AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

10-7-82
Vol. 47 No. 195
Pages 44223-44536

federal register

Thursday
October 7, 1982

Selected Subjects

Administrative Practice and Procedure
Postal Rate Commission

Air Pollution Control
Environmental Protection Agency

Aliens
Immigration and Naturalization Service

Aviation Safety
Federal Aviation Administration

Bridges
Coast Guard

Buses
Interstate Commerce Commission

Credit Unions
National Credit Union Administration

Energy Conservation
Federal Trade Commission

Excise Taxes
Internal Revenue Service

Fisheries
National Oceanic and Atmospheric Administration

Freedom of Information
National Capital Planning Commission

Hazardous Materials Transportation
Research and Special Programs Administration, Transportation Department

Income Taxes
Internal Revenue Service

CONTINUED INSIDE

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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The **Federal Register** will be furnished by mail to subscribers, free of postage, for $300.00 per year, or $150.00 for six months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to 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

Marine Safety
Coast Guard

Marketing Agreements
Agricultural Marketing Service

Milk Marketing Orders
Agricultural Marketing Service

Organization and Functions (Government Agencies)
Interstate Commerce Commission
Justice Department

Pipeline Safety
Research and Special Programs Administration, Transportation Department

Privacy
Justice Department

Savings and Loan Associations
Federal Home Loan Bank Board

Securities
Federal Reserve System

Seizure and Forfeiture
Immigration and Naturalization Service

Uniform System of Accounts
Interstate Commerce Commission

Contents

Federal Register
Vol. 47, No. 195
Thursday, October 7, 1982

The President
PROCLAMATIONS
44225 Goddard Day, Dr. Robert H. (Proc. 4982)
44223 School Bus Safety Week, National (Proc. 4981)
44227 World Food Day (Proc. 4983)

Executive Agencies

Agricultural Marketing Service
RULES
44231 Filberts/hazelnuts grown in Oreg. and Wash.; interim
Milk marketing orders:
44232 Iowa
PROPOSED RULES
Milk marketing orders:
44268 Oklahoma Metropolitan et al.

Agriculture Department
See Agricultural Marketing Service; Foreign Agricultural Service; Forest Service.

Army Department
See also Engineers Corps.
NOTICES
44379 Privacy Act; systems of records

Arts and Humanities, National Foundation
NOTICES
Meetings:
44447 Humanities Advisory Panel

Civil Aeronautics Board
NOTICES
44462 Meetings; Sunshine Act

Coast Guard
RULES
Drawbridge operations:
44258 Massachusetts (2 documents)
Regattas and marine parades; safety of life:
44257 Head of Connecticut River Regatta
PROPOSED RULES
Drawbridge operations:
44347 New Jersey
44346 Washington
NOTICES
Meetings:
44455 Houston/Galveston Navigation Safety Advisory Committee

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration.

Commodity Futures Trading Commission
NOTICES
44462 Meetings; Sunshine Act

Consumer Product Safety Commission
NOTICES
44365 Privacy Act; systems of records; annual publication

Defense Department
See also Army Department; Defense Intelligence Agency; Defense Logistics Agency; Engineers Corps; Navy Department.
NOTICES
44382 Privacy Act; systems of records

Defense Intelligence Agency
RULES
44257 Privacy Act; implementation

Defense Logistics Agency
NOTICES
44379 Agency forms submitted to OMB for review

Economic Regulatory Administration
NOTICES
Electric energy transmission; exports to Canada or Mexico; authorizations, permits, etc.:
44386 Comision Federal de Electricidad
44386, 44387 Minnesota Power & Light Co. (2 documents)

Education Department
NOTICES
Grant applications and proposals; closing dates:
44384 Postsecondary Education Improvement Fund; Mina Shaughnessy Scholars Programs

Energy Department
See Economic Regulatory Administration; Energy Information Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration.

Energy Information Administration
NOTICES
44388 Agency forms submitted to OMB for review
Meetings:
44388 American Statistical Association Committee on Energy Statistics

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
44376 Akutan and Unalaska Islands, Alaska; proposed harbors
44378 Atka, Alaska; proposed harbor
44377 False Pass, Alaska; proposed channel improvements
44378 King Cove, Alaska; proposed harbor
44377 Yakutat, Alaska; proposed harbor

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
44261 Oregon
44259 Pennsylvania
44260 Texas

Air quality planning purposes; designation of areas:
44263 Connecticut
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
44350 Calibration revisions; standardized dry gas meter
44354 Nitrogen oxide emissions determination; ion chromatographic method
NOTICES
Toxic and hazardous substances control:
44425, 44426 Confidential information and data transfer to contractors (2 documents)

Federal Aviation Administration
RULES
44246 Aircraft maintenance; operations review program; correction
Airworthiness directives:
44243 Mitsubishi
44244 Transition areas
44245 VOR Federal airways
PROPOSED RULES
Aircraft products and parts, certification:
44341 Lear Fan Model 2100 airplane; special conditions; extension of time
44342 Control zones
44342 Transition areas
NOTICES
Meetings:
44456 Aeronautics Radio Technical Commission

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
44405 Arizona Public Service Co.
44406 Atlantic Bancorporation
44406 Boyd, James O.
44406 Central Power & Light Co.
44406 Colorado Interstate Gas Co.
44407 Columbia Gas Transmission Corp.
44407, 44408 Commercial Pipeline Co., Inc. (2 documents)
44408 Commonwealth Edison Co.
44408 Connecticut Municipal Electric Energy Cooperative
44408 Consolidated Gas Supply Corp. et al.
44408 Consolidated Hydroelectric, Inc.
44408 Cornell Heavy Oil Process, Inc.
44409 Gas Research Institute
44408 Gasdel Pipeline System Inc.
44410 Great Lakes Gas Transmission Co.
44414, 44415 Homestake Consulting & Investments, Inc. (7 documents)
44415 Interstate Power Co.
44416 Iowa Power & Light Co.
44416 Mississippi Power & Light Co.
44417 Mississippi Power Co.
44417 Monsanto Oil Co.
44423 New England Power Co.
44418 Northern Natural Gas Co.
44418 Northern States Power Co.
44419 Pacific Gas & Electric Co.
44420 Pacific Power & Light Co.
44420 Pennsylvania Electric Co.
44421 Public Service Co. of New Mexico
44421 Tennessee Natural Gas Lines, Inc.
44422 Vermont Electric Power Co., Inc.
44422 Washington Water Power Co.
44422 Wisconsin Electric Power Co.
44403 Income tax normalization; compliance with Accelerated Cost Recovery System (ACRs) provisions; policy statement
Natural gas companies:
44389 Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend (Gulf Oil Corp. et al.)
Natural Gas Policy Act:
44391, 44397 Jurisdictional agency determinations (2 documents)

Federal Highway Administration
NOTICES
Environmental statements; availability, etc.:
44456 Pulaski County, Ark.

Federal Home Loan Bank Board
PROPOSED RULES
Federal Savings and Loan Insurance Corporation:
44334 Industry conflicts of interest; loans to one borrower, limitations
Federal savings and loan system:
44333 Branch office approval; elimination of review for undue injury
NOTICES
44462 Meetings; Sunshine Act (2 documents)

Federal Housing Commissioner—Office of Assistant Secretary for Housing
RULES
44247 Minimum property standards, mortgage and loan insurance programs, low income housing, etc.; deferral of effective dates

Federal Maritime Commission
NOTICES
44426–44427 Agreements filed, etc. (3 documents)
Freight forwarder licenses:
44427 Bosco Services Freight Forwarding Co.

Federal Mine Safety and Health Review Commission
NOTICES
44462 Meetings; Sunshine Act

Federal Reserve System
RULES
44241 OTC margin stocks; list (Regulations G, T, and U)
NOTICES
Applications, etc.:
44428 Huntley Bancshares, Inc., et al.
44429 PNC Financial Corp.; correction
44428 Security Bancshares Inc.
Bank holding companies; proposed de novo nonbank activities:
44428 Barclays Bank PLC et al.
44429 Hospital Trust Corp. et al.
Banks and investment companies:
44429 Sweep arrangements; petition to prohibit; hearing

Federal Trade Commission
RULES
Appliances, consumer; energy cost and consumption information in labeling and advertising:
44246 Room air conditioners; comparability ranges

NOTICES
Premerger notification waiting periods; early terminations:
44432 Weatherford International Inc., et al.

Foreign Agricultural Service
NOTICES
44361 Privacy Act; systems of records

Forest Service
NOTICES
Meetings:
44362 Los Padres National Forest Grazing Advisory Board
44362 Sawtooth National Forest Grazing Advisory Board Committee

Health and Human Services Department
See Human Development Services Office; Public Health Service.

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
44424 Cases filed

Housing and Urban Development Department
See also Federal Housing Commissioner—Office of Assistant Secretary for Housing.
RULES
Low income housing:
Deferral of effective dates (Editorial Note: For a document on this subject, see entry under Federal Housing Commissioner—Office of Assistant Secretary for Housing)

Human Development Services Office
NOTICES
44474 Discretionary grants administration manual; revisions; inquiry

Immigration and Naturalization Service
RULES
Aliens:
44239 Expired reentry permits
44239 Unlawful transportation; seizure and forfeiture of vehicles, vessels, and aircraft; final rule
44233 Aliens and nationality; efficiency of service; remedial and technical changes; final rule

Interior Department
See Land Management Bureau; National Park Service; Reclamation Bureau.

Internal Revenue Service
RULES
Excise and income taxes:
44247 Foundations, pensions, etc.
PROPOSED RULES
Income taxes:
44343 Group-term life insurance; individual selection
44345 Life-nonlife consolidated returns; hearing

International Trade Administration
NOTICES
Antidumping:
44362 Carbon steel wire rod from Venezuela
Scientific articles, duty free entry:
44364 Interior Department

International Trade Commission
NOTICES
44462 Meetings; Sunshine Act

Interstate Commerce Commission
RULES
Organization, functions, and authority delegations:
44516 Finance Board; termination, end transfer of functions to Review Boards
PROPOSED RULES
Accounts, uniform system:
44359 Depreciation policy, disclosure; withdrawn
Bus Regulatory Reform Act; implementation:
44517 Bus carrier rates and fares; procedures for complaints
44518 Securities regulations; elimination and modification
NOTICES
Bus Regulatory Reform Act; implementation:
44521 Motor carriers and subsidiaries, holding companies; removal of extraordinary financial conditions
Motor carriers:
44443, 44445 Finance applications (2 documents)
44445, 44446 Permanent authority applications (2 documents)
Rail carriers:
44442 State intrastate rail rate authority; State certification sub-numbers list
Rail carriers; contract tariff exemptions:
44442 Southern Railway Co. et al.
Rerouting of traffic:
44442 St. Louis Southwestern Railway Co. et al.

Justice Department
See also Immigration and Naturalization Service.
RULES
Organization, functions, and authority delegations.
44254 Tax Division; compromise, settle and close civil claims
44255, 44256 Privacy Act; implementation (2 documents)

Land Management Bureau
NOTICES
Alaska native claims selection; applications, etc.:
44437 Kotlik Yupik Corp.
44436 Lower Kalskag, Inc.; correction
Classification of public lands:
44434, 44435 Arizona (2 documents)
Closure of public lands:
44438 New Mexico
Conveyance of public lands:
44440 Montana
Environmental statements; availability, etc.:
44439 Divide and Medicine Bow Resource Areas, Rawlins District, Wyo.; management framework plan
44440 Oil and gas leasing and development; Alaska National Petroleum Reserve
Exchange of public lands for private land:
44439 Montana
Management framework plans, review and supplement, etc.:
44438 Arizona

Meetings:
44437 Bakersfield District Grazing Advisory Board
44438 California Desert District Multiple Use Advisory Council
44436 Kingman Resource Area Grazing Advisory Board
44436 Phoenix/Lower Gila Resource Areas Grazing Advisory Board
Opening of public lands:
44436 California
Realty action:
44440 Montana
Withdrawal and reservation of lands, proposed, etc.:
44438 Idaho

Management and Budget Office
NOTICES
44524 Budget rescissions and deferrals

National Capital Planning Commission
RULES
44229 Freedom of Information Act; implementation
NOTICES
Senior Executive Service:
44447 Bonus awards schedule

National Credit Union Administration
RULES
Federal credit unions:
44242 Insurance and group purchasing activities; restrictions removed
PROPOSED RULES
Federal credit unions:
44340 Unsecured loans; liens upon member's shares and dividends; interpretation and policy statement

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
44266 Atlantic squid; foreign fishing
44264 Foreign fishing; joint venture processing capacity and total allowable level of foreign fishing, publication as notice announcements
44267 Stone crab; correction
NOTICES
Meetings:
44364 Mid-Atlantic Fishery Management Council

National Park Service
NOTICES
Boundary establishment, descriptions, etc.:
44441 Coronado National Memorial and Coronado National Forest; land transfer
Meetings:
44441 Women's Rights Advisory Commission
Mining plans of operations; availability, etc.:
44441 Death Valley National Monument, Calif.

National Science Foundation
NOTICES
44448 Commercial and industrial firms, involvement with NSF-supported research facilities; proposed policy statement; inquiry

National Transportation Safety Board
NOTICES
44450 Accident reports, safety recommendations, and responses, etc.; availability

Navy Department
NOTICES
44381 Privacy Act; systems of records

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
44453 Armed forces Radiobiology Research Institute
44454 Duke Power Co.
44454 Sacramento Municipal Utility District
44462 Meetings; Sunshine Act

Postal Rate Commission
PROPOSED RULES
Practice and procedure rules:
44348 Recommended rate classification decisions; advance notice

Public Health Service
NOTICES
44432 Privacy Act; systems of records

Reclamation Bureau
PROPOSED RULES
44356 Acreage limitation; hearing

Research and Special Programs Administration, Transportation Department
RULES
Hazardous materials:
44466 United Nations shipping descriptions, use of; optional hazardous materials table; amendments
Pipeline safety:
44263 National Fire Protection Association; address change
PROPOSED RULES
Hazardous materials:
44356 Radioactive materials; radiation level limits for exclusive-use shipments
NOTICES
Meetings:
44456 Surface Transportation Users Conference on Radionavigation

Small Business Administration
NOTICES
Applications, etc.:
44455 Sam Woong Investment Co.
44455 United Financial Resources
Small business investment companies:
44454 Maximum annual cost of money to small business concerns; Federal Financing Bank rate

Textile Agreements Implementation Committee
NOTICES
44365 Textile consultations with Maldives Republic; review of trade in women's, girls', and infants' wool sweaters

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration; Research and Special Programs Administration, Transportation Department; Urban Mass Transportation Administration.
NOTICES
Meetings:
44456 Minority Business Resource Center Advisory Committee

Treasury Department
See also Internal Revenue Service.
NOTICES
44459 Agency forms submitted to OMB for review
Organization, functions, and authority delegations:
44459 Internal Revenue Commissioner; telecommunications service and rates proceedings before West Virginia Public Service Commission et al.

Urban Mass Transportation Administration
NOTICES
44457 Bus specifications, elimination of advanced design

Western Area Power Administration
NOTICES
Power rate adjustments:
44425 Central Valley Project

CFR PARTS AFFECTED IN THIS ISSUE

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

1 CFR
456 ... 44229

3 CFR
Proclamations:
4981 ... 44223
4982 ... 44225
4983 ... 44227

7 CFR
982 ... 44231
1079 ... 44232
Proposed Rules:
1071 ... 44268
1073 ... 44268
1104 ... 44268
1106 ... 44268
1126 ... 44268
1132 ... 44268

8 CFR
204 ... 44233
212 ... 44233
214 ... 44233
223 (2 documents) ... 44233, 44239
237 ... 44233
242 ... 44233
245 ... 44233
248 ... 44233
249 ... 44233
265 ... 44233
274 ... 44239

12 CFR
207 ... 44241
220 ... 44241
221 ... 44241
721 ... 44242
Proposed Rules:
545 ... 44333
556 ... 44333
561 ... 44334
563 ... 44334
701 ... 44340

14 CFR
39 ... 44243
71 (2 documents) ... 44244, 44245
91 ... 44246
Proposed Rules:
21 ... 44341
23 ... 44341
71 (2 documents) ... 44342

16 CFR
305 ... 44246

24 CFR
200 ... 44247
203 ... 44247
204 ... 44247
213 ... 44247
215 ... 44247
220 ... 44247
221 ... 44247
222 ... 44247
226 ... 44247
227 ... 44247
233 ... 44247
235 ... 44247
236 ... 44247
237 ... 44247
240 ... 44247
425 ... 44247
426 ... 44247
804 ... 44247
805 ... 44247
812 ... 44247
841 ... 44247

26 CFR
1 ... 44247
53 ... 44247
54 ... 44247
301 ... 44247
Proposed Rules:
1 (2 documents) ... 44343, 44345

28 CFR
0 ... 44254
16 (2 documents) ... 44255, 44256

32 CFR
292a ... 44257

33 CFR
100 ... 44257
117 (2 documents) ... 44258
Proposed Rules:
117 (2 documents) ... 44346, 44347

39 CFR
Proposed Rules:
3001 ... 44348

40 CFR
52 (3 documents) ... 44259–44261
81 (2 documents) ... 44261, 44263
Proposed Rules:
60 (2 documents) ... 44350, 44354

43 CFR
Proposed Rules:
426 ... 44356

49 CFR
171 ... 44466
172 ... 44466
176 ... 44466
178 ... 44466
192 ... 44263
193 ... 44263
1011 ... 44516
1100 ... 44516
Proposed Rules:
173 ... 44356
1100 ... 44517
1113 ... 44518
1114 ... 44518
1115 ... 44518
1206 ... 44359
1207 ... 44359

50 CFR
611 (2 documents) ... 44264, 44266
654 ... 44267

Federal Register
Vol. 47, No. 195
Thursday, October 7, 1982

Presidential Documents

Title 3—

The President

Proclamation 4981 of October 5, 1982

National Schoolbus Safety Week of 1982

By the President of the United States of America

A Proclamation

Schoolbus transportation serves a very special and important segment of this Nation—our children. More than twenty-two million youngsters use schoolbuses to get to school.

When we consider the millions of young people who are transported and the millions of trips schoolbuses make each year, we can take great pride in our safety record. Nevertheless, we must reaffirm our commitment to providing the safest possible transportation for our children. They are our most important resource, and their safe transport is and deserves to be one of our highest priorities.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, in accordance with House Joint Resolution 486, do hereby proclaim the week of October 3, 1982, through October 9, 1982, as National Schoolbus Safety Week of 1982. I call upon the people of the United States to observe this day with appropriate activities in their homes, schools, and communities.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of Oct., in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 82-27827
Filed 10-6-82; 11:25 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 4982 of October 5, 1982

Dr. Robert H. Goddard Day

By the President of the United States of America

A Proclamation

Robert H. Goddard, born one hundred years ago, is the father of the Space Age. Due to his pioneering vision of space travel and his tireless research efforts in developing the world's first liquid-fuel rocket, the United States has achieved a preeminent position in space. Dr. Goddard was a trailblazer to the stars.

Dr. Goddard was born on October 5, 1882, in Worcester, Massachusetts. He was a student and later a member of the faculty at Clark University for 29 years. The Smithsonian Institution first gave him a small grant to assist his research, and the Guggenheim family and Foundation subsequently became his strong financial backers. Dr. Goddard was the first to explore the practicality of using rocket power to reach high altitudes.

During his lifetime, Dr. Goddard was often ignored or ridiculed for his imagination, including the concept of a rocket going to the moon. Yet he was not deterred. And today, he is universally recognized as the world's foremost pioneer in space rocketry and in predicting man's role in space.

Rewards and recognition came posthumously to Dr. Goddard. On September 16, 1959, Congress authorized a gold medal in his honor. A major space science laboratory, NASA's Goddard Space Flight Center, was also established in 1959. One hundred years after his birth, it is appropriate to commemorate, with gratitude, Dr. Robert Goddard's brilliant contributions in laying the foundation for America's entry into the Space Age.

As a mark of respect to this great Space Pioneer, the father of modern rocketry, the Congress of the United States by House Joint Resolution 568 has proclaimed October 5, 1982, as "Dr. Robert H. Goddard Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim that Tuesday, October 5, 1982, is Dr. Robert H. Goddard Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings that day.

I also invite the people of the United States to honor the memory of Dr. Goddard on that day by holding appropriate exercises and ceremonies in suitable places throughout the land.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th. day of Oct, in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 82-27828
Filed 10-6-82; 11:26 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 4983 of October 5, 1982

World Food Day, 1982

By the President of the United States of America

A Proclamation

Food is basic to life. Achieving and maintaining an adequate, reliable food supply is a high priority for every nation.

From the first, the United States has supported the principle that a strong nation requires a strong agricultural foundation. Out of our westward pioneer movement emerged a sound system of agriculture firmly based on the concepts of private enterprise and the primacy of the independent family farm. The result has been a food production system well able to feed our own population while meeting the needs of others throughout the world.

Not all nations are blessed with America's agricultural endowments, nor have many nations adopted the incentives that are critical to fueling such a successful agriculture. The Food and Agriculture Organization of the United Nations estimates that as many as 400 to 500 million people suffer from poverty-induced malnutrition, particularly in the Third World.

The people of the United States have long been committed to sharing this country's agricultural bounty and technology with other nations in times of need. We have provided more than $30 billion in food aid, plus an additional $10 billion for shipping costs, since the "Food-for-Peace" program was initiated 28 years ago. We have also made available thousands of agricultural experts, a diversity of training programs, and benefits of our intensive agricultural research. The United States is also doing its part to improve world food security by maintaining high levels of production and reserve stocks and by making agricultural products available in the world market so that other countries can meet their food requirements.

We have not been alone in focusing attention on the problems of hunger in the world. More than 100 countries participated in observing the first World Food Day last year. We particularly salute the Food and Agriculture Organization which, on World Food Day this year, celebrates 37 years of dedication to the elimination of hunger and malnutrition.

Let us continue our mutual efforts to define the causes of world food problems and vigorously pursue their solutions. Toward that end, the Congress of the United States has again responded with a Joint Resolution designating Oct., 16, 1982, as World Food Day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 16, 1982, "World Food Day" and do call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of Oct., in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 82-27829
Filed 10-6-82; 11:27 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 47, No. 195
Thursday, October 7, 1982

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.

NATIONAL CAPITAL PLANNING COMMISSION

1 CFR Part 456

Freedom of Information Act Regulations

AGENCY: National Capital Planning Commission.

ACTION: Final rule.

SUMMARY: The Commission's Freedom of Information Act Regulations were last published in the **Federal Register** on May 16, 1975 (40 FR 21544) in the Notices section. At its meeting on September 2, 1982, the Commission adopted amendments to its regulations to increase the Commission's fees for the production of materials, institute search fees, and establish a minimum fee, and to reflect the current Commission staff organization, official agency hours, and staff member principally responsible for FOIA matters. Since the Commission's FOIA regulations have not previously been published as regulations in the Code of Federal Regulations, the entire text of the regulations, including the amendments discussed above, are published below.

EFFECTIVE DATE: October 7, 1982.

FOR FURTHER INFORMATION CONTACT: Edward H. Rickels, Records Management Officer, National Capital Planning Commission, Room 1007, 1325 G Street, NW., Washington, D.C. 20576, telephone (202) 724–0209.

SUPPLEMENTARY INFORMATION: The proposed rules were published for comment in the **Federal Register** on July 15, 1982 (47 FR 30790). No comments were received. However, on August 23, 1982, the Commission's staff was reorganized. As a result, the new organization is listed in § 456.2(b) of the regulations and the title "Office of Public Affairs" has been changed to the "Public Affairs Officer" whenever it appears in the regulations.

List of Subjects in 1 CFR Part 456

Freedom of information, Administrative practice and procedure (Government agencies).

Part 456 is added to 1 CFR to read as follows:

PART 456—FREEDOM OF INFORMATION ACT REGULATIONS

Sec.
456.1 Introduction.
456.2 Organization.
456.3 Public access to information.

Authority: 5 U.S.C. 552.

§ 456.1 Introduction.

The following regulations implement the Freedom of Information Act, as amended, 5 U.S.C. 552 (hereinafter the "Act"), and provide procedures by which information may be obtained from the National Capital Planning Commission (hereinafter the "Commission"). Official records made available pursuant to the Act shall be furnished to members of the public as prescribed herein.

§ 456.2 Organization.

The Commission is the central planning agency for the Federal Government in the National Capital. The Commission is composed of ex-officio, the Secretary of the Interior, the Secretary of Defense, the Administrator of the General Services Administration, the Mayor of the District of Columbia, the Chairman of the Council of the District of Columbia, and the Chairman of the Committees on the District of Columbia of the Senate and the House of Representatives, or their alternates; and five citizens, three of whom are appointed by the President, and two of whom are appointed by the Mayor of the District of Columbia. The Commission is assisted by a staff headed by an Executive Director. The staff is organized functionally as follows:

(a) Office of the Executive Director;
(b) Legal and Secretariat Services Section;
(c) Management Services Section;
(d) Planning and Programming Division;
(e) Review and Implementation Division; and
(f) Planning Services Division.

§ 456.3 Public access to information.

(a) *General policy.* It is the Commission's general policy to facilitate the broadest possible availability and dissemination of information to the public. The Commission's staff is available to assist the public in obtaining information formally by using the procedures herein or informally by discussions with the staff. The Commission's staff may, therefore, continue to furnish informally to the public information, which, prior to the amendments to the Act contained in Public Law 93–502, enacted November 21, 1974, was customarily furnished in the regular performance of their duties, provided the staff do so in a manner not inconsistent with these regulations. In addition, to the extent permitted by other laws, the Commission will make available records which it is authorized to withhold under the Act when it determines that such disclosure is in the public interest.

(b) *Established place of obtaining information.* Information may be obtained only from the Commission's offices, which are located at 1325 G Street, NW., Washington, D.C. 20576. Its official hours are 8:00 a.m. to 6:00 p.m., Monday through Friday, excluding legal holidays.

(c) *Information sources within the Commission.* Requests for Commission publications, offered for sale or informal requests for general information on the Commission should be directed to the Public Affairs Officer. All formal requests for agency records pursuant to the Act must be directed to the Commission's Records Management Officer.

Any request directed initially to the wrong information source will be correctly routed by the Commission's staff and the requesting party will be so notified. The ten-day time period within which the Commission is required to determine whether to comply with a request shall not begin to run until the request reaches, or with the exercise of due diligence should have reached, the appropriate information source.

(d) *Information routinely available.* The following types of information shall be routinely available (subject to the fee schedule, infra) for public dissemination without recourse to the Commission's formal information request procedures

unless such information falls within one of the exemptions to agency disclosure listed in 5 U.S.C. 552(b):

(1) Correspondence between the Commission and the public;

(2) Executive Director's Recommendations;

(3) Committee Reports;

(4) Commission Memorandums of Actions; and

(5) Maps.

Requests for information, other than maps, shall be directed to the Commission's Records Management Officer; map requests shall be directed to the Public Affairs Officer.

(e) *Formal requests for information.* All formal requests for information pursuant to the Act shall be made in writing to the Commission's Records Management Officer. To expedite internal handling of such requests, the words "Freedom of Information Request" shall appear on the face of the envelope bearing such request. The request shall state that the request is made pursuant to the Freedom of Information Act; shall reasonably describe the information sought, including the date the Commission received or produced the requested information, if known; shall state, pursuant to the fee schedule set forth infra, the maximum fee the party making the request would be willing to pay for the duplication of the requested records without further approval; and shall, if possible, provide a telephone number at which the requesting party can be contacted to facilitate handling of the request.

(f) *Commission response to formal requests.* The Commission's Records Management Officer, upon request for information made in compliance with these regulations, shall determine within ten days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor and of the right of such person to appeal to the head of the agency any adverse determination. In unusual circumstances as specified infra, the ten-day time limit may be extended by written notice to the person making the request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from establishments that are separate from the Commission's offices;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(g) *Determination to grant request.* If the Commission's Records Management Officer makes a determination to grant a request in whole or in part, the person making such request will be so notified in writing. The notice shall also include a description of the information to be made available, a statement of the time when and the place where such information may be inspected or alternatively, the procedure for duplication and delivery (by mail or other means) of the information to the requesting party and a statement of the total fees chargeable to the requesting person pursuant to the fee schedule infra.

(h) *Determination to deny request-appeal procedure.* If the Commission's Records Management Officer makes a determination to deny, in whole or in part, a request for information, he shall so notify the party making the request in writing. Any appeal of such determination shall be made in writing to the Chairman of the Commission and shall include a brief statement of the legal, factual, or other basis for the party's objection to the initial decision. The Chairman shall, within twenty days (excepting Saturdays, Sundays, and legal holidays) of the receipt of any such appeal determine whether to grant or deny the appeal and shall, immediately upon making his decision, give written notice of the decision to the party, including a brief statement of the reasons therefor.

(i) *Waiver.* Whenever a waiver of any of the procedures set forth herein would further the purpose of the Act by causing the public disclosure of non-confidential information within the time period required by the Act, the Commission's Records Management Officer may, in the context of individual requests for information, waive any of the procedural requirements herein.

(j) *Schedule of fees.* (1) The Commission may charge the following fees for the production of information pursuant to the Act:

(i) Publications offered for sale—as marked.

(ii) Commission reports—$0.25/page.

(iii) Committee reports—$0.25/page.

(iv) Commission Memorandums of Actions—$0.25/page.

(v) Transcripts of Commission meetings and Committee meetings—$0.25/page.

(vi) Other records—$0.25/page.

(vii) Maps—microfilm printout—$1.00/each; ozalid maps—$0.30/linear foot.

(viii) Manual record research: $2.25 per quarter hour if conducted by a clerical employee; $5.00 per quarter hour if conducted by a professional or managerial employee.

(2) The Commission keeps on file a limited quantity of back copies of Executive Director's Recommendations, Committee Reports, and Commission Memorandums of Actions. The Commission will first attempt to fill specific requests for these documents from its supply of back copies and until the supply is exhausted, the Commission will provide the documents at no charge. Once the supply is exhausted, the requested documents will be provided in accord with the fee schedule.

(3) The minimum fee for the production of information will be $2.00. The Commission's Records Management Officer may waive fees when less than $2.00 or when it is in the public interest to do so. Such a waiver will be in the public interest, for example, when in the determination of the Commission the request will not impose an undue burden or expense upon it and the request is: (i) From another Government organization, Federal, State or local; (ii) for the purpose of obtaining information primarily for the benefit of the general public rather than for the primary benefit of the requester, as will be the case with certain requests from news media and from organizations engaged in a nonprofit activity designed for public safety, health, welfare, or education; (iii) from employees and former employees seeking information from their own personnel records; (iv) from or on behalf of the defending party in connection with a proceeding against such party by the Federal Government; and (v) from a low-income person and the fee would impose a financial hardship.

(k) *Prior approval or advance deposit of fees.* (1) Where the fees anticipated to result from a request are substantially greater than the amount estimated in the written request, the persons requesting the information shall be immediately

notified of the estimated fees and his approval of such fees requested. Such person shall also be afforded the opportunity to revise his or her request to reduce the fees but satisfy his or her needs for information.

(2) The Commission's Records Management Officer may require that the person requesting information make an advance deposit of the estimated fees.

(3) The dispatch of any such request for an estimated fee approval or advance deposit shall suspend, until a reply is received by the Commission's Records Management Officer, the period pursuant to 5 U.S.C., 552 and paragraph (f) supra within which the Records Management Officer must respond to a written request for information.

(l) *Payment of fees.* Fees charged a person for the production of information must be paid in full prior to release of the information. In the event that the person is in arrears for previous requests to the Commission for information, no information will be provided for any subsequent requests until the arrears have been paid in full. Payment of fees shall be made by a personal check, postal money order or bank draft on a bank in the United States, made payable to the order of the Treasurer of the United States.

Daniel H. Shear,

Secretary to the Commission.

September 30, 1982.

[FR Doc. 82-27572 Filed 10-6-82; 8:45 am]

BILLING CODE 7520-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

Handling of Filberts/Hazelnuts Grown in Oregon and Washington; Suspension of Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final action will suspend on an interim basis the formula prescribed under the Filbert/Hazelnut marketing order for computing inshell trade demand, so that a trade demand in excess of that derived from the formula can be established for the 1982–83 season. Furthermore, the formula is inflexible in that it does not provide for certain adjustments in the data used in computing the inshell trade demand and, when applied over a period of time, could result in serious distortions in that computed quantity. This action was recommended by the Filbert/Hazelnut Marketing Board which is established under the marketing order to work with the USDA in administering the program. This suspension will continue until a new formula is made effective.

