to § 1106.60.

§ 1106.43 General classification rules.

In determining the classification of producer milk pursuant to § 1106.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1106.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1106.9(b) of (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1106.40, 1106.41, and 1106.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1106.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1106.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1106.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1106.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1106.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1106.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an off set for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1106.40(b)(1) that were received in packaged from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1106.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1106.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1106.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of fluid milk products from a person described in § 1106.12(b)(5);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii)(*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1106.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all

such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1106.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity pro rated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1106.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1106.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1106.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1106.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after

the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1106.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1106.44(a)(12) and the corresponding step of § 1106.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1106.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the amount and class utilization of milk received by each handler from producers whose milk is being marketed by such cooperative association. For the purpose of this report, the milk caused to be so delivered by a cooperative association shall be pro rated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

Class Prices

§ 1106.50 Class prices.

Subject to the provisions of § 1106.52, the class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I price.* The Class I price in Zone I shall be the basic formula price for the second preceding month plus $1.98.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic II formula price computed pursuant to § 1106.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1106.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1106.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1106.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1106.51a Basic class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1106.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1106.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii)) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c)(1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the

quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1106.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1106.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1106.50(a) shall be adjusted by the amount stated in paragraph (a)(1) through (9) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1106.2, the adjustent shall be as follows:

	Adjustment per hundredweight
Zone I	No adjustment.
Zone II	Plus 7 cents.
Zone III	Minus 10 cents.
Zone IV	Minus 33 cents.
Zone V	Minus 18 cents.
Zone VI	Minus 13 cents.

(2) For a plant located in any of the following Kansas counties, the adjustment shall be as follows:

(i) Minus 24 cents.

Anderson, Atchison, Brown, Chase, Clay, Cloud, Coffey, Dickinson, Donipham, Douglas, Franklin, Geary, Jackson, Jefferson, Johnson, Leavenworth, Linn, Lyon, Marshall, Miami, Morris, Nemaha, Osage, Ottawa, Pottawatomie, Republic, Riley, Saline, Shawnee, Wabaunsee, Washington, Wyandotte.

(ii) Minus 23 cents.

Elk, Greenwood, Woodson.

(iii) Minus 18 cents.

Cheyenne, Decature, Ellsworth, Graham, Jewell, Lincoln, Logan, Mitchell, Norton, Osborne, Phillips, Rawlins, Rooks, Sheridan, Sherman, Smith, Thomas, Wallace.

(3) For a plant located in any of the following Missouri counties, the adjustment shall be as follows:

(i) Minus 24 cents.

Adair, Andrew, Atchison, Audrain, Bates, Benton, Boone, Buchanan, Caldwell, Callaway, Camden, Carroll, Cass, Chariton, Clark, Clay, Clinton, Cole, Cooper, Daviess, DeKalb, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Jackson, Johnson, Knox, Lafayette, Lewis, Lincoln, Linn, Livingston, Macon, Marion, Mercer, Miller, Moniteau, Monroe, Montgomery, Morgan, Nodaway, Osage, Pettis, Pike, Platte, Putnam, Ralls, Randolph, Ray, Saline, Schuyler, Scotland, Shelby, Sullivan, St. Clair, Worth.

(ii) Minus 31 cents.

Bollinger, Cape Girardeau, Perry, St. Francois, Ste. Genevieve.

(iii) Minus 38 cents.

Barry, Butler, Carter, Cedar, Christian, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Franklin, Gasconade, Greene, Howell, Iron, Jefferson, Laclede, Lawrence, Madison, Maries, McDonald, Mississippi, New Madrid, Oregon, Ozark, Pemiscot, Phelps, Polk, Pulaski, Reynolds, Ripley, St. Charles, St. Louis, City of St. Louis, Scott, Shannon, Stoddard, Stone, Taney, Texas, Warren, Washington, Wayne, Webster, Wright.

(4) For a plant located in any of the following Louisiana parishes the adjustments shall be as follows:

(i) Plus 49 cents.

Beinville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Red River, Richland, Sabine, Tensas, Union, Webster, West Carroll, Winn.

(ii) Plus 68 cents.

Allen, Avoyelles, Beauregard, East Feliciana, Evangeline, Livingston, Rapides, St. Helena, St. Tammany, Tangipahoa, Vernon, Washington, West Feliciana.

(iii) Plus 87 cents.

Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, Terrebonne, Vermilion, West Baton Rouge.

(5) For a plant located in any of the following Texas counties the adjustment shall be as follows:

(i) Plus 22 cents.

Archer, Baylor, Clay, Hardeman, Montague, Wichita, Wilbarger.

(ii) Plus 25 cents.

Bowie and Cass.

(iii) Plus 27 cents.

Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

(iv) Plus 34 cents.

Camp, Collin, Cook, Dallas, Delta, Denton, Ellis, Fannin, Franklin, Grayson, Hill, Hood, Hopkins, Hunt, Johnson, Kaufman, Lamar, Morris, Parker, Rains, Red River, Rockwall, Somervell, Tarrant, Titus, Upshur, Van Zandt, Wise, Wood.

(v) Plus 37 cents.

El Paso.

(vi) Plus 40 cents.

Gregg, Harrison, Marion, Panola, Rusk, Smith.

(vii) Plus 44 cents.

Bailey, Castro, Cochran, Cottle, Crosby, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Terry Yoakum.

(viii) Plus 49 cents.

Anderson, Bell, Bosque, Cherokee, Comanche, Coryell, Erath, Falls, Freestone, Hamilton, Henderson, Lampasas, Limestone, McLennan, Mills, Navarro.

(ix) Plus 52 cents.

Angelina, Houston, Jasper, Leon, Nacogdoches, Newton, Polk, Sabine, San Augustine, Shelby, Trinity, Tyler.

(x) Plus 54 cents.

Brazos, Burleson, Grimes, Madison, Milam, Robertson, Walker.

(xi) Plus 59 cents.

Andrews, Borden, Brown, Callahan, Coke, Coleman, Dawson, Eastland, Ector, Fisher, Foard, Glasscock, Haskell, Howard, Jack, Jones, Kent, King, Knox, Martin, Midland, Mitchell, Nolan, Palo Pinto, Runnels, Scurry, Shackelford, Stephens, Sterling, Stonewall, Taylor, Throckmorton, Tom Green, Young.

(xii) Plus 64 cents.

Bastrop, Burnet, Lee, Travis, Williamson.

(xiii) Plus 70 cents.

Austin, Brazoria, Chambers, Colorado, Fayette, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, San Jacinto, Waller, Washington.

(xiv) Plus 76 cents.

Bexar, Caldwell, Comal, DeWitt, Gonzales, Guadalupe, Hays, Jackson, Lavaca, Matagorda, Wharton, Wilson.

(xv) Plus 87 cents.

Arkansas, Bee, Calhoun, Goliad, Karnes, Live Oak, Refugio, Victoria.

(xvi) Plus 100 cents.

Brooks, Duval, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio.

(xvii) Plus 109 cents.

Cameron, Hidalgo, Willacy.

(xviii) All other areas in the State of Texas not listed shall be plus 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is from the city hall in Oklahoma City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(6) For a plant located in any of the following New Mexico counties the adjustments shall be as follows:

(i) Plus 22 cents.

Chaves, Colfax, Curry, DeBaca, Eddy, Lea, Quay, Roosevelt, San Juan, Union.

(ii) Plus 37 cents.

Bernalillo, Catron, Dona Ana, Grant, Guadalupe, Harding, Hidalgo, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Rio Arriba, Sandoval, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Valencia.