EFFECTIVE DATE: October 7, 1982.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5697.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified a "nonmajor" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated nine handlers.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking and that good cause exists for not postponing the effective time of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This action involves the formula for computing filbert inshell trade demand for a marketing year; (2) this action permits the Filbert/Hazelnut Marketing Board to estimate and recommend establishment of a larger trade demand figure than would result from application of that formula to meet anticipated domestic inshell market needs; (3) the interim final suspension herein provided should become effective promptly so the Board's estimated and recommended inshell trade demand for the 1982–83 marketing year can be established promptly; (4) it is necessary that the trade demand be established promptly because it will be used in connection with the implementation of volume regulations for the 1982–83 marketing year and handlers need to know what trade demand quantity will apply for that year so they can plan their operations accordingly; (5) prompt action also is needed so the preliminary computed free percentage, which will release no less than 70 percent of any established trade demand quantity, can be computed as soon as practicable; and (6) in view of the foregoing, giving preliminary notice and engaging in public rulemaking, and postponing the effective time of this action will not serve any useful purpose.

Section 982.40(b) of the marketing agreement and Order No. 982, as amended (7 CFR Part 982), regulating the handling of Filberts/Hazelnuts grown in Oregon and Washington, prescribes that prior to August of a marketing year, the Board shall recommend establishment of an inshell trade demand for that year to the Secretary. The marketing agreement and order are collectively referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The second sentence of § 982.40(b) requires the inshell trade demand to be equal to the average of the trade acquisitions of inshell filberts during the preceding three years. The third sentence of that paragraph states that if the trade acquisitions during any one or all of those years was abnormally low because of crop conditions, the Board may use a prior year or years in determining the three-year average.

The domestic inshell trade demand computed in accordance with that formula totals 4,293 tons whereas the Board believes that a trade demand of 5,500 tons is necessary to promote orderly marketing conditions and provide for market growth during the 1982–83 marketing year. The formula is inflexible and will not permit the Board to recommend a trade demand for inshell filberts that will adequately meet anticipated marketing needs for the 1982–83 season. Moreover, the formula fails to take into account and make adjustments for inshell filberts unshipped at the end of a season and carried over into the following season. Over a period of time, this failure could lead to serious distortion in the computed trade demand quantity and restrict, rather than provide for market growth.

In view of the foregoing, it is hereby found that the second and third sentences of § 982.40(b) obstruct the establishment of a meaningful trade demand figure and section 8c(6)(A) of the act (7 U.S.C. 608(c)(6)(A)) and thus do not now tend to effectuate the declared policy of the act and should be suspended on an interim final basis. The Board already has initiated action by assigning the problem to its Amendment Committee. The Committee has been instructed to review the current problem and develop an alternative formula.

§ 982.40 [Amended]

Therefore, the second and third sentences of § 982.40(b) are hereby suspended until a new formula is put

into effect. These sentences read as follows:

* * * * *

(6) * * *

The inshell trade demand shall equal the average of the trade acquisitions of inshell filberts during the preceding three years. If the trade acquisitions during any one or all of those years was abnormally low because of crop conditions, the Board may use a prior year or years in determining the three-year average. * * *

List of Subjects in 7 CFR Part 982

Marketing agreement and order, Filberts, Hazelnuts, Oregon, and Washington.

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

Dated: October 4, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-27683 Filed 10-6-82; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1079

Milk in the Iowa Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends the limit on how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the Iowa milk order. The action was requested by a cooperative association to accommodate the efficient and orderly disposition of reserve milk supplies that are available to the market. The suspension is for the months of October and November 1982.

EFFECTIVE DATE: October 7, 1982.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C., 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued September 7, 1982; published September 13, 1982 (47 FR 40181).

It has been determined that this action is not a major rule under the criteria set forth in Executive Order 12291.

Also, it has been determined that the need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register.** However, this would not permit the completion of the procedure in time to give interested parties timely notice that the limitation on the amount of milk that may be moved directly from producer farms to nonpool manufacturing plants for October 1982 would be modified. The initial request for the action was received on August 26, 1982. A notice of proposed suspension was issued on September 7, 1982, inviting interested parties to comment on the proposed action by September 20, 1982.

It has been determined that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to assure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

Notice of proposed rulemaking was published in the **Federal Register** (47 FR 40181) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment was received in favor of the proposed suspension and none were received in opposition.

After considering all relevant material, including the proposal in the aforesaid notice, the comment filed and other available information, it is hereby found and determined that for each of the months of October and November 1982 the following provisions of the order do not tend to effectuate the declared policy of the Act:

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

Statement of Consideration

This action makes inoperative for October and November 1982 cetain provisions limiting the amount of producer milk that a cooperative association or other handlers may divert from farms directly to nonpool manufacturing plants. The present order provides that a cooperative association may divert up to 50 percent of its total member milk delivered to all pool plants or diverted from them during the months of September through November and up to 70 percent all other months. Similarly, the operator of a pool plant may divert during the months of September through November up to 50 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) and up to 70 percent during all other months. The suspension would increase the diversion limitation for the months of October and November 1982 from 50 percent to 70 percent for cooperative associations and operators of pool plants.

Land O' Lakes, Inc., a cooperative association of producers, requested the suspension of the 50 percent limitation on diversions for October and November 1982. The cooperative stated that large supplies of milk in relation to Class I sales in the coming months will require more diversions of milk from farms to manufacturing plants than can be accommodated by the order without the suspension. The cooperative said that the suspension of the 50 percent requirement and the retention of the 70 percent diversion limitation would still require the receipt of 30 percent of all milk supplies at pool plants, assuring the availability of milk for fluid use. The cooperative stated that the suspension of the 50 percent diversion limitation would allow for a more efficient means of handling the reserve supplies of milk in the Iowa market.

Interested parties were given an opportunity to submit written data, views and arguments concerning the proposed suspension. The only comment received was from Land O' Lakes which supported the action on the basis that it would facilitate the orderly and economic disposition to nonpool manufacturing plants of an increasing supply of milk above fluid requirements. The proponent stated that the suspension would allow an additional 3 million pounds of milk to move directly from farms of its members to nonpool manufacturing facilities.

Reserve milk supplies within a market normally decline during the fall months. However, current marketing information indicates that this year reserve milk supplies for the Iowa market are likely to exceed the quantity of milk that could be diverted to nonpool manufacturing plants under the present diversion limitation and still maintain producer status for all such milk. Data for the first seven months of 1982 show that although producer milk receipts for the market was about 4 percent lower than for the same months last year the

pounds of pooled Class I milk were down nearly 8 percent from a year ago. The decline in Class I milk was due to certain handlers shifting their Class I sales from plants pooled under the Iowa order to plants regulated under other nearby orders. Thus, the quantity of producer milk needed at pool plants for Class I use during this October and November will be less than it was one year ago and a greater quantity of milk will have to be diverted to nonpool manufacturing plants. Without the suspension of the 50 percent limitation on the amount of milk that can be moved directly from farms to manufacturing plants, uneconomic movements of milk would be made solely for the purpose of pooling the milk of dairy farmers who have regularly been associated with the Iowa market.

The purposes of the suspension are to insure that those producers who have been regularly supplying the Iowa market continue to share in the higher-valued fluid sales of the regulated market and to promote the efficient and orderly marketing of milk in the Iowa market. It is concluded that the supply-demand conditions in the market warrant a suspension of the 50 percent diversion limitation for the months of October and November 1982.

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

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area. Otherwise uneconomic movements of milk would be made solely for the purpose of pooling the milk of dairy farmers who have regularly been associated with the Iowa market;

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

(c) This suspension order is the only practical means to alleviate a current marketing problem; and

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

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

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the months of October and November 1982.

Effective date: October 7, 1982.

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

Signed at Washington, D.C., on: October 4, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82–27541 Filed 10–6–82; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 204, 212, 214, 223, 237, 242, 245, 248, 249, and 265

Aliens and Nationality; Immigration and Nationality Act Amendments of 1981

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: These rule changes are necessitated by the enactment of the Immigration and Nationality Act Amendments of 1981. The interim rule with comment period published previously is now finalized after considering public comments. The final rule is intended to improve the efficiency of the Service by eliminating unnecessary paperwork and by providing remedial and technical changes to the existing regulations.

EFFECTIVE DATE: November 8, 1982.

FOR FURTHER INFORMATION CONTACT:

For General Information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Telephone: (202) 633–3048.

For Specific Information about Alien Change of Status: Bert C. Rizzo, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Telephone: (202) 633–3946.

For Specific Information about Alien Admission and Exclusion: Edward F. Burns, Immigration Inspector, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Telephone: (202) 633–3996.

SUPPLEMENTARY INFORMATION: The purpose of the Immigration and Nationality Act Amendments of 1981, Pub. L. 97–116, 95 Stat. 1611, is to improve the efficiency of the Immigration and Naturalization Service by streamlining certain Service procedures, clarifying ambiguities in the current law and eliminating unnecessary reporting requirements. An interim rule implementing the 1981 Amendments to the Act was published in the **Federal Register** on March 22, 1982 at 47 FR 12129. Comments on the interim rule were received regarding how it could be improved to best promote the Congressional intent of the 1981 Act. The following is a section-by-section analysis of the revisions made to the interim rule and an explanation why the suggestions received were or were not incorporated into the final rule.

8 CFR 204.2(c)(7) is revised for an editorial change.

8 CFR 212.2(a)–(g) were revised by the interim rule to remove the requirement that an alien, who was previously deported or removed from the United States, must obtain consent before applying for a visa, admission, or change of status if the alien has remained outside the United States for more than five successive years after the date of the last deportation or removal. Section 4 of Pub. L. 97–116 amended section 212(a)(17) of the Act to remove the consent requirement where the alien meets the requisite period of absence from the United States. Comments criticizing these revisions suggested that the requirement of five years' continuous physical presence abroad was too restrictive, and went beyond the language and spirit of the statute. The legislative history of this statute, as evidenced in page 20 of House Report 97–264, unquestionably supports the present rule. Congress intended that once an alien was deported from the United States, the alien should remain outside the United States for five continuous years unless given permission to re-enter by the Attorney General. Thus an "illegal" entry is interruptive of the five year period. Furthermore, the purpose of the statute was not to ameliorate the consequences of deportation to deserving individuals, but to eliminate unnecessary adjudications of I–212's (applications for permission to reapply for admission into the U.S. after deportation or removal) which are routinely approved for aliens who have remained outside the United States for five years. Editorial changes have been made throughout the section to improve readability.

8 CFR 212.7(b) is revised to improve readability.

8 CFR 212.10 remains as it was printed in the interim rule.

8 CFR 214.2(j)(2)(ii) is revised to improve readability.

8 CFR 214.2(j)(3) is revised to improve readability.

8 CFR Part 223 is revised for editorial correction.

8 CFR Part 237.6 is revised to improve readability.

8 CFR 242.8 is revised to improve readability.

8 CFR 242.17 remains as it was printed in the interim rule.

8 CFR 245.1 is revised to improve readability. One commenter criticized the definition of "continuous presence" as being an unduly restrictive and inappropriate interpretation of the Congressional intent. The plain language of section 245 of the Act requires "continuous presence" and does not refer to any breaks. The House Report No. 97–264 to H.R. 4327 states, at page 23, "It is the Committee's intent that brief temporary trips abroad (e.g., to visit family) should not be construed to break the continuous presence or practice requirements for an alien to benefit under these provisions." The report further points to *Rosenberg v. Flueti*, 374 U.S. 449 (1963), to justify the intent for not requiring "continuous presence." In the interest of fairness, administrative simplification, and ecomomy, the Service has decided that a fixed time limit for an individual trip of 30 days would meet the Congressional intent and allow for uniform and fair adjudication of cases under section 101(a)(27)(H) of the Act. Should an alien physician fail to qualify for special immigrant status solely due to a too lengthy absence, that physican would be eligible for 3rd or 6th preference status since the statue eliminated the requirement that the physican pass the Visa Qualifying Examination, the major hurdle for 3rd and 6th preference. Therefore, the 30-day time limit will remain in effect.

8 CFR 245.1(a)–(d) is revised to improve readability.

8 CFR 245.3 is revised to improve readability.

8 CFR 248.2 is revised to improve readability.

8 CFR 249.1 is amended to include a waiver of the grounds of excludability contained in sec. 212(a)(23) as it relates to a single conviction for simple possession of 30 grams or less of marihuana under sec. 212(h) of the Act.

8 CFR 265.1 is amended to eliminate the annual and quarterly registration of permanent resident and non-immigrant aliens; however, they must continue to report new addresses and changes of address using Form AR–11. While section 11 of Pub. L. 97–116 removes the annual and quarterly registration requirements, it still retains the authority for the Attorney General, upon ten days' notice, to require (by regulation) any aliens or class of aliens to report their current addresses and other information.

In accordance with 5 U.S.C. 605(d), the Commissioner of Immigration and Naturalization certifies that this rule will not have significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects

8 CFR Part 204

Administrative practice and procedure, Adoption, Citizenship and naturalization, Infants and children, Orphans.

8 CFR Part 212

Administrative practice and procedure, Aliens, Health, Port of entry.

8 CFR Part 214

Administrative practice and procedure, Aliens, Health profession, Schools.

8 CFR Part 223

Administrative practice and procedure, Reentry permits, Aliens.

8 CFR Part 237

Administrative practice and procedure, Aliens.

8 CFR Part 242

Administrative practice and procedure, Aliens, Authority delegations.

8 CFR Part 245

Administrative practice and procedure, Aliens, Foreign officials.

8 CFR Part 248

Administrative practice and procedure, Aliens.

8 CFR Part 249

Aliens, Immigration.

8 CFR Part 265

Administrative practice and procedure, Aliens.

Accordingly, Title 8 of the Code of Federal Regulations is amended as follows:

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

1. In § 204.2, paragraph (c)(7) is revised to read as follows:

§ 204.2 Documents.

* * * * *

(c) * * *

(7) *Relationship by adoption.* If the petitioner and the beneficiary are related to each other by adoption, a certified copy of the adoption decree must accompany the petition. Immigration benefits may be obtained under sections 101(b)(1)(E) or 101(b)(2) of the Act by virtue of an adoptive relationship if the child was adopted while under the age of sixteen and the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years. Legal custody must occur after the adoption. Residence occurring prior to or after the adoption will satisfy the residence requirement. A child adopted under the age of sixteen years is a "child" for purposes of sections 101(b)(1)(E) and 101(b)(2) of the Act.

* * * * *

(Secs. 103, 204, 66 Stat. 173, 179; Sec. 2, Pub. L. 97–116, 95 Stat. 1611 (8 U.S.C. 1103, 1154))

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

2. In § 212.2, paragraphs (a) through (g) are revised to read as follows:

§ 212.2 Consent to reapply for admission after deportation, removal or departure at Government expense.

(a) *Evidence.* Any alien who has been deported or removed from the United States, who is applying for a visa, admission to the United States, or adjustment of status, must present proof to the satisfaction of the consular or immigration officer that the alien has remained outside the United States for more than five successive years following the last deportation or removal. Any alien who does not present proof of more than five successive years' absence from the United States which is satisfactory to the consular or immigration officer, or who has not remained outside the United States for the requisite period, must apply for permission to reapply as provided under this part. A temporary stay in the United States with the approval of the Attorney General, under section 212(d)(3) of the Act, does not interrupt the five-year absence requirement.

(b) *Alien applying to consular officer for nonimmigrant visa or nonresident border crossing card.* Permission to reapply for admission to the United States after deportation or removal, within five years of the date of such deportation or removal for an alien who is applying or will apply to a consular officer for nonimmigrant visa or nonresident border crossing card, shall

be requested through the consular officer and may be granted only in accordance with section 212 (a)(17) and (d)(3)(A) of the Act and § 212.4 of this part. However, the alien may apply for such permission on Form I–212 submitted to the consular officer, if the consular officer is willing to accept such application and if that officer, in forwarding Form I–212 for decision to the district director having jurisdiction over the place where the deportation or removal proceedings were held, recommends to the district director that the alien be permitted to apply on Form I–212.

(c) *Applicant for nonimmigrant visa under section 101(a)(15)(K) of the Act.* Notwithstanding the provisions of paragraph (b) of this section, any applicant for a nonimmigrant visa under section 101(a)(15)(K) of the Act who is the beneficiary of a valid visa petition approved by the Service under that section may apply for permission to reapply for admission to the United States after deportation or removal by submitting Form I–212 to the consular officer. The consular officer shall forward the Form I–212 to the Service officer having jurisdiction over the area within which the consular officer is located. If the alien is ineligible on grounds which may be waived under section 212 (g), (h), or (i) of the Act upon the applicant's marriage to the United States citizen petitioner, the consular officer shall also forward a recommendation whether the waiver should be granted.

(d) *Applicant for immigrant visa.* Any applicant for an immigrant visa who is not physically present in the United States, and who requires permission to reapply, may file Form I–212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held. If the applicant also requires a waiver under section 212 (g), (h), or (i) of the Act, a Form I–601 must be filed simultaneously with the American consul having jurisdiction over the alien's place of residence. The consul shall forward the applications to the appropriate Service officer abroad who has jurisdiction over the area within which the consul is located.

(e) *Applicant for adjustment of status.* Any applicant for adjustment of status under section 245 of the Act and Part 245 of this chapter who requires permission to reapply in conjunction with an application for adjustment of status must file an application for permission to reapply, Form I–212, with the district director having jurisdiction over the place where the alien resides. If the application under section 245 of the Act has been initiated, renewed, or is pending in a proceeding before an immigration judge, the district director shall refer the Form I–212 to the immigration judge for adjudication.

(f) *Applicant for admission at port of entry.* Any alien may request permission to reapply for admission to the United States within five years of the date of deportation or removal by filing with the district director having jurisdiction over the port or entry Form I–192 (if the alien is seeking temporary admission) or Form I–212 (if the alien is seeking lawful admission for permanent residence). However, the district director may authorize an alien seeking temporary admission at a port of entry to apply on Form I–212 for permission to reapply after deportation or removal.

(g) *Other applicants.* Any applicant for permission to reapply for admission under circumstances other than those described in paragraphs (b)–(f) of this section shall file Form I–212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held, or with the district director who exercised or is exercising jurisdiction over the most recent proceeding relating to the applicant. If the applicant is physically present in the United States but is ineligible to apply for adjustment of status, the application must be filed with the district director having jurisdiction over the alien's place of residence.

* * * * *

3. In § 212.7, paragraph (b) is revised to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

* * * * *

(b) *Section 212(g) (tuberculosis and certain mental conditions).*—(1) *General.* Any alien who is ineligible for a visa and is excluded from admission into the United States under section 212(a) (1), (3), or (6) of the Act may file an Application for Waiver of Grounds of Excludability (Form I–601) under section 212(g) of the Act at an office designated in paragraph (2). The family member specified in section 212(g) of the Act may file the waiver for the applicant if the applicant is incompetent to file the waiver personally.

(2) *Locations for filing Form I–601.* Form I–601 may be filed at any one of the following offices:

(i) The American consulate where the application for a visa is being considered if the alien is outside the United States;

(ii) The Service office having jurisdiction over the port of entry where the alien is applying for admission into the United States; or

(iii) The Service office having jurisdiction over the alien if the alien is in the United States.

(3) *Section 212(a)(6) (tuberculosis).* If the alien is excludable under section 212(a)(6) of the Act because of tuberculosis, he shall execute Statement A on the reverse of page 1 of Form I–601. In addition, he or his sponsor in the United States is responsible for having Statement B executed by the physician or health facility which has agreed to supply treatment or observation; and, if required, Statement C shall be executed by the appropriate local or State health officer.

(4) *Section 212(a) (1) or (3) (certain mental conditions).*—(i) *Arrangements for submission of medical report.* If the alien is excludable under section 212(a) (1) or (3) (because of mental retardation or because of a past history of mental illness) he or his sponsoring family member shall submit an executed Form I–601 to the consular or Service office with a statement that arrangements have been made for the submission to that office of a medical report. The medical report shall contain a complete medical history of the alien, including details of any hospitalization or institutional care or treatment for any physical or mental condition; findings as to the current physical condition of the alien, including reports of chest X-ray examination and of serologic test for syphilis if the alien is 15 years of age or over, and other pertinent diagnostic tests; and findings as to the current mental condition of the alien, with information as to prognosis and life expectancy and with a report of a psychiatric examination conducted by a psychiatrist who shall, in case of mental retardation, also provide an evaluation of the alien's intelligence. For an alien with a past history of mental illness, the medical report shall also contain available information on which the U.S. Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery. Upon receipt of the medical report, the consular or Service office shall refer it to the U.S. Public Health Service for review.

(ii) *Submission of statement.* Upon being notified that the medical report has been reviewed by the U.S. Public Health Service and determined to be acceptable, the alien or his sponsoring family member shall submit to the consular or Service office a statement, from a clinic, hospital, institution, school, other specialized facility, or

specialist in the United States acceptable to the U.S. Public Health Service. The Statement shall specify the name and address of the clinic, hospital, institution, school, other specialized facility, or specialist, and shall affirm that the specified facility or specialist has agreed to accept the alien for all necessary diagnostic studies and medical supervision for a period of 5 years and during such period to be responsible either for providing, or for ensuring that the alien is provided such additional care, training, or schooling as the diagnostic studies indicate to be necessary; that the alien, his sponsoring family member, or other responsible person has made complete financial arrangements for payment of any charges that will be made during the 5-year period for all necessary diagnostic studies, care, and specialized training or schooling of the alien, including services to be received from the specified facility or specialist or from other sources; that the specified facility or specialist will furnish the Director, Foreign Quarantine Program, Center for Disease Control, Atlanta, Ga. 30333, an initial report, giving a current evaluation of the mental status of the alien within 30 days after his arrival; semiannual reports of his mental status for a period of 5 years, even if he has been discharged from care, training, or schooling, unless approval has been granted by the U.S. Public Health Service to transfer responsibility for the medical supervision of the alien to another facility or specialist; prompt notification of the death of the alien, of his departure without approval of the facility or specialist, or of his failure to report to the facility or specialist as may be required in connection with semiannual reports, or of his failure to report to the facility or specialist within 30 days after the facility or specialist receives notice from the U.S. Public Health Service that he has arrived in the United States; and that the alien will be in an outpatient, inpatient, study, or other status as determined by the responsible local physician or specialist, during the initial evaluation and during any subsequent care or observation deemed necessary.

(5) *Assurances: Bonds.* In all cases under paragraph (b) of this section the alien or his sponsoring family member shall also submit an assurance that the alien will comply with any special travel requirements as may be specified by the U.S. Public Health Service and that, upon the admission of the alien into the United States, he will proceed directly to the facility or specialist specified for the initial evaluation, and will submit to such further examinations, treatment, schooling, training, and medical regimen as may be required, whether in an outpatient, inpatient, study, or other status, and that, before responsibility for the medical supervision of the alien is transferred to another facility or specialist, the alien or the sponsoring family member will obtain approval from the Director, Foreign Quarantine Program, Center for Disease Control, Atlanta, Ga. 30333. The alien, his sponsoring family member, or other responsible person shall provide such assurances or bond as may be required to assure that the necessary expenses of the alien will be met and that he will not become a public charge. For procedures relating to cancellation or breaching of bonds, see Part 103 of this chapter.

* * * * *

4. Section 212.10 is reprinted for reader convenience:

§ 212.10 Section 212(k) waiver.

Any applicant for admission who is in possession of an immigrant visa, and who is excludable under section 212(a)(14), (20), or (21) of the Act, may apply to the district director at the port of entry for a waiver under section 212(k) of the Act. If the application for waiver is denied by the district director, the application may be renewed in exclusion proceedings before an immigration judge as provided in Part 236 of this chapter.

(Secs. 103, 203, 212 of the Immigration and Nationality Act, as amended by secs. 4, 5, 18 of Pub. L. 97-116, 95 Stat. 1611, 1620, (8 U.S.C. 1103, 1153, 1182)

PART 214—NONIMMIGRANT CLASSES

5. In § 214.2, paragraphs (j)(2)(ii) and (3) are revised to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(j) * * *

(2) * * *

(ii) *Exemptions.* From January 10, 1978 until December 31, 1983, any alien who has come or seeks to come to the United States as an exchange visitor to participate in an accredited program of graduate medical education or training, or any alien who seeks to change nonimmigrant status for such purpose, may be admitted to participate in such program without regard to the requirements stated in subparagraphs (A) and (B)(ii)(I) of section 212(j)(1) of the Act if a substantial disruption in the health services provided by such program would result from not permitting the alien to participate in the program: *Provided,* That the exemption will not increase the total number of aliens then participating in such programs to a level greater than that participating on January 10, 1978.

(3) *Aliens in cancelled programs.* When the approval of an exchange visitor program is withdrawn by the Director of the International Communication Agency, the district director shall send a notice of the withdrawal to each participant in the program. A copy of each such notice shall also be sent to the program sponsor. If the exchange visitor is currently engaged in activities authorized by the cancelled program, the participant is authorized to remain in the United States to engage in those activities until expiration of the period of stay previously authorized. The district director shall also notify participants in cancelled programs that permission to remain in the United States as an exchange visitor, or extension of stay may be obtained if the participant is accepted in another approved program and a Form IAP-66, executed by the new program sponsor, is submitted. In this case, a release from the sponsor of the cancelled program will not be required.

* * * * *

(Secs. 103, 214, 66 Stat. 173, 189; Sec. 5, Pub. L. 97-116, 95 Stat. 1612 (8 U.S.C. 1103, 1184))

PART 223—REENTRY PERMITS

6. Section 223.2 is revised to read as follows:

§ 223.2 Period of validity.

A reentry permit is valid for a maximum period of two years unless otherwise restricted. The period of validity commences from the date of issuance and not from the date the application for the permit was submitted to the Service. A reentry permit cannot be renewed.

7. Section 223.4 is revised to read as follows:

§ 223.4 Revalidation.

A reentry permit issued after December 29, 1980 is revalidated for a period of two years from the original date of issuance, except a restricted permit which: (a) Is valid for less than the maximum period allowed or (b) authorizes a limited number of entries.

(Secs. 103, 223, 66 Stat. 173, 194; sec. 6, Pub. L. 97-116, 95 Stat. 1615 (8 U.S.C. 1103, 1203))

PART 237—DEPORTATION OF EXCLUDED ALIENS

8. Section 237.6 is revised to read as follows:

§ 237.6 Deportation.

(a) *Definitions of terms.* For the purposes of this section, the following terms mean:

(1) Adjacent island—as defined in section 101(b)(5) of the Act.

(2) Foreign contiguous territory—any country sharing a common boundary with the United States.

(3) Residence in foreign contiguous territory or adjacent island—any physical presence, regardless of intent, in a foreign contiguous territory or an adjacent island if the government of such territory or island agrees to accept the alien.

(4) Aircraft or vessel—any conveyance and other mode of travel by which arrival is effected.

(b) *Place to which deported.* Any alien (other than an alien crewmember or an alien who boarded an aircraft or vessel in foreign contiguous territory or an adjacent island) who is ordered excluded shall be deported to the country where the alien boarded the vessel or aircraft on which the alien arrived in the United States. If that country refuses to accept the alien, the alien shall be deported to:

(1) The country of which the alien is a subject, citizen, or national;

(2) The country where the alien was born;

(3) The country where the alien has a residence; or

(4) Any country willing to accept the alien.

(c) *Contiguous territory and adjacent islands.* Any alien ordered excluded who boarded an aircraft or vessel in foreign contiguous territory or in any adjacent island shall be deported to such foreign contiguous territory or adjacent island if the alien is a native, citizen, subject, or national of such foreign contiguous territory or adjacent island, or if the alien has a residence in such foreign contiguous territory or adjacent island. Otherwise, the alien shall be deported, in the first instance, to the country in which is located the port at which the alien embarked for such foreign contiguous territory or adjacent island.

(d) *Land border pedestrian arrivals.* Any alien ordered excluded who arrived at a land border on foot shall be deported in the same manner as if the alien had boarded a vessel or aircraft in foreign contiguous territory.

(Secs. 103, 237 of the Immigration and Nationality Act; as amended by Sec. 7, Pub. L. 97-116, 95 Stat. 1615 (8 U.S.C. 1103, 1227))

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

9. In § 242.8, paragraph (a) is revised to read as follows:

§ 242.8 Immigration judges.

(a) *Authority.* In any proceeding conducted under this part the immigration judge shall have the authority to determine deportability and to make decisions, including orders of deportation, as provided by section 242(b) of the Act; to reinstate orders of deportation as provided by section 242(f) of the Act; to determine applications under sections 208, 212(k), 241(a)(11), 241(f), 244, 245, and 249 of the Act; to determine the country to which an alien's deportation will be directed in accordance with section 243(a) of the Act; to order temporary withholding of deportation pursuant to section 243(h) of the Act; and to take any other action consistent with applicable law and regulations as may be appropriate. An immigration judge may certify his or her decision in any case to the Board of Immigration Appeals when it involves an unusually complex or novel question of law or fact. Nothing contained in this part shall be construed to diminish the authority conferred on immigration judges under section 103 of the Act.

* * * * *

10. In § 242.17, paragraph (d) is reprinted for reader convenience:

§ 242.17 Ancillary matters, applications.

* * * * *

(d) *Application for relief under section 241(f).* The respondent may apply to the immigration judge for relief from deportation under section 241(f) of the Act.

* * * * *

(Secs. 103, 208, 242 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1158, 1252))

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

11. Section 245.1 is revised to read as follows:

§ 245.1 Eligibility.

(a) *General.* Any alien who was inspected and admitted or paroled into the United States, except an alien who is ineligible to apply for adjustment of status as noted in paragraph (b) of this section, may apply for adjustment of status to permanent resident if the applicant is eligible to receive an immigrant visa and an immigrant visa is immediately available at the time of filing of the application.

(b) *Ineligible aliens.* The following categories of aliens are ineligible to apply for adjustment of status to permanent residence under section 245 of the Act:

(1) Any alien who entered the United States in transit without a visa;

(2) Any alien who, on arrival in the United States, was serving in any capacity on board a vessel or aircraft or was destined to join a vessel or aircraft in the United States to serve in any capacity thereon;

(3) Any alien who was not admitted or paroled following inspection by an immigration officer;

(4) Any alien who on or after January 1, 1977 was employed in the United States without authorization prior to filing an application for adjustment of status, except an applicant who is an immediate relative as defined in section 201(b) of the Act or a special immigrant as defined in section 101(a)(27)(H) of the Act;

(5) Any nonpreference alien who is seeking or engaging in gainful employment in the United States who is not the beneficiary of a valid individual or blanket labor certification issued by the Secretary of Labor or who is not exempt from certification requirements under section 212.8(b) of this chapter;

(6) Any alien who has or had the status of an exchange visitor under section 101(a)(15)(J) of the Act and who is subject to the foreign residence requirement of section 212(e) of the Act, unless the alien has complied with the foreign residence requirement or has been granted a waiver of that requirement, under that section;

(7) Any alien who has nonimmigrant status under paragraph (15)(A), (15)(E), or (15)(G) of section 101(a) of the Act, or has an occupational status which would, if the alien were seeking admission to the United States, entitle the alien to nonimmigrant status under those paragraphs, unless the alien first executes and submits the written waiver required by section 247(b) of the Act and Part 247 of this chapter; and

(8) Any alien who claims immediate relative status under section 201(b) or preference status under section 203(a)(1) through 203(a)(6) of the Act, unless the applicant is the beneficiary of a valid unexpired visa petition filed in accordance with Part 204 of this chapter.

(c) *Special categories.*—(1) *Alien medical graduates.* Any alien who is a medical graduate qualified for special immigrant classification under section 101(a)(27)(H) of the Act is eligible for adjustment of status. An accompanying

spouse and children also may apply for adjustment of status under this section. Temporary absences from the United States of 30 days or less do not interrupt the continuous presence requirement during which the applicant was practicing or studying medicine. Temporary absences authorized under the Service's advance parole procedures will not be considered interruptive of continuous presence when the alien applies for adjustment of status.

(2) *Nonpreference investors.*—(i) Any alien investor, if otherwise qualified, is eligible for adjustment of status if:

(A) The applicant was present in the United States on or before June 1, 1978;

(B) The applicant qualified as a nonpreference immigrant under section 203(a)(8) of the Act as in effect on or before June 1, 1978;

(C) The applicant applied for adjustment of status on or before June 1, 1978;

(D) The applicant was determined to be exempt from the labor certification requirement of section 212(a)(14) of the Act because the applicant had actually invested capital in an enterprise in the United States before that date;

(E) The applicant was a principal manager of that enterprise; and

(F) That enterprise employed one or more U.S. citizens or permanent residents other than a spouse or child of the applicant.