(7) For a plant located in any of the following Colorado counties the adjustments shall be as follows:

(i) Plus 10 cents.

Baca, Bent, Cheyenne, Kiowa, Kit Carson, Lincoln, Logan, Phillips, Prowers, Sedgwick, Washington, Yuma.

(ii) Plus 22 cents.

Archuleta, La Plata, Montezuma.

(iii) Plus 32 cents.

Adams, Arapahoe, Boulder, Clear Creek, Crowley, Custer, Denver, Douglas, Elbert, El Paso, Gilpin, Huerfano, Jefferson, Larimer, Las Animas, Morgan, Otero, Park, Pueblo, Teller, Weld.

(iv) No adjustment.

Any Colorado county not specified in paragraph (a)(7) (i), (ii) or (iii) of this section.

(8) For a plant located in any of the following Arkansas counties the adjustments shall be as follows:

(i) Minus 21 cents.

Benton, Boone, Carroll, Marion, Washington.

(ii) Plus 25 cents.

Little River and Miller.

(iii) No adjustment.

Any Arkansas county not specified in paragraph (a)(8) (i) or (ii) of this section.

(9) For a plant located outside the areas described in paragraph (a)(1) through (8) of this section, the adjustment shall be minus 10 cents plus an additional reduction of 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the city halls in Tulsa or Ponca City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(b) For fluid milk products transferred in bulk from a pool plant to a pool distributing plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1106.44(a)(12) the pounds of skim milk in receipts of packaged fluid milk products from other pool plants;

(2) Multiply the remaining pounds of skim milk in Class I by 105 percent;

(3) Subtract the pounds of skim milk in receipts of milk at the transferee-plant from producers, handlers described in § 1106.9(c), and diverted milk from other pool plants;

(4) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor-plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(5) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(4) of this section to each transferor-plant at which the Class I price is lower than the Class I price at the transferee-plant by the difference in Class I prices applicable at the transferor-plant and transferee-plant, and add the resulting amounts;

(6) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(5) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1106.42(a) and at which the applicable Class I price is less than the Class I price at the transferee-plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable adjustment rate determined pursuant to paragraph (b)(5) of this section for such plant. If the aggregate of this computation for all plants having the same adjustment rate as determined pursuant to paragraph (b)(5) of this section exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

(7) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraph (b)(1) through (6) of this section.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1106.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the final Class II price and the Class III price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

§ 1106.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1106.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1106.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1106.9(c) that were classified in each class pursuant to §§ 1106.43(a) and 1106.44(c) by the applicable class prices; and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage substracted from each class pursuant to § 1106.44(a)(14) and the corresponding step of § 1106.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1106.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1106.44(a)(9) and the corresponding step of § 1106.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I

pursuant to § 1106§ 44(a)(7)(i) through (iv) and (vii) and the corresponding step of § 1106.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(7)(v) and (vi) and the corresponding step of § 1106.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(11) and the corresponding step § 1106.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment oligation under any order; and

(g) Subtract for a handler described in § 1106.9(c) the amount obtained from multiplying the Class III price for the preceding month by the hundredweight of skim milk and butterfat contained in inventory at the beginning of the month that was delivered to another handler's pool plant during the month.

§ 1106.61 Computation of uniform price.

The market administrator shall compute for each month the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1106.60 for all handlers who filed the reports prescribed in § 1106.30 for the month and who made the payments pursuant to § 1106.71 for the preceding month;

(b) Add not less than one-half of the unobligated balance in the producer-settlement fund;

(c) Add the aggregate of all minus location adjustments and subtract the aggregate of all plus location adjustments computed pursuant to § 1106.75;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1106.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "uniform price" for milk received from producers.

§ 1106.62 Announcement of uniform price and butterfat differential.

The market administrator shall annnounce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the applicable uniform price pursuant to § 1106.61 for such month.

Payments for Milk

§ 1106.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1106.71, 1106.76, and 1106.77, and from which he shall make all payments pursuant to §§ 1106.72 and 1106.77, except that payments to a cooperative association pursuant to § 1106.72 shall be offset by any payments due from such cooperative association pursuant to § 1106.71 that have not been received by the market administrator.

§ 1106.71 Payments to the producer-settlement fund.

(a) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 14th day after the end of the month the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1106.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1106.75, of such handler's receipts of producer milk and milk received from handlers pursuant to § 1106.9(c). In the case of a cooperative association which is a handler, less than the amount due from other handlers pursuant to § 1106.73(d), exclusive of differential butterfat values; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1106.60(f).

(b) Subject to paragraph (d) of this section, each person who operated a plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator on or before the 25th day after the end of each month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

(c) Any handler who the market administrator determines was more than 3 days late in making any payment obligation under Part 1106 shall pay to the market administrator the amount the handler would have otherwise been required to pay to producers and cooperative associations pursuant to § 1106.73. Payment shall be made to the market administrator on or before the day prior to the dates specified in § 1106.73 and such payments shall continue until the handler has met all payment obligations for 3 consecutive months.

(d) The following conditions shall apply with respect to payments prescribed in paragraphs (a), (b) and (c) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator.

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(3) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1106.73 (b) and (d).

§ 1106.72 Payments from the producer-settlement fund.

(a) On or before the 15th day after the end of each month the market administrator shall pay to each handler except one making payment pursuant to

§ 1106.71(c) the amount, if any, by which the amount computed pursuant to § 1106.71(a)(2) exceeds the amount computed pursuant to § 1106.71(a)(1).

(b) If the market administrator received payment from a handler(s) pursuant to § 1106.71(c), he shall distribute such amount plus any amount due such handler(s) pursuant to paragraph (a) of this section to producers and to cooperative associations in the same manner as provided in § 1106.73. In the event the handler fails to transmit the total amount due, the market administrator shall reduce uniformly the payments due to producers of such handler and complete such payments when the remaining amount is received.

(c) If at any time the balance in the producer-settlement fund is insufficient to make all payments pursuant to paragraph (a) of this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1106.73 Payments to producers and to cooperative associations.

(a) Except as provided in § 1106.71(c) and paragraphs (b), (d) and (f) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1)(i) On or before the last day of each month of March through July to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the previous month's Class III price multipied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by the producer, provided that the deductions do not exceed the value of the milk received during the partial payment period and the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(ii) On or before the last day of each month of August through February to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the previous month's Class III price plus $1.00, and further adjusted by the zone or location adjustment applicable at the receiving plant multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by the producer from whom the handler received milk, except that the amount deducted shall not exceed the value of the milk received during the partial payment period and provided that the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(2) On or before the 17th day of the following month, an amount equal to not less than the appropriate uniform price adjusted by the butterfat differential and location adjustments to producers multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1106.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iv) Less proper deductions authorized in writing by such producer, provided that the deductions do not exceed the value of the milk received during the final payment period and the handler has paid such deductions to assignees by the date payment is otherwise due to the producer: *Provided,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1106.72(a) for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) Except as provided in paragraph (f) of this section, in the case of a cooperative association which the market administrator determines is authorized by those producers for whom it markets milk to collect payment for their milk and which has so requested any handler in writing, such handler other than one specified in § 1106.71(c) shall on or before the 2nd day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from those producers from whom it markets milk as determined by the market administrator an amount equal to not less than the amount due such producers as determined pursuant to paragraph (a) of this section.

(c) In making payments to producers pursuant to paragraph (a) of this section, or to a cooperative association pursuant to paragraph (b) of this section, each handler shall furnish such producer or cooperative association with respect to each of the producers for whom it markets milk and from whom the handler received milk during the month, a written statement showing:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds, and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

(d) Except as provided in § 1106.71(c) and paragraph (f) of this section, each handler pursuant to § 1106.9(a) who receives milk from a cooperative association as a handler pursuant to § 1106.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before the 2nd day prior to the last day of the month for milk received during the first 15 days of the month, not less than the applicable partial payment rate specified for such month in paragraph (a)(1) of this section; and

(2) On or before the 15th day of the following month for milk received during the month, not less than the uniform price as adjusted pursuant to §§ 1106.74 and 1106.75 less any payments made pursuant to paragraph (a)(1) of this section.

(e) Except as provided in § 1106.71(c), each handler who received bulk fluid milk or bulk fluid cream products from a pool plant operated by a cooperative association shall pay the following amounts for such products to the cooperative association:

(1) On or before the 2nd day prior to the last day of each month, an amount determined by multiplying such receipts during the first 15 days of the month by the applicable partial payment rate specified for such month in paragraph (a)(1) of this section. If the handler so elects, such price may be adjusted by the butterfat differential specified in § 1106.74 for the preceding month.

(2) On or before the 15th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to

§ 1106.42(a) by the applicable class price, as adjusted by the butterfat differential specified in § 1106.74, less any payments made by the handler pursuant to paragraph (e)(1) of this section for such month. For the purpose of such computation, the applicable Class I price shall be the Class I price applicable at the transferee plant including the applicable administrative assessment rate.

(f) If the application of § 1106.71(d)(2) results in a delay in payment by the market administrator to handlers, the payments prescribed in paragraph (a), (b) and (d) of this section may be delayed by the same number of days.

(g) If the market administrator does not receive the full payment required of a handler pursuant to § 1106.71(c), he shall reduce uniformly per hundredweight the payments due producers and cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler.

§ 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 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1106.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments required pursuant to § 1106.73, the uniform price computed pursuant to § 1106.61 shall be adjusted by the amounts set forth in § 1106.52 according to the location of the plant where the milk being priced was received.

(b) For the purpose of computations pursuant to §§ 1106.71 and 1106.72, the uniform price shall be adjusted by the amount set forth in § 1106.52 that is applicable at the location of the nonpool plant from which the milk was received (except that the adjusted uniform price shall not be less than the Class III price).

§ 1106.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to § 1106.30(b) and § 1106.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and uniform price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1106.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1106.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), exept that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1106.60 for such handler shall include, in lieu of the value of other source milk specified in § 1106.60(f) less the value of such other source milk specified in § 1106.71(a)(2)(ii), a value of milk determined pursuant to § 1106.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1106.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1106.30(b) and 1106.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1106.60 for such nonpool

supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1106.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1106.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1106.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which results in monies due the market administrator from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which the error occurred. Any monies found to be due a handler from the market administrator shall be paid promptly to such handler, except that the market administrator shall offset any monies due a handler against monies due from such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required pursuant to § 1106.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1106.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1106.71, 1106.73, 1106.76, 1106.77, 1106.85, or 1106.86 shall be increased 1 percent beginning on the first day after the due date, and on the same day of each subsequent month until such obligation is paid, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

Administrative Assessment and Marketing Service Deduction

§ 1106.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1106.9(c) that were delivered to pool plants of other handlers or held in inventory at the end of the month;

(b) Receipts from a handler described in § 1106.9(c);

(c) Other source milk allocated to Class I pursuant to § 1106.44(a) (7) and (11) and the corresponding steps of § 1106.44(b), except such other source milk that is excluded from the computations pursuant to § 1106.60 (d) and (f);

(d) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat specified in § 1106.76(a)(2).

§ 1106.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 1106.73, shall deduct 7 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk of such producer (except a handler's own farm production) for whom the marketing services set forth in this paragraph are not being performed by a cooperative association as determined by the Secretary. Each handlier making such deductions shall pay the deductions to the market administrator on or before the 15th day after the end of the month. The monies shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide producers with market information. The services shall be performed by the market administrator or an agency engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 15th day after the end of each month, pay such deduction to the cooperative association rendering such services accompanied by a statement showing the quantity of milk for which such deduction was computed for each such produer.

PART 1126—MILK IN TEXAS MARKETING AREA

1. In § 1126.2, a new heading, Zone 1–A, and a listing of counties thereunder is added immediately following the counties listed under Zone 1 and prior to the heading Zone 2 to read as follows:

§ 1126.2 Texas marketing area.

* * * * *

Zone 1–A

Archer, Baylor, Clay, Hardeman, Montague, Wichita and Wilbarger.

* * * * *

2. In § 1126.52(a)(1), a new provision is added immediately following "Zone 1 . . . No Adjustment" to read as follows:

§ 1126.52 Plant location adjustments for handlers.

(a) * * *

(1) * * *

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 1–A	Minus 12 cents.

* * * * *

3. In § 1126.52(a)(2), all of the provisions contained in subdivision (iii) are removed.

PART 1132—MILK IN TEXAS PANHANDLE MARKETING AREA

Section 1132.2 is revised to read as follows:

§ 1132.2 Texas Panhandle marketing area.

"Texas Panhandle marketing area," hereinafter called the "marketing area," means all of the territory within the counties of Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Moore, Oldham, Ochiltree, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler, all in the State of Texas.

List of Subjects in 7 CFR Parts 1106, 1126, 1132

Milk Marketing Orders, Milk, Dairy Products.

Signed at Washington, D.C. on May 12, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-13428 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-02-M

federal register

Wednesday
May 19, 1982

Part III

Department of Commerce

Patent and Trademark Office

Reissue, Reexamination, Protest and Examination Procedures in Patent Cases

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

Reissue, Reexamination, Protest and Examination Procedures in Patent Cases

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office is amending the rules of practice in patent cases (1) to eliminate consideration of the so-called "no defect" reissue applications, (2) to limit the participation by protestors during the examination of patent applications, (3) to reject and permit appeal to the Board of Appeals for failure to comply with the duty of disclosure rather than striking applications without appeal rights, and (4) to clarify the interface between patent application examination and patent reexamination in certain areas. These changes are intended to (1) reduce the prosecution costs of patent applicants, and (2) permit some of the Patent and Trademark Office resources now devoted to consideration of the so-called "no defect" reissue applications, and to extensive participation by protestors during application examination, to be directed toward reduction of the backlog of pending patent applications. The changes are also intended to provide for review by the Board of Appeals of duty of disclosure issues which arise during patent application examination. The rule changes are further intended to clarify the interface between the duty of disclosure during patent application examination and the duty of disclosure during patent reexamination, as well as the treatment of concurrent reissue and reexamination proceedings on the same patent.

EFFECTIVE DATE: July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. R. Franklin Burnett by telephone at (703) 557–3054 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking was published in the **Federal Register** on November 10, 1981, at 46 FR 55666–55672 and in the Official Gazette on December 8, 1981, at 1013 O.G. 19–25. An oral hearing was held on February 4, 1982. Forty-two written letters and statements were submitted. Fourteen persons testified at the oral hearing which resulted in 113 pages of testimony. Consideration was also given to the comments presented at the oral hearing on April 16, 1981, relating to the proposed rules for implementing patent reexamination.

Objectives of Rule Change

The rule change is designed to adopt and implement suggestions from members of the public for changes in patent examination practice considered desirable in light of the implementation of statutory patent reexamination, contained in Public Law 96–517. Many of the persons who commented in writing and at the hearing held on April 16, 1981, on the proposed rules for implementing patent reexamination favored modification of patent examination rules as amended herein. This rule change is designed to implement the suggestions received and, in particular, to reduce the prosecution costs of patent applicants by limiting the amount of participation by protestors during the patent application examination process.