(ii) The employment of the U.S. citizen or permanent resident may have occurred at any time and for any period of time in the enterprise or any subsequent enterprise.

(iii) Any applicant under this section may qualify with an investment in an enterprise other than that used to establish the applicant's priority date, or may qualify without a present investment.

(iv) Any applicant will have qualified as a nonpreference immigrant on or before June 1, 1978 for purposes of this section, if the application for investor status was actually approved on or before that date, or the application was subsequently approved with a priority date on or before June 1, 1978.

(v) Any alien qualified under this subsection is exempt from the restrictions of sections 212(a)(14) and 245(c)(2) of the Act.

(vi) A spouse or children of an investor qualified under this section may also apply for adjustment of status.

(d) *Concurrent applications to overcome exclusionary grounds.* Except as provided in Parts 235 and 249 of this chapter, an application under this part shall be the sole method of requesting the exercise of discretion under sections 212 (g), (h), (i), and (k) of the Act, as they relate to the excludability of an alien in the United States. Any applicant for adjustment under this part may also apply for the benefits of section 212(c) of the Act, for permission to reapply after deportation or removal under section 212(a)(17) of the Act, and for the benefits of section 212(a)(28)(I)(ii) of the Act. No fee is required for filing an application to overcome the exclusionary grounds of the Act if filed concurrently with an application for adjustment of status under the provisions of the Act of October 28, 1977, and of this part.

* * * * *

(Secs. 103, 245, 66 Stat. 173, 217, secs. 5, and 19, Pub. L. 97–116, 95 Stat. 1614, 1621 (8 U.S.C. 1103, 1255))

12. Section 245.3 is revised to read as follows:

§ 245.3 Adjustment of status under section 13 of the Act of September 11, 1957, as amended.

Any application for benefits under section 13 of the Act of September 11, 1957, as amended, must be filed on Form I–485 with the district director having jurisdiction over the applicant's place of residence. The benefits under section 13 are limited to aliens who were admitted into the United States under section 101, paragraphs (a)(15)(A)(i), (a)(15)(A)(ii), (a)(15)(G)(i), or (a)(15)(G)(ii) of the Immigration and Nationality Act who performed diplomatic or semi-diplomatic duties and to their immediate families, and who establish that there are compelling reasons why the applicant or the member of the applicant's immediate family is unable to return to the country represented by the government which accredited the applicant and that adjustment of the applicant's status to that of an alien lawfully admitted for permanent residence would be in the national interest. Aliens whose dutes were of a custodial, clerical, or menial nature, and members of their immediate families, are not eligible for benefits under section 13. In view of the annual limitation of 50 on the number of aliens whose status may be adjusted under section 13, any alien who is prima facie eligible for adjustment of status to that of a lawful permanent resident under another provision of law shall be advised to apply for adjustment pursuant to such other provision of law. An applicant for the benefits of section 13 shall not be subject to the labor certification requirement of section 212(a)(14) of the Immigration and Nationality Act. The applicant shall be notified of the decision and, if the application is denied, of the reasons for the denial and of the right to appeal under the provisions of Part 103 of this chapter. Any applications pending with the Service before December 29, 1981 must be resubmitted to comply with the requirements of this section.

* * * * *

(Secs. 103, 245, of the Immigration and Nationality Act, as amended; 71 Stat. 642, as amended, sec. 17, Pub. L. 97–116, 95 Stat. 1619 (8 U.S.C. 1103, 1255, 1255b))

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

13. Section 248.2 is revised to read as follows:

§ 248.2 Ineligible classes.

The following categories of aliens are not eligible to change their nonimmigrant status under section 248 of the Act:

(a) Any alien in immediate and continuous transit through the United States without a visa;

(b) Any alien classified as a nonimmigrant under section 101(a)(15)(C), (D), or (K) of the Act;

(c) Any foreign medical graduate admitted as a nonimmigrant under section 101(a)(15)(J) of the Act, or who acquired such status after admission in order to receive graduate medical education or training, whether or not the alien was subject to, received a waiver of, or fulfilled the two-year foreign residence requirement of section 212(e) of the Act; and

(d) Any alien classified as a nonimmigrant under section 101(a)(15)(J) of the Act (other than an alien described in paragraph (c) of this section) who is subject to the foreign residence requirement of section 212(e) of the Act and who has not received a waiver of the residence requirement, except when the alien applies to change to a classification under section 101(a)(15)(A) or (G) of the Act.

(Secs. 103, 248 of the Immigration and Nationality Act; as amended, sec. 10, Pub. L. 97–116, 95 Stat. 1617 (8 U.S.C. 1103, 1258))

PART 249—CREATION OF RECORDS OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

14. Section 249.1 is revised to read as follows:

§ 249.1 Waiver of inadmissibility.

In conjunction with an application under section 249 of the Act, an otherwise eligible alien who is inadmissible under paragraph (9), (10), or (12) of section 212(a) of the Act or so much of paragraph (23) of section 212(a) of the Act as relates to a single offense of simple possession of 30 grams or less of marihuana may request a waiver of

such ground of inadmissibility under section 212(h) of the Act. Any alien within the classes described in subparagraphs (B) through (H) of section 212(a)(28) of the Act may apply for the benefits of section 212(a)(28)(I)(ii) in conjunction with an application under section 249 of the Act.

(Secs. 103, 212, 249 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1103, 1182, 1259)

PART 265—NOTICES OF ADDRESS

15. Section 265.1 is revised to read as follows:

§ 265.1 Forms.

Except for those exempted by section 263(b) of the Act, all aliens in the United States required to register under section 262 of the Act shall report each change of address and new address within 10 days on Form AR–11. This form is available at post offices and Service offices in the United States. The completed form must be mailed to the Department of Justice, Immigration and Naturalization Service, Washington, DC 20536.

* * * * *

(Secs. 103, 265 of the Immigration and Nationality Act, as amended by sec. 11, Pub. L. 97–166, 95 Stat. 1617 (8 U.S.C. 1103, 1305))

Dated: September 24, 1982.

Alan C. Nelson.

Commissioner of Immigration and Naturalization.

[FR Doc. 82–27543 Filed 10–6–82; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Part 223

Expired Reentry Permits

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule provides official notification to alien holders of expired reentry permits that an expired reentry permit which contains valid visas or entry stamps will be returned by the designated Service official upon request for a new reentry permit. This procedure benefits the alien who no longer is required to obtain replacement visas and entry stamps after obtaining a new reentry permit.

EFFECTIVE DATE: October 7, 1982.

FOR FURTHER INFORMATION CONTACT: For General Information: Stanley J. Kieszkiel, Acting, Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, DC 20536. Telephone: (202) 633–3048.

For Specific Information: Margaret M. Smitherman, Immigration Examiner, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, DC 20536. Telephone: (202) 633–5014.

SUPPLEMENTARY INFORMATION: This rule formalizes the Service's decision to allow an alien to retain an expired reentry permit that contains valid visas or entry stamps. Previously these documents were required to be surrendered to the Service even though the existing visas were valid. This procedure created an unnecessary inconvenience for the alien who, upon receipt of a new reentry permit, was required to obtain replacement visas and entry stamps. Although this procedure is intended to benefit the alien, it in no way relieves the alien of submitting the expired reentry permit to an immigration official before a new reentry permit will be issued.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is unnecessary because the rule grants a benefit.

In accordance with 5 U.S.C. 605(b) the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule grants a benefit to the alien.

This rule is exempt from the requirement of E.O. 12291 as provided by section 1(a)(3) of the Executive Order because it relates solely to Service organization and procedure.

List of Subjects in 8 CFR Part 223

Administrative practice and procedure, Aliens, Reentry permits.

PART 223—REENTRY PERMITS

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

Section 223.3 is revised to read as follows:

§ 223.3 Expired permits.

Upon the expiration of the period of validity of a reentry permit, the permit shall be surrendered by the holder to the issuing office. If the expired permit has not been surrendered to the Service, no subsequent reentry permit shall be issued to the same alien unless the alien first surrenders the expired permit, or satisfactorily explains why the permit cannot be surrendered. However, an alien shall be permitted to retain an expired reentry permit that contains valid visas, entry stamps or documents necessary for entry into another country. The expired reentry permit shall be voided by an immigration officer by clipping the upper left hand corner of the cover and indentification page prior to returning the document to the alien.

(Secs. 103, 223 of the I&N Act, as amended; 8 U.S.C. 1103, 1203)

Dated: September 24, 1982.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 82–27540 Filed 10–6–82; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Part 274

Seizure and Forfeiture of Vehicles, Vessels and Aircraft; Immigration and Nationality Act Amendments of 1981

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts, with amendments, the Service's interim rule relating to the seizure and forfeiture of conveyances used in the unlawful transportation of aliens in violation of the Immigration and Nationality Act as amended by Pub. L. 97–116. The interim rule with comment period was promulgated on May 5, 1982 at 47 FR 19315. After considering the comments received, the Service is making appropriate amendments to specific sections of 8 CFR Part 274. The balance of Part 274 remains in effect as published on May 5, 1982.

EFFECTIVE DATE: November 8, 1982.

FOR FURTHER INFORMATION CONTACT: For General Information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

For Specific Information: Paul D. McClure, Criminal Investigator, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, Telephone: (202) 633–2471.

SUPPLEMENTARY INFORMATION: On May 5, 1982, an interim rule with request for comments was published in the **Federal Register** at 47 FR 19315 to revise Part 274 of Title 8 of the Code of Federal Regulations. Part 274 was revised to implement the related section of the Immigration and Nationality Act as amended by Section 12 of Pub. L. 97–116, as well as to reorganize and rewrite the remaining regulations. The rule became effective on May 5, 1982. This final rule adopts the interim rule with appropriate amendments to Part 274. The balance of Part 274, as published on May 5, 1982, remains in effect as final regulations.

Section 12 of Pub. L. 97–116 (95 Stat. 1617; 8 U.S.C. 1324 (b)), effective December 29, 1981, brings the Immigration and Naturalization Service (INS) forfeiture law and procedures into

conformity with those of other enforcement agencies by removing the "innocent owner" exception to seizure and by relieving INS of the obligation to pay any administrative and incidental costs incurred by a successful claimant on forfeiture, provided INS had probable cause for the original seizure. The former requirement that INS satisfy valid lien or third party interests in the conveyance "without expense to the interest holder" was also removed.

In addition to implementing the changes made by Pub. L. 97–116, the interim rule reorganized certain sections of 8 CFR Part 274, and included pertinent provisions of the customs laws applicable to the Service. These include: termination of property interests from the date of seizure if the conveyance is later forfeited; requirement that the burden of proof is on the claimant to establish that the property interest in the conveyance existed prior to the seizure; change from retail to wholesale value in appraisals; a separate section setting out provisions for filing petitions (for mitigation, remission, or restoration); separate sections on remission and mitigation; requirement that lien holders granted remission or mitigation not return conveyances to culpable owners; provision for INS comment before judicial forfeitures are compromised; and provision for payment to informants.

In response to the publication of the interim rule in the **Federal Register**, comments from three parties were received by the Service, two from private parties and one from a U.S. Attorney's office. These responses were given careful consideration in formulating the final rule.

The suggestion by one commenter that the definition of "common carrier" in § 274.1(a) be amended to include "commercial airlines" has been adopted.

Concern was expressed both by government and private commenters on the treatment of "innocent owners" in Part 274. Public Law 97–116 provides two exceptions to the forfeiture of seized conveyances: (1) Common carriers, unless the owner or person in charge was a consenting party, and (2) conveyances unlawfully in the possession of a person other than the owner. The Report of the Judiciary Committee (H.R. Rep. No. 264, 97th Cong., 1st Sess. 27 (1981)) discusses a broader concept of the exception from forfeiture for an "innocent owner" than is apparent in the plain language of the statute as amended by Pub. L. 97–116. The Report states that the Immigration and Naturalization Service shall provide owners of conveyances with an opportunity to show that they were not involved in or knowledgeable about its illegal use. Although not reflected in the amendment to section 274(b) of the Act, the Committee on the Judiciary expressed the view that INS should promulgate regulations which will: (1) Require its officers to make a good faith inquiry to ascertain ownership of seized conveyances; (2) insure timely and effective notice to the owners and others with a financial interest in the conveyances; and (3) afford owners the opportunity (prior to the institution of forfeiture proceedings) to show that they were not involved in criminal activity.

The interim rule in § 274.5(b) sets out three exceptions to *forfeiture*, pursuant to Pub. L. 97–116 and the accompanying Report: (1) Common carriers, unless the owner or person in charge consented or was privy to the illegal act; (2) conveyances unlawfully in the possession of a person other than the owner; and (3) innocent owners.

In response to the comment of the U.S. Attorney that, as written, the exception for innocent owners might be interpreted as mandatory, the Final Rule is amended to provide that the exception applies only after the person establishes he is an innocent owner and that he took all reasonable steps to prevent the unlawful use of the conveyance.

One commenter was concerned that aircraft of innocent owners should not be subject to forfeiture. The same exceptions which apply to other types of conveyances apply to aircraft. Another commenter opposed the seizure of conveyances of innocent owners. This position is contrary to Pub. L. 97–116, which removes all exceptions to seizure provided INS has reason to believe an illegal act has occurred.

One commenter stated that owners should be given immediate notice of seizures to prevent excess costs since owners are now liable for seizure costs. Section 274.5(a) provides for due diligence in ascertaining ownership and whether a conveyance is subject to forfeiture.

Another commenter recommended that § 274.5 be amended to make conveyances not forfeited available at the place of seizure or storage, whichever the owner requests. This recommendation is rejected as deleterious to INS program operations, and as contrary to the interest of Pub. L. 97–116 which frees INS from bearing costs of the seizure and forfeiture program. Although the owner presumably would bear the financial costs, if such an amendment were adopted, INS would lose workhours spent in transporting conveyances for the owner's convenience.

Another comment regarded the possible effect § 274.6 (which provides a presumption that an interest does not exist where the claimant fails to show required state documentation) has on aircraft which are registered with the Federal Aviation Administration rather than with states. The presumption arises only where there are state requirements, and would have no effect on aircraft.

A final comment relates to the procedures for compromising claims in § 274.20. The U.S. Attorney's office was concerned that the requirement for written reports was too cumbersome. This section is amended to remove the requirement of a written report and provides instead for consultation with the Assistant Attorney General, Criminal Division, and the Regional Commissioner before compromise.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant impact on a substantial number of small entities. The rule is not a major rule as defined in section 1.(b) of E.O. 12291.

List of Subjects in 8 CFR Part 274

Administrative practice and procedure, Aircraft, Conveyances, Immigration, Law enforcement, Mitigation, Motor carriers, Motor vehicles, Penalties, Seizure and forfeitures, Vessels.

PART 274–SEIZURE AND FORFEITURE OF VEHICLES, VESSELS AND AIRCRAFT

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended to read as follows:

1. In § 274.1, paragraph (a) is revised to read as follows:

§ 274.1 Definitions.

* * * * *

(a) The term "common carrier", as defined in 49 U.S.C. 1(3), means an airline carrier, an express carrier, a rail carrier, a sleeping car carrier, a motor common carrier, a water common carrier, and a freight forwarder.

* * * * *

2. In § 274.5, paragraph (b) is revised to read as follows:

§ 274.5 Return to owner of seized conveyance not subject to forfeiture; opportunity for personal interview.

* * * * *

(b) The following conveyances are not subject to forfeiture: (1) A conveyance used by any person as a common carrier unless it appears that the owner or other person in charge was a consenting party or privy to the illegal act; (2) a

conveyance established by the owner to have been unlawfully in the possession of a person other than the owner in violation of law; and (3) a conveyance established by the owner to have been used in an act to which the owner was not privy; or did not consent, and the owner took all reasonable steps to prevent the illegal use of the conveyance.

* * * * *

3. Section 274.20 is revised to read as follows:

§ 274.20 Compromise of claim.

Once a judicial forfeiture proceeding is commenced, it may be compromised by the United States Attorney only with the concurrence of the Assistant Attorney General, Criminal Division, Department of Justice. In considering a compromise, the United States Attorney shall consider the probabilities for successfully prosecuting the forfeiture action, and the terms of the possible compromise offer. The United States Attorney shall consult with the Regional Commissioner before action is taken.

* * * * *

(Secs. 103, 274(b) of the Immigration and Nationality Act as amended by section 12, Pub. L. 97-116, 95 Stat. 1617; 8 U.S.C. 1103, 1324(b))

Dated: September 24, 1982.

Alan C. Nelson,

Commissioner of Immigration and Naturalization.

[FR Doc. 82-27538 Filed 10-6-82; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, and 221

[Regs. G, T, and U]

Securities Credit Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The List of OTC Margin Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to margin requirements under certain Federal Reserve regulations. The List is published from time to time by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective July 26, 1982 and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: October 18, 1982.

FOR FURTHER INFORMATION CONTACT: Jamie Lenoci, Financial Analyst, Division of Banking Supevision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2781.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of stocks traded over-the-counter on file at the Office of the Federal Register as of July 26, 1982. This Supplement of additions and deletions should be used in conjunction with that publication of the List (See 47 FR 30719, July 16, 1982). The List, as amended, includes those stocks that the Board of Governors has found meet the criteria specified by the Board and thus have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant incorporating such stocks within the requirements of Regulations G, T, U, and X. Copies of the current List and the Supplement of changes thereto may be obtained from any Federal Reserve Bank. Such copies are also on file at the Office of the Federal Register.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion on the List specified in 12 CFR 207.5(d) and (e), 220.8(h) and (i), and 221.4(d) and (e). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, banking, Credit, Federal Reserve System, Margin, Margin requirements; Reporting requirements, Securities.

12 CFR Part 220

Banks, banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, Reporting requirements, Securities.

12 CFR Part 221

Banks, banking, Credit, Federal Reserve System, Margin, Margin requirements, Reporting requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78g and 78w) and in accordance with § 207.2(f)(2) of Regulation g, § 220.2(e)(2) of Regulation T, and § 221.3(d)(2) of Regulation U, there is set forth below the Supplement of additions to and deletions from the Board's List:

Board of Governors of the Federal Reserve System First Supplement to July 26, 1982 List of OTC Margin Stocks

October 18, 1982.

Additions to the List

Affiliated Bank Corporation of Wyoming—$1.00 par common
American First Corporation (Oklahoma)—$1.00 par common
Angeles Corporation—No par common
Astronics Corporation—$.01 par common
Aviation Group, Inc., the—$.10 par common
BIW Cable Systems, Inc.—$.40 par common
Belo, A.H., Corporation—$1.67 par common
CSP Inc.—$.01 par common
CAM-OR, Inc.—No par common
Castle Industries, Inc.—$.10 par common
Cenvill Development Corp.—$.01 par common
Citizens Savings Financial Corporation (Florida)—$.01 par common
Coastal International, Ltd.—$.01 par common
Collaborative Research, Inc.—$.10 par common
Collagen Corporation—No par common
Comdial Corporation—$.01 par common
Communications Systems, Inc.—$.05 par common
Computer Associates International, Inc.—$.10 par common
Computer Memories Incorporated—No par common
Corvus Systems, Inc.—No par common
Cracker Barrel Old Country Store, Inc.—$.50 par common
Cushman Electronics, Inc.—No par common
Cycare Systems, Inc.—$.01 par common
Delta Natural Gas Company, Inc.—$1.00 par common
Dickey-John Corporation—No par common
E.I.L. Instruments, Inc.—$.10 par common
EMC Insurance Group Inc.—$1.00 par common
Eikonix Corporation—$.05 par common
Ellman's, Inc.—$1.00 par common
First American Bank Corporation (Michigan)—9% cumulative convertible preferred
First Bancorp of N. H., Inc.—$1.00 par common
First Bancshares of Louisiana, Inc.—$5.00 par common
First Executive Corporation—10% convertible subordinated debentures
Gandalf Technologies Inc.—No par common
Gibraltar Savings Association—$1.00 par common
Gulf Nuclear, Inc.—No par common

H & H Oil Tool Co., Inc.—No par common
HCA, Inc.—$1.00 par common
Health Care and Retirement Corporation of America—$.10 par common
Healthdyne, Inc.—$.01 par common
Helionetics, Inc.—$.10 par common
Holmes, D. H., Company, Limited—$5.00 par common
Instacom, Inc.—$.10 par common
Interprovincial Pipe Line Limited—No par common
JB's Restaurants, Inc.—No par common
KLA Instruments Corporation—$.001 par common
LTX Corporation—$.05 par common
Lexidata Corporation—$.01 par common
Lilly Industrial Coating, Inc.—Class A, no par common
Marine Bancorp, Inc. (Pennsylvania)—$5.00 par common
Monchik-Weber Corporation, the—$.01 par common
National Bancshares Corporation of Texas—10% convertible subordinated debentures
North Carolina Federal Savings and Loan Association—$.01 par common
Paco Pharmaceutical Services, Inc.—$.01 par common
Patriot Bancorporation—$2.20 cumulative convertible preferred
Philips' Gloeilampenfabrieken, N.V.—Common American shares, Nfl 10 par value
Photon Sources, Inc.—No par common
Policy Management Systems Corporation—$.01 par common
Price Company, the—No par common
Rogers Cablesystems Inc.—Class B, no par common
Sooner Federal Savings and Loan Association—$.01 par common
Southeastern Michigan Gas Enterprises, Inc.—$10.00 par common
Standard Havens, Inc.—$.05 par common
Stocker & Yale, Inc.—$1.00 par common
Summit Oilfield Corporation—$.01 par common
Technology for Communications International—No par common
Telesphere International, Inc.—$.01 par common
Templeton Energy, Inc.—$.01 par common
Unimation, Inc.—$.10 par common
United Stationers Inc.—$.10 par common
Viking Freight System, Inc.—No par common
Visual Technology, Inc.—$.10 par common
Webb Company, the—No par common, $3.00 stated value

Deletions From the List

Anthem Electronics, Inc.—No par common
Associated Coco-Cola Bottling Company, Inc.—$.50 par common
Basco, Inc.—$.10 par common
CIC Financial Corporation—$1.00 par common
Central National Chicago Corporation—$1.00 par common
Century Banks, Inc.—$1.00 par common
Chemed Corporation—$1.00 par capital
*Columbus Mills, Inc.—$1.00 par common
Connecticut Energy Corporation—$13.33⅓ par common
*Datametrics Corporation—No par common
DEL-VAL Financial Corporation—$1.00 par common
Delmed, Inc.—$.10 par common
*Hawthorne Financial Corporation [1]—$1.00 par capital
Health Extension Services Inc.—$.02 par common
*Hickory Furniture Company [1]—$.10 par common
*High Stoy Technological Corporation—$.02 par common
*Interisland Resorts, Ltd.—No par common, $2.00 stated value
National Utilities & Industries Corporation—$10.00 par common
New Jersey Resources Corp—$5.00 par common
Nicolet Instrument Corporation—$.25 par common
Nutri/System, Inc.—$.01 par common
Ohio Citizens Bancorp, Inc.—$10.00 par common
Pacific-Southern Mortgage Trust—$1.00 par shares of beneficial interest
*Rovac Corporation, the—$.01 par common
*Ryan Insurance Group, Inc.—$1.00 par common
STSC Inc.—$.10 par common
Solomon, Sam Company, Inc.—$.10 par common
Texas American Bancshares, Inc.—$5.00 par common
*Transidyne General Corporation—$.10 par common
Transport Life Insurance Company—$1.00 par common
*Westcoast Petroleum Ltd.—$2.00 par common

NAME CHANGES

From	To
American Fidelity Life Insurance Company—$1.00 par common.	AMFI Corporation—$1.00 par common
Application Engineering Corporation—$1.00 par common.	AEC, Incorporated—$1.00 par common
Commerce Southwest Inc.—$1.00 par convertible preferred Class A, $8.00 par convertible perferred.	BancTexas Group, Inc.—$1.00 par convertible preferred Class A, $8.00 par convertible preferred
Commercial Trust Company of New Jersey—$5.00 par capital.	Commercial Bancshares Inc.—$5.00 par capital
Detroitbank Corporation—$5.00 par common.	Comerica, Inc.—$5.00 par common
Docutel Corporation—$.10 par common.	Docutel/Olivetti Corporation—$.10 par common
Dunlap and Associates, Inc.—$1.00 par common.	Reflectone, Inc.—$1.00 par common
First National Charter Corporation—$6.25 par common.	Chartercorp.—$6.25 par common
Interface Mechanisms, Inc.—No par common.	Intermec Corporation—No par common
Lynden Transport, Inc.—$1.00 par common.	Lynden, Inc.—$1.00 par common
Northeast Energy Development Corporation—No par common.	Great American Resources, Inc.—No par common
Roadway Express, Inc.—No par common.	Roadway Services, Inc.—No par common

*Removed for failing continued listing requirement.

By order of the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)), September 28, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-27526 Filed 10-4-82; 9:46 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 721

Insurance and Group Purchasing Activities

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration has adopted final regulations governing Federal credit union insurance and group purchasing activities. The regulation removes most of the restrictions presently imposed, thus simplifying compliance and allowing Federal credit unions greater flexibility in managing their operations.

EFFECTIVE DATE: October 30, 1982.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Linda M. Cohen, Director, Department of Chartering and Education, or Wilmer Theard, Analyst, Department of Chartering and Education, at the above address. Telephone (202) 357-1080.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 1981, NCUA published a final rule amending Part 721, to be effective November 17, 1981 (46 FR 47435). The effective date of that rule was subsequently extended to April 1, 1982 (46 FR 55922). On February 24, 1982, NCUA issued a new proposal to amend Part 721, inviting comments until April 16, 1982 (47 FR 8027). The effective date of the final rule (which was to go into effect on April 1, 1982) was extended indefinitely pending the outcome of the new rulemaking proceeding (47 FR 8006). The comment period on the new proposed rule was subsequently extended to June 30, 1982 (47 FR 23791).

Summary of Comments

A total of 65 comments were received on the proposed rule. Twenty-six Federal credit unions provided comments. Twelve credit union leagues and insurance companies also submitted comments. The remainder of the comments were from State authorities, trade organizations, and other interested

parties. Sixty of the commenters were supportive of the proposed regulation. Several of these proposed more restrictions and others proposed more liberal reimbursement provisions. Two commenters opposed the regulation and indicated that NCUA should further analyze the impact of the regulation and permit vendors to participate in developing a new regulation.

Twenty-two commenters urged adoption of the regulation but recommended complete removal of all limitations on reimbursement for costs of administrative functions performed in making insurance and group purchasing plans available. A number of the commenters indicated that state law should prevail.

Twenty-five commenters favored adoption of the proposed rule but recommended more restrictive reimbursement levels. Some recommended that reimbursement for the direct and indirect costs of performing administrative functions be permitted. Some suggested that NCUA should establish limits on reimbursement to avoid "reverse competition". (Reverse competition arises when competing insurers or providers of group purchasing services (particularly credit life insurance) raise the reimbursement and/or the premium to induce the credit union or other group to endorse their plan.)

Several commenters mentioned that language should be included in the regulation to prohibit release of the mailing list for unauthorized purposes.

Discussion

The Board has approved as a final rule it proposal to revise Part 721 of the NCUA Rules and Regulations. This action expands the potential flexibility of operations for Federal credit unions yet removes regulatory burdens on their operations. The preponderance of comments has been in favor of the proposed regulation. Some commenters suggested modifications which would be more restrictive in the area of reimbursement; others suggested changes which would provide for more liberal reimbursement. The Board believes that this regulation provides the flexibility needed by credit unions at this time.

The Board takes note of the concern expressed by some commenters that the reimbursement limits established by the rule will permit reverse competition. The Board has confidence that credit unions' board of directors will maintain the cooperative spirit and engage the credit union in incidental activities that are beneficial to the membership.

The Board has declined to include language at this time limiting release of credit union mailing lists. Management of the credit union mailing list has been entrusted to the credit union's board of directors. The NCUA Board believes that the credit union's board of directors will make the proper decisions concerning release of mailing lists.

Regulatory Flexibility Act

The NCUA Board hereby certifies that the final rule will not have a significant impact upon a substantial number of small credit unions. Any credit union may receive reimbursement from vendors for the approximate cost of the administrative functions performed. A credit union may, under this regulation, select a method of computing cost which may be substantially less burdensome than methods previously required. Therefore, a final flexibility analysis is not required by 5 U.S.C. 605(b).

List of Subjects in 12 CFR Part 721

Credit unions, Insurance.

Accordingly, 12 CFR Part 721 is amended as set forth below.

Dated: September 23, 1982.

Rosemary Brady,

Secretary to the NCUA Board.

12 CFR Part 721 is revised to read as follows:

PART 721—FEDERAL CREDIT UNION INSURANCE AND GROUP PURCHASING ACTIVITIES

Sec.
721.1 Authority.
721.2 Reimbursement.

Authority: Sec. 107(15), 94 Stat. 132 (12 U.S.C. 1757(15)), Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789).

§ 721.1 Authority.

A federal credit union may make insurance and group purchasing plans involving outside vendors available to the membership (including endorsement), and may perform administrative functions on behalf of the vendors.

§ 721.2 Reimbursement.

(a) A federal credit union may be reimbursed by a vendor for its administrative functions as provided below:

(1) For insurance plans, a credit union may receive an amount not to exceed $4 per single-payment policy, $6 per combination policy, or $4 per annum for any other type of policy.

(2) For credit insurance plans, as an alternative to the above, a credit union may receive an amount not to exceed 10% (per policy) of the "prima facie" premium rate established or approved by the state insurance authority for that type of plan.

(3) For group purchasing plans other than insurance, a credit union may receive an amount not to exceed the direct and indirect costs to the credit union of any administrative functions performed on behalf of the vendor. A credit union shall be able to justify such reimbursement, using standard accounting procedures.

(b) No official or employee of a credit union or any of their immediate family may receive any compensation or benefit, directly or indirectly, in conjunction with any activity covered under this regulation.

[FR Doc. 82-27634 Filed 10-6-82; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-CEF-5-AD; Amdt. 39-4472]

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. (MHI) Models MU-2B/-10/-15/-20/-25/-30/-36 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection, and repair, if necessary, of the fire detection and direct current (DC) power emergency relay circuits on Mitsubishi Heavy Industries, Ltd. (MHI) Models MU-2B/-10/-15/-20/-25/-30/-36 airplanes. This AD is prompted by a report of incorrect wiring which resulted in erroneous fire detection system operation. This could cause incorrect action by the pilot in the event of a powerplant fire. This action will assure detection and correction of this incorrect wiring.

EFFECTIVE DATE: October 14, 1982.

Compliance: Within the next 25 hours time-in-service after the effective date of this AD.

ADDRESSES: Mitsubishi Heavy Industries, Ltd. (MHI) Service Bulletin 187, dated May 27, 1982, may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aircraft Works, 10, Oye-Cho, Minato-Ku, Nagoya, Japan. This document may be examined at the Northwest Mountain Region, Honolulu Aircraft Certification Field Office, Room 7108, Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Honolulu,

Hawaii 96850. A copy of this Service Bulletin is also contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Gary K. Nakagawa, Manager, Honolulu Aircraft Certification Field Office, ANM–170H, Northwest Mountain Region, FAA, Room 7108, Prince Kuhio Federal Building, P.O. Box 50246, Honolulu, Hawaii 96850, Telephone (808) 546–8650.

SUPPLEMENTARY INFORMATION: There has been a report of a service difficulty involving a U.S. Registered Mitsubishi Heavy Industries, Ltd. (MHI) Model MU–2B–20 aircraft wherein it was discovered that the fire detection system was incorrectly wired. This condition causes the fire warning system to illuminate the wrong engine warning light in the cockpit in the event of an engine overheat or fire. The "Press to Test" circuit will not reveal this discrepancy. Incorrect fire detection indications could result in the flight crew taking inappropriate actions which could result in the loss of the remaining engine. Therefore, to ensure that fire detection circuits are properly wired, the manufacturer has issued Service Bulletin 187 dated May 27, 1982, which contains instructions for a one-time inspection and repair, if necessary, of the fire detection circuit and the direct current power emergency relay circuit. Since this condition is likely to exist in other airplanes of the same type design, the FAA is issuing an AD which makes the requirements of MHI Service Bulletin 187 mandatory on Mitsubishi Heavy Industries, Ltd., Models MU–2B/–10/–15/–20/–25/–30/–36 airplanes.