The rule change also seeks to reduce the amount of time required by the Patent and Trademark Office to examine protested applications by limiting protestor participation. The technical expertise of the Patent and Trademark Office will continue to be available to make determinations of patentability on the basis of prior art and related facts on an ex parte basis. However, the patent examiners in the Office are not trained as hearing examiners and have no substantial experience in handling inter partes matters. Under the rule change, protestor participation will be limited to the filing of papers in opposition to the grant of a patent with no Office communications to the protestor resulting therefrom beyond an acknowledgment of receipt of a protest or petition to strike in reissue applications. The opportunity to comment on Office actions and applicants' responses is eliminated. The rule change also intends to accomplish these purposes by eliminating the consideration of reissue applications not initially presented to correct defects pursuant to 35 U.S.C. 251.

The rule change is also designed to provide for review by the Board of Appeals of duty of disclosure issues which arise during patent application examination. This is accomplished by amending § 1.56(d) to provide that the claims in an application be rejected if upon examination pursuant to 35 U.S.C. 131 and 132 it is found that applicant is not "entitled to a patent under the law" because of fraud or a violation of the duty of disclosure. The rejection would be made under the same conditions and circumstances previously used to strike an application, i.e., "clear and convincing evidence" of fraud or any violation of the duty of disclosure through bad faith or gross negligence. The statute, 35 U.S.C. 131, provides for examination of an application "and if on such examination it appears that the applicant is entitled to a patent under the law, the Commissioner shall issue a patent * * *" Section 132 of Title 35, United States Code, makes provision for the rejection of a claim for a patent as a result of the examination directed by 35 U.S.C. 131. While questions of fraud and violations of the duty of disclosure have historically been dealt with by the Commissioner through the mechanism of striking the affected application, there is no statutory requirement that the Commissioner act in that manner. Clearly the Commissioner can choose how, and by whom, the examination directed by 35 U.S.C. 131 can be made. 35 U.S.C. 132 authorizes a rejection in those circumstances where applicant is not "entitled to a patent under the law." The rule change simply modifies the mechanism and procedures which the Commissioner will use where the applicant is not "entitled to a patent under the law" because of failures to comply with § 1.56(d).

The rule change is also designed to clarify the interface between patent application examination and patent reexamination in certain areas. The two areas involved are duty of disclosure and concurrent proceedings involving a patent under reexamination and for which a reissue application has been filed.

Sections 1.56, 1.106, 1.175, 1.193, 1.291, 1.555, 1.565, and 1.570 are amended to accomplish the purposes indicated above.

Discussion of Specific Rules

Access and Publication of Reissue Applications

The changes proposed in § 1.11 are not being adopted since only one of the twenty-two comments favored the changes.

The publication of notices of the filing of reissues and provisions for public access to reissues will therefore continue as at present. Such publication eliminates the need for interested members of the public to periodically monitor the patent files to determine if a reissue application has been filed.

Amendments to § 1.56

A large majority of the comments supported the amendments to § 1.56. A number of comments questioned the advisability of having relatively inexperienced or non-attorney examiners handle questions of fraud or violation of the duty of disclosure. In response thereto, the amendments to the rule do not require that such questions be handled by the examiner who examines the application for questions of obviousness, enablement, etc. The Office presently plans to have questions of possible fraud or violation of the duty of disclosure examined by examiners with legal training assigned to the Office of the Assistant Commissioner for Patents. Several comments suggested that the provisions for striking an application pursuant to existing paragraph (c) of § 1.56 are inconsistent with the rejection for fraud or violation of the duty of disclosure contemplated in the amendment to paragraph (d). In response thereto, it is pointed out that paragraph (c) of § 1.56 makes striking of the application discretionary with the Commissioner. It is thus more appropriate to retain this authority to strike the application in appropriate circumstances rather than to make it subject to a rejection. No inconsistency is seen between the different routes under paragraphs (c) and (d) of § 1.56. Several comments were received indicating concern about the possible delay of a decision by the Board of Appeals pending consideration of a fraud or duty of disclosure question. In response to these concerns, it is pointed out that less time overall will be required by having the Board of Appeals consider the matter once rather than in a series of separate decisions. Further, expense to the applicant will be minimized by one appeal rather than two. The amendments to § 1.56 are adopted as proposed except for some clarifying changes in paragraph (g).

Section 1.56 is amended by revising the title and paragraph (d), and by adding new paragraphs (e) through (i). The revision to the title and paragraph (d) provides for the rejection of claims upon examination pursuant to 35 U.S.C. 131 and 132 on the ground that applicant is not entitled to a patent under the law if it is established by clear and convincing evidence (1) that any fraud was practiced or attempted on the Office in connection with the application, or in connection with any previous application upon which the application relies, or (2) that there was any violation of the duty of disclosure through bad faith or gross negligence in connection with the application, or in connection with any previous application upon which the application relies. Under amended paragraph (d), any rejection which would be made would include all the claims in the application.

The standards to be used in rejecting the claims under paragraph (d) as amended, would be the same as those utilized by the Commissioner in striking applications pursuant to present paragraph (d), i.e., clear and convincing evidence of fraud or any violation of the duty of disclosure through bad faith or gross negligence. Consistent with present practice, the revision of paragraph (d) looks to fraud or a violation of the duty of disclosure through bad faith or gross negligence with relation to the application under consideration or any previous application upon which the application relies.

The phrase "in connection with the application" is construed in the same manner as in the present unamended paragraph (d). For purposes of this section, a reexamination proceeding on a patent would be considered as being "in connection with the application" insofar as consideration of any subsequent reissue application is concerned. The phrase also includes within its scope the mere refiling of the subject matter of an application in another application without relying in the second application upon the first application. Thus, an appropriate rejection upon examination pursuant to 35 U.S.C. 131 and 132 based on conduct or actions proscribed by § 1.56(d) could not be avoided merely by refiling the subject matter of the application in a second or subsequent application which did not rely upon the earlier application. The phrase "in connection with any previous application upon which the application relies" is intended to include all applications upon which the application under consideration relies, either directly or indirectly. For example, an application to reissue a patent obviously relies upon the application which resulted in the patent sought to be reissued. Likewise, continuation applications, continuation-in-part applications, and divisional applications also rely upon one or more parent applications.

New paragraph (e) of § 1.56 normally delays the examination of an application for compliance with paragraph (d) of § 1.56 until such time as (1) all other matters are resolved, or (2) appellant's reply brief pursuant to § 1.193(b) has been received and the application is otherwise ready for consideration by the Board of Appeals, at which time the appeal will be suspended for examination pursuant to paragraph (d) of this section. Present plans are to have this examination on the question of fraud or violation of the duty of disclosure conducted by examiners with legal training assigned to the Office of the Assistant Commissioner for Patents. Paragraph (e), as added, would thus permit the resolution of issues arising under § 1.56(d) to be delayed until consideration of such issues is necessary and appropriate. The practice under new paragraph (e) is generally consistent with present practice under paragraph (d) which normally delays the substantive resolution of fraud and duty of disclosure issues until other issues have been resolved in favor of applicant. Under new paragraph (e) an appeal would be suspended for examination pursuant to amended paragraph (d) of § 1.56 once appellant's reply brief pursuant to § 1.193(b) has been received and the application is otherwise ready for consideration by the Board of Appeals. If no questions of possible violation of § 1.56 are raised or evident on the record before the examiner, no examination for compliance with paragraph (d) of § 1.56 will be undertaken. New paragraph (e) provides for the reopening of prosecution of the application to the extent necessary to conduct the examination pursuant to amended paragraph (d) of § 1.56 including any appeal pursuant to § 1.191. New paragraph (e) also indicates that where an appeal has already been filed based on a rejection on other grounds, any further rejection under amended paragraph (d) will be treated in accordance with amended § 1.193(c).