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

List of Subjects in 14 CFR Part 39

Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Mitsubishi Heavy Industries, Ltd., (MHI): Applies to MU–2B/–10/–15/–20/–25, (Serial Numbers 005 through 238), MU–2B–30 (Serial Numbers 502 through 547) and MU–2B–36 (Serial Number 501) airplanes certificated in any category. (This AD does not apply to MU–2B airplanes having serial numbers with the suffix "SA.")

Compliance: Required as indicated unless already accomplished.

To ensure correct engine fire detection and DC power emergency relay wiring, within the next 25 hours time-in-service after the effective date of this AD, accomplish the following:

(a) Inspect and, if necessary, repair the engine fire detecting and DC power emergency relay circuits as prescribed in Sections I and II of MHI Service Bulletin 187, dated May 27, 1982.

(b) Aircraft may be flown in accordance with FAR 21.197 to a maintenance facility where this inspection can be accomplished.

(c) An alternate means of compliance with this AD may be used when approved by the Manager, Honolulu Aircraft Certification Field Office, Northwest Mountain Region, Federal Aviation Administration, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850.

This amendment becomes effective on October 14, 1982.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impractical for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location identified under the caption **"ADDRESSES."**

This is a final order of the Administrator under Federal Aviation Act of 1958, as amended. As such, it is subject to review by only the Courts of Appeal of the United States or the United States Court of Appeals for the District of Columbia.

Issued in Kansas City, Missouri, on September 24, 1982.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82–27311 Filed 10–6–82; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 82–ACE–09]

Designation of Federal Airways, Area Low Point Routes Controlled Airspace and Reporting Points; Designation of Transition Area—Grant, Nebraska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Grant, Nebraska, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Grant Municipal Airport, Grant, Nebraska, utilizing a Non-Directional Radio Beacon (NDB) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: December 23, 1982

FOR FURTHER INFORMATION CONTACT: Dale Carnine, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–532, FAA Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION: A new instrument approach procedure to the Grant Municipal Airport, Grant, Nebraska, is being established utilizing an NDB as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails the designation of a transition area at Grant, Nebraska, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

Discussion of Comments

On pages 33279 and 33280 of the **Federal Register** dated August 2, 1982, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate

a transition area at Grant, Nebraska. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 G.m.t. December 23, 1982, by designating the following transition area:

Grant, Nebraska

That airspace extending upward from 700 feet above the surface within an 8.5 mile radius of the Grant Municipal Airport (Latitude 40°52'10"N, Longitude 101°43'57"W).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on September 22, 1981.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82-27312 Filed 10-6-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 81-AWA-17]

Alteration of VOR Federal Airways—V-89, V-120, V-159, V-161 and V-67

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment renumbers certain alternate VOR Federal Airways and revokes other alternate airway segments in the central part of the U.S. This action reduces chart clutter by revoking airways that are no longer needed for flight planning or Air Traffic Control (ATC) and also supports International Civil Aviation Organization (ICAO) agreement to phase out alternate airway descriptions from the National Airspace System.

EFFECTIVE DATE: December 23, 1982.

FOR FURTHER INFORMATION CONTACT: Robert Maxey, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On August 12, 1982, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to renumber segments of alternate VOR Federal Airways V-89E and V-159W and revoke segments of V-120N, V-161W, and V-67E in the central part of the U.S. (47 FR 35001). The revocation of these segments, which are no longer needed for air navigation, will reduce clutter. Other alternate airway segments are renumbered to eliminate the use of alternate airway descriptions in accordance with ICAO agreement. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) renumbers V-89E between Chadron, NE, and Cheyenne, WY, and V-159 between Sioux City, IA, and Omaha, NE, and revokes V-120N between Mason City, IA, and Waterloo, IA, V-161W between Mason City, IA, and Rochester, MN, and V-67E between Rochester, MN, and Waterloo, IA. There is no change in the amount of designated controlled airspace as a result of this action. The renumbering of alternate airways is in accordance with ICAO agreement to phase out alternate airway descriptions from the National Airspace System.

List of Subjects in 14 CFR Part 71

Federal airways.

Adoption Of The Amendment

Accordingly, pursuant to the authority delegated to me § 71.123 of Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t. December 23, 1982, as follows:

1. V-89 [Amended]

By deleting the words ", including an east alternate from Denver to Cheyenne via Gill, CO, and INT Gill 003° and Cheyenne 131° radials; Chadron, including an E alternate from Cheyenne to Chadron via Scottsbluff, NE" and substituting for them the words "; Chadron, NE"

2. V-81 [Amended]

By adding after Denver, CO, the words "; Gill, CO; INT Gill 003° and Cheyenne, WY, 131° radials; Cheyenne; Scottsbluff, NE; Chadron, NE"

3. V-120 [Amended]

By deleting after Waterloo, IA, the words ", including a north alternate via INT Mason City 106° and Waterloo 323° radials"

4. V-67 [Amended]

By deleting the words ", including an east alternate. The airspace at and above 10,000 feet MSL from Capital to 28 miles south of Burlington is excluded during the time that the Allen MOA is activated by NOTAM"

5. V-161 [Amended]

By deleting after Rochester, MN, the words ", including a W alternate via INT Mason City 023° and Rochester 243° radials"

6. V-159 [Amended]

By deleting after Sioux City, IA, the words ", including a west alternate via INT Omaha 320° and Sioux City 174° radials"

7. V-307 [Amended]

By adding after Omaha, NE the words "; INT Omaha 320° and Sioux City, IA, 174° radials; Sioux City"

8. V-129 [Amended]

By deleting after Dubuque, IA; the words "INT Dubuque 348° and Nodine, MN, 150° radials, Nodine, including a W alternate from Dubuque to Nodine via Waukon, IA" and substituting for them the words "INT Dubuque 348° and NODINE, MN, 150° radials; Nodine" and by deleting the words "The airspace at and above 10,000 feet MSL from Capital to 25 miles north, is excluded during the time that the Allen MOA is activated by NOTAM."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a

significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on September 30, 1982.

John W. Baier,

Acting Manager, Airspace and Air Traffic Rules Division.

[FR Doc. 82-27623 Filed 10-6-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 91

[Docket No. 21071; Amdt. Nos. 43-23, and 91-181]

Operations Review Program: Amendment No. 12: Aircraft Maintenance

Correction

In FR Doc. 82-25471 appearing on page 41076 in the issue of Thursday, September 16, 1982, make the following correction.

On page 41088, second column, third line of § 91.172(a), the reference to "§ 172.123(b)" should have read "§ 127.123(b)".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Room Air Conditioners

AGENCY: Federal Trade Commission.

ACTION: Rule related notice.

SUMMARY: Under the Federal Trade Commission's Appliance Labeling Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range is still applicable for the next year.

The ranges of energy efficiencies for room air conditioners have not changed by as much as 15% since the last publication. Therefore, the ranges published on March 25, 1980 remain in effect until new ranges are published.

EFFECTIVE DATE: October 7, 1982.

FOR FURTHER INFORMATION CONTACT: James Mills, 202-376-2891, or Lucerne D. Winfrey, 202-376-2805, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers, (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

[1] Pub. L. 94-163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR Part 305 (November 19, 1979).

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained the estimated annual cost or energy efficiency rating, derived from tests performed pursuant to the DOE test procedures, for all models of the seven categories of appliances. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From the information, the Commission compiled and published [3] ranges of the comparability for each product, as required by § 305.10 of the rule.

Section 305.10(a) of the rule requires that manufacturers, after filing this initial report, shall report the same information annually by specified dates for each product type.[4] If an analysis of the new data indicates that the upper or lower limits of any of the ranges have changed by more than 15%, the Commission must, under § 305.10 of the rule, publish a revised version of the new range or ranges. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for room air conditioners have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the initial publication of the ranges on March 25, 1980.

In consideration of the foregoing, the present ranges for room air conditioners will remain in effect for the next year.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

(Sec. 324 of the Energy Policy and Conservation Act, 42 U.S.C. 6294 (1975), as amended by the National Energy Conservation Policy Act, 42 U.S.C. 6291 (1978); sec. 553 of the Administrative Procedure Act, 5 U.S.C. 551)

Carol M. Thomas,

Secretary.

[FR Doc. 82-27678 Filed 10-6-82; 8:45 am]

BILLING CODE 6750-01-M

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[3] 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 26036 (April 17, 1980), 46 FR 3829 (January 16, 1981).

[4] Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for refrigerator-freezers and freezers are due by August 1.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 203, 204, 213, 215, 220, 221, 222, 226, 227, 233, 235, 236, 237, 240, 425, 426, 804, 805, 812 and 841

[Docket No. N-82-1172]

Notice of Postponement of Effective Dates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of postponement of effective dates for certain recent interim and final rules.

SUMMARY: This notice postpones the effective dates for certain recently published interim and final rules because of the unanticipated early recess of Congress.

DATES: The effective dates of each of the rules cited below are postponed until further notice.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10278, 451 7th Street, SW., Washington, D.C. 20410, telephone no. (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Pursuant to section 7(o)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)(3), no interim or final rule issued by the Department may become effective until 30 calendar days of continuous session of Congress have passed following the rule's date of publication in the **Federal Register**. The Department recently has published in the **Federal Register** the rules listed below. Effective dates were announced at the time of publication based on a projection of the necessary Congressional session-days and on an October 7, 1982 adjournment of the Congress. The Congress, however, has recessed as of October 1, 1982, and plans to resume its session in late November 1982. This unanticipated early recess of Congress has interrupted the necessary 30-day period required by Section 7(o)(3) for the rules listed below. Accordingly, the effective dates listed in these rules are stayed, and announcement of the new effective dates for these rules will be published by Notice in the **Federal Register** after Congress returns and those dates can be determined.

Section 7(o)(4) of the Department of Housing and Urban Development Act authorizes waiver of the delayed effective date requirement if concurred in by the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs. If waiver is granted for any of the rules listed, notice of that waiver and of the newly established effective date based thereon will be published in the **Federal Register**.

24 CFR Part 200. Intermediate Minimum Property Standards for Solar Heating and Domestic Hot Water Interim rule published August 17, 1982, Docket No. R-82-1004 (47 FR 35760)

24 CFR Parts 203, 204, 213, 220, 221, 222, 226, 227, 233, 235, 237 and 240. Single Family Waiver Authority Final rule published August 18, 1982, Docket No. R-82-952 (47 FR 5957)

24 CFR Parts 215, 236, 425 and 426. Rent Supplement Regulations Interim rule published August 24, 1982, Docket No. R-82-1006 (47 FR 36814)

24 CFR Part 812. Definition of Family Income Final rule published August 31, 1982, Docket No. R-82-772 (47 FR 38282)

24 CFR Parts 804, 805 and 841. Low Rent Housing Homeownership Opportunities (Turnkey III); Indian Housing; Public Housing Development Phase; Maximum Limit on Total Development Cost Final rule published September 8, 1982, Docket No. R-82-856 (47 FR 39480)

Dated: October 4, 1982.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 82-27687 Filed 10-6-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 53, 54 and 301

[T.D. 7838; EE-159-78]

Procedure and Administration of Certain Excise Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to Procedure and Administration with respect to Chapters 41, 42, 43, and 44 (relating to excise taxes and black lung benefit trusts), and the unrelated business income tax, all under the Internal Revenue Code. Changes in the applicable law were made by the Tax Reform Act of 1969, the Employee Retirement Income Security Act of 1974, the Tax Reform Act of 1976, and the Revenue Act of 1978. These regulations would provide the public with the guidance needed to comply with those Acts and would affect all persons liable for tax under Chapters 41, 42, 43, and 44 of the Code.

DATES: The amendments are effective at varying dates dependent upon the effective date of the underlying excise tax. In general, the Code sections imposing the taxes are effective as follows:

26 U.S.C.	Subject	Effective date
§ 4911	Excess lobbying expenditures of public charities.	Taxable years beginning after Dec. 31, 1976.
§ 4940	Investment income of private foundations.	Taxable years beginning after Dec. 31, 1969.
§ 4941	Self-dealing by private foundations.	Jan. 1, 1970.
§ 4942	Failure by private foundation to distribute income.	Taxable years beginning after Dec. 31, 1969.
§ 4943	Excess business holdings of private foundations.	Taxable years beginning after Dec. 31, 1969.
§ 4944	Investments that jeopardize charitable purpose of private foundations.	Jan. 1, 1970.
§ 4945	Taxable expenditures of private foundations.	Jan. 1, 1970.
§ 4951	Self-dealing by black lung benefit trusts.	Taxable years beginning after Dec. 31, 1977.
§ 4952	Taxable expenditures of black lung benefit trusts.	Taxable years beginning after Dec. 31, 1977.
§ 4953	Excess contributions to black lung benefit trusts.	Taxable years beginning after Dec. 31, 1977.
§ 4971	Failure by pension plan to meet minimum funding standard.	Plan years beginning after Dec. 31, 1975 or after Sept. 2, 1974.
§ 4972	Excess contributions for self-employed individuals.	Taxable years beginning after Dec. 31, 1975.
§ 4973	Excess contributions to IRA's, etc.	Jan. 1, 1975.
§ 4974	Excess accumulations in IRA's, etc.	Jan. 1, 1975.
§ 4975	Prohibited transactions by pension plans.	Jan. 1, 1975.
§ 4981	Undistributed income of REIT's.	Taxable years beginning after Oct. 4, 1976.

FOR FURTHER INFORMATION CONTACT: Charles M. Watkins of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 25, 1980, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1), the Regulations on Foundation and Similar Excise Taxes (26 CFR Part 53), Pension

Excise Taxes (26 CFR Part 54), and the Regulations on Procedure and Administration (26 CFR Part 301) under various provisions of the Internal Revenue Code of 1954. These amendments were proposed to conform the regulations relating to procedure and administration of the excise taxes to present law.

Only a few minor comments were received with respect to the proposed amendments, and no public hearing was requested or held. This Treasury decision does not reflect any changes made by the Windfall Profit Tax Act of 1980, or those changes made by Pub. L. 96–596, enacted December 24, 1980. The proposed amendments are adopted by this Treasury decision with minor changes.

Executive Order 12291 and Regulatory Flexibility Act

The Internal Revenue Service has determined that this document does not contain a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is, therefore, not required.

Although this document adopts final regulations, the Internal Revenue Service has concluded that the regulations adopted herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Leonard S. Hirsh of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects

26 CFR Parts 1.6001–1—1.6109–2

Income taxes, Filing requirements.

26 CFR Part 53

Excise taxes, Foundations, Trusts and trustees.

26 CFR Part 54

Excise taxes, Pensions.

26 CFR Part 301

Administrative practice and procedure, Excise taxes, Filing requirements, Income taxes, Investigations, Pensions.

Adoption of Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Parts 1, 53, 54, and 301 are hereby adopted subject to the changes set forth below:

Pension Excise Taxes

[26 CFR Part 54]

Paragraph 1. Section 54.6011–1, as set forth in paragraph 6 of the notice of proposed rulemaking, is amended by revising paragraph (a) to read as follows:

§ 54.6011–1 General requirement of return, statement, or list.

(a) *Minimum funding standards or excess contributions for self-employed individuals and section 403(b)(7)(A) custodial accounts.* Any employer or individual liable for tax under section 4971, 4972 or 4973(a)(2) (for a custodial account under section 403(b)(7)(A)) shall file an annual return of Form 5330 and shall include therein the information required by such form and the instructions issued with respect thereto.

* * * * *

Procedure and Administration

[26 CFR Part 301]

Par. 2. Section 301.6501(e)–1, as set forth in paragraph 12 of the notice of proposed rulemaking, is amended by:

1. Inserting the following sentence at the end of paragraph (c)(3)(i): "If a private foundation discloses in its return (or in a schedule or statement attached thereto) the nature, source, and amount of any income giving rise to any omitted tax, the tax arising from such income shall be counted as reported on the return in computing whether the foundation has omitted more than 25 percent of the tax reported on its return."

2. Inserting the following sentence at the end of paragraph (c)(5): "If a real estate investment trust discloses in its return (or in a schedule or statement attached thereto) the nature source, and amount of any income giving rise to any omitted tax, the tax arising from such income shall be counted as reported on the return in computing whether the trust has omitted more than 25 percent of the tax reported on its return."

Par. 3. Section 301.6501(n)–1, as set forth in paragraph 13 of the notice of proposed rulemaking, is amended by:

1. Inserting "(2)" in the second sentence of paragraph (a)(1), immediately following the phrase "section 4947(a)".

2. Inserting "(a) or section 4941(b)" immediately following the phrase "section 4941" in the third sentence of the example in paragraph (c).

Par. 4. Section 301.7422–1, as set forth in paragraph 24 of the notice of proposed rulemaking, is amended by:

1. Inserting "and 43" immediately following the phrase "chapter 42" in the title.

1a. Inserting "of the United States Claims Court or" immediately following the word "decision" in paragraph (a)(1).

1b. Deleting the phrase "Court of Claims" from paragraph (a)(2) and inserting the phrase "Claims Court" in its place.

1c. Inserting a "," after the phrase "District Court" in paragraph (a)(2).

2. Inserting "(d)(2)(iii)(*a*)" immediately following the phrase "pursuant to § 53.4941(e)–1" in the second sentence of the example in paragraph (c).

3. Inserting "(d)(2)(iv)" immediately following the phrase "§ 53.49419e)–1" in the third and fourth sentences of the example in paragraph (c).

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: September 8, 1982.

John E. Chapoton,

Assistant Secretary of the Treasury.

Title 26 of the Code of Federal Regulations, Parts 1, 53, 54 and 301 are amended as set forth below:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. Section 1.6012–2(e) is revised to read as follows:

§ 1.6012–2 Corporations required to make returns of income.

* * * * *

(e) *Charitable and other organizations with unrelated business income.* Every organization described in section 511(a)(2) which is subject to the tax imposed by section 511(a)(1) on its unrelated business taxable income shall make a return on Form 990–T for each taxable year if it has gross income, included in computing unrelated business taxable income for such taxable year, of $1,000 or more. The filing of a return of unrelated business income does not relieve the organization of the duty of filing other required returns.

* * * * *

Par. 2. Section 1.6012–3(a)(5) is revised to read as follows:

§ 1.6012–3 Returns by fiduciaries.

(a) *For estates and trusts.* * * *

(5) *Trusts with unrelated business income.* Every fiduciary for a trust described in section 511(b)(2) which is subject to the tax on its unrelated business taxable income by section 511(b)(1) shall make a return on Form 990–T for each taxable year if the trust has gross income, included in computing unrelated business taxable income for such taxable year, of $1,000 or more. The filing of a return of unrelated business income does not relieve the fiduciary of

such trust from the duty of filing other required returns.

* * * * *

Par. 3. Paragraph (a)(2)(i) of § 1.6033–2 is amended by adding a new sentence at the end to read as follows:

§ 1.6033–2 Returns by exempt organizations; taxable years beginning after December 31, 1969.

(a) *In general.* * * *

(2)(i) * * * For taxable years beginning after December 31, 1977, every section 501(c)(21) black lung trust shall file an annual information return on Form 990–BL or any other form prescribed by the Internal Revenue Service for that purpose.

* * * * *

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 4. A new paragraph (e) is added to § 53.6011–1 to read as follows:

§ 53.6011–1 General requirement of return, statement, or list.

* * * * *

(e) For taxable years beginning after December 31, 1977, every person liable for tax under section 4951, 4952, or 4953 (relating to taxes on self-dealing, taxable expenditures, and excess contributions involving black lung benefit trusts) shall file an annual return with respect to the tax on the form prescribed by the Internal Revenue Service for that purpose. The person liable for the tax shall include the information required by the form and its related instructions.

Par. 5. Section 53.6071–1 is amended by changing a cross reference in paragraph (a) and adding a new paragraph (d). The revised paragraph (a) and new paragraph (d) read as follows:

§ 53.6071–1 Time for filing returns.

(a) *General rule.* Except as otherwise provided in this section, a return required by § 53.6011–1 shall be filed at the time the private foundation or trust described in section 4947(a)(2) is required to file its annual information or tax return under section 6033 or 6012 (as may be applicable).

* * * * *

(d) *Taxes related to black lung benefit trusts.* Forms 990–BL and 6069 shall be filed on or before the 15th day of the fifth month following the close of the filer's taxable year.

PART 54—PENSION EXCISE TAXES

Par. 6. New § 54.6011–1 is added to read as follows:

§ 54.6011–1 General requirement of return, statement, or list.

(a) *Minimum funding standards or excess contributions for self-employed individuals and section 403(b)(7)(A) custodial accounts.* Any employer or individual liable for tax under section 4971, 4972 or 4973(a)(2) (for a custodial account under section 403(b)(7)(A)) shall file an annual return on Form 5330 and shall include therein the information required by such form and the instructions issued with respect thereto.

(b) *Tax on prohibited transactions.* Every disqualified person (as defined in section 4975(e)(2)) liable for the tax imposed under section 4975(a) with respect to a prohibited transaction shall file an annual return on Form 5330 and shall include therein the information required by such form and the instructions issued with respect thereto. The annual return on Form 5330 shall be filed with respect to each prohibited transaction and for each taxable year (or part thereof) of the disqualified person in the taxable period (as defined in section 4975(f)(2)) beginning on the date on which such prohibited transaction occurs.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 7. Section 301.6204–1 is revised to read as follows:

§ 301.6204–1 Supplemental assessments.

If any assessment is incomplete or incorrect in any material respect, the district director or the director of the regional service center, subject to the restrictions with respect to the assessment of deficiencies in income, estate, gift, chapter 41, 42, 43, and 44 taxes, and subject to the applicable period of limitation, may make a supplemental assessment for the purpose of correcting or completing the original assessment.

Par. 8. Section 301.6211–1 is amended by revising paragraph (a) and the first sentence of paragraph (f) to read as follows:

§ 301.6211–1 Deficiency defined.

(a) In the case of the income tax imposed by subtitle A of the Code, the estate tax imposed by chapter 11, subtitle B, of the Code, the gift tax imposed by chapter 12, subtitle B, of the Code, and any excise tax imposed by chapter 41, 42, 43, or 44 of the Code, the term "deficiency" means the excess of the tax, (income, estate, gift, or excise tax as the case may be) over the sum of the amount shown as such tax by the taxpayer upon his return and the amounts previously assessed (or collected without assessment) as a deficiency; but such sum shall first be reduced by the amount of rebates made. If no return is made, or if the return (except a return of income tax pursuant to sec. 6014) does not show any tax, for the purpose of the definition "the amount shown as the tax by the taxpayer upon his return" shall be considered as zero. Accordingly, in any such case, if no deficiencies with respect to the tax have been assessed, or collected without assessment, and no rebates with respect to the tax have been made, the deficiency is the amount of the income tax imposed by subtitle A, the estate tax imposed by chapter 11, the gift tax imposed by chapter 12, or any excise tax imposed by chapter 41, 42, 43, or 44. Any amount shown as additional tax on an "amended return," so-called (other than amounts of additional tax which such return clearly indicates the taxpayer is protesting rather than admitting) filed after the due date of the return, shall be treated as an amount shown by the taxpayer "upon his return" for purposes of computing the amount of a deficiency.

* * * * *

(f) As used in section 6211, the term "rebate" means so much of an abatement, credit, refund, or other repayment as is made on the ground that the income tax imposed by subtitle A, the estate tax imposed by chapter 11, the gift tax imposed by chapter 12, or the excise tax imposed by chapter 41, 42, 43, or 44, is less than the excess of (1) the amount shown as the tax by the taxpayer upon the return increased by the amount previously assessed (or collected without assessment) as a deficiency over (2) the amount of rebates previously made. * * *

Par. 9. Section 301.6212–1 is amended by revising paragraph (a), (b)(1), and the first sentence of paragraph (c) to read as follows:

§ 301.6212–1 Notice of deficiency.

(a) *General rule.* If a district director or director of a service center (or regional director of appeals), determines that there is a deficiency in respect of income, estate, or gift tax imposed by subtitle A or B, or excise tax imposed by chapter 41, 42, 43, or 44, of the Code, such official is authorized to notify the taxpayer of the deficiency by either registered or certified mail.

(b) *Address for notice of deficiency—* (1) *Income, gift, and chapter 41, 42, 43, and 44 taxes.* Unless the district director for the district in which the return in question was filed has been notified under the provisions of section 6903 as to the existence of a fiduciary relationship, notice of a deficiency in

respect of income tax, gift tax, or tax imposed by chapter 41, 42, 43, or 44 shall be sufficient if mailed to the taxpayer at his last known address, even though such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

* * * * *

(c) *Further deficiency letters restricted.* If the district director or director of a service center (or regional director of appeals) mails to the taxpayer notice of a deficiency, and the taxpayer files a petition with the Tax Court within the prescribed period, no additional deficiency may be determined with respect to income tax for the same taxable year, gift tax for the same calendar quarter (calendar year with respect to gifts made before January 1, 1971), estate tax with respect to the taxable estate of the same decedent, chapter 41, 43, or 44 tax of the taxpayer for the same taxable year, section 4940 tax for the same taxable year, or chapter 42 tax of the taxpayer (other than under section 4940) with respect to the same act (or failure to act) to which such petition relates. * * *

Par. 10. Section 301.6213–1 is amended by revising paragraph (a)(2) and by adding a new paragraph (e). These revised and added provisions read as follows:

§ 301.6213–1 Restrictions applicable to deficiencies, petition to Tax Court.

(a) *Time for filing petition and restrictions on assessment.* * * *

(2) *Restrictions on assessment.* Except as otherwise provided by this section, by sections 6851 and 6861(a) (relating to termination and jeopardy assessments), by section 6871(a) (relating to immediate assessment of claims for income, estate, and gift taxes in bankruptcy and receivership cases), or by section 7485 (in case taxpayer petitions for a review of a Tax Court decision without filing bond), no assessment of a deficiency in respect of a tax imposed by subtitle A or B or chapter 41, 42, 43, or 44 of the Code and no levy or proceeding in court for its collection shall be made until notice of deficiency has been mailed to the taxpayer, nor until the expiration of the 90-day or 150-day period within which a petition may be filed with the Tax Court, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. As to the date on which a decision of the Tax court becomes final, see section 7481. Notwithstanding the provisions of section 7421(a), the making of an assessment or the beginning of a proceeding or levy which is forbidden by this paragraph may be enjoined by a proceeding in the proper court. In any case where the running of the time prescribed for filing a petition in the Tax Court with respect to a tax imposed by chapter 42 or 43 is suspended under section 6213(e), no assessment of a deficiency in respect of such tax shall be made until expiration of the entire period for filing the petition.

* * * * *

(e) *Suspension of filing period for certain chapter 42 and chapter 43 taxes.* The period prescribed by section 6213(a) for filing a petition in the Tax Court with respect to the taxes imposed by section 4941,4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975, shall be suspended for any other period which the Commissioner has allowed for making correction under section 4941(e)(4), 4942(j)(2), 4943(d)(3), 4944(e)(3), 4945(i)(2), 4951(e)(4), 4952(e)(2), 4971(c)(3), or 4975(f)(6). Where the time for filing a petition with the Tax Court has been suspended under the authority of this paragraph (e), the extension shall not be reduced as a result of the correction being made prior to expiration of the period allowed for making correction.

Par. 11. Section 301.6501(c)—1 is amended by revising paragraph (c) to read as follows:

§ 301.6501(c)–1 Exceptions to general period of limitations on assessments and collections.

* * * * *

(c) *No return.* In the case of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after the date prescribed for filing the return. For special rules relating to filing a return for chapter 42 and similar taxes, see §§ 301.6501(n)–1, 301.6501(n)–2, and 301.6501(n)–3.

* * * * *

Par. 12. Section 301.6501(e)–1 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 301.6501(e)–1 Omission from return.

* * * * *

(c) *Excise taxes*—(1) *In general.* If the taxpayer omits from a return of a tax imposed under a provision of subtitle D an amount properly includable thereon, which amount is in excess of 25 percent of the amount of tax reported thereon, the tax may be assessed or a proceeding in court for the collection thereof may be begun without assessment, at any time within 6 years after the return was filed. For special rules relating to chapter 41, 42, 43, and 44 taxes, see subparagraphs (2), (3), (4), and (5) of this paragraph.

(2) *Chapter 41 excise taxes.* If an organization discloses an expenditure in its return (or in a schedule or statement attached thereto) in a manner sufficient to apprise the district director or director of a service center of the existing and nature of such expenditure, the three year limitation on assessment and collection described in section 6501(a) shall apply with respect to any tax under chapter 41 arising from such expenditure. If a taxpayer fails to so disclose an expenditure in its return (or in a schedule or statement attached thereto), the tax arising from the expenditure not so disclosed may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(3) *Chapter 42 excise taxes.* (i) If a private foundation omits from its annual return with respect to the tax imposed by section 4940 an amount of tax properly includible therein which is in excess of 25 percent of the amount of tax imposed by section 4940 which is reported on the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment at any time within 6 years after the return was filed. If a private foundation discloses in its return (or in a schedule or statement attached thereto) the nature, source, and amount of any income giving rise to any omitted tax, the tax arising from such income shall be counted as reported on the return in computing whether the foundation has omitted more than 25 percent of the tax reported on its return.

(ii) If a private foundation or trust (as the case may be) discloses an item in its return (or in a schedule or statement attached thereto) in a manner sufficient to apprise the district director or director of a service center of the existence and nature of such item, the three year limitation on assessment and collection described in section 6501(a) shall apply with respect to any tax imposed under sections 4941(a), 4942(a), 4943(a), 4944(a), 4945(a), 4951(a), 4952(a), and 4953 arising from any transaction disclosed by such item. If a private foundation or trust (as the case may be) fails to so disclose an item in its return (or in a schedule or statement attached thereto), the tax arising from any transaction not so disclosed may be assessed or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(4) *Chapter 43 excise taxes.* If a taxpayer discloses an item in its return (or in a schedule or statement attached thereto) in a manner sufficient to apprise

the district director or director of a service center of the existence and nature of such item, the three year limitation on assessment and collection described in section 6501(a) shall apply with respect to any tax imposed under sections 4971(a), 4972, 4973, 4974, and 4975(a) arising from any transaction disclosed by such item. If a taxpayer fails to so disclose an item in its return (or in a schedule or statement attached thereto), the tax arising from any transaction not so disclosed may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. The applicable return for the tax under sections 4971, 4972, 4973 and 4974 is the return designated by the Commissioner for reporting the respective tax. The applicable return for the tax under section 4975 is the return filed by the plan used to report the act giving rise to the tax.

(5) *Chapter 44 excise taxes.* If a real estate investment trust omits from its annual return with respect to the tax imposed by section 4981 an amount of tax properly includible therein which is in excess of 25 percent of the amount of tax imposed by section 4981 which is reported on the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. If a real estate investment trust discloses in its return (or in a schedule or statement attached thereto) the nature, source, and amount of any income giving rise to any omitted tax, the tax arising from such income shall be counted as reported on the return in computing whether the trust has omitted more than 25 percent of the tax reported on its return.

* * * * *

Par. 13. New §§ 301.6501(n)–1, 301.6501(n)–2, and 301.6501)(n)–3 are added to read as follows:

§ 301.650(n)–1 Special rules for chapter 42 and similar taxes.

(a) *Return filed by private foundation, plan, or trust.* (1) A return filed by a private foundation, plan, or trust (as the case may be) with respect to any act giving rise to a tax imposed by chapter 42 (other than a tax imposed by section 4940), or by Section 4975 shall be considered, for purposes of section 6501, to be the return of all persons required to file a return with respect to any such tax arising from such act, notwithstanding that all such persons have not signed the return. In the case of a private foundation that files a Form 990–PF (or a Form 5227 in the case of a nonexempt foundation described in section 4947(a)(2)), which contains questions with respect to such taxes, the filing of such form by such foundation shall constitute the filing of a return with respect to any such act, even though the foundation incorrectly answered such questions.

(2) For purposes of section 4940, the return referred to in this section is the return filed by the private foundation for the taxable year for which the tax is imposed.

(b) *Failure of private foundation plan, or trust to file.* The period of limitations on assessment and collection described in section 6501 does not begin with respect to any person liable for tax under chapter 42 (other than section 4940) or section 4975 arising from a given act, where the private foundation, plan, or trust (as the case may be) has not filed its required return that reports such act for the year in which the act (or failure to act) giving rise to liability for such tax occurred.