New paragraph (f) continues the present long standing practice whereby any member of the public can file a petition to strike an application from the files pursuant to paragraph (c) of § 1.56. Such petitions are currently being filed without specific mention in § 1.56. Under revised § 1.56 petitions to strike an application for a violation of § 1.56 are limited to violations of paragraph (c), with any violations of paragraph (d) being subject matter for rejection under paragraph (d). New paragraph (f) requires that any such petition alleging a violation of paragraph (c) which is entered in the application file must: (1) Be timely filed, (2) specifically identify the application to which the petition is directed, and (3) be served on the applicant or be filed with the Office in duplicate in the event service is not possible. New paragraph (f) does not specifically limit a "timely petition" to

any particular point in the examination of the application. Such petitions will generally be considered "timely" if they are filed before final rejection or allowance of the application by the examiner. Whether or not a petition filed after final rejection or allowance of the application by the examiner is considered "timely" will depend upon the circumstances and the point in the prosecution at which the petition is submitted.

New paragraph (f) requires that the petition specifically identify the application to which the petition is directed. While an identification by application serial number is not essential, the identification must include enough specificity that the Office can determine with certainty the application to which the petition is directed. Paragraph (f) requires service of the petition on the applicant, or a duplicate copy in the event service is not possible, before the petition will be entered. While the Office might, in some circumstances, reproduce and serve a petition on the applicant, a member of the public would have no assurance that this would be done and, under paragraph (f), could not rely upon the Office doing so. Paragraph (f) also requires that any petition filed by an attorney or agent comply with § 1.346.

New paragraph (g) of § 1.56 assures a member of the public that a petition to strike an application for violation of paragraph (c) of § 1.56 which meets the requirements of paragraph (f) will be considered by the Office. Language has been added to conform to additional language in § 1.291(c). The Office will send petitioner an acknowledgment of the entry of a petition to strike in a reissue application file. However, the Office will not communicate with the member of the public filing such a petition in non-reissue applications, except for the return of any self-addressed postcard which was enclosed which merely acknowledges receipt of the petition. The member of the public filing the petition will not be permitted to contact the Office as to the disposition, or status, of the petition, or to participate in any Office proceedings relating to the petition. No further papers will be acknowledged or considered unless they raise new issues which could not have been earlier presented and thereby constitute a new proper petition. Mere arguments relating to the Office's decision on the petition or applicant's response to the petition would not qualify as a new proper petition. The disposition of the petition, once one has been filed, will, under paragraph (g), be an ex parte matter between the Office and the applicant. Paragraph (g) provides for communication by the Office with the applicant regarding a petition to strike the application which has been entered in the application file. Under new paragraph (g) the applicant could be required by the Office to respond to the petition. Any such response would be ex parte and would not be served on the member of the public filing the petition.

New paragraph (h) of § 1.56 provides that any member of the public may seek to have the claims in an application rejected pursuant to the amended paragraph (d) of § 1.56 by filing a timely protest in accordance with § 1.291. New paragraph (h) also requires that any such protest filed by an attorney or agent seeking a rejection of claims pursuant to amended paragraph (d) of § 1.56 must be in compliance with § 1.346. One comment suggested that the last sentence of paragraph (h) is redundant since § 1.346 applies without any specific mention. After careful consideration of the comment the sentence is being retained in order to emphasize and remind attorneys and agents of the obligations imposed by § 1.346.

New paragraph (i) provides for the Office requiring the applicant to supply information pursuant to paragraph (a) of § 1.56 in order for the Office to decide any issues relating to paragraphs (c) and (d) of § 1.56, whether or not such issues arise as a result of a petition or a protest, or arise from other sources, e.g., an examiner discovering the issue while studying the application file. Any requirements for information under new paragraph (i) will be ex parte in nature between the Office and the applicant. The ex parte nature of the requirements for information under new paragraph (i) differs from past practice under which information was required, or requested, from applicant and one or more petitioners or protestors in some cases.

Rejection of Claims

Five comments were submitted relating to new paragraph (c) of § 1.106. Two of the comments favored the paragraph as written and three recommended modification or clarification of the paragraph to ensure that it is not inconsistent with *In re Ruff et al.*, 45 CCPA 1037, 118 USPQ 340 (CCPA 1958), and subsequent decisions. No modification or clarification of the paragraph is considered necessary since the intent of the paragraph was not to change current practice, but was merely to emphasize the importance placed on admissions and to make § 1.106 more closely reflect current practice, which includes practice following *In re Ruff et al.*, and subsequent decisions. The amendments to § 1.106 are adopted as proposed.

Section 1.106 is amended to include a new paragraph (c) which emphasizes the importance placed on admissions by the applicant or the patent owner in a reexamination proceeding insofar as matters affecting patentability are concerned. Paragraph (c) includes a reference to the use of rejections based upon facts within the knowledge of the examiner as provided in § 1.107. Paragraph (c) does not constitute a change in practice, but does result in § 1.106 more closely reflecting current practice.

Reissue Oath or Declaration

Ten persons commented on § 1.175. Four comments were received in support of the proposed change. Three of these favorable comments were from patent law groups. Of the six comments received opposing the change, two were from patent law groups. Eleven comments received at the April 16, 1981, hearing on reexamination argued for retraction of the "Dann Amendments" which included § 1.175(a)(4). Four comments at the April 16, 1981, hearing favored retaining the "Dann Amendments". The arguments supporting the change were generally that paragraph (a)(4) was not necessary in view of the new reexamination procedure. The arguments opposing the deletion were generally that an inter partes practice before the Office is desirable from the standpoint of the judiciary and for a complete resolution of issues. After careful consideration of all of the arguments and the resources available in the Patent and Trademark Office, it is felt that the practice under paragraph (a)(4) of § 1.175 should be discontinued and paragraph (a)(4) should be cancelled.

The numbering of paragraphs (a) (5) and (6) is not being changed. Proposed paragraph 1.175(a)(6) is being adopted as new paragraph 1.175(a)(7). The proposed wording is otherwise being adopted without change.

Amended § 1.175 eliminates paragraph (a)(4). Under paragraph (a)(4), the Office gave advisory opinions on patentability over additional prior art without any changes in the patent claims. The courts have generally refused to give preclusive effect to these advisory opinions. See *PIC Inc.* v. *Prescon Corp.*, 485 F. Supp. 1302, 205 USPQ 228 (D. Del. 1980), and *Rohm and Haas Co.* v. *Mobil Oil Corp.*, 525 F. Supp. 1298, 212 USPQ 354 (D. Del. 1981). Accordingly, in view of the implementation of patent reexamination

pursuant to Pub. L. 96–517 it is appropriate to discontinue the advisory opinions provided pursuant to § 1.175(a)(4). Under amended § 1.175 an applicant for reissue of a patent will be required to file with the reissue application a statement under oath or declaration specifically averring a defect in the patent, e.g., "a defective specification or drawing," or an excess or insufficiency in the claims. Amended § 1.175 also requires, in paragraphs (a)(5) and (a)(6), that applicant specify "errors" as opposed to "what might be deemed to be errors." Amended § 1.175 effectively eliminates Office consideration of the merits of "no defect" reissue applications since any such "no defect" reissue applications filed after July 1, 1982, the effective date of the changes to § 1.175, will not be examined as to questions of patentability. In addition, § 1.175(a)(7) has been added to parallel the provisions in § 1.65 requiring the same acknowledgment of the duty of disclosure in the oath or declaration of reissue applications as in the case of non-reissue applications.