(c) *Example.* The provision of this section may be illustrated by the following example:

Example. In 1973, D, an individual taxpayer who was a disqualified person under the provisions of section 4946(a)(1), participated in an act of self-dealing with a private foundation and incurred a tax under section 4941(a)(1). On May 15, 1974, the private foundation files a Form 990–PF and answers all the questions thereon with regard to any acts of self-dealing (as defined in section 4941(d)) in which it may have engaged in 1973. Assuming that the foundation's return was not a false or fraudulent return nor made with the willful attempt to defeat tax, the period of limitations on assessment and collection under section 6501(a) shall start with respect to any tax under section 4941(a) or section 4941(b) imposed on D arising out of that transaction with such foundation.

§ 301.6501(n)–2 Certain contributions to section 501(c)(3) organizations.

If a private foundation makes a contribution to a section 501(c)(3) organization as provided in section 4942(g)(3), and a deficiency of tax of such foundation occurs due to the failure of the section 501(c)(3) organization to make the distribution prescribed by section 4942(g)(3), then such deficiency may be assessed within one year after the expiration of the period within which a deficiency may be assessed for the taxable year with respect to which the contribution was made.

§ 301.650(n)–3 Certain set-asides described in section 4942(g)(2).

Where a deficiency of tax of a private foundation results from the failure of an amount set aside by such foundation for a specific project to be treated as a qualifying distribution under section 4942(g)(2)(B)(ii)(II), such deficiency may be assessed within two years after the expiration of the period within which a deficiency may be assessed for the taxable year to which the amount set aside relates.

Par. 14. Paragraph (a) of § 301.6503(a)–1 is revised to read as follows:

§ 301.6503(a)–1 Suspension of running of period of limitation; issuance of statutory notice of deficiency.

(a) *General rule.* (1) Upon the mailing of a notice of deficiency for income, estate, gift, chapter 41, 42, 43, or 44 tax under the provisions of section 6212, the period of limitation on assessment and collection of any deficiency is suspended for 90 days after the mailing of a notice of such deficiency if the notice of deficiency is addressed to a person within the States of the Union and the District of Columbia, or 150 days if such notice of deficiency is addressed to a person outside the States of the Union and the District of Columbia (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th or 150th day), plus an additional 60 days thereafter in either case. If a proceeding in respect of the deficiency is placed on the docket of the Tax Court, the period of limitation is suspended until the decision of the Tax Court becomes final, and for an additional 60 days thereafter. If a notice of deficiency is mailed to a taxpayer within the period of limitation and the taxpayer does not appeal therefrom to the Tax Court, the notice of deficiency so given does not suspend the running of the period of limitation with respect to any additional deficiency shown to be due in a subsequent deficiency notice.

(2) This paragraph may be illustrated by the following example:

Example. A taxpayer filed a return for the calendar year 1973 on April 15, 1974; the notice of deficiency was mailed to him (at an address within the United States) on April 15, 1977; and he filed a petition with the Tax Court on July 14, 1977. The decision of the Tax Court became final on November 6, 1978. The running of the period of limitation for assessment is suspended from April 15, 1977, to January 5, 1979, which date is 60 days after the date (November 6, 1978), on which the decision became final. If in this example the taxpayer had failed to file a petition with the Tax Court, the running of the period of limitation for assessment would then be suspended from April 15, 1977 (the date of notice), to September 12, 1977 (that is, for the 90-day period in which he could file a petition with the Tax Court, and for 60 days thereafter).

* * * * *

Par. 15. Section 301.6503(g)–1 is redesignated as § 301.6503(f)–1 and a

new § 301.6503(g)–1 is added to read as follows:

§ 301.6503(g)–1 Suspension pending correction.

The running of the periods of limitations provided in sections 6501 and 6502 on the making of assessments, the collection by levy, or a proceeding in court in respect of any tax imposed by chapter 42 or section 507, 4971, or 4975 shall be suspended for any period described in section 507(g)(2) or during which the Commissioner has extended the time for making correction under section 4941(e)(4), 4942(j)(2), 4943(d)(3), 4944(e)(3), 4945(i)(2), 4951(e)(4), 4952(e)(2), 4971(c)(3), or 4975(f)(6).

Par. 16. A new § 301.6511(f)–1 is added to read as follows:

§ 301.6511(f)–1 Special rules for chapter 42 taxes.

(a) *In general.* Claims for credit or refund of an overpayment of any tax imposed by chapter 42 shall be filed by the taxpayer within 3 years from the time a return was filed by the private foundation or trust (as the case may be) with respect to such tax, or within 2 years from the time the tax was paid, whichever of such periods expire the later.

(b) *Examples.* This section may be illustrated by the following examples:

Example (1). In 1972, D, an individual taxpayer who was a disqualified person under the provisions of section 4946(a)(1), participated in an act of self-dealing with a private foundation and incurred a tax under section 4941(a)(1). The private foundation files a Form 990–PF on May 15, 1973, and discloses thereon that it has engaged in an act of self-dealing with D. D files a Form 4720 on July 2, 1973, and pays the amount of tax imposed by section 4941(a) with respect to such act of self-dealing. For purposes of this section, the return was filed on May 15, 1973, and any claim for credit or refund by D must be filed by May 17, 1976 (May 15, 1976, was a Saturday).

Example (2). Assume the same facts as in example (1) except that D filed a Form 4720 on July 1, 1974, and pays the tax on that date. D must then file any claim for credit or refund by July 1, 1976.

Par. 17. Section 301.6512–1 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 301.6512–1 Limitations in case of petition to Tax Court.

(a) *Effect of petition to Tax Court*—(1) *General rule.* If a person having a right to file a petition with the Tax Court with respect to a deficiency in income, estate, gift, or excise tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44 of the Code has filed such petition within the time prescribed in section 6213(a), no credit or refund of income tax for the same taxable year, of gift tax for the same calendar year or calendar quarter, of estate tax in respect of the taxable estate of the same decedent, or of tax imposed by chapter 41, 42, 43, or 44 with respect to any act (or failure to act) to which such petition relates, in respect of which a district director or director of a service center (or a regional director of appeals) has determined the deficiency, shall be allowed or made, and no suit in any court for the recovery of any part of such tax shall be instituted by the taxpayer, except as to items set forth in paragraph (a)(2) of this section.

* * * * *

(b) *Overpayment determined by Tax Court.* If the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of income tax for the same taxable year, of gift tax for the same calendar year or calendar quarter, of estate tax in respect of the taxable estate of the same decedent, or of tax imposed by chapter 41, 42, 43, or 44 with respect to any act (or failure to act) to which such petition relates, in respect of which a district director, or director of a service center (or a regional director of appeals) has determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of such tax, the overpayment determined by the Tax Court shall be credited or refunded to the taxpayer when the decision of the Tax Court has become final. (See section 7481, relating to the date when a Tax Court decision becomes final.) No such credit or refund shall be allowed or made of any portion of the tax unless the Tax Court determines as part of its decision that such portion was paid—

(1) After the mailing of the notice of deficiency, or

(2) Within the period which would be applicable under section 6511(b)(2), (c), (d) or (g) (see §§ 301.6511(b)–1, 301.6511(c)–1, 301.6511(d)–1, 301.6511(d)–2, and 301.6511(d)–3), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the Tax Court finds that there is an overpayment.

* * * * *

§ 301.6601–1 [Amended]

Par. 18. Paragraph (d) of § 301.6601–1 is amended by striking out "or gift tax" and inserting in lieu thereof "gift, or chapter 41, 42, 43, or 44 tax".

Par. 19. Section 301.6653–1 is amended by revising paragraph (c)(1) through paragraph (c)(2) introductory text to read as follows:

§ 301.6653–1 Failure to pay tax.

* * * * *

(c) *Definition of underpayment*—(1) *Income, estate, gift, and chapter 41, 42, 43, and 44 taxes.* In the case of income, estate, gift, and chapter 41, 42, 43, and 44 taxes, an underpayment for purposes of section 6653 and this section is—

(i) The total amount of all deficiencies as defined in section 6211, if a return was filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return, or

(ii) The amount of the tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44, as the case may be, if a return was not filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return.

However, for purposes of paragraph (c)(1)(i) of this section, any amount of additional tax shown on the amended return, so called, filed after the due date of the return is a deficiency.

(2) *Other taxes.* In the case of any tax other than an income, estate, gift or chapter 41, 42, 43, or 44 tax, an underpayment for purposes of section 6653 and this section is the amount by which the tax imposed exceeds—

* * * * *

Par. 20. Section 301.6659–1 is amended by revising so much of paragraph (c)(1) as precedes example (1) and by revising paragraph (c)(2) to read as follows:

§ 301.6659–1 Applicable rules.

* * * * * *

(c) *Deficiency procedures*—(1) *Addition to the tax for failure to file tax return.* (i) Subchapter B, chapter 63, of the Code (deficiency procedures) applies to the additions to the income estate, gift, and chapter 41, 42, 43, and 44 taxes imposed by section 6651 for failure to file a tax return to the same extent that it applies to such taxes. Accordingly, if there is a deficiency (as defined in section 6211) in the tax (apart from the addition to the tax) where a return has not been timely filed, deficiency procedures apply to the addition to the tax under section 6651. If there is no deficiency in the tax where a return has not been timely filed, the addition to the tax under section 6651 may be assessed and collected without deficiency procedures.

(ii) The provisions of paragraph (c)(1)(i) of this section may be illustrated by the following examples:

* * * * *

(2) *Additions to the tax for negligence or fraud.* Subchapter B of chapter 63

(deficiency procedures) applies to all additions to the income, estate, gift, and chapter 41, 42, 43, and 44 taxes imposed by section 6653 (a) and (b) for negligence and fraud.

* * * * *

Par. 21. Section 301.6861–1 is amended by revising its heading, by revising the first sentence of paragraph (a), and by adding a new paragraph (g) to read as follows:

§ 301.6861–1 Jeopardy assessments of income, estate, gift, and certain excise taxes.

(a) *Authority for making.* If a district director or director of a service center believes that the assessment or collection of a deficiency in income, estate, gift, or chapter 41, 42, 43, or 44 tax will be jeopardized by delay, then the director is required to assess such deficiency immediately, together with the interest, additional amounts, and additions to the tax provided by law.* * *

* * * * *

(g) *Special rules for chapters 42 and 43 taxes.* For purposes of paragraph (a) of this section, the amount of a deficiency with respect to any tax imposed by section 4941(a), 4942(a), 4943(a), 4944(a), 4945(a), 4951(a), 4952(a), 4971(a) or 4975(a) shall include the amount of additional tax imposed by section 4941(b), 4942(b), 4943(b), 4944(b), 4945(b), 4951(b), 4952(b), 4971(b) or 4975(b) for failure to correct the act (or failure to act) which gave rise to liability for the initial tax. For purposes only of determining the amount to be assessed with respect to such additional tax, the correction period (as defined in sections 4941(e)(4), 4942(i)(2), 4943(d)(3), 4944(e)(3), 4945(i)(2), 4951(e)(4), 4952(e)(2), 4971(c)(3), and 4975(f)(6)) shall be considered to end on the day such jeopardy assessment is made.

Par. 22. Paragraph (a) of § 301.6862–1 and the heading of such section are revised to read as follows:

§ 301.6862–1 Jeopardy assessment of taxes other than income, estate, gift, and certain excise taxes.

(a) If the district director believes that the collection of any tax (other than income, estate, gift, chapter 41, 42, 43, or 44 tax) will be jeopardized by delay, the director shall, whether or not the time otherwise prescribed by law for filing the return or paying such tax has expired, immediately assess such tax, together with all interest, additional amounts and additions to the tax provided by law. A district director will make an assessment under this section if collection is determined to be in jeopardy because at least one of the conditions described in § 1.6851–1(a)(1)(i), (ii), or (iii) (relating to termination assessments) exists. For example, assume that a taxpayer incurs on January 18, 1977, liability for tax imposed by section 4061, that the last day on which return and payment of such tax is required to be made is May 2, 1977, and that on January 18, 1977, the district director determines that collection of such tax would be jeopardized by delay. In such case, the district director shall immediately assess the tax.

* * * * *

Par. 23. The heading and first sentence of paragraph (b) of § 301.6863–1 are revised to read as follows:

§ 301.6863–1 Stay of collection of jeopardy assessments; bond to stay collection.

* * * * *

(b) *Additional conditions applicable to income, estate, gift, and chapter 41, 42, 43 and 44 tax assessments.* In the case of jeopardy assessment of income, estate, gift, chapter 41, 42, 43, or 44 tax, the bond must be conditioned upon the payment of so much of the amount included therein as is not abated by a decision of the Tax Court which has become final, together with the interest on such amount.* * *

Par. 24. A new § 301.7422–1 is added which reads as follows:

§ 301.7422–1 Pendency of suit for purposes of the chapter 42 and 43 excise taxes.

(a) The "correction period" under sections 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, and 4975 shall be extended in certain circumstances while a refund suit referred to in section 7422 is pending. For purposes of such sections and the regulations thereunder, a suit for refund instituted under the provisions of this section shall be deemed to be pending until—

(1) The expiration of time allowed for filing a notice of appeal from a decision of the United States Claims Court or of the United States District Court, if no timely notice of appeal is filed; or

(2) The expiration of the time allowed for filing a petition for certiorari from a decision of the United States Claims Court, or from a decision of the United States District Court, which has been affirmed or the appeal dismissed by the United States Court of Appeals, if no timely petition for certiorari is filed; or

(3) If a petition for certiorari has been filed, thirty days from the denial of such petition; or

(4) Thirty days from the date of a decision of the United States Supreme Court if no timely petition for rehearing is filed, however, if a timely petition for rehearing from such a decision is filed, and is denied, thirty days from the denial thereof.

(b) If a decision is entered upon a rehearing or if a decision is modified or reversed as the result of a decision of a higher court, rules similar to the rules applicable if such decision were the original decision shall apply.

(c) Example. The provision of this section may be illustrated by the following example:

Example. On December 14, 1973, 60 days after having received a notice of deficiency under section 6212 with respect to the taxes arising from an act of self-dealing, D files a form 4720 with respect to such act for 1972 and pays the amount of initial tax. The payment of the tax extends the correction period, pursuant to § 53.4941(e)–1(d)(2)(iii)(*a*), until 90 days after payment. On February 1, 1974, D files a claim for refund, thereby extending the correction period pursuant to § 53.4941(e)–1(d)(2)(iv) during the pendency of the claim plus an additional 90 days. On May 1, 1974, the claim for refund is denied, and on July 1, 1974, D files a suit for refund in the United States District Court, thereby extending the correction period in accordance with § 53.4941(e)1(d)(2)(iv) during the pendency of the suit. On June 2, 1975, the Court denies D's claim for refund. D files a timely notice of appeal on June 16, 1975, thereby extending the correction period. On September 2, 1975, the Court of Appeals affirms the decision of the District Court. If D does not file a petition for certiorari with the United States Supreme Court, the correction period will end upon the expiration of the time to so file.

Par. 25 Immediately after § 301.7454–1 there is inserted the following new section § 301.7454–2 to read as follows:

§ 301.7454–2 Burden of proof in foundation manager, etc. cases.

(a) *Foundation manager.* In any proceeding involving the issue whether a foundation manager as defined in section 4946(b) has "knowingly" participated in an act of self-dealing within the meaning of section 4941, participated in an investment which jeopardizes the carrying out of exempt purposes within the meaning of section 4944, or agreed to the making of a taxable expenditure within the meaning of section 4945, the burden of proof in respect of such issue shall be upon the Commissioner.

(b) *Trustee of a black lung benefit trust.* In any proceeding involving the issue whether a trustee of a trust described in section 501(c)(21) has "knowingly" participated in an act of self-dealing within the meaning of section 4951 or agreed to the making of a taxable expenditure within the meaning of section 4952, the burden of proof in

respect of such issue shall be upon the Commissioner.

[FR Doc. 82-27720 Filed 10-5-82; 11:12 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Tax Division Directive No. 42]

Organization of the Department of Justice; Appendix To Subpart Y—Redelegation of Authority To Compromise and Close Civil Claims

AGENCY: Tax Division, Department of Justice.

ACTION: Final rule.

SUMMARY: This directive increases the redelegation to various officials of the Tax Division of the authority to compromise, settle and close claims filed in behalf of the United States and claims against the United States. This directive supersedes Tax Division Directive No. 41.

EFFECTIVE DATE: October 7, 1982.

FOR FURTHER INFORMATION CONTACT: Mildred L. Seidman, Review Section, Tax Division, Department of Justice, Washington, D.C. 20530, 202-724-6567.

SUPPLEMENTARY INFORMATION: The Assistant Attorney General for the Tax Division has determined that this directive is not a rule within the meaning of Executive Order 12291 or the Regulatory Flexibility Act.

In the Appendix to Subpart Y—Redelegation of Authority To Compromise and Close Civil Claims, Tax Division Directive No. 1 is removed and Directive No. 42 is added to read as set forth below.

List of Subjects in 28 CFR Part 0

Government employees and organization and functions (Government agencies).

PART 0 [AMENDED]

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, particularly §§ 0.70, 0.160, 0.162, 0.164, 0.166, and 0.168, it is ordered as follows:

Appendix to Subpart Y is amended by removing Directive No. 41 and by adding new Directive No. 42 to read as follows:

Appendix to Subpart Y—Redelegation of Authority to Compromise and Close Civil Claims

* * * * *

Tax Division

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[Tax Division Directive No. 42]

Section 1. The Chiefs of the Civil Trial Sections, the Court of Claims Section, and the Appellate Section are authorized to reject offers in compromise, regardless of amount, without reference to the Review Section, provided that such action is not opposed by the agency or agencies involved.

Section 2. Subject to the conditions and limitations set forth in Section 6 hereof, the Chiefs of the Civil Trial Sections and Court of Claims Section are authorized to:

(A) Accept offers in compromise in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $100,000,

(B) Accept offers in compromise in injunction or declaratory judgment suits against the United States in which the amount of the related liability, if any, does not exceed $100,000, and

(C) Accept offers in compromise in all other nonmonetary cases,

Provided, That such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 3. Subject to the conditions and limitations set forth in Section 6 hereof, the Chief of the Appellate Section is authorized to:

(A) Accept offers in compromise with reference to litigating hazards of the issues on appeal in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $100,000,

(B) Accept offers in compromise in declaratory judgment suits against the United States in which the amount of the related liability, if any, does not exceed $100,000, and

(C) Accept offers in compromise in all other nonmonetary cases which do not involve issues concerning collectibility, *Provided*, That such action is not opposed by the agency or agencies involved or the chief of the section in which the case originated, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 4. Subject to the conditions and limitations set forth in Section 6 hereof, the Chief of the Review Section shall have authority to:

(A) Accept offers in compromise of claims against the Government in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $500,000,

(B) Approve administrative settlements not exceeding $500,000,

(C) Accept offers in compromise of claims in behalf of the Government in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $500,000,

(D) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $500,000,

(E) Accept offers in compromise in all nonmonetary cases, and

(F) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount,

Provided, That the action is not opposed by the agency or agencies involved or the chief of the section to which the case is assigned, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 5. Subject to the conditions and limitations set forth in Section 6 hereof, the Deputy Assistant Attorneys General each shall have authority to:

(A) Accept offers in compromise of claims against the Government in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $750,000,

(B) Approve administrative settlements not exceeding $750,000,

(C) Accept offers in compromise of claims in behalf of the Government in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $750,000 or 10 percent of the original claim, whichever is greater,

(D) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $750,000,

(E) Accept offers in compromise in all nonmonetary cases, and

(F) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount, provided, that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 6. The authority redelegated herein shall be subject to the following conditions and limitations:

(A) When, for any reason, the compromise or administrative settlement or concession of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totalling more than the respective amounts designated in Sections 2, 3, 4 and 5, the case shall be fowarded for review at the appropriate level.

(B) When, because of the importance of a question of law or policy presented, the position taken by the agency or agencies or by the United States Attorney involved, or any other considerations, the person otherwise authorized herein to take final action (or the Chief of the Review Section, in cases which have been considered by such section) is of the opinion that the proposed disposition should be reviewed at a higher level, the case shall be forwarded for such review.

(C) If the Department has previously submitted a case to the Joint Committee on Taxation leaving one or more issues unresolved, any subsequent compromise or concession in that case must be submitted to the Joint Committee, whether or not the

overpayment exceeds the amount specified in Section 6405 of the Internal Revenue Code.

(D) Nothing in this Directive shall be construed as altering any provision of Subpart Y of Part O of Title 28 of the Code of Federal Regulations requiring the submission of certain cases to the Attorney General, the Deputy Attorney General, or the Solicitor General.

(E) Authority to approve recommendations that the Government confess error, or make administrative settlements, in cases on appeal, is excepted from the foregoing redelegations.

(F) The Assistant Attorney General, at any time, may withdraw any authority delegated by this Directive as it relates to any particular case or category of cases, or to any part thereof.

Section 7. This Directive supersedes Tax Division Directive No. 41, effective October 27, 1981.

Section 8. This Directive shall become effective on the date of its publication in the **Federal Register.**

Dated: September 24, 1982.

Glenn L. Archer, Jr.,

Assistant Attorney General, Tax Division.

Approved:

Edward C. Schmults,

Deputy Attorney General.

[FR Doc. 82-27527 Filed 10-6-82; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 16

[AAG/A Order No. 8-82]

Privacy Act of 1974; Production or Disclosure of Material or Information

AGENCY: Justice Department.

ACTION: Final rule.

SUMMARY: The INTERPOL—United States National Central Bureau (INTERPOL—USNCB) is reprinting under a separate section of Title 28 of the Code of Federal Regulations (CFR) its existing Privacy Act regulations exempting its Criminal Investigative Records System (CIRS), JUSTICE/INTERPOL-001, from certain Privacy Act provisions. Rules to exempt this system of records have already been promulgated under "§ 16.71 Exemption of the Office of the Deputy Attorney General Systems" where the system is now identified in paragraph (c)(1) as JUSTICE/DAG-007. Due to a reorganization making the INTERPOL—USNCB an independent organizational entity within the Department of Justice (beginning in Fiscal Year 1982), the CIRS system of records has been redesignated under the INTERPOL—USNCB as JUSTICE/INTERPOL-001. Therefore, the exemptions for JUSTICE/DAG-007 are being republished as a new section of 28 CFR, i.e., § 16.103, to reflect redesignation of the system as JUSTICE/INTERPOL-001 and to clarify the new organizational status of the INTERPOL—USNCB. There is no new effect on the public as a result of this reprinting.

DATE: This rule shall be effective October 7, 1982.

ADDRESS: Administrative Counsel, Justice Management Division, Department of Justice, Room 6239, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: William J. Snider (202-633-3452).

SUPPLEMENTARY INFORMATION: The CIRS system was exempted from certain Privacy Act provisions under the Office of the Deputy Attorney General exemptions in 28 CFR 16.71 by order published in the **Federal Register** on May 19, 1980 (45 FR 32670). Notice of a reorganization and the redesignation of this system was published in an annual publication of Department records systems on December 9, 1981 (46 FR 60326). Accordingly, the Department now proposes to amend 28 CFR by reprinting the existing exemption of the system under a new and separate CFR section to identify its correct organizational placement. This rule does not amplify or expand the present exemptions for the system. Reprinting of the rule under a new CFR section entitled "§ 16.103 Exemption of the INTERPOL—United States National Central Bureau System" will merely facilitate the public's ease in identifying and requesting access to records maintained in the organization's system of records.

Since the reprinting is in the public interest, it has been determined that it is impracticable and unnecessary to provide opportunity for public comment and that it is contrary to the public interest to delay the effective date of this rule. This determination is made in accordance with 5 U.S.C. 553(b)(B) and (d)(3).

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, Sunshine Act.

Accordingly, pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, Title 28 of the CFR is amended as follows: Section 16.71 is amended by removing paragraphs (c) and (d), and a new § 16.103, is added.

Dated: August 23, 1982.

William D. Van Stavoren

Acting Assistant Attorney General for Administration.

PART 16 [AMENDED]

§ 16.71 [Amended]

1. Section 16.71 is amended by removing paragraphs (c) and (d). Section 16.103 is added as set forth below.

§ 16.103 Exemption of the INTERPOL—United States National Central Bureau System.

(a) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2), and (3), (e)(4) (G) and (H), (e)(5) and (8), (f) and (g):

(1) The Criminal Investigative Records System (CIRS) (JUSTICE/INTERPOL-001). This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From paragraph (c)(3) because the release of accounting disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement.

(2) From paragraph (c)(4), (d), (e)(4) (G), and (H), (f) and (g) because these provisions concern individual access to records and such access might compromise ongoing investigations reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation.

(3) From paragraph (e)(1) because information received in the course of an international criminal investigation may involve a violation of state or local law, and it is beneficial to maintain this information to provide investigative leads to state and local law enforcement agencies.

(4) From paragraph (e)(2) because collecting information from the subject of criminal investigations would thwart the investigation by placing the subject on notice.

(5) From paragraph (e)(3) because supplying an individual with a statement of the intended use of the requested information could compromise the existence of a confidential investigation, and may inhibit cooperation.

(6) From paragraph (e)(5) because the vast majority of these records come from local criminal justice agencies and it is administratively impossible to

ensure that the records comply with this provision. Submitting agencies are, however, urged on a continuting basis to ensure that their records are accurate and include all dispositions.

(7) From paragraph (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

[FR Doc. 82-27689 Filed 10-6-82; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 16

[AAG/A Order No. 9-82]

Privacy Act of 1974; Production or Disclosure of Material or Information; Removal of an Exemption

AGENCY: Justice Department.

ACTION: Final rule.

SUMMARY: The exemption of two systems of records from certain provisions of the Privacy Act is removed from Title 28 of the Code of Federal Regulations, § 16.90. These systems, which were previously maintained by the Civil Rights Division, were entitled "Records Obtained by Office of Special Litigation Concerning Residents of Certain State Institutions (JUSTICE/CRT-005)" and "Files of Federal Programs Section, Civil Rights Division (JUSTICE/CRT-006)." The records in these systems were incorporated into the Central Civil Rights Division Index File and Associated Records system (JUSTICE/CRT-001), most recently published at 45 FR 75909 (1980).

In addition, specificity as to statutory authority has been included throughout § 16.90 for clarity. Neither of these amendments has any effect on the public.

DATE: This rule will be effective October 7, 1982.

ADDRESS: Administrative Counsel, Justice Managment Division, Department of Justice, Room 6239, 10th and Constitution Avenue, NW., Washington, D.C. 20530

FOR FURTHER INFORMATION CONTACT: William J. Snider (202-633-3452).

SUPPLEMENTARY INFORMATION: On August 27, 1975, a rule was published exempting these two systems of records from certain provisions of the Privacy Act. However, on September 28, 1978, notice of deletion of these two systems was published in the **Federal Register.** Since these two systems have been terminated, it is appropriate that the exemptions be removed from 28 CFR 16.90.

It has been determined that it is impracticable and unnecessary to provide opportunity for public comment and that it is not in the public interest to delay the effective date of this rule. This determination is made in accordance with 5 U.S.C. 553(b)(B).

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, and Sunshine Act.

Accordingly, pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, § 16.90 of 28 CFR is amended as set forth below.

Dated: August 20, 1982.

William D. Van Stavoren,

Acting Assistant Attorney General for Administration.

PART 16 [AMENDED]

Section 16.90 is amended by removing paragraphs (c) and (d) and by redesignating paragraphs (e), (f), (g), and (h) as paragraphs (c), (d), (e), and (f), respectively. Paragraphs (a) and (b) and redesignated paragraphs (c), (d), (e), and (f) are revised as follows:

§ 16.90 Exemption of Civil Rights Division Systems.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission (JUSTICE/CRT-007).

This exemption applies to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d) because this system contains investigatory material compiled by the Equal Opportunity Commission pursuant to its authority under 42 U.S.C. 2000e-8. 42 U.S.C. 2000e-5(b), 42 U.S.C. 2000e-8(e), and 44 U.S.C. 3508 make it unlawful to make public in any manner whatsoever any information obtained by the Commission pursuant to the authority.

(c) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d) and (g):

(1) Central Civil Rights Division Index File and Associated Records (JUSTICE/CRT-001).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting for disclosure pursuant to the routine uses published for this system may enable the subject of an investigation to gain valuable information concerning the nature and scope of the investigation and seriously hamper law enforcement efforts.

(2) From subsection (d) because freely permitting access to records in this system would compromise ongoing investigations and reveal investigatory techniques. In addition, these records may be subject to protective orders entered by federal courts to protect their confidentiality. Many of the records contained in this system are copies of documents which are the property of state agencies and were obtained under express or implied promises to strictly protect their confidentiality.

(3) From subsection (g) because exemption from the provision of subsection (d) will render the provisions on suits to enforce (d) inapplicable.

(e) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3), (d), and (g) of 5 U.S.C. 552a; in addition, the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), and (d) of 5 U.S.C. 552a: Freedom of Information/Privacy Act Records (JUSTICE/CRT-010).

These exemptions apply only to the extent that the records contained in this system have been obtained from other systems of records maintained by the Civil Rights Division for which exemptions from one or more of the foregoing provisions of the Privacy Act of 1974 have been promulgated. The exemptions claimed for this system of records apply only to records obtained from such other Civil Rights Division systems and only to the same extent as the records contained in such other systems have been exempted.

(f) The system of records listed under paragraph (e) of this section is exempted for the following reasons:

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[FR Doc. 82-27690 Filed 10-6-82; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Defense Intelligence Agency

32 CFR Part 292a

[DIA Regulation 12-121]

Privacy Act of 1974; Implementation

AGENCY: Defense Intelligence Agency, DOD.

ACTION: Final rule.

SUMMARY: The Defense Intelligence Agency herewith exempts one of its system of records from certain provisions of the Privacy Act of 1974.

EFFECTIVE DATE: October 7, 1982.

FOR FURTHER INFORMATION CONTACT: Mrs. Helen E. Shuford, Privacy Act Officer, (RTS-18), HQ Defense Intelligence Agency, Washington, D.C. 20301. Telephone: 202/695-9368.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency herewith exempts system L-DIA 0740, entitled: "Attache Special Project (ASP) and Comparison Channel (CC) Information System" from certain provisions of the Privacy Act of 1974, Title 5, United States Code Section 552a (Pub. L. 93-579, 88 Stat. 1896, *et seq.*). These exemptions are needed to ensure candor and openness in response to inquiries about the suitability of individuals for access to or continued access to ASP and CC information.

These exemptions were published as a proposed rule on September 3, 1982 at FR Doc. 82-24405 (47 FR 38921) and no public comments were received.

List of Subjects in 32 CFR Part 292a

Privacy.

PART 292a—PRIVACY ACT OF 1974

Accordingly, § 292a.15(b) of Title 32 CFR is amended as follows:

* * * * *

In § 292a.15(b) at the end of the present entry add:

§ 292a.15 Specific exemptions.

* * * * *

Sysname. Attache Special Projects (ASP) and Comparison Channel (CC) Information System.

Exemptions:

Parts of this system may be exempt from the following portions of Title 5, United States Code 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

Authority. 5 U.S.C. 552a(k)(5).

Reason. To protect and ensure the integrity of the ASP and CC information access process. These are necessary to ensure that the agency may obtain candid and necessary information in order to properly develop and resolve information effecting access determinations. If the agency is unable to protect this information, sources, both individuals and agencies, may become reluctant to provide necessary information and the integrity of the access process will be degraded.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

October 4, 1982.

[FR Doc. 82-27693 Filed 10-6-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CCGD3-82-27]

Establishment of Special Local Regulations for the Head of the Connecticut River Regatta in Middletown, Conn.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes special local regulations for the Connecticut River between the southern tip of Gildersleeve Island and Light number 87 during the Head of the Connecticut River Regatta sponsored by the Head of the Connecticut River Regatta, City of Middletown, Connecticut on October 10, 1982. This action is required to permit the conducting of an approved marine event. It is intended to restrict the general navigation in the area for the safety of the spectators and participants in the event.

EFFECTIVE DATE: October 10, 1982, from 9 a.m. to 6 p.m.