Delay in Examination of Resissue Applications

Six comments were received relative to the proposed changes in § 1.176. One comment supported, and five comments opposed, deleting the two month waiting period before action could be taken by an examiner in a reissue application. The opposing comments favored retaining the two month period to provide an opportunity for interested parties to submit information relating to the examination of a reissue application after notice of the filing thereof has been published in the Official Gazette. Since the notices under § 1.11 will continue to be published, no need is seen to change § 1.176. The proposed change is therefore not adopted.

Examiner's Answer

Only one comment was made relating to the proposed addition of paragraph (c) to § 1.193. It suggested including a minimum time period for response in the rule. This suggestion was not adopted because in some circumstances it may be appropriate to set a shorter or a longer period for the reply brief. The amendments to § 1.193 are adopted as proposed.

Paragraph (c) adds to § 1.193 a provision that any decision rejecting claims pursuant to § 1.56(d) in an application already on appeal from a rejection based on other grounds shall constitute a supplemental examiner's answer introducing a new ground of rejection and removing the suspension of the appeal introduced pursuant to § 1.56(e). Prior to entering any such supplemental examiner's answer under paragraph (c), the Office may require information from applicant pursuant to paragraph (i) of § 1.56. Under paragraph (c) of § 1.193, the appellant may file a reply to the supplemental examiner's answer. Paragraph (c) provides that the appellant's reply to the supplemental examiner's answer will be considered and responded to as necessary with appellant being provided with an additional month, or such other time as may be set, within which to reply to any such response from the Office. After introduction of a supplemental examiner's answer pursuant to paragraph (c) and any replies and response thereto, the application will be forwarded to the Board of Appeals for consideration.

Protests by the Public Against Pending Applications

Fifteen persons commented on the proposed amendment of § 1.291. Two persons suggested that protests be acknowledged by more than the return of a self-addressed postcard. The suggestion has been adopted to the extent of providing for an acknowledgment of the entry of a protest in a reissue application file to be sent to the member of the public filing the protest. The suggestion has not been adopted insofar as original applications are concerned since these applications are generally required to be kept in confidence under 35 U.S.C. 122. Further, the use of return postcards is an established method of receiving acknowledgment from the Office that a paper has been filed. By merely returning the postcard to a protestor in an application for an original patent and directing Office initiated communications solely to applicant, the amount of Office resources required will be minimized.

Several persons commented that the protest proceeding should be more inter partes. The weight of the comments received at the hearings held on April 16, 1981, and February 4, 1982, and in writing, favored ex parte proceedings. To ensure that the proceedings are essentially ex parte, a sentence is being added to paragraph (c) of § 1.291, indicating that active participation by a member of the public ends with the filing of the protest. To retain the inter partes nature of the protest would be contrary to the majority of the comments received and to one of the major purposes of the rule change, i.e., to reduce the amount of time spent by the Office in examining protested applications. The amendments to paragraphs (a) and (b) of § 1.291 are adopted as proposed and paragraph (c) is being revised as indicated above.

Amended § 1.291 continues to permit protests by the public against pending original and reissue applications. The protest may include any grounds which the member of the public filing the protest believes to be applicable.

Amended paragraph (a) of § 1.291 provides for entry of a protest in the application file if the protest specifically identifies the application, is timely submitted, and is either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate, in the event service is not possible. The comments made above in the discussion of new paragraph (f) of § 1.56 regarding the timeliness of the filing or submission, specific identification of the application, and service on the applicant, are also applicable to the amendments of paragraph (a) of § 1.291. The requirement that the Office acknowledge the filing of a protest is deleted from paragraph (a), but is covered in paragraph (c).

New paragraph (b) of § 1.291 assures members of the public that a protest will be considered by the Office if (1) it specifically identifies the application to which it is directed; (2) it is timely submitted; (3) it is properly served upon the applicant in accordance with § 1.248, or is filed with the Office in duplicate in the event service is not possible; (4) it includes a listing of the patents, publications or other information relied upon and a concise explanation of the relevance of each listed item; (5) it includes a copy of each listed patent or publication or other item of information in written form, or at least the pertinent portions thereof; and (6) it includes an English language translation of all the necessary and pertinent parts of any non-English language document relied upon. It is considered desirable that §1.291 advise members of the public as to the contents which should be included in any protest since there will be no Office communications directed to the member of the public submitting the protest under paragraph (c). Thus, under paragraph (c) members of the public will not be given an opportunity to complete any protest which is incomplete. Amended paragraph (c) provides for the acknowledgment of the entry of a protest in a reissue application file.

Amended paragraph (c) of § 1.291 provides that a member of the public filing a protest in an application for an original patent will not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard acknowledging

receipt of the protest. Amended paragraph (c) of § 1.291 does not permit the member of the public filing the protest, or any other member of the public, to contact the Office as to the disposition, or status, of the protest or to participate in any Office proceedings relating to the protest. The disposition of the protest, once it has been filed will, under paragraph (c), be an ex parte matter between the Office and the applicant. However, applications which are open to the public may be inspected pursuant to § 1.11.

Amended paragraph (c) provides for the Office to communicate with the applicant regarding any protest entered in the application file. Under paragraph (c), the applicant could be required by the Office to respond to the protest. Any response would be ex parte and would not be served on the member of the public filing the protest. Paragraph (c) provides for the Office to require applicant to supply information pursuant to paragraph (a) of § 1.56 in order for the Office to decide any issues raised by the protest. Requirements for information under paragraph (c) will be ex parte in nature between the Office and the applicant. The ex parte nature of the requirements for information under paragraph (c) differs from past practice under which information could be required, or requested, from applicant and one or more protestors. Under amended paragraph (c), the active participation of the protestor ends with the filing of the protest and no further submission on behalf of the protestor will be acknowledged or considered unless such submission raises new issues which could not have been earlier presented, and thereby constitutes a new protest. Mere arguments relating to an Office action or an applicant's response would not qualify as a new protest.

Duty of Disclosure in Reexamination Proceedings

Only two comments were received relative to proposed § 1.555. One comment argued that the Office should never ignore a violation of the duty of disclosure or leave it hanging. In response thereto, neither the statute nor the presently existing reexamination rules provide for reexamination on grounds other than those based on patents or printed publications. The second comment questioned whether a patent owner has a duty to cite new prior art after a request but prior to an order to reexamine. No further clarification of the section is necessary since § 1.555(a) specifies when the patent owner should file a prior art statement in a reexamination proceeding. The amendments to § 1.555 are adopted as proposed.

Amended § 1.555 makes the duty of disclosure in reexamination proceedings more consistent with the duty of disclosure in patent applications. Paragraph (a) of § 1.555 specifes that a duty of candor and good faith toward the Patent and Trademark Office rests on the patent owner or involved employees of the patent owner, on each attorney or agent who represents the patent owner, and on every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. This rule is consistent with the duty set forth in § 1.56(a) insofar as patent applications are concerned, except that in paragraph (a) of § 1.555 the patent owner is specified rather than the inventor as set forth in paragraph (a) of § 1.56. This does not, however, impose the responsibility for compliance with the duty of disclosure on a corporate entity or organization but leaves the responsibility with involved individuals in the corporation or other organization. Paragraph (a) of § 1.555 places a requirement on the individuals identified to bring to the attention of the Office patents or printed publications material to the reexamination which have not been previously made of record in the patent file and specifies how that should be accomplished.