FOR FURTHER INFORMATION CONTACT: LTJG D. R. Cilley, Boating Safety Office, Third Coast Guard District, Governors Island, New York, NY 10004, (212) 668-7975.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to the authority contained in 46 U.S.C. 454 and 33 CFR 100.35 to promote the safety of life on the navigable waters during this event, and in this connection to control the movement of vessels. Since there is insufficient time to publish a proposed rule before the date of the event and the regulations are needed in order to protect life and property, this regulation is published as a final rule and will become effective in less than 30 days. The final rule is not considered to be a major rule under the terms of Executive Order 12291 since it involves negligible cost and will not have significant impact on recreational vessels, commercial vessels, and other marine interests. For this reason, the District Commander has determined this rule will not have significant economic impact on a substantial number of small entities. Also, in accordance with DOT Order 2100.5, economic impact is so minimal that it does not require an evaluation. Further, the rule is necessary for the protection of life and property in the area during the marine event.

Drafting Information

The principal persons involved in drafting this rule are LTJG D. R. Cilley, Project Manager, Boating Safety Office, and Ms. Mary Ann Arisman, Project Attorney, Legal Office, Third Coast Guard District.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Accordingly, Part 100 of Title 33 Code of Federal Regulations is amended by adding the following section:

§ 100.35-327 Head of the Connecticut River Regatta in Middletown, CT

(a) The following area will be closed intermittently to all vessel traffic from 9:00 a.m. to 6:00 p.m. on October 10, 1982: The Connecticut River between the southern tip of Gildersleeve Island and Light number 87.

(b) No person or vessel may enter or remain in the closed area unless participating in the event or authorized by the sponsor of the event to do so.

(c) Procedures for transiting race course:

(1) Vessels awaiting passage through the race course will be held at the southern tip Gildersleeve Island, if southbound, and at Light number 87, if northbound, until they are escorted at no wake speeds by the Coast Guard Patrols through the race area.

(2) No spectator or transiting vessel will be allowed to go out onto or across the race course without Coast Guard escort.

(d) A patrol officer of the Coast Guard or a member of the Coast Guard Auxiliary will advise when the area is closed. A patrol officer is a commissioned, warrant, or petty officer of the Coast Guard.

(e) Patrol officers will be on law enforcement vessels displaying a Coast Guard Ensign to enforce the laws in general and these local regulations in particular. The operator of a vessel shall obey the orders of a patrol officer. In addition, the operator of a vessel, upon hearing five or more short blasts from a law enforcement vessel, shall stop

immediately and then proceed as directed by the patrol officer.

(f) A member of the Coast Guard Auxiliary will be on a patrol vessel displaying the Coast Guard Auxiliary Flag. Through the use of voice, sign and hand signals a member of the Auxiliary may inform the operator of a vessel of the special local regulations and the applicable law.

(46 U.S.C. 454, 49 U.S.C. 1655(b)(1); 33 CFR 100.35, 49 CFR 1.46(b))

Dated: September 20, 1982.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 82-27684 Filed 10-6-82; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 82-024]

Drawbridge Operation Regulations; Lagoon Pond, Martha's Vineyard, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Town of Tisbury, Massachusetts, the Coast Guard is changing the regulations governing the Lagoon Pond Drawbridge, Tisbury, by permitting the number of openings to be limited during summer months. This change is being made to accommodate periods of peak vehicular traffic. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: October 7, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Naulty, Chief, Bridge Branch, First Coast Guard District, Boston, MA, 02114 (617-223-0645).

SUPPLEMENTARY INFORMATION: On 8 March 1982, the Coast Guard published a proposed rule (47 FR 45) concerning this amendment. The Commander, First Coast Guard District also published these proposals as a Public Notice dated 12 March 1982. Interested persons were given until 16 April 1982 to submit comments.

Discussion of Comments

There was no response to the **Federal Register** notice of the proposed regulations. Fourteen letters were received in response to the First District public notice. All responses indicated approval of the regulation of the Lagoon Pond Bridge. Some responses suggested changes or additions to the proposal. Concern was expressed about access to Lagoon Pond in emergencies, as access has been provided in the past. The proposed regulations are intended to provide for the reasonable needs of navigation. Consequently, they will be amended to provide for emergency situations.

A marina located on Lagoon Pond suggested that there should be unrestricted passage through the draw during spring and early summer, the marina's launching season, because its operation is susceptible to tidal conditions. It was also suggested that access to Lagoon Pond should not be restricted during early morning or evening hours. A review of the drawtender's log for the period 22 April–25 October 1981 revealed that most movement out of Lagoon Pond during spring and early summer did not occur when the tide was high. More often than not, the passage was made serveral hours from the high water period. The log also revealed that during the April–October period a total of six passages were made in the early morning or evening hours.

Two people requested that the 8:15–8:45 a.m. opening period be changed to 7:15–7:45 a.m. and that the 5–5:45 p.m. period be changed to 5:45–6:15 p.m. The drawtender's log lists three openings earlier than 8:15–8:45 a.m. during the six month period mentioned above and 19 openings from 5:00 p.m. to 6:15 p.m. There is no apparent need for a change of the proposed 8:15–8:45 a.m. opening and none for the afternoon period. The afternoon openings are scattered throughout the one and a quarter hours.

Two comments suggested that the delay to vehicular traffic due to the opening and closing cycle of the draw could be measurably shortened if automated traffic gates were installed. The Massachusetts Department of Public Works, owner of the bridge, intends to install automated gates at some future time. However, due to budgetary restraints, the installation is not planned for the foreseeable future.

These final regulations have been reviewed under provisions of Executive Order 12291 and have been determined not to be a major rule. They are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 22 May 1980). As explained above, an economic evaluation has not been conducted. In accordance with § 605(d) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding § 117.79 immediately after 117.78 to read as follows:

§ 117.79 Lagoon Pond Highway Bridge, Tisbury, Massachusetts.

(a) The draw shall open on signal from September 16 through May 14, provided 24 hours advance notice is given.

(B) From May 15 through September 15, the draw will open on signal only from 8:15–8:45 a.m., 10:15–11 a.m., 3:15–4 p.m., 5–5:45 p.m., and 7:30–8 p.m. Throughout the remainder of this period, the draw will open for the passage of vessels if 4 (four) hours advance notice is given.

(c) The draw shall open at any time for public vessels of the United States, any vessels of state or municipal governments used for public safety, and in case of emergency or during severe storm conditions.

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: July 6, 1982.

L. L. Zumstein,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 82-27679 Filed 10-6-82; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 82-013]

Drawbridge Operation Regulations, West Bay, Osterville, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Town of Barnstable, Massachusetts, the Coast Guard is changing the regulations governing the operation of the drawspan over West Bay in the Village of Osterville. This change is being made to formalize regulations which have been in effect for many years. The regulations provide for the reasonable needs of navigation and accommodate vehicular traffic.

EFFECTIVE DATE: October 7, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Naulty, Chief, Bridge Branch, First Coast Guard District, 150 Causeway Street, Boston, MA 02114 (617-223-0645).

SUPPLEMENTARY INFORMATION: On 1 April 1982 the Coast Guard published a proposed rule (47 FR 63) concerning this

amendment. The Commander, First Coast Guard District, also published these proposals as a Public Notice on 12 April 1982 and as an item in the Local Notice to Mariners Nos. 17–21, inclusive, from 15 April through 4 May 1982. Interested persons were given until 12 May 1982 to comment on the proposal.

Discussion of the Proposed Regulation

Twenty-one responses were received concerning the proposed regulations. One response, from the U.S. Fish and Wildlife Service, indicated no opposition to the proposal, the remaining responses indicated approval. However, three of these letters suggested a modification of the proposed regulation covering the period October 11 to November 1. The proposed regulation requires a four-hour advance notice for a bridge opening during this period. The suggested modification would require the bridge to be opened on call from 8 a.m. to 4 p.m. Except for the boatyard immediately above the drawbridge, there is no commercial activity along the waterway. The boatyard provides service, mooring, and storage for recreational vessels. The vessels serviced are, generally, owned by residents in the Osterville area. As the shores above the drawbridge are private property there is little prospect for a significant increase in the number of vessels being brought to the area. As the proposed regulations do not foreclose use of the waterway during the latter part of October, the requested change is not considered necessary.

These final regulations have been reviewed under provisions of Executive Order 1291 and have been determined not to be a major rule. They are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 22 May 1980). As explained above, an economic evaluation has not been conducted. In accordance with § 605(d) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding § 117.78a immediately after § 117.78 to read as follows:

§ 117.78a West Bay, Osterville, Massachusetts.

(a) The draw shall open on signal from April 1 through October 31 on the following schedule:

(1) April 1 through June 14 and October 12 through October 31, 8 a.m.–4 p.m.

(2) June 15 through June 30, 8 a.m.–6 p.m.

(3) July 1 until Labor Day, 8 a.m.–8 p.m.

(4) Labor Day through October 11, 8 a.m.–5 p.m.

(5) For the remainder of this period the draw will open on signal if 4 hours notice is given in advance.

(b) From November 1 through March 31 the draw shall open on signal if a 24-hour notice is given in advance.

(c) The owner or agency controlling the bridge shall post the regulations in this section on the upstream and downstream sides of the bridge, in a conspicuous location where they can be easily read at any time.

(33 U.S.C. 499; U.S.C. 1655(b)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: September 22, 1982.

C. E. Robbins,

Rear Admiral, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 82–27680 Filed 10–6–82; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AH307PA; A–3–FRL 2207–3]

Approval of Revision of Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This revision of the Pennsylvania State Implementation Plan (SIP) approves an expanded ridesharing program to provide for additional emission reductions necessary to meet earlier SIP commitments. Because of the difficulties experienced in the implementation of the Newtown Branch Electrification Project and the requirements of the **Federal Register** notice of April 4, 1979 (44 FR 20372), the expanded ridesharing program was added to provide for those equivalent emission reductions which would have been achieved through the implementation of the Newtown Branch Electrification Project. The Newtown Branch Electrification Project remains as a part of the SIP, although no credit can be taken for the resultant emission reductions until a formal commitment for funding and implementation is provided by the Southeastern Pennsylvania Transportation Authority (SEPTA) and approved by the DVRPC Board.

EFFECTIVE DATE: October 7, 1982.

ADDRESSES: Copies of the SIP revision is available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs & Energy Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, PA. 19106, ATTN: Patricia Sheridan (3AW12)

Delaware Valley Regional Planning Commission, The Bourse Building, 21 South Fifth Street, Philadelphia, PA. 19106, ATTN: John J. Coscia

Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA. 17120, ATTN: James K. Hambright

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street SW., (Waterside Mall), Washington, D.C. 20460

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Hanson, Chief, Pennsylvania Section (3AW11), Air and Waste Management Division, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Curtis Building, Philadelphia, PA. 19106, Telephone Number: 215–597–8173.

SUPPLEMENTARY INFORMATION: EPA assessed the approvability of the SIP revision by reviewing the plan revision in connection with the requirements for an approvable nonattainment SIP, which are described in the **Federal Register** notice of April 4, 1979 (44 FR 20372) and the requirements of Section 110 and Part D of the Clean Air Act. On May 10, 1982, EPA published a Notice of Proposed Rulemaking (47 FR 20007). EPA evaluated the comments received during the public comment period in its assessment of the final approval status of the revision to the Pennsylvania SIP. It is EPA's conclusion that the SIP revision submitted by Pennsylvania is approvable.

The subject revision of the Pennsylvania SIP was submitted to EPA on December 9, 1981 after a public hearing on October 15, 1981.

On May 20, 1980, EPA published a conditional approval of Pennsylvania's SIP, which includes the transportation

element for the Delaware Valley area. One of the conditions on this SIP was that the Delaware Valley Regional Planning Commission (DVRPC), as lead agency for transportation/air quality planning, must obtain firm commitments for the implementation of the Newtown Branch electrification project by December 31, 1980, or obtain commitment for an equivalent measure by June 30, 1981. (These deadlines were finalized in the **Federal Register** notice of March 19, 1981, 46 FR 17552.)

On December 9, 1981, Acting Secretary Peter S. Duncan, Pennsylvania Department of Environmental Resources (DER), submitted a revision to the Pennsylvania SIP which adds an expanded ridesharing program in the Delaware Valley which will result in emission reductions which are equivalent to those from the Newtown Branch electrification project. This addition became necessary when the electrification project was withdrawn from the fiscal year 1981 Annual Element of the Transportation Improvement Plan for the Delaware Valley. This withdrawal resulted from changes in priorities for capital projects managed by the Southeastern Pennsylvania Transportation Authority. The project may be completed in the future but not soon enough to satisfy emission reduction commitments made in the 1979 SIP.

The existing ridesharing program has been operating since 1974, and has aided in the initiation of 250 vanpools and 3,172 carpools during this time. The measure being approved today consists of an expansion of this existing ridesharing program. An expected 30 vanpools and 67 carpools will result from this program expansion.

DVRPC has submitted an adequate commitment to implement the expanded program. This commitment is the adoption by the DVRPC Board of the expanded ridesharing program on June 25, 1981. In addition, on October 22, 1981, the Board adopted a recommendation that DER add the expanded ridesharing program to the Early Action Program of the Transportation Element of the Pennsylvania SIP.

EPA has reviewed the information submitted by the State and is today approving the expanded ridesharing program as a satisfactory equivalent for the Newtown Branch electrification project.

Public Comments on Proposal

There were five comments on the proposed SIP revision, one of which suggested substituting an expanded ridesharing program in place of the Newtown Branch Electrification Program.

Four of the commenters voiced strong support for including the expanded ridesharing program as an addition to the existing SIP, retaining the Newtown Branch Electrification Project for future implementation.

Response

As specified in the **Federal Register** of March 19, 1981 (46 FR 17552), a condition for the approval of the Pennsylvania State Implementation Plan (SIP) for carbon monoxide and ozone was the submission, by December 31, 1981, of firm commitments from appropriate State and local authorities for the implementation of the Newtown Branch electrification project. If firm commitments were not obtained by December 31, 1980, the Commonwealth was required to submit additional measures with equivalent reductions by June 30, 1981. Since the Newtown Branch electrification project was deleted from the 1981 Annual Element of the Transportation Improvement Plan by the DVRPC Board on November 20, 1980, the submission of additional measures, which would result in an equivalent reduction of HC emissions, was required by the **Federal Register** notice.

Accordingly, a public hearing was held on October 15, 1981, to consider the inclusion of an expanded ridesharing program in the Pennsylvania SIP, "to compensate for the emission reductions associated with the Newtown Electrification Project." Subsequently, on December 9, 1982, the Commonwealth of Pennsylvania submitted a proposed SIP revision "which revises the transportation portion of the SIP for Southeastern Pennsylvania to include an expanded ridesharing program in lieu of commitments to the Newtown Electrification Project." Since the approve revision includes the expanded ridesharing program as an additional measure, the Newtown Branch Electrification Project remains in the SIP as a planned measure with no commitment for scheduled implementation, and with no credit given for emission reduction.

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

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 (January 27, 1981).

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 December 6, 1982. 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, Intergovernmental relations.

(42 U.S.C. 7401–76542)

Dated: September 28, 1982.

Note.—Incorporation by reference of the State Implementation Plan for the State of Pennsylvania was approved by the Director of the Federal Register on July 1, 1982.

Anne M. Gorsuch,

Administrator.

PART 52 [AMENDED]

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

Subpart NN—Pennsylvania

Section 52.2020, Identification of Plan, is amended by adding paragraph (c)(46).

§ 52.2020 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

(46) A revision submitted by the Acting Secretary of the Pennsylvania Department of Environmental Resources on December 9, 1981, which would add an expanded ridesharing program in the Delaware Valley.

[FR Doc. 82-27595 Filed 10-6-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-6-FRL 2218-1]

Texas; Administrative Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The purpose of this notice is to approve an administrative revision for Section VIII (Texas Air Pollution Emergency Episode Contingency Plan) to the Texas State Implementation Plan submitted by the Texas Air Control Board (TACB) on May 18, 1982. At the same time, EPA is also approving a revision for Regulation VIII (Control of Air Pollution Episodes) to the Texas SIP submitted by the Governor on June 30, 1975 and the administrative update submitted on December 29, 1981. Administrative revisions to a SIP may

be submitted by the State air pollution control agency rather than under the Governor's signature and need not be subjected to public hearing.

The Section VIII and Regulation VIII revisions demonstrate that the TACB has adequately provided for the monitoring of pollution levels and to take abatement action as may be necessary to prevent the occurrence of pollution levels which could endanger public health and welfare. They fulfill the requirements listed in 40 CFR 51.16 (b) and (d) Prevention of air pollution episodes and 40 CFR Part 51, Appendix L Example Regulations for Prevention of Air Pollution Emergency Episodes.

DATE: This action will be effective on December 6, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Incorporation by reference material is available for inspection during normal business hours at the following locations:

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

Environmental Protection Agency, Public Information Reference Unit, EPA Library Rm. 2404, 401 M Street SW., Washington, D.C. 20460

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

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

FOR FURTHER INFORMATION CONTACT: Kathryn M. Griffith, State Implementation Plan Section, Environmental Protection Agency, Region 6, Air and Waste Management Division, Air Programs Branch, 1201 Elm Street, Dallas, Texas 75270, (214) 767–2742.

SUPPLEMENTARY INFORMATION: On May 18, 1982, the TACB, in accordance with 40 CFR 51.6(c), submitted an administrative revision for Section VIII (Texas Air Pollution Emergency Episode Contingency Plan). Applicable SIP revision requirements are set forth in 40 CFR 51.6. In accordance with § 51.6(c), "the plan may be revised from time to time consistent with the requirements applicable to implementation plans under this part." Prior to submitting this administrative revision, the Governor had submitted a revision to Section VIII on the June 30, 1975. However, EPA has not, to date, acted on the June 30, 1975 submittal.

Since the May 18, 1982 submittal differs substantially from the June 30, 1975 submittal, EPA has reviewed the May 18, 1982 submittal in its entirety and considers it to supersede the June 30, 1975 submittal.

EPA also reviewed TACB's Regulation VIII (Control of Air Pollution Episodes) which was submitted by the Governor on June 30, 1975 along with a certification that a public hearing was held as required by 40 CFR 51.4(b). On December 29, 1981, TACB submitted an administrative update for Regulation VIII which changed the rule numbers and a few words. The submittal does not change the content of Regulation VIII, therefore, EPA is also adopting this submittal to conform with the States' new numbering system.

Section VIII and Regulation VIII are interdependent, and as such, were reviewed together. EPA developed an evaluation report[1] which is based on the requirements established in 40 CFR 51.16 (b) and (d) Prevention of air pollution episodes and 40 CFR Part 51, Appendix L Example Regulations for Prevention of Air Pollution Emergency Episodes. This evaluation report is available for inspection during normal business hours at the EPA Region 6 Office and the other addresses listed above.

Because EPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on December 6, 1982. However, if we receive notice within 30 days that someone wishes to submit critical comments, *then* EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Under 5 U.S.C. Section 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 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 December 6, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

List of Subjects in 40 CFR Part 52

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

[1] EPA Review of Texas' State Implementation Plan Revisions for Section VIII (Texas Air Pollution Emergency Episode Contingency Plan) and Regulation VIII (Control of Air Pollution Episodes)

Note.—Incorporation by reference of the State Implementation Plan for the State of Texas was approved by the Director of the Federal Register on July 1, 1982.

(Sec. 110; Clean Air Act, as amended, 42 U.S.C. 7210)

Dated: October 1, 1982.

Anne M. Gorsuch,

Administrator.

PART 52 [AMENDED]

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart SS—Texas

In § 52.2270, (c) is amended by adding subparagraph (42) as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(42) An administrative revision for Section VIII (Texas Air Pollution Emergency Episode Contingency Plan) and a revision to Regulation VIII (Control of Air Pollution Episodes) was submitted by the TACB on May 18, 1982 and December 29, 1981, respectively.

[FR Doc. 82-27571 Filed 10-6-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 52 and 81

[A-10-FRL 2200-5]

Revision to Oregon State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking addresses State Implementation Plan (SIP) revisions submitted by the State of Oregon Department of Environmental Quality (DEQ) pursuant to the requirements of Part D of the 1977 Clean Air Act (hereinafter referred to as the Act) and revises nonattainment area boundaries pursuant to paragraph 107(d) of the Act. In today's action, EPA is approving the carbon monoxide (CO) and ozone (O_3) attainment plans for the Portland nonattainment area. EPA is also approving the revisions to the Portland CO nonattainment area boundary.

EFFECTIVE DATE: October 7, 1982.

ADDRESSES: Copies of the materials relevant to the SIP may be examined during normal business hours at:

Central Docket Section (10A–82–7).
West Tower Lobby, Gallery I.
Environmental Protection Agency, 401
M Street SW., Washington, D.C. 20460
Air Programs Branch, M/S 532,
Environmental Protection Agency,
Region 10, 1200 Sixth Avenue, Seattle,
WA 98101
State of Oregon, Department of
Environmental Quality, Yeon Building,
522 SW. Fifth, Portland, OR 97207

Copy of the State's Submittal may be Examined at: The Office of Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:
Loren C. McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101, Telephone No. (206) 442–7369, FTS. 399–7369.

SUPPLEMENTARY INFORMATION:

I. Background

On July 20, 1982, the State of Oregon DEQ officially submitted the 1982 Portland CO and O_3 SIP revisions to EPA. This submittal also contained a revision to the CO nonattainment boundary which substantially reduces the size of the nonattainment area. On July 21, 1982 (47 FR 31586) EPA proposed to approve these plans with the understanding that the draft plan, on which the proposal was based, was substantially the same as the official submittal. EPA has determined that the draft and official SIP revisions were substantially the same and is today approving the Portland CO and O_3 SIP revisions. Additional background information on today's rulemaking can be found in the July 21, 1982 **Federal Register** (47 FR 31586).

II. Response to Comments

A 30-day public comment period was provided on the proposed rulemaking. No comments were received.

III. Plan Review

The general requirements for the CO and O_3 SIPs are described in the **Federal Register** published on January 22, 1981 (46 FR 7182). EPA reviewed the SIP in accordance with those requirements and developed a technical support document for each plan which briefly describes EPA's conclusions regarding each SIP requirement and its approvability. Both plans meet all technical and policy requirements contained in the January 22, 1981 **Federal Register.**

In general, the CO and O_3 SIPs call for expeditious attainment of National Ambient Air Quality Standards (NAAQS) and require reasonable further progress (RFP). Both SIPs include contingency plans to be implemented in the event that RFP is in jeopardy. The principal control measure in both SIPs is a mandatory I/M program which has been operating in Portland since 1975. A more detailed description of the CO and O_3 SIPs and their adoption can be found in the July 21, 1982 **Federal Register.**

IV. CO Boundary Redesignation

Based upon new monitoring and modeling data submitted in the plan, the State requested EPA to revise, pursuant to Section 107 of the Act, the Portland CO nonattainment boundary. The existing boundary includes the entire interstate air quality maintenance area. The new boundary is limited to the general downtown Portland area and is defined as the area enclosed by the west bank of the Willamette River, the Broadway Bridge and Broadway ramp, Hoyt Street, I–405 (the Stadium Freeway) and the Marquam Bridge.

V. Summary of Rulemaking Action

1. EPA approves the Portland CO attainment plan submitted by the DEQ pursuant to Part D requirements. This plan approval includes the extension of the attainment date for CO to December 31, 1985.

2. EPA approves the Portland O_3 attainment plan including an extension of the attainment date to December 31, 1987.

3. EPA approves the CO nonattainment boundary for Portland pursuant to Section 107 of the Act.

Under Executive Order 12291, today's action is not "Major." The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 1982. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2))

List of Subjects

40 CFR Part 52

Air pollution control, Ozone, Carbon monoxide; Intergovernmental relations.

40 CFR Part 81

Air pollution control, National parks Wilderness areas.

(Secs. 107(d) and 171 through 173, Clean Air Act, as amended (42 U.S.C. 7407(d), 7410(a), 7501 through 7503, and 7601(a)))

Dated: October 1, 1982.

Anne M. Gorsuch,
Adminstrator.

Note.—Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

PART 52 [AMENDED]

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

Subpart MM—Oregon

1. In § 52.1970, paragraph (c)(55) is added as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(55) On July 20, 1982 the State of Oregon Department of Environmental Quality submitted: (i) Carbon monoxide (CO) and ozone (O_3) attainment plans for Portland which build upon those plans submitted in June 1979 and (ii) a request to extend the Portland CO and O_3 attainment dates to December 31, 1985 and December 31, 1987, respectively.

2. The table in § 52.1973 is revised to read as follows:

§ 52.1973 Attainment dates for national standards.

Air quality control region and nonattainment area	Pollutant						
	TSP		SO_2		NO_2	CO	O_3
	1st[1]	2nd[2]	1st[1]	2nd[2]			
Portland Interstate AQCR:							
1. Portland-Vancourver AQMA (Or portion)	a	f	a	b	b	h	i.
2. Salem	a	b	a	b	b	e	e.
3. Eugene-Springfield AQMA	a	f	a	b	b	h	b.
4. Remainder of AQCR Southwest Oregon	c	c	a	b	b	d	c.
Instrastate AQCR:							
1. Medford-Ashland AQMA	e	f	a	b	b	g	e.
2. Remainder of AQCR	c	c	a	b	b	b	b.
Northwest Oregon Intrastate AQCR	a	b	a	b	b	b	b.
Central Oregon Intrastate AQCR	a	c	a	b	b	b	b.
Eastern Oregon Intrastate AQCR	c	c	a	b	b	b	b.

[1] 1st—Primary.
[2] 2nd—Secondary.
a. Area designated as having air quality levels presently below primary standards or area is unclassifiable.
b. Area designated as having air quality levels presently below secondary standards or area is unclassifiable.
c. May 1975.
d. May 31, 1976.
e. December 31, 1982.
f. As expeditiously as practicable with date to be identified in plan due to be submitted by July 1, 1980.
g. Later than December 31, 1982 but before December 31, 1987 with specific date to be identified in alternatives analysis due July 1, 1980.
h. December 31, 1985.
i. December 31, 1987.

3. Section 52.1981 is amended by revising paragraphs (b) and (c) to read as follows:

§ 52.1981 Extension.

* * * * *

(b) The Administrator hereby extends the attainment date for carbon monoxide in the Eugene-Springfield and Portland nonattainment areas to December 31, 1985 and in the Medford-Ashland nonattainment area to beyond December 31, 1982 but before December 31, 1987. The actual attainment date for the Medford-Ashland area is to be identified in the transportation control plan alternatives analysis due to be submitted by July 1, 1980. No further analysis is required for the Eugene-Springfield area.

(c) The Administrator hereby extends the attainment date for ozone in the Portland nonattainment area to December 31, 1987.

PART 81 [AMENDED]

Part 81 of Chapter I, Title 40 Code of Federal Regulations is amended as follows:

Subpart C—Oregon

In § 81.338, the table entitled "Oregon-CO" is revised to read as follows:

§ 81.338 Oregon.

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Portland-Vancouver AQMA (portion of the Oregon portion).	X	
Eugene-Springfield AQMA	X	
Medford-Ashland AQMA	X	
City of Salem	X	
Remainder of State		X

[FR Doc. 82-27567 Filed 10-6-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-1-FRL-2210-1]

Designations of Areas for Air Quality Planning Purposes; Attainment Status Redesignation; Waterbury and Greenwich, Conn.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 8, 1982, the Connecticut Department of Environmental Protection (DEP) submitted a request to redesignate the cities of Waterbury and Greenwich as being in attainment of the primary total suspended particulate (TSP) National Ambient Air Quality Standards (NAAQS). Based on a careful review of the monitoring data and the information submitted, EPA agrees that the areas are now in attainment and is today publishing a revised attainment listing confirming this. The intended effect is to revise the attainment status listing to reflect this information.

EFFECTIVE DATE: October 7, 1982.

ADDRESSES: Copies of Connecticut's request are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; the Office of the Federal Register, 110 L Street, NW., Washington, DC; and The Connecticut Department of Environmental Protection, Air Compliance Unit, 165 Capitol Avenue, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Sarah Simon, Air Management Division, EPA, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5633.

SUPPLEMENTARY INFORMATION: On April 8, 1982, the Commissioner of the Connecticut Department of Environmental Protection requested that EPA promulgate a new attainment designation for the two cities in his state, Waterbury and Greenwich, which had formerly been designated non-attainment for the primary TSP NAAQS. As discussed in EPA's June 8, 1982 proposal of this action, the monitoring records and information submitted with the request demonstrate that the two areas are in attainment because no primary TSP violations have occurred over the last eight calendar quarters in Greenwich and the last 12 quarters in Waterbury.

No comments were received. Based on the DEP request and our review, EPA is today promulgating an attainment designation for these two areas by revising the TSP attainment list in 40 CFR 81.307.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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 December 6, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

(Sec. 107, Clean Air Act as amended)

Dated: October 1, 1982.

Anne M. Gorsuch,

Administrator.

PART 81 [AMENDED]

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Section 81.307 of Connecticut's attainment status designation table for total suspended particulates (TSP) is revised to read as follows:

§ 81.307 Connecticut.

CONNECTICUT—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 41		X		
AQCR 42		X		
AQCR 43		X		
AQCR 44		X		

[FR Doc. 82-27568 Filed 10-6-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 193

[Amdts. 192-42 and 193-3; Docket No. PS-65]

Transportation of Natural and Other Gas by Pipeline Incorporation by Reference

AGENCY: Materials Transportation

Bureau, Research and Special Programs Administration, DOT.

ACTION: Technical amendment.

SUMMARY: This amendment changes the address listed for the National Fire Protection Association in Appendix A to Part 192 and in Appendix A to Part 193.

DATE: This amendment becomes effective October 7, 1982.

FOR FURTHER INFORMATION CONTACT: Ralph T. Simmons, 202–426–2392. Copies of the amendment may be obtained from the Docket Branch, Room 8426, Materials Transportation Bureau, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: The address of the National Fire Protection Association (NFPA) has changed from the one listed in Appendix A to Part 192 and Appendix A to Part 193. This amendment removes the incorrect address and replaces it with the correct one. Copies of materials incorporated by reference in Parts 192 and 193 that are published by NFPA may be obtained at the new address.

Because this document does not substantively change the requirements in Parts 192 and 193, notice and public procedure are unnecessary, and in accordance with 5 U.S.C. 553, the amendment is final.

Also, since the amendment will have a positive effect on the economy of less than $100 million a year, and no adverse effects are anticipated, this action is not "major" under Executive Order 12291 or "significant" under Department of Transportation procedures.

List of Subjects

49 CFR Part 192

Pipeline safety.

49 CFR Part 193

Fire prevention, Pipeline safety, Security measures, Liquified natural gas facilities.

PARTS 192 AND 193 [AMENDED]

In consideration of the foregoing, Parts 192 and 193 of Title 49 of the Code of Federal Regulations are amended as follows:

Appendix A [Amended]

1. In Part 192, under Appendix A—Incorporation by Reference, subdivision I., item F. is amended by removing the words "470 Atlantic Avenue, Boston, Massachusetts 02110" and inserting in their place "Batterymarch Park, Quincy, Massachusetts 02269".

Appendix A [Amended]

2. In Part 193, under Appendix A—Incorporation by Reference, subdivision I., item F. is amended by removing the words "470 Atlantic Avenue, Boston, Massachusetts 02210" and inserting in their place the words "Batterymarch Park, Quincy, Massachusetts 02269".

3. The authority citation for Part 192 is:

Authority: 49 U.S.C. 1672 and 1804; 49 CFR 1.53 and Appendix A of Part 1.

4. The authority citation for Part 193 is:

Authority: 49 U.S.C. 1671 et seq.; 49 CFR 1.53 and Appendix A of Part 1.

Issued in Washington, D.C., on September 30, 1982.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 82-27520 Filed 10-6-82; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 2907-182]

50 CFR Part 611

Foreign Fishing

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA withdraws an appendix to the foreign fishing regulations that shows the portion of the U.S. harvest available for joint venture processing and the total allowable level of foreign fishing in the various U.S. fisheries. Instead, NOAA will announce redistributions of fish among foreign and domestic fishermen and processors by publishing notices. Timely announcements of redistributions will facilitate the attainment of optimum yield from the Nation's fishery resources.

DATE: November 8, 1982.

FOR FURTHER INFORMATION CONTACT: Susan Jelley (Permits and Regulations Division), 202–634–7432.

SUPPLEMENTARY INFORMATION: Since their inception, the foreign fishing regulations (50 CFR Part 611) have included a table that shows the optimum yields of all fisheries under management plans, as well as the distribution of the optimum yields among domestic harvest, domestic and joint venture processing (JVP) amounts, "reserve," and the total allowable level of foreign fishing (TALFF). This table (known as the TALFF table) shows current distributions of the optimum yields, and is codified as an Appendix to section 611.20, "Total Allowable Level of Foreign Fishing." Since amounts of fish are redistributed continuously throughout the year as the fisheries progress, NMFS has been required to amend the TALFF table to reflect those adjustments through the rulemaking process.

The NMFS reviewed the practice of publicizing the distributions of the optimum yields of the various fisheries by means of an appendix to a regulation, and on March 16, 1982 (47 FR 11299), NOAA proposed to remove the TALFF table from the appendix to 50 CFR 611.20 and to delete references to that appendix in other portions of Part 611. Instead, NOAA will publish initial JVPs, initial TALFFs (i.e., JVPs and TALFF at the start of a fishing year), and in season adjustments to JVPs and TALFF required by the fishery management plans as "notices" in the **Federal Register.** These regulations direct interested parties to contact the Office of Resource Conservation and Management or the appropriate Regional Director for up-to-date tables.

The preamble to the proposed rule thoroughly discussed the basis and purpose of the proposed action and the classification of the rulemaking; it also invited public comment on the proposed rule until April 15, 1982. Two parties submitted comments on the proposed rule. Both parties supported the proposed action; in particular, one party stated that "elimination of the requirement that TALFF be promulgated as formal rules will add needed flexibility to the allocation system and allow for greater regulatory responsiveness to developments in the fishery." One of the parties requested that NOAA take into account certain changes contemplated in a proposed amendment to a fishery management plan. That amendment has not yet been approved, however; NOAA will make the appropriate changes separately in proposed and final implementing rules for that Amendment.

NOAA therefore adopts as final the proposed rule, with the following exception: A reference in § 611.81(b)(4)(ii)(4) to paragraph "(b)(4)(iii)(B)" is corrected to read "(b)(4)(iii)(A)" to reflect the redesignation of paragraphs previously specified in item 8 of the regulatory amendment.

Classification

This action seeks to simplify the process of publicizing information contained in the TALFF table. As a change in the manner of publicizing that

information, this action does not constitute a "major" rule under the criteria specified in E.O. 12291.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: October 1, 1982.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

For reasons set forth in the preamble, 50 CFR Part 611 is amended as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. Section 611.20 is revised to read as follows:

§ 611.20 Total allowable level of foreign fishing.

(a) The total allowable level of foreign fishing (TALFF), if any, with respect to any fishery subject to the exclusive fishery management authority of the United States is that portion of the optimum yield (OY) of such fishery which will not be harvested by vessels of the United States.

(b) Each specification of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFFs will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) Specifications of OY and the initial estimates of U.S. harvests and TALFFs at the beginning of the relevant fishing year will be published in the **Federal Register.** Adjustments to those numbers will be published as notices in the **Federal Register** upon occasion or as directed by regulations implementing fishery management plans. For current apportionments, contact the appropriate Regional Director or the Office of Resource Conservation and Management, F/CM, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

3. Section 611.50 is amended by revising paragraph (b)(3) to read as follows:

§ 611.50 Northwest Atlantic Ocean fishery.

* * * * *

(b) * * *

(3) *TALFF.* The TALFFs for the Northwest Atlantic Ocean fishery are published in the **Federal Register.** Current TALFFs are also available from the Regional Director.

* * * * *

4. Section 611.52 is amended by revising paragraph (b) to read as follows:

§ 611.52 Mackerel fishery.

* * * * *

(b) *Allocation of reserve.* If the projected amount of mackerel to be harvested by U.S. fishermen exceeds the initial level of harvest specified as DAH at the beginning of each fishing year, the Regional Director will leave the excess in the reserve to allow the U.S. fishery to continue without closure throughout the year. The Regional Director will allocate the rest of the reserve to the total allowable level of foreign fishing (TALFF). If the projected amount of mackerel to be harvested by U.S. fishermen does not exceed the initial level of harvest specified as DAH, the Regional Director will allocate the entire reserve to TALFF.

* * * * *

5. Section 611.60 is amended by revising paragraph (b)(2) to read as follows:

§ 611.60 General provisions.

* * * * *

(b) * * *

(2) *TALFF.* The TALFFs are published in the **Federal Register.** Current TALFFs are also available from the Regional Director.

* * * * *

6. Section 611.70 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 611.70 Washington, Oregon, and California trawl fishery.

* * * * *

(b) * * *

(1)(i) *Initial TALFF.* The total allowable levels of foreign fishing (TALFF), the amounts of fish set aside as reserves, and the estimated domestic annual harvest (DAH) are published in the **Federal Register.** Current TALFFs are also available from the Regional Director.

* * * * *

7. Section 611.80 is amended by revising paragraph (b)(2) to read as follows:

§ 611.80 Seamount groundfish fishery.

* * * * *

(b) * * *

(2) *TALFF.* The TALFFs for the seamount groundfish fisheries are published in the **Federal Register.** Current TALFFs are also available from the Regional Director.

* * * * *

8. Section 611.81 is amended by removing paragraphs (b)(4)(ii)(A) and (b)(4)(iii), by changing the reference in paragraph (b)(4)(ii)(C) from "paragraph (b)(4)(ii)(B)" to "paragraph (b)(4)(iii)(A)," and by redesignating paragraphs (b)(4)(i)(B), (b)(4)(ii)(B) and (b)(4)(ii)(C) as paragraphs (b)(4)(ii)(B), (b)(4)(iii)(A) and (b)(4)(iii)(B), respectively. In addition, section 611.81 is amended by redesignating paragraph (b)(4)(i)(A) as paragraph (b)(4)(ii)(A) and revising it, and by adding a new paragraph (b)(4)(i), to read as follows:

§ 611.81 Pacific billfish, oceanic sharks, wahoo, and mahi mahi fishery.

* * * * *

(b) * * *

(4) * * *

(i) *TALFF, reserve, and JVP amounts.* The TALFFs, amounts of fish held in reserve, and amounts of JVP are published in the **Federal Register.** Current TALFFs, reserves and JVPs are also available from the Regional Director.

(ii) *TALFF and national allocations.* (A) The total amount of each species of billfish, oceanic sharks, wahoo, and mahi mahi which may be caught and retained in each regulatory area by foreign vessels subject to this section is limited to the TALFF for each applicable regulatory area, and to the amount of the applicable national allocation.

* * * * *

9. Section 611.91 is amended by revising paragraph (b)(2) to read as follows:

§ 611.91 Tanner crab fishery.

* * * * *

(b) * * *

(2) *TALFF.* The total allowable level of foreign fishing (TALFF) for Tanner crab is published in the **Federal Register.** Current TALFFs are also available from the Regional Director.

* * * * *

10. Section 611.92 is amended by removing paragraph (a)(3) and by revising paragraph (c)(1)(i) to read as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

* * * * *

(c)(1) *OYs, TALFFs and Reserves.* (i) The specifications of optimum yield (OY), estimates of domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and TALFFs and Reserves are published in the **Federal Register.** Current amounts are also available from the Regional Director. Species listed in paragraph (b)(1) and Table I of this section as "unallocated

species," or species for which the TALFF is zero, will be treated as prohibited species in accordance with § 611.13.

* * * * *

11. Section 611.93 is amended by revising paragraphs (b)(1)(i) and (b)(2) to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(1) *TALFF and reserves.* (i) The OY, DAH, TALFF, and reserve for target species and other species taken in the fishery are specified and published in the **Federal Register.** Current amounts are also available from the Regional Director. The TALFF for nonspecified species is any amount of such species taken incidentally to the harvest of the specified TALFF, and of such amounts of the specified reserve and DAH as may be apportioned to TALFF.

* * * * *

(2) *Apportionment to TALFF of reserves and initial DAH.*—(i) *Apportionment of reserves.* As soon as practicable after each of the following dates, and after consultation with the North Pacific Fishery Management Council, the Secretary shall apportion to TALFF up to one-fourth (¼) of each of the initial reserve amounts, in accordance with paragraph (b)(2)(iii) of this section: February 2, April 2, June 2, and August 2.

(ii) *Apportionment of initial DAH.* As soon as practicable after each of the following dates, and after consultation with the North Pacific Fishery Management Council, the Secretary shall reassess each DAH amount and shall apportion to TALFF such parts thereof as he or she determines to be appropriate in accordance with paragraph (b)(2)(iii) of this section: June 2 and August 2.

* * * * *

12. Section 611.94 is amended by revising paragraph (b)(2) to read as follows:

§ 611.94 Snail fishery.

* * * * *

(b) * * *

(2) *TALFF, DAH, DAP, JVP, Reserve.* The annual total allowable level of foreign fishing (TALFF), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and reserve for snails for each calendar year are published in the **Federal Register.** Current amounts are also available from the Regional Director.

* * * * *

[FR Doc. 82-27711 Filed 10-6-82; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 611

[Docket No. 2930-197]

Foreign Fishing; Atlantic Squid

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: The National Oceanic and Atmospheric Administration allocates 10,777 metric tons of the reserve of *Illex* squid to the total allowable level of foreign fishing by this notice. This action is required by the regulations implementing the fishery management plan for Atlantic squid. The allocation will encourage achievement of the optimum yield.

EFFECTIVE DATE: October 4, 1982.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600.

SUPPLEMENTARY INFORMATION: The fishery management plan for the Atlantic squid fishery, as amended, established a reserve of 13,000 metric tons (mt) of *Illex* squid (45 FR 45296, July 3, 1980). Regulations provide a mechanism to allocate all or part of the reserve to the total allowable level of foreign fishing (TALFF) in September of each year (45 FR 63863, September 26, 1980). Sections 611.51(b) and 655.22(a) direct the Regional Director of the Northeast Region, National Marine Fisheries Service (NMFS), in August to project the total domestic harvest for the entire fishing year (April 1 through March 31). He does this by multiplying the domestic catch (exclusive of joint venture harvest) from April through July—1,663 mt this year—by a factor of 2.9. The product, 4,823 mt, plus the 2,400 mt authorized for joint ventures through August 15, totals 7,223 mt, which is more than the initial level of domestic annual harvest of 5,000 mt. Therefore the excess of 2,223 mt will remain in the reserve. The balance of the reserve, 10,777 mt, is allocated to TALFF. The TALFF, as adjusted, is now 22,777 mt.

NOAA has received and the appropriate Regional Fishery Management Councils have recommended approval of additional permits for *Illex* joint ventures after the date of August 15 specified in § 611.51(b)(2) for determining the needs of the domestic fishery. Subsequent review of the harvest statistics for the fishery shows that U.S. fishermen not involved in joint ventures will not land appreciably more than the 2,245 mt of *Illex* squid landed to date. Thus, the total estimate of U.S. harvest for the balance of the fishing year, 7,223 mt, is sufficient to include new joint venture authorizations of 1,400 mt, in addition to the 2,400 mt authorized before August 15.

This action is taken under the authority of §§ 611.51(b) and 655.22(c), and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: October 1, 1982.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR Part 611 is amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

§ 611.20 [Appendix 1 Amended]

2. In § 611.20, Appendix 1, the entries for squid, short-finned, under the entry designated D (Squid fishery) for Northwest Atlantic fisheries and footnote 8 are revised to read as follows:

* * * * *

	Species code	OY	DAH	DAP	JVP	DNP	Reserve	TALFF
Squid, short-finned	504	30,000	5,000	[8]5,000		[8]2,223	[8]	22,777

* * * * * * * * *

[8] The Assistant Administrator for Fisheries, NOAA, has determined that 800 mt for *Loligo* and 3,800 mt for *Illex* will not be utilized by domestic processors and are available for joint ventures.

* * * * * * * *

[FR Doc. 82-27609 Filed 10-4-82; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 654

[Docket No. 2930-196]

Stone Crab Fishery; Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects the effective date from November 8, 1982, to October 22, 1982, for the final regulations for the stone crab fishery, which were published on September 22, 1982 (47 FR 41757). The effective date was erroneously set 45 days from publication in the **Federal Register**, rather than the correct date of 30 days from the publication date.

FOR FURTHER INFORMATION CONTACT: Jack T. Brawner, 813-983-3141.

Dated: October 1, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-27688 Filed 10-6-82; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 195
Thursday, October 7, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1071, 1073, 1104, 1106, 1126, and 1132

[Docket Nos. AO-210-A43, et al.]

Milk in the Oklahoma Metropolitan and Certain Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

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

SUMMARY: This final decision provides that the Oklahoma Metropolitan, Neosho Valley, and Wichita marketing areas and the Oklahoma counties of the Red River Valley marketing area be merged under one order. The combined "Southwest Plains" marketing area also includes 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 merged order are patterned largely after those of the Oklahoma Metropolitan order with minor modifications. The decision provides also that the Texas counties of the Red River Valley marketing area be added to the marketing area of the Texas order. The 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.

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 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). Recommended Decision—issued on May 12, 1982; published May 19, 1982 (47 FR 21684). Extension of Time—issued on June 16, 1982; published June 21, 1982 (47 FR 26665).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the respective marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Oklahoma City, Oklahoma, on May 20-23 and May 27-29, 1980, pursuant to notice thereof issued on April 25, 1980 (45 FR 28734).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on May 12, 1982, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Issue No. 2. *Need for merger of orders.* Thirteen new paragraphs are added at the end.

2. Issue No. 4(a). *Milk to be priced and pooled.*

—Pool distributing plant.—Four new paragraphs are added after paragraph 4.

—Pool supply plant.—A new paragraph is added after paragraph one; and a new paragraph is added after paragraph three.

—Cooperative balancing plants.—Paragraph one is revised; and three new paragraphs are added at the end.

—Producer.—Four new paragraphs are added at the end.

—Producer milk.—Paragraphs 17 and 18 are revised; paragraph 21 and 22 are deleted and five new paragraphs are substituted therefor.

3. Issue No. 4(c). *Class prices and location adjustments.—Out-of-area locations adjustments.*—Four new paragraphs are added after paragraph 17.

4. Issue No. 4(d). *Distribution of proceeds to producers.—Partial payments to producers and rate of such payments.*—Two new paragraphs are added after paragraph 16; and three new paragraphs are added at the end.

—Payments by handlers for milk received from a pool plants operated by a cooperative association.—Two new paragraphs are added after paragraph six.

4(e) Administrative provisions.—*Administrative assessment.*—Two new paragraphs are added after paragraph eight.

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 interstate 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 Metropolitan, 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 represent 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 represent 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 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,

[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.

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 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

[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, 1954 (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).

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 time 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 on Order 73. It is noted that this milk represents a reserve supply not only for the four 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 additional 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 in 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 markering 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 marekts 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 merged 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 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] 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 4 ORDERS TO BE MERGED, 1976-1979 (1,000,000 LBS.)

Year	Order 71	Order 73	Order 104	Order 106	Total
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 the 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

[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.

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 4 ORDERS TO BE MERGED, 1976-1979

Year	Order 71	Order 73	Order 104	Order 106	Combined
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 4 ORDERS TO BE MERGED, 1976-1979 (DOLLARS PER HUNDREDWEIGHT)

Year	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 blend 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 hundredweight. 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 prices 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 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 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 structual 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 83 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 these 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 disruptions 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 what 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 inefficiencies 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 disruptions 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 play 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 play 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 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 7 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 overlaps 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 1976, Kansas and Oklahoma represented about 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 milion 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 milion 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 declines 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 8 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 intertwined 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

[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.

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 among the procurement areas of different markets at different times and are primarily a function of changes in milk movements by AMPI, which represesents 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 an overriding consideration in determining whether the proposed four-market merger is justified. The proportion of the milk 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 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 order handler 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 16 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 Order 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 sales 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 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 handlers' 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 identical 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 respect 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, verification activities. The provisions of the merged order would apply only to that milk handled after the effective date of the merger.

Exceptions to certain of the foregoing proposed findings and conclusions of the recommended decision were filed on behalf of Vanguard Milk Producers Cooperative of Missouri, Inc., Farm Fresh Dairy, Inc. (a handler regulated under Order 106), Colvert Dairy (a handler regulated under Order 104), and independent producers serving Colvert Dairy. These parties oppose the merger of Orders 71, 73, 104 and 106 and urge that the Secretary set aside the recommended decision and convene a new hearing to consider a merger order that would encompass a larger regional marketing area. They state that the decision disregards traditional standards for the merger of orders and instead substitutes an arbitrary standard. Exceptors also claim that the four-market merger would fail to preserve a healthy competition for milk supplies and would reduce the blend price to many independent producers. These and other points are addressed below.

Exceptors claim that the Department erred by not including the Texas order (Order 126) in the merger and that the Department arbitrarily limited the alternative options open at the public hearing by marking a prejudgement to eliminate logical and reasonable alternatives. These views are without merit. The scope of the merger hearing was established by the proposals that were submitted by interested parties. All merger proposals that were submitted to the Department of hearing were included in the Notice of Hearing. These proposals did not include the Texas order as a part of a five-market merger. Procedurally, the scope of the proceeding could not be expanded during the course of the hearing to include a merger of that order. This would have required the issuance of another hearing notice reflecting the expanded proposal. It is noted in this regard that the record of this hearing did not demonstrate that the inclusion of the Texas market under any order for the Oklahoma-Kansas area was essential for orderly marketing and that a merger of orders that did not include the Texas order would not carry out the intent of the Act.

The exceptors state that the recommended decision abandoned traditional standards for determining marketing areas (i.e., procurement and sales area overlaps) and that the decision substitutes a new standard (i.e., advancement of the dominant cooperative's supply system) that is contrary to the declared policy of the Act.

First, the extent to which there is an overlapping of the procurement and sales areas among the markets was not abandoned. The recommended decision dealt with both of these criteria in greater detail. Both factors were considered in determining the need and scope of the merger of orders.

Second, no new standard for a merger of orders was advanced in the recommended decision. The organization of the available supply of milk for shipment to distributing plants by the major cooperative association in the area under consideration is an important part of the "market structure" that must be considered in any merger of orders. This is not a new consideration as claimed by exceptors. In this case, AMPI's marketing practices established a significant linkage among the four markets. Market structure, in addition to the organization of milk supplies, also includes the size of the markets, the number and size of distributing plants as well as changes in the distribution sector, all of which are factors that also were considered in the recommended decision.

Exceptors also state that the recommended decision failed to make a ruling on certain proposed findings contained in briefs of two interested parties. The specific proposed findings referred to are: (a) That the Class I utilization percentages and the blend prices among the orders are basically in alignment; and (b) that AMPI's committee supply contracts, common marketing agreement, price reblending, and over-order premiums with competitive discounts enhance its monopoly supply control within the proposed marketing area. In effect, exceptors contend that the blend price alignment among the orders is representative of orderly marketing, thus negating the need for a merger. Exceptors also contend that the proposed merger is not in the public interest because it will not preserve healthy competition.

The yearly Class I utilization percentages and average blend prices for each of the markets included in the merged order are set forth herein for 1976 through 1979. The yearly data, however, obscure the significant blend price changes that occurred monthly among the markets because of structural changes in the distribution sector. The description of the cause and magnitude of the blend price changes and the relationship of such price among the markets refutes the proposed findings advanced by exceptors.

Exceptors contend that the 4-market merger is not in the public interest because it will promote competition. In this regard, the earlier findings of this decision point out that the widely fluctuating blend prices under the separate orders do not reflect the kind of price stability intended under Federal regulation, provide false signals to producers to make production and delivery adjustments, and are not conducive to the maintenance of an efficient procurement and delivery system on either a local or regional basis. A consolidation of the marketing areas under a single order will result in a greater degree of blend price stability than that exhibited by the four separate orders. As a result, dairy farmers will be able to plan their future production and marketing strategies with a greater degree of certainty. Also, a broader sharing of the fluid milk sales and the application of a uniform price throughout the milkshed will provide for greater equity among dairy farmers as well as the opportunity for the development of a more efficient and stable supply system by cooperative associations and by handlers that obtain milk from other than a regional cooperative association. These benefits are contrary to exceptors' characterization of either the possible

intent or result of the merger of orders adopted herein. The merger recognizes and accommodates to a regional marketing approach that is not reflected in the current regulatory scheme. By doing so, the merger will remove many of the conflicts between the regional and local marketing approaches and, thus, promote stability in the marketing of milk on both a regional and local basis to the benefit of interested parties.

The business practices of AMPI, to which exceptors refer, are standard practices of cooperative associations that are utilized to provide a greater measure of efficiency in managing available milk supplies and recovering costs with the objectives of improving returns for the mutual benefit of member producers. These business practices, as well as the representation of Mid-Am in the markets involved in this proceeding are identified in this decision to the extent relevant to the proceeding.

The exceptors claim that by the cooperative's refusal to testify on certain matters AMPI has failed to carry the proponent's burden of proof. They contend that the evidence was weighed improperly in that the recommended decision adopted AMPI's testimony without considering refusal of AMPI's witnesses to answer pertinent questions and, further, that such refusal violates a requirement of the Administrative Procedure Act. As "proof" exceptors list a number of pages in the hearing transcript which are characterized as pages where AMPI's witnesses either refused to answer, conceded there was not data to support certain conclusions, or did not know material information.

In reaching a decision on the issues involved, the testimony of any one party is not evaluated or analyzed in isolation of the total evidence contained in the hearing record. To do so could result in a failure to take certain amendatory action on the basis of insufficient evidence being presented by a particular party when the total evidence contained in the record establishes the need for such action. The decision sets forth the marketing conditions that establish the need for the order merger adopted herein. The findings and conclusions of the merger issue were determined on the basis of a thorough analysis and weighing of all of the evidence contained in the record that was presented by all interested parties.

The simple listing of pages by exceptors does not provide a basis to conclude that the marketing conditions depicted in the recommended decision were in error. The fact that one witness would not or could not answer certain questions, or provide certain data does not mean that the information sought was not presented at the hearing. Actually, most of the information sought on the listed pages is contained in the record and was provided by other witnesses or in exhibits introduced at the hearing.

In total, the exceptions do not provide a basis for altering the findings and conclusions of the recommended decision and they are denied for the reasons previously set forth.

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 part 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 59 Oklahoma counties. Twelve of the 59 counties are partially within the Oklahoma Metropolitan marketing area and one country (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 merger 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 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

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 handlers. 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)

[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.

[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.

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 Haskell 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 the 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.

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 Texarkanna, 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 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 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.

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 describe the

[11] Parts of Garfield and Logan Counties are currently included in the Order 106 marketing area.

[12] Parts of Cleveland, Oklahoma, and Pottawatomie Counties are currently in the Order 106 marketing area.

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 plant." 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 definition 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 picked 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 then 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 spokesman 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 regulatory 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 buying 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.

In his exceptions to the recommended decision, the operator of a partially regulated distributing plant at Texarkana urges that the in-area route disposition pooling standards be established at 15 percent of a distributing plant's receipts. Exceptor

contends that the 15 percent requirement is now contained in the Oklahoma Metropolitan order and should be continued under the merged order.

Evidence presented at the hearing indicated that the handler's plant would not be subject to full regulation if the 10 percent requirement were adopted. Exceptor indicates, however, that due to an oversight the milk sold to schools was not taken into consideration when evidence on the plant's distribution was presented at the hearing. Exceptor now indicates that during the school term it is common for the plant to dispose of 10 to 15 percent of its receipts in McCurtain County, Oklahoma, one of the counties included in the marketing area of the Southwest Plains order.

It should be noted that exceptor's statement that the in-area pooling standard for distributing plants under the Oklahoma Metropolitan order is 15 percent of a pool distributing plant's receipts of milk is not correct. Under that order, the 15 percent applies to a plant's total route disposition rather than to the plant's total receipts. In the case of a pool distributing plant, the route disposition may vary from a low of 50 percent of the plant's total receipts to 100 percent of the plant's total receipts. Thus, a distributing plant with a Class I utilization that is in excess of 66⅔ percent of the plant's receipts would be less likely to be fully regulated if the in-area pooling standard were based on 15 percent of the plants total route disposition than on 10 percent of the plant's total receipts. Conversely, a distributing plant with Class I utilization that is less than 66⅔ percent would be more likely to be fully regulated if the in-area pooling standard were based on 15 percent of the plant's total route disposition than on 10 percent of the plant's total receipts.

Exceptor's request that the standard be changed to 15 percent of a plant's receipts should not be granted. There is no way of determining at this point in the proceeding what impact such change might have on other plants that have sales in the marketing area.

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 should 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 provision 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 institutions. 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 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.

Certain transitional provisions are needed in the merged order to assure that supply plants that have demonstrated an adequate association with the individual markets included in the merger will be eligible under the merged order for the limited shipping privileges during February through August 1983. For this purpose, such eligibility shall be deemed to have been established if the plant was a pool supply plant under any of the four orders to be merged (or any combination thereof) during the months of September through December 1982. Each of the four orders now bases automatic pooling of supply plants or limited shipping requirements on a plant's performance during at least these four months.

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.

Due to an oversight, the provisions of the proposed merged order as set forth in the recommended decision would not have fully carried out the intent of that decision with respect to the pooling standards for a supply plant located within the marketing area or in a county adjacent to the marketing area. The order attached to this decision has been

corrected in this regard by revising the definition of a pool supply plant to specify that in the event milk of a producer is diverted to a pool distributing plant from a supply plant for the purpose of meeting a portion of the qualifying shipments by such supply plant, at least one day's production from the farm of the producer whose milk is so diverted during the month must be physically received at the supply plant. The need for this type of requirement was pointed out in the recommended decision in the possible application of the pool supply plant standards to Kraft's operations at its Bentonville and Berryville plants. In that discussion, it was noted that in the case where a producer's milk is diverted from the farm to a pool distrubuting plant for the purpose of qualifying a supply plant (Bentonville plant), at least one day's production must be received at such supply plant to assure that the milk so diverted has at least a minimal association with such plant.

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 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 tigher 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 predicted. 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 a 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 distribution 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 Febuary-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 for the months of February-August. The remaining 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 country 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 shipment 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 of 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 particpate 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 to 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 devivered 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 milk is diverted must be recieved 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 if 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 or in a county adjacent to 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 distributiong 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 ddirectly 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 if 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 shipments 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.

Mid-Am excepted to a provision of the proposed order that would require a cooperative's balancing plant to be located within the marketing area as a condition for pooling such plant. The cooperative agreed that a location limitation is appropriate but requested that such area be limited to the marketing area and counties immediately adjacent to such area. Exceptor pointed out that the operator of a supply plant would be accorded special consideration if the supply plant is located within the marketing area or in a county adjacent to such area. (As provided herein, the operator of a supply plant that is so located may include milk that is diverted by the supply plant to a pool distributing plant in meeting a portion of the shipments that a supply plant must make to a pool distributing plant to qualify as a pool plant.) Mid-Am suggested that the area limitation for such supply plant would also be appropriate for limiting the location of a cooperative's balancing plant as a condition for pool plant status.

Under usual circumstances, a balancing plant operated by a cooperative transfers limited amounts of bulk fluid milk to pool distributing plants. The plant functions primarily as a manufacturing plant to process the reserve milk supplies for the market. Pool status for a cooperative's balancing plant is dependent primarily upon the extent to which the member producer milk supply of the cooperative is delivered to pool distributing plants in the market. As an additional safeguard to assure that the cooperative's balancing plant is primarily associated with the market in which the cooperative desires to pool such plant, orders commonly restrict the area in which such plant must be located.

The area limitation set forth in the merged order was selected on the basis of the area limits proposed by AMPI and Kraft. Mid-Am's suggestion that the area limits be expanded to include the counties immediately adjoining the area also will provide appropriate location limits for a cooperative's balancing plants. As previously noted, balancing plants are used primarily to process the reserve milk supplies for a fluid market. Thus, it is reasonable to assume that a plant located within the marketing area

of an order or in the primary production area for such market would be processing milk that represents the reserve fluid milk supplies for such market. In the case of the merged order, the primary production area includes the marketing area and counties that are adjacent to the marketing area. Thus, the area in which a cooperative's balancing plant may be located should be extended to include the counties adjacent to the marketing area.

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 asociation 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 order 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 plant 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 farms 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 quantity 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 nonmember 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 in 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 merged 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.

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 supplies 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-handlers 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 orders 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 an other 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 adoptd to prevent cooperative associations and pool plant operators from pooling on the porposed 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.

Thid 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 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 diary farmer with another market during the short-production season should not be able to have the dairy farmer qualify as a producer of the Southwest Plains market in other months when supplies are much more plentiful relative to demand. Permitting a handler to shift dairy farmers back and forth between markets in this manner would take supplies away from 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 dairy 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.

In view of the likely effective date of the merged order, it is concluded that the "dairy farmer for other markets" provisions should not apply during any of the months of February–July 1983. If this provision became effective at the time the merged order was made effective, the determination of producer status would be contingent upon where a dairy farmer delivered his milk during September–November 1982, which would be before the merged order is effective. Thus, by delaying the application of the "dairy farmer for other markets" provision until the start of the next "qualifying period"

(Septemer 1, 1983), dairy farmers would have advance notice of the rules concerning their eligibility as producers under the merged order.

An exception to the "dairy farmer for other market" provision was filed by 40 nonmember producers and several handlers. Exceptors point out that the provision was originally adoptd for the Texas order and was intended "to foreclose AMPI from loading the Texas pool to the disadvantage of substantial independent competition that AMPI faces in the Texas market." Exceptors contend that in southwest Plains market production from dairy farmers who are not members of a cooperative comes largely from the north and that the adoption of such a provision would make it difficult for these dairy farmers to enter the market.

The "dairy farmer for other markets" provision would preclude a handler or cooperative association from bringing additional dairy farmers on the market as producers under the Southwest Plains order only under limited circumstances. A dairy farmer could not be brought onto the market as a producer during the months of February–July if the handler or cooperative marketed more than one-third of such dairy farmer on a market other than the Southwest Plains market during the preceding months of September through November. Thus, if a handler or cooperative has not previously been responsible for marketing the milk of a dairy farmer, such dairy farmer may be brought on as a new producer under the Southwest Plains order during any month of the year without restriction.

As has been pointed out, the intent of the provision is to safeguard producers regularly supplying the Southwest Plains market from sharing their pool proceeds with such other dairy farmers during the flush production months when the handler finds the milk of such dairy farmers to be surplus to the needs of the other market. Contrary to the arguments advanced by exceptors against the adoption of the "dairy farmer for other markets" provision, the provision would allow a handler to bring a new producer onto the market at any time.

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 the 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 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 as 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 an 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 month should not exceed the quantity of producer milk that the cooperative association caused to be delivered to and was physically received at all pool plants.

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 month should not exceed the quantity of producer milk physically received at pool plant(s) as producer milk for which the plant operator is the handler.

Any milk diverted by a 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 days'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.

Kraft and Mid-Am excepted to the limits provided under the proposed merged order on the amount of milk that may be diverted from a pool plant to nonpool plants as producer milk during the months of September–January. Kraft requested that the limits on such diversions be the same as now provided under the Oklahoma Metroplitan order. Mid-Am suggested that since the proposed pool supply plant shipping standards provide for an adjustment of up to 10 percentage points in such standards the allowable diversions should be the reciprocal of the supply plant shipping standards. Kraft also commented on the need to have diversion limits for distributing plants and supply plants that are the reciprocal of the distribution standards for pool distributing plants and the shipping standards of pool supply plants, respectively.

Mid-Am noted that while the diversion limits of the merged order are more liberal than those proposed by AMPI such limits are considerably tighter than those contained in the separate orders. In this regard, Mid-Am pointed out that the Neosho Valley order contains no diversion limits and that the Oklahoma Metropolitan, Red River Valley and Wichita orders provide that a handler may divert to nonpool plants as producer milk an amount equal to deliveries to a pool plant.

As exceptors noted, the provisions of the merged order as contained in the recommended decision would have allowed a pool plant to divert during September-January only one-third of its total producer receipts and would have required the supply plant to physically receive the remaining two-thirds of its producer milk supply. The exceptors point out that if a plant is a distributing plant and can only process one-half of the total receipts from producers as Class I, it would be necessary for the plant operator to transfer from the pool plant a quantity of milk equal to 16 percent of the handler's total receipts of producer milk (including milk diverted to nonpool plants).

The diversion limits set forth in the recommended decision could result in an inefficient movement of milk by a pool plant during the months of September-January. Such situation could occur at a distributing plant that has only Class I uses and limited holding facilities and has a producer milk supply for such plant that is twice as great as the plant's needs. Under the provisions of the merged order as initially adopted, the distributing plant would have been able to divert to nonpool plants only one-third of the producer milk for which it was the handler and would have been required to receive the other two-thirds of its milk supply at the distributing plant. A plant that can utilize only one-half of its total producer milk supply in Class I uses because of a 3- or 4-day bottling schedule during the week would need to transfer at least 16 percent of its total producer milk supply to other plants for manufacturing. Such receipt and subsequent transfer of milk would be an inefficient movement and should not be required under the order. To assure that a handler is not required to make such inefficient movement of milk, the merged order should permit the plant operator to divert to nonpool plants during all months of the year an amount of milk equal to the quantity of milk physically received at the pool plant.