Amended paragraph (b) of § 1.555 essentially parallels existing paragraph (b) of § 1.56 and makes similar provisions applicable to disclosures in reexamination proceedings.

Amended paragraph (c) of § 1.555 provides that the duties of candor, good faith, and disclosure required in paragraph (a) of § 1.555 have not been complied with if any fraud was practiced or attempted on the Office or there was any violation of the duty of disclosure through bad faith or gross negligence by, or on behalf of, the patent owner in the reexamination proceeding. The language of paragraph (c) refers to fraud or violation of the duty of disclosure in the reexamination proceeding since such conduct during the pendency of applications is covered by § 1.56.

Amended paragraph (d) of § 1.555 affirms that the responsibility for compliance with § 1.555 rests upon the individuals identified in paragraph (a). Paragraph (d) also provides that no evaluation will be made in the reexamination proceeding by the Office as to compliance with § 1.555. Paragraph (d) of § 1.555 also provides that questions of compliance with § 1.555 which are discovered during a reexamination proceeding will be noted as unresolved questions in accordance with present § 1.552(c). Paragraph (d) will not preclude the patent owner from filing a reissue application to have questions of candor, good faith, and duty of disclosure considered and resolved, including such questions which arise during a reexamination proceeding, so long as the requirements of 35 U.S.C. 251 have been met. Paragraph (d) does not preclude suspension or disbarment proceedings under present § 1.348 based upon conduct during a reexamination proceeding.

Concurrent Office Proceedings

Four comments were received on § 1.565. One comment proposed adding a sentence at the end of paragraph (b) of § 1.565 reflecting that reexamination would only be stayed in extraordinary situations. This suggestion has not been adopted since it is considered inappropriate to attempt to further define by rule the circumstances under which a stay of the reexamination may be appropriate. Two comments were received raising questions as to the treatment, during a merged reissue and reexamination proceeding, of broader claims which are present therein because of a reissue application which contained broadened claims. No clarification or change is necessary since the broadened claims are properly in the merged proceeding during the period it is merged. Such broader claims which are present in both the reissue and reexamination files during the pendency of the merged proceeding will be treated in accordance with the reissue statute and case law during the pendency of the merged proceeding. If the merged proceeding ceases to exist because of the abandonment of the reissue application, the claims in the reexamination file, including any broadened claims, will be examined in accordance with the reexamination statute and rules. Finally, one comment did not agree with merging reissue and reexamination proceedings because the merger is not seen to produce cost savings or other salutary results. One of the reasons for the merged proceedings is to ensure that claims of differing scope and inconsistent responses are not presented at the same time in different proceedings in the same patent. Moreover, since the proceedings are concurrent rather than sequential, a significant savings in resources and overall pendency time may be realized by merging in many cases.

The amendment to § 1.565 clarifies the proposed language of paragraph (b),

eliminates from paragraph (b) the last two sentences relating to the treatment of concurrent reexamination and reissue proceedings, and adds a new paragraph (d) relating to this subject. The clarification in paragraph (b) is intended to avoid misinterpretations relating to stay determinations where concurrent litigation or reissue applications are involved.

Under new paragraph (d), which is consistent with the practice presently in effect under paragraph (b), if a reissue application and a reexamination proceeding on which an order pursuant to present § 1.525 has been mailed are pending concurrently on a patent, a decision will normally be made to merge the two proceedings or to stay one of the proceedings. New paragraph (d) also provides that where merger of a reissue application and a reexamination proceeding is ordered, the merged examination will be conducted in accordance with present §§ 1.171–1.179. The examiner, in examining the merged proceeding, will apply the reissue statute and case law, in addition to applicable provisions of §§ 1.171–1.179, to the merged proceeding. This is appropriate in view of the fact that the statutory provisions for reissue applications and reissue application examination include, *inter alia*, provisions equivalent to 35 U.S.C. 305 relating to the conduct of reexamination proceedings. New paragraph (d) of § 1.565 makes clear that the patent owner must place and maintain the same claims in the reissue application and the reexamination proceeding during the pendency of the merged proceeding. Under new paragraph (d) of § 1.565 the examiner's actions and any responses by the patent owner in a merged proceeding will apply to both the reissue application and the reexamination proceeding and will be physically entered into both files. New paragraph (d) also provides that any reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissued patent. The amendments to § 1.565 are adopted with the changes for clarification indicated in paragraph (b).

Reexamination Certificate

Section 1.570, as amended, revises paragraph (e) to refer to new paragraph (d) of § 1.565 rather than paragraph (b) in order to reflect the changes in § 1.565.

No comments were received concerning the section and it is adopted without change.

Interim Procedures on Applications Pending on Effective Date

On July 1, 1982, the revised procedures of §§ 1.56(d) and 1.193(c) will apply to any applications then pending which have not been the subject of a final Office decision on questions of fraud or violation of the duty of disclosure. Any petition to strike an application from the files or any protest against a pending application filed prior to July 1, 1982, will be governed by the rules in effect prior to that date. Any applications filed under § 1.175(a)(4) prior to July 1, 1982, will be examined until the application is amended and a reissue patent issues thereon or the application becomes abandoned. For a discussion of the interim practice in effect prior to July 1, 1982, see 1013 O.G. 18–19.

Environmental, energy, and other considerations: The rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354).

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Lawyers.

Amendment of Regulations

PART 1—RULES OF PRACTICE IN PATENT CASES

For the reasons indicated above and pursuant to the authority given to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, Part 1 of Title 37, Code of Federal Regulations is amended as set forth below.

1. Section 1.56 is amended by revising the heading and paragraph (d) and by adding new paragraphs (e) through (i) to read as follows:

§ 1.56 Duty of disclosure; fraud; striking or rejection of applications.

* * * * *

(d) No patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or gross negligence. The claims in an application shall be rejected if upon examination pursuant to 35 U.S.C. 131 and 132, it is established by clear and convincing evidence (1) that any fraud was practiced or attempted on the Office in connection with the application, or in connection with any previous application upon which the application relies, or (2) that there was any violation of the duty of disclosure through bad faith or gross negligence in connection with the application, or in connection with any previous application upon which the application relies.

(e) The examination of an application for compliance with paragraph (d) of this section will normally be delayed until such time as (1) all other matters are resolved, or (2) appellant's reply brief pursuant to § 1.193(b) has been received and the application is otherwise prepared for consideration by the Board of Appeals, at which time the appeal will be suspended for examination pursuant to paragraph (d) of this section. The prosecution of the application will be reopened to the extent necessary to conduct the examination pursuant to paragraph (d) of this section including any appeal pursuant to § 1.191. If an appeal has already been filed based on a rejection on other grounds, any further rejection under this section shall be treated in accordance with § 1.193(c).

(f) Any member of the public may seek to have an application stricken from the files pursuant to paragraph (c) of this section by filing a timely petition to strike the application from the files. Any such timely petition and any accompanying papers will be entered in the application file if the petition and accompanying papers (1) specifically identify the application to which the petition is directed, and (2) are either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible. Any such petition filed by an attorney or agent must be in compliance with § 1.346.