The diversion limits for a supply plant operator should be identical to the limits that apply to the operator of a distributing plant. The suggestion by exceptors that the allowable diversions to nonpool plants should be a percentage that represents the reciprocal of the supply plant standards should not be adopted. The suggested diversion limits for a supply plant would be appropriate if the plant has no manufacturing facilities and the plant serves only as an assembly point for producer milk on its way to the central market. However, the usual function of a supply plant serving the fluid market is to physically receive all of the milk of its producers at such plant. Then, to the extent that such receipts are needed at distributing plants, the milk is transferred from the supply plant to distributing plants. The milk that is not needed at the distributing plants is manufactured at such supply plant. A plant that functions in such manner has no need to divert all milk that is in excess of its transfers to pool distributing plants. Even though a supply plant has manufacturing capabilities, it may be limited in the amount of milk that it can process at such facility and may need to divert some of its milk supply to nonpool plants. For this reason, a limited amount of milk should be permitted to be diverted to nonpool plants. The supply plant operator should be permitted to divert an amount of milk to nonpool plants equal to the quantity of milk physically received at the supply plant.

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 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 separated 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
Byran	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—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
Bulter	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 $1.98. 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 transportation 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 $2.05 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 $2.05 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.

Zone 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 in 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 Metropolitan 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 be 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 hundredweight. 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 regulated 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, Carroll 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 Texarkana, 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 difference 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 Texarkana, 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, AMPI revised its position with respect to a location adjustment for

[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).

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 I differential in these four counties under the Texas order.

The operator of a Texarkana plant excepted to the initial recommendations that the merged order provide for a Class I differential of $2.23 for milk received at the Texarkana plant. Exceptor pointed out that such location differential is at variance with the $2.165 Class I differential that applies at such plant under the provisions of the Central Arkansas order. In this instance, he contends that a Class I differential of $2.165 should also apply at the Texarkana plant under the provisions of the merged order.

Ideally, a single Class I differential should apply at each plant for milk used for Class I purposes regardless of the Federal order under which the plant is regulated. The use of zones in establishing Class I differentials under Federal orders tends to achieve this objective of providing a single Class I differential for a plant that may switch regulation between two or more orders.

In this instance, the zone Class I differential that applies under the Texas order in the two Texas counties of Bowie and Cass and the Arkansas counties of Little River and Miller is deemed to be appropriate for such area under the merged order. As previously noted, the inclusion of the four counties in such pricing zone would result in a Class I differential of $2.23 at plants in the Texarkana area. The adoption of such zone pricing will coordinate the pricing of Class I milk in these four counties with the areas in Texas that adjoin the Texarkana area since the zone pricing under the Texas order for areas west of Texarkana is also adopted under the merged order.

It is also noted that the $2.23 Class I differential adopted herein for the Texarkana area is a differential that is intermediate between the differentials provided under the Central Arkansas and Greater Louisiana orders. As previously noted, a Class I differential of $2.165 applies under the Central Arkansas order at Texarkana plants. Under the Greater Louisiana order, the Class I differential at Texarkana plants is a least 10 cents greater than the $2.23 differential provided herein for plants in the Texarkana area.

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 Plains 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 seven 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 are 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 marketing area—plus 87 cents ($2.85).

In the State of Texas, 16 location 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 Valley marketing area—plus 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).

(b) Zone 2—plus 40 cents ($2.38).

[14] Official notice is taken of the decision issued May 2, 1975, by the Assistant Secretary with respect to the merger of six milk orders into the Texas order.

(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 or Corpus Christi, Texas. Under the Southwest Plains order, the Class I price at any plant in this area should 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 increasing 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 Grande 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 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 order for plants 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, Linn and Osage—minus 24 cents ($1.74).

(3) The three nonfederally regulated counties of Elk, Greenwood, and Woodson that are located between the current Neosho Valey marketng 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 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 pools 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-pool 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 in 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 conjunction 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 in 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 market administrator. When consideration is given that such reports need not be mailed until the 7th of the month and that the market administrator's office is not customarily open on weekends of 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 payments 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 partial 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 producrs. 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 payments 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 obligation 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 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 adopted 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 receiving 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 has 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 has 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 them 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 spokeman 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 spokeman 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 spokeman 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 uder 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 any 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 spokesman 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 Novermber 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.

The operators of two proprietary plants filed exceptions to the partial payment rate provided in the merged order. Both excepted to the adoption of a partial payment rate during any month in excess of the Class III price for the preceding month. One of the handlers also excepted to the inclusion of the months of August and February in the payment period when the increased rate applies.

As noted previously, the partial payment rate in the merged order is a compromise between the partial payment rate of the Wichita order and the other three orders. Producers under the Wichita order are being paid currently on the basis of a payment rate that is in excess of the one adopted herein for the merged order. Furthermore, the rate that applies under the Wichita order is not confined to the months of August and February but applies during all months of the year. The establishment of a rate in the merged order that is less than the highest partial payment rate of the separate orders and the application of such rate during eight of the twelve months of the year appears to be a reasonable solution under the circumstances.

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 considerably 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 proposal 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.

In its exceptions, Kraft objected to this conclusion. Exceptor held that requiring a handler to make two assignment payments per month to creditors of producers would result in substantial paperwork and would increase a handler's administrative costs. Exceptor contends that handlers should not be required to forward assignments twice a month to a creditor who prefers to be paid but once a month. Kraft suggests that the order require handlers to forward an assignment from the partial payment due a producer only when instructed to do so by the producer.

Kraft's cost would be less under the modification that it proposed only in the event that some of its producers do not instruct Kraft to forward deductions to assignees by the date the partial payment must be made to producers. If, however, each producer requests the handler to forward assignments from his partial payment, the handler would be required to make payment in the manner specified in the recommended decision.

There is merit in exceptor's contention that handlers should not be required to make payment to those assignees who prefer to be paid but once a month. There are compelling reasons, however, for concluding that only those deductions that have been paid to an assignee by the date of the partial payment may be deducted from payments due a producer. If a handler were not required to forward a deduction to an assignee at the time of the partial payment, he would have a competitive advantage over a handler receiving milk from producers who had not authorized deductions from payments due them. Under the option proposed by Kraft, it would be possible for a handler to pay his producers only once a month. In such circumstance, the handler's producers would request that the partial payment due them be withheld in its entirety and the handler would withhold the payment of such assignments to creditors until the final payment is due such producers. Such handler would have a competitive advantage over other handlers who are not able to take advantage of such option.

Payments by handler 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 payments 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 requirements 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, and 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.

Mid-Am excepted to provisions that would allow handlers who buy bulk fluid milk from a pool plant operated by a cooperative association to pay for such milk at the partial payment rate for milk containing 3.5 percent butterfat or to adjust the rate to reflect the butterfat content of the milk purchased. The cooperative did not object to allowing a handler who is purchasing skim milk from a cooperative's pool plant to adjust the price downward for milk containing less than 3.5 percent butterfat. On the other hand, the cooperative believed that if a handler received milk with a butterfat content in excess of 3.5 percent butterfat, the handler should be required to pay for such skim milk and butterfat at the time of the partial payment. Accordingly, the cooperative requested that the merged order require handlers to pay a partial payment that is adjusted on the basis of the butterfat content of the milk purchased from a cooperative's pool plant during the first 15 days of the month.

If such an arrangement is provided, handlers buying milk directly from the farms of producers would have a competitive advantage over handlers buying milk from a pool plant operated by a cooperative association. This would result because handlers buying directly from dairy farmers would be obligated to make a partial payment for such milk based upon a payment rate for milk containing 3.5 percent butterfat. However, handlers buying milk from a cooperative's plant would be required to pay a higher partial payment rate in the event their purchases of bulk milk contain in excess of 3.5 percent butterfat. Thus, it is concluded that handlers should be permitted to pay for milk that is purchased from a cooperative's pool plant on the basis of the partial payment rate for milk containing 3.5 percent butterfat content or, alternatively, the handler should be permitted to adjust the rate downward to reflect the actual butterfat content of the milk purchased.

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 forgo 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 accessed. 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. They 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 handlers' premise that all payments postmarked on or before the due date were made on time, one would eliminate at the most only the payments 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 associations 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 diffucult 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 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 usd 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 unapid 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 than 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 that 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 producer 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 increases 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.

The operator of a distributing plant at Tulsa, Oklahoma, filed an exception to the establishment under the merged order of a maximum rate of six cents per hundredweight for the administrative assessment. Exceptor recommended that the maximum rate be limited to four cents per hundredweight.

The evidence received at the hearing indicates that since October 1977 the rate for administrative assessment has been at the maximums permitted under the separate orders. Since the current maximum rate is four cents under two of the orders and five cents under the other two orders, it is not realistic to assume that a maximum rate of four cents per hundredweight would provide sufficient revenue for effective administration of the merged order. As noted in the recommended decision, the maximum should be established at a level so that the market administrator may assess to handlers any increased costs of operations that may occur at some future time without the necessity of having a public hearing called to amend the order to provide for an increase in the maximum assessment rate.

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 of 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 contigency 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 paritial 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 the 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 doucments 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 determinations 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) Its 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.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Counsel for Kraft noted in his exceptions that he had filed on May 12, 1982, a request with the Department asking that official notice be taken of several documents and publications that were issued subsequent to the hearing. It appears from counsel's exceptions that the request was submitted for the purpose of using such material, if official notice was granted, as a basis for pointing out that the recommended decision should be revised to provide for an increase in the diversion limits of the merged order for the months of September-January.

It was not possible to take action on the request for official notice prior to the issuance of the recommended decision because the decision was issued on the date the request was filed. Furthermore, there now appears to be no reason to take any action on exceptor's request since the diversion limits have been modified in the final decision to correspond to the limits suggested by exceptor.

Counsel for Vanguard Milk Producers Cooperative of Missouri, Inc., Farm Fresh Dairy, Inc., Colvert Dairy and the independent producers supplying Colvert Dairy requested on September 23 1982, that official notice be taken of an opinion of the United States Court of Appeals for the Eighth Circuit in *Alexander v. National Farmers Organization, et al.*

The request for official notice is denied. The rules governing this proceeding specify that "interested persons shall be given adequate notice, at the hearing or subsequent thereto, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed" (7 CFR 900.8(d)(5)). Accordingly, official notice of the Court's opinion and its relationship to this proceeding, if any, may not be allowed in this final decision since interested parties are precluded from having an opportunity to comment thereon.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT regulating the handling of milk, and an ORDER amending the orders regulating the handling of milk in the aforesaid specified marketing areas which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered. That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval; Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

April 1982 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the Texas Panhandle and Texas orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Texas Panhandle and Texas marketing areas, respectively; is approved or favored by producers, as defined under the terms of the orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

It is also hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*), to determine whether the issuance of the Southwest Plains order, which amends and merges the orders, as amended, regulating the handling of milk in the Oklahoma Metropolitan, Red River Valley, Wichita and Neosho Valley marketing areas is approved or favored by producers, as defined under the terms of the attached Southwest Plains order who during the representative period were engaged in the production of milk for sale within the marketing area defined in the attached Southwest Plains order.

The representative period for the conduct of such referendum is hereby determined to be April 1982.

The agent of the Secretary to conduct such referendum is hereby designated to be Richard E. Arnold.

List of Subjects in 7 CFR Parts 1071, 1073, 1104, 1106, 1126, 1132

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C. on October 4, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Order[1] *amending and merging the orders, regulating the handling of milk in the Oklahoma Metropolitan, Red River Valley, Wichita and Neosho Valley marketing areas.*

Findings and Determinations

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 determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The Southwest Plains order, which amends and merges the aforesaid orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Southwest Plains marketing area, and the minimum prices specified in the Southwest Plains order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The Southwest Plains order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the Southwest Plains order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his 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 attached Southwest Plains order.

Order relative handling. It is therefore ordered that on an after the effective date hereof the handling of milk in the Oklahoma Metropolitan, Red River Valley, Wichita, and Neosho Valley marketing areas (Parts 1106, 1104, 1073, and 1071, respectively) shall be amended and merged into one order. Parts 1104, 1073, and 1071 are thereby suspended and such vacated Part designations shall be reserved for future assignment. The handling of milk in the merged marketing area, to ge designated as the "Southwest Plains Marketing Area" (Part 1106) shall be in conformity to and in compliance with the terms and conditions of the following attached order.

The provisions of the proposed marketing agreement and order amending the aforesaid orders, as contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on May 12, 1982 and published in the **Federal Register** on May 19, 1982 (47 FR 21684), shall be and are the terms and provisions of this order, and are set forth in full herein, subject to the following modifications:

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

1. Section 1106.7 is revised.
2. Section 1106.12(b)(5) is revised.
3. Section 1106.13(d) (2) and (3) is revised.

In Title 7 of the Code of Federal Regulations, Part 1106 is revised to read as follows:

PART 1106—MILK IN SOUTHEAST PLAINS MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
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 product.
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 price.
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.

Sec.
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.

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 (e) 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. A plant that was a pool supply plant under the Neosho Valley, Wichita, Red River Valley or Oklahoma Metropolitan orders (or any combination thereof) during the months of September through December 1982 shall qualify as a pool plant in each of the months of February through August 1983 until any month of such period in which the plant fails to meet the 20 percent shipping requirement.

(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. The diverted milk used in meeting such qualifying shipments shall be limited to the milk of dairy farmers from whom at least one day's production is physically received during the month at such supply plant. 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 or in a county adjacent to 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 or more of the producer milk of members of the cooperative association (and any producer milk or 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 inviting data, views, and arguments. If a plant which would not otherwise qualify as a pool plant during the month qualifies 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 meet 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, nevertheless, 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 regultory 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 person 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; *Provided*, That this provision shall not apply during any of the months of February–July 1983.

§ 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 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 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 quanitity 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, emulsifiers, or flavoring) resembles 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 hundredweight 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 § 1106.71(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 transferor-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 rquired 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 paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product cointaining 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 form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; 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 shrinkage assigned pursuant to § 1106.41(a) to the receipts specified in § 1106.41(a)(2) and in skrinkage 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 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 utilization to such other source milk; and

(3) If the transferor-handler or divertor-plant received during the month other source milk to be allocated pursuant to § 1106.44(a)(11) or (12) or the corresponding step 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 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 avaliable 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 provide for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to another order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 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 another order plant, a producer-handler plants, 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 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*) Tc 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) or (c) that was not received at the 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 § 1106.09(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 offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(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 form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 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 produced 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 fluid milk from another order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; 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 another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 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 prorated to Class II and Class III combined, being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 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 and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from 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 prorated 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 Class 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 adjustment 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, Doniphan, 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, Decatur, 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.

Bienville, 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, Cooke, 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.
Aransas, 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 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) or 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 adminstrator 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 handled 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 subtracted for 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 mutiplying 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 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 of § 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 obligation 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 payment 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 announce 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 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 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 reamining 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 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, 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 hudredweight 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 for 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 minumum rate;

(4) The amount and nature of any deductions from the amount othewise 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. 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 operastes 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 another 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 classifed 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), except 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 by 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); and

(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 amounts 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 handler 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 agent 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 such producer.

Order [1] amending the orders, regulating the handling of milk in the Texas and Texas Panhandle marketing areas

Finding and Determinations

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 determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid specified marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending each of the specified orders contained in the recommended decision issued by Deputy Administrator, Marketing Program Operations, on May 12, 1982, and published in the Federal Register on May 19, 1982 (47 FR 21684) shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

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 imediately 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 Pandhandle 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.

[FR Doc. 82-27542 Filed 10-6-82; 8:45 am]

BILLING CODE 3410-02-M

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545 and 556

[No. 82-669]

Branch Office Approval

Dated: September 30, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board is proposing to amend its Branch Office regulations to eliminate the review for undue injury. This action is being proposed to simplify the branch application process and to reduce the regulatory burden currently imposed on institutions that apply for branch offices.

DATE: Comments must be received by: December 8, 1982.

ADDRESS: Send comments to Director, Information Services Section, Office of Communications, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available at this address for public inspection.

FOR FURTHER INFORMATION CONTACT: Gayle L. Radley, (202) 377-6961, Attorney, Office of General Counsel, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board ("Board"), by Board Resolution Nos. 80-285 (May 5, 1980; 45 FR 31046) and 80-760 (December 4, 1980; 45 FR 83196), adopted final amendments which revised and consolidated its branching regulations (12 CFR 545.14) and set forth a new policy statement on branching (12 CFR 556.5). Those revisions amended the regulatory criteria for branch approvals to eliminate the tests for "need" and "probability of success," while retaining the tests for "undue injury," assessment of the applicant's supervisory performance, and observance of the Community Reinvestment Act of 1977 (12 USC 2901) ("CRA"). The Board proposes, today, to eliminate the undue-injury criterion for branch approvals.

At present, § 545.14(e)(1) requires the Board to consider whether the proposed branch "[c]an be established without undue injury to properly conducted existing local thrift and home-financing institutions." Section 556.5 sets out the Board's policy statement on branching and gives guidance regarding the Board's evaluation of protests based on an allegation of undue injury. To support an allegation of undue injury, a protestant must demonstrate that the harm to an existing institution is adverse, economic in nature, substantial and harmful to the institution as a whole and not merely to a given branch office. Moreover, while older, established institutions may allege undue injury as a basis for protesting a proposed branch, § 556.5 currently expresses a Board policy which gives particular consideration to protests filed by newly-organized institutions, *i.e.*, institutions in operation three years or less.

The undue-injury criterion was adopted verbatim from section 5(e) of the Home Owners' Loan Act ("HOLA") (12 U.S.C. 1464(e)), which prohibits the granting of *de novo* federal charter unless a new institution can be "[e]stablished without undue injury to properly conducted existing local thrift and home-financing institutions." A review of branch applications for undue injury, however, is not mandated by the HOLA but was established by a regulatory provision adopted in the early 1960's. At that time, branching was still relatively rare and the Board thought it appropriate to give the same considerations to branch applications as it did in the granting of *de novo* federal charters. The branching policy was adopted primarily to give newly-organized institutions temporary insulation from the branching patterns of established institutions which might apply to branch in the same market area.

Consistent with the general view that the marketplace is the best regulator of economic activity, and as a part of its deregulation initiatives, the Board proposes to eliminate the undue-injury criterion as a consideration in its review of branch office applications. The Board believes that it can faithfully fulfill its responsibilities to promote safety and soundness in the thrift industry without shielding thrift institutions from competition. The decision to open a new branch should be a business decision for the management of an institution to make after considering the institution's options in light of its competitive environment. In the Board's experience, branching has neither generally nor directly engendered any of the financial difficulties institutions might experience. Where an institution is operating in a safe and sound manner, management should have the same degree of business discretion to expand as it has to make the decision to underwrite loans or to market liability instruments. As a matter of policy, the Board believes that the decision to branch is one for management to make with as little regulatory overview as possible.

In addition, as noted above, one of the principal reasons why the Board adopted the undue-injury test was to provide newly-organized institutions some degree of temporary insulation from the branching patterns of established institutions. The Board now finds that this policy, although rational when adopted in the 1960's, is no longer relevant today. While prior experience might have supported the conclusion that newly-organized institutions needed special protection, today newly-organized institutions often have a competitive advantage over older, established institutions. Newly-organized institutions are not burdened with large portfolios of old, low-yielding loans and are, therefore, more likely to be operating at a positive profit spread. Indeed, in the current economic environment, they are often more economically viable than older, more established institutions.

As a practical matter, the use of the undue-injury criterion as a basis for protesting proposed branch activity has substantially diminished, possibly because of changes in the basic structure of the thrift industry. Since 1980, no branch application has been denied based on the likelihood of undue injury to another insured institution as a whole, nor, since the 1970s, has an application protested by a newly-organized institution ever been denied solely on the basis of the undue-injury criterion. Thus, whatever need there might have been previously to protect newly-organized federal institutions has been substantially diminished.

The Board believes that the proposed amendments would benefit the public interest by permitting institutions to more conveniently service customer needs and that the public interest is served by a policy which allows branching patterns to satisfy an institution's corporate choices and business plans. The practical effect of this proposed regulation would give the consumer a choice of alternative facilities which would serve to improve and maximize the delivery of competitive financial services.

This proposal would also simplify the branch application process and reduce the regulatory burden currently imposed on institutions which apply to branch. In addition, since the time necessary to prepare and process a branch application would be greatly reduced, the amendments would benefit the thrift industry by eliminating unnecessary delays and costs entailed in administrative processing. Considerable cost savings would also result from this deregulatory action because institutions would no longer be required to compile and analyze extensive amounts of data regarding competitive conditions in the relevant geographic area.

The action the Board proposes today is consistent with recent actions taken by the Office of the Comptroller of the

Currency. That agency has recently revised its branch regulations to eliminate a test analogous to the Board's undue-injury criterion. Agency involvement in the decision of a national bank to branch is now minimal, except where supervisory concerns or the CRA performance of an institution must be addressed. *See* § 5.30 of the Code of Federal Regulations (12 CFR 5.30; 47 FR 29823 (1982)).[1]

The Board proposes to retain the criteria which would allow an application to be denied where an applicant has an unacceptable CRA performance record or where there are bases for supervisory objection. In order to provide the Board with greater flexibility in considering branch applications, however, the Board also proposes to amend section 556.5(b). The Board will consider whether the overall policies, condition, and operation of the applicant are satisfactory and, as a whole, afford no bases for supervisory objection. Where the overall condition of the applicant is satisfactory, the Board in its discretion may waive any specific supervisory objection and approve the branch application. In the absence of unacceptable supervisory or CRA concerns, however, institutions should be able to branch without agency interference.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (September 19, 1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives and legal basis underlying the proposed rules.* These elements are incorporated into the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The proposed rule would apply equally to all associations chartered by the Board.

3. *Impact of the proposed rules on small associations.* The proposal would eliminate the special consideration now accorded to newly-organized institutions by the policy statement on branching set out in § 556.5.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that may duplicate, overlap or conflict with the proposal.

5. *Alternatives to the proposed rules.* The proposal is deregulatory in nature. It reduces agency involvement in a thrift institution's decision to branch. The alternative would be to continue to allow protests by other thrift institutions on the ground of undue injury. However, since applications to branch have not been denied solely on the basis of undue injury, and since the regulatory burden and financial costs borne by an institution that wishes to branch are substantial, the Board believes the better alternative is to allow the marketplace to promote or discourage branching without unnecessary agency involvement.

List of Subjects in 12 CFR Parts 545 and 556

Branching, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Parts 545 and 556 of Subchapter C of Title 12, *Code of Federal Regulations*, as set forth below.

PART 545—OPERATIONS

1. By Board Resolution No. 82–578 (August 26, 1982; 1982; 47 FR 39836), the Board proposed to revise 12 CFR 545.14. The Board proposes to further revise this section by revising proposed § 545.14(e) to read as follows:

§ 545.14 Branch offices.

* * * * *

(e) *Approval by the board or the Principal Supervisory Agent.* (1) The Board shall approve an application only if, in its opinion, the overall policies, condition, and operation of the applicant afford no basis for supervisory objection and the proposed branch will open within 12 months of approval unless otherwise allowed by the Board or the Supervisory Agent. In considering whether to approve an application, the board will assess and take into account an institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, pursuant to Part 563e of this Chapter; assessment of an institution's record of performance may be the basis for denying an application. An application may also be denied on the basis of restrictions imposed by the Board pursuant to an existing agreement between the Board and a State agency that regulates State-chartered savings and loan associations.

(2) The Principal Supervisory Agent may approve, on behalf of the Board, an application for permission to establish a branch office if no substantial protest based on Part 563e of this Chapter has been filed. Such application shall be deemed to be approved by the Board 30 calendar days after notification that the application is complete, unless the applicant is otherwise notified by the Principal Supervisory Agent that objection has been taken on grounds set forth in subparagraph (1) of this paragraph (e).

* * * * *

PART 556—STATEMENTS OF POLICY

2. Revise § 556.5 by amending paragraph (b), deleting paragraph (d) and redesignating subparagraphs (e), (f), (g), (h), (i) and (j) as new paragraphs (d), (e), (f), (g), (h) and (i), respectively, as follows:

§ 556.5 Establishment of branch offices.

* * * * *

(b) *Supervisory clearance*—(1) *General.* The branching regulations recognize that the decision to branch is a management prerogative. However, in granting supervisory clearance to an applicant, the board will consider whether the overall policies, condition, and operation of the applicant are satifactory and, as a whole, afford no bases for supervisory objection. Where the overall condition of the applicant is satisfactory, the Board in its discretion may waive any specific supervisory objection and approve the branch application. * * *

(3) *Community reinvestment.* * * *

(d) *Protest and oral argument.* * * *

(e) *Basis for approval.* * * *

(f) *Branch openings.* * * *

(g) *Branch closings.* * * *

(h) *Name of branch office.* * * *

(i) *Drive-in and pedestrian offices.*

* * *

(Section 5 of the Home Owners' Loan Act, 48 Stat. 132 (12 USC 1464; secs. 402, 403, and 407 of the National Housing Act, 12 USC 1725, 1726 & 1730; Reorg. Plan No. j3 of 1947, 12 FR 4981, 3 CFR 1071 (1943–48 Comp.))

By the Federal Home Loan Bank Board.

J. J. Finn, *Secretary.*

[FR Doc. 82–27712 Filed 10–6–82; 8:45 am]

BILLING CODE 6720–01–M

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12 CFR Parts 561 and 563

[No. 82-668]

Industry Conflicts of Interest; Limitations on Loans to One Borrower

Dated: September 30, 1982.

[1] *See also Federal Review of Intrastate Branching Applications Can Be Reduced;* Report of the General Accounting Office ("GAO") (February 24, 1982). In 1982, the GAO issued a report in which it recommended minimizing, if not eliminating, federal review of commercial branch banking. The GAO recommended an exception-oriented notification system by which a bank would notify the regulator of its intent to establish a branch, comply with existing public-comment requirements, and, within a set time, establish the branch, unless otherwise notified by the regulator. The regulator would retain the power to deny the branch, but extensive review would only be required where the institution has been identified through existing adverse supervisory information or CRA protests.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board proposes to revise its regulations pertaining to conflicts of interest at institutions insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"). These revisions would: (1) Change the criteria for recognizing a limited partnership as an affiliated person of an insured institution (with a corresponding change to the attributon rules in the regulation limiting loans to one borrower); (2) change the guidelines on composition of an insured institution's board of directors to provide that a majority, rather than two-thirds, of the board should be outside directors; (3) apply present prohibitions regarding procurement fees, kickbacks, and unearned fees to all services offered by insured institutions; (4) implement more flexible and comprehensive requirements relating to non-loan transactions between an insured institution and its affiliated persons; (5) update current limitations on the types of loans that an insured institution may make to an affiliated person; (6) impose a cost-of-funds floor on preferential interest rates for loans to affiliated persons; and (7) eliminated one of the triggering mechanisms that presently obligates an insured institution to file a Form AR disclosure statement. In addition, several technical changes would be made to reduce the compliance burden imposed by the Board's conflict-of-interest regulations. The Board also requests comments and recommendations regarding the present regulatory limitation on loans to one borrower.

DATE: Comments must be received by: December 7, 1982.

ADDRESS: Send comments to Director, Information Services Section, Office of Communications, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Michael D. Schley, Attorney (202–377–6444), Office of General Counsel, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION: In August 1976, the Board adopted a comprehensive final rule on conflicts of interest at institutions insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") that substantially revised existing regulations and added many new provisions. The cornerstone of this regulatory scheme was the concept of the "affiliated person," defined (at CFR 561.29) to include insiders of an insured institution (directors, officers, and persons controlling ten percent or more of the institution's stock or voting rights), spouses and immediate family members of insiders, and organizations in which insiders of the institution have a substantial interest. Regulations were adopted that either prohibited or restricted transactions between insured institutions and their affiliated persons, such as loans (12 CFR 563.43), real property transactions (12 CFR 563.41), and deposit relationships (12 CFR 563.34), that might cause a loss to the institution, or might not be in the best interests of the institution, as a result of insider influence in a conflict-of-interest situation. Other provisions dealing with insider business opportunities (12 CFR 563.40 563.44), composition of the board of directors (12 CFR 563.33), loan service arrangements (12 CFR 563.35), kickbacks and unearned fees (12 CFR 563.40), and mortgage insurance arrangements (12 CFR 563.44) were designed to reduce the risk of real and apparent conflicts of interest and epsure fair dealings between institutions and their customers. New disclousre requirements known as Form AR (12 CFR 563.45) provided for reporting of all remuneration of insiders and other transactions in which affiliated persons have a material interest; one of the triggers for this report was transactions involving more than $40,000 in which an affiliated person has a material interest.

This regulatory framework has remained basically unchanged since 1976. The past six years have provided an opportunity for examination and supervisory staff of the Board who are constantly monitoring the industry for insider self-dealing to determine which regulatory provision have been effective and which have not, both during the industry's relative prosperity in the late 1970s and the more difficult economic climate of recent years. Futhermore, over this period of time the Board has received many comments from the industry recommending changes to various provisions that may impose an undue compliance burden or unnecessarily deprive institutions of legitimate business opportunities. Finally, the mere passage of time has rendered a few of these regulatory provisions outdated, as the powers and activities of the industry have expanded and inflation has devalued dollar figures regulatory ceilings that are not indexed to the cost of living. In light of all these considerations, the Board has developed the proposals described in this document.

In preparing this proposed revision of its conflict-of-interest regulations, the Board has formulated certain guiding principles. First, because insider self-dealing is highly deterimental to the safety and soundness of an institution, the regulations should prevent *actual* conflicts of interest from influencing the business discretion of management. Second, *apparent* conflicts of interest (i.e., instances in which, although a transaction may be advantageous to an insider, it is in fact in the best interests of the institution) should be limited because the mere appearance of insider self-dealing may result in a loss of public confidence in an institution and have a corresponding impact on its safety and soundness. Third, prohibitions and restrictions should be drawn narrowly so as to achieve the regulatory objectives with minimal infringement on the business discretion of industry management. Fourth, regulations should be designed to impose the least possible compliance, reporting, and administrative burdens on the industry. Finally, the Board's conflict-of-interest regulations should be flexible enough to accommodate the changing business of the savings and loan industry as well as changes in the economic climate.

A description of each of the amendments proposed by the Board follows. The Board requests comments on the approriateness of the principles it has used to formulate these proposals, and whether the proposals adequately serve the stated regulatory objectives. Furthermore, the Board solicits and encourages comments regarding appropriate revisions to its regulations on industry conflicts of interest in addition to those proposed in this document.

1. *Definition of "affiliate person"; limitations on loans to one borrower.* The Board proposes to make a minor but significant amendment to the definition of "affiliated person" in 12 CFR 561.29. The regulation currently provides that a partnership of which one of the partners is also a director, officer, or controlling person of an insured institution is considered an affiliated person of the institution. The regulation does not distinguish between general partners, who have a management role in a partnership, and limited partners, who do not participate in management.

The proposed amendment would provide that a partnership that is affiliated with an insured institution solely because its limited partner is a director, officer, or controlling person of

the institution would be deemed an affiliated person only if the limited partner is entitled to ten percent or more of the partnership's profit. This rule would be consistent with the ten-percent-equity-interest rule in § 561.29 that applies to a stockholder's interest in a corporation, because a limited partner, like a stockholder, has limited liability and is not involved in the general management of the firm. If a limited partner has less than a ten-percent interest in a partnership, there is little likelihood that an indirect benefit to the partner from a transaction between the partnership and the insured institution generally would give rise to a material conflict of interest. An additional minor amendment to § 561.29 would attribute to an affiliated person, for purposes of the ten-percent test, the stock or limited partnership interests of his or her immediate family members who live in the same home or are directors or officers of the institution, in recognition of the identity of interest that usually exists between immediate family members. Finally, § 561.29 (d)(4) would be amended to clarify that either ownership or *control* of stock may trigger affiliated person status for a corporation.

The Board takes this opportunity to propose a corresponding amendment to its regulation on loans to one borrower (12 CFR 563.9–3). The Board proposes to amend § 563.9–3 to provide that a loan to a limited partner would be attributed to the partnership only if the limited partner is entitled to receive ten percent or more of the firm's profits. Thus, if a limited