(g) A petition to strike an application from the files submitted in accordance with the second sentence of paragraph (f) of this section will be considered by the Office. An acknowledgement of the entry of such a petition in a reissue application file will be sent to the member of the public filing the petition. A member of the public filing such a petition in an application for an original patent will not receive any communications from the Office relating to the petition, other than the return of a self-addressed postcard which the member of the public may include with the petition in order to receive an acknowledgement by the Office that the petition has been received. The Office will communicate with the applicant regarding any such petition entered in the application file and may require the

applicant to respond to the Office on matters raised by the petition. The active participation of the member of the public filing a petition pursuant to paragraph (f) of this section ends with the filing of the petition and no further submission on behalf of the petitioner will be acknowledged or considered unless such submission raises new issues which could not have been earlier presented, and thereby constitutes a new petition.

(h) Any member of the public may seek to have the claims in an application rejected pursuant to paragraph (d) of this section by filing a timely protest in accordance with § 1.291. Any such protest filed by an attorney or agent must be in compliance with § 1.346.

(i) The Office may require applicant to supply information pursuant to paragraph (a) of this section in order for the Office to decide any issues relating to paragraphs (c) and (d) of this section which are raised by a petition or a protest, or are otherwise discovered by the Office.

2. Section 1.106 is amended by adding a new paragraph (c) to read as follows:

§ 1.106 Rejection of claims.

* * * * *

(c) In rejecting claims the examiner may rely upon admissions by the applicant, or the patent owner in a reexamination proceeding, as to any matter affecting patentability and, insofar as rejections in applications are concerned, may also rely upon facts within his or her knowledge pursuant to § 1.107.

3. Section 1.175 is amended by revising paragraph (a) to read as follows:

§ 1.175 Reissue oath or declaration.

(a) Applicants for reissue, in addition to complying with the requirements of the first sentence of § 1.65, must also file with their applications a statement under oath or declaration as follows:

(1) When the applicant verily believes the original patent to be wholly or partly inoperative or invalid, stating such belief and the reasons why.

(2) When it is claimed that such patent is so inoperative or invalid "by reason of a defective specification or drawing," particularly specifying such defects.

(3) When it is claimed that such patent is inoperative or invalid "by reason of the patentee claiming more or less than he had the right to claim in the patent," distinctly specifying the excess or insufficiency in the claims.

(4) [Reserved]

(5) Particularly specifying the errors relied upon, and how they arose or occurred.

(6) Stating that said errors arose "without any deceptive intention" on the part of the applicant.

(7) Acknowledging a duty to disclose information applicant is aware of which is material to the examination of the application.

* * * * *

4. Section 1.193 is amended by adding a paragraph (c) to read as follows:

§ 1.193 Examiner's answer.

* * * * *

(c) Any decision pursuant to § 1.56(d) rejecting claims in an application already under appeal of a rejection based on other grounds shall constitute a supplemental examiner's answer introducing a new ground of rejection and removing the suspension of the appeal introduced pursuant to § 1.56(e), in which case appellant may file a reply thereto within two months from the date of the supplemental examiner's answer. Such reply will be considered and responded to as necessary. Appellant may file a reply brief directed to any such response within one month of the date of the response or within such other time as may be set in the response.

5. Section 1.291 is amended by revising the title, amending paragraphs (a) and (c), and adding paragraph (b), to read as follows:

§ 1.291 Protests by the public against pending applications.

(a) Protests by a member of the public against pending applications will be referred to the examiner having charge of the subject matter involved. A protest specifically identifying the application to which the protest is directed will be entered in the application file if (1) the protest is timely submitted; and (2) the protest is either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible.

(b) A protest submitted in accordance with the second sentence of paragraph (a) of this section will be considered by the Office if it includes (1) a listing of the patents, publications or other information relied upon; (2) a concise explanation of the relevance of each listed item; (3) a copy of each listed patent or publication or other item of information in written form or at least the pertinent portions thereof; and (4) an English language translation of all the necessary and pertinent parts of any non-English language patent, publication, or other item of information in written form relied upon.

(c) An acknowledgment of the entry of a protest under paragraph (a) of this section in a reissue application file will be sent to the member of the public filing the protest. A member of the public filing a protest under paragraph (a) of this section in an application for an original patent will not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard which the member of the public may include with the protest in order to receive an acknowledgment by the Office that the protest has been received. The Office will communicate with the applicant regarding any protest entered in the application file and may require the applicant to supply information pursuant to paragraph (a) of § 1.56, including responses to specific questions raised by the protest, in order for the Office to decide any issues raised by the protest. The active participation of the member of the public filing a protest pursuant to paragraph (a) of this section ends with the filing of the protest and no further submission on behalf of the protestor will be acknowledged or considered unless such submission raises new issues which could not have been earlier presented, and thereby constitutes a new protest.

6. Section 1.555 is revised to read as follows:

§ 1.555 Duty of disclosure in reexamination proceedings.

(a) A duty of candor and good faith toward the Patent and Trademark Office rests on the patent owner, on each attorney or agent who represents the patent owner, and on every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. All such individuals who are aware, or become aware, of patents or printed publications material to the reexamination which have not been previously made of record in the patent file must bring such patents or printed publications to the attention of the Office. A prior art statement, preferably in accordance with § 1.98, should be filed within two months of the date of the order for reexamination, or as soon thereafter as possible in order to bring such patents or printed publications to the attention of the Office.

(b) Disclosures pursuant to this section may be made to the Office through an attorney or agent having responsibility on behalf of the patent owner for the reexamination proceeding or through a patent owner acting in his or her own behalf. Disclosure to such an attorney, agent or patent owner shall

satisfy the duty of any other individual. Such an attorney, agent or patent owner has no duty to transmit information which is not material to the reexamination.

(c) The duties of candor, good faith, and disclosure required in paragraph (a) of this section have not been complied with if any fraud was practiced or attempted on the Office or there was any violation of the duty of disclosure through bad faith or gross negligence by, or on behalf of, the patent owner in the reexamination proceeding.

(d) The responsibility for compliance with this section rests upon the individuals identified in paragraph (a) of this section and no evaluation will be made in the reexamination proceeding by the Office as to compliance with this section. If questions of compliance with this section are discovered during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.552(c).

7. Section 1.565 is amended by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 1.565 Concurrent office proceedings.

* * * * *

(b) If a patent in the process of reexamination is or becomes involved in interference proceedings or litigation, or a reissue application for the patent is filed or pending, the Commissioner shall determine whether or not to stay the reexamination, reissue or interference proceeding.

* * * * *

(d) If a reissue application and a reexamination proceeding on which an order pursuant to § 1.525 has been mailed are pending concurrently on a patent, a decision will normally be made to merge the two proceedings or to stay one of the two proceedings. Where merger of a reissue application and a reexamination proceeding is ordered, the merged examination will be conducted in accordance with §§ 1.171–1.179 and the patent owner will be required to place and maintain the same claims in the reissue application and the reexamination proceeding during the pendency of the merged proceeding. The examiner's actions and any responses by the patent owner in a merged proceeding will apply to both the reissue application and the reexamination proceeding and be physically entered into both files. Any reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissued patent.

8. Section 1.570 is amended by revising paragraph (e) to read as follows:

§ 1.570 Issuance of reexamination certificate after reexamination proceedings.

* * * * *

(e) If the reexamination proceeding is terminated by the grant of a reissued patent as provided in § 1.565(d) the reissued patent will constitute the reexamination certificate required by this section and 35 U.S.C. 307.

* * * * *

Dated: April 6, 1982.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

[FR Doc. 82-13613 Filed 5-18-82; 8:45 am]

BILLING CODE 3510-16-M

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Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

S. 2244 / Pub. L. 97–176 Northern Pacific Halibut Act of 1982. (May 17, 1982; 96 Stat. 78) Price: $1.75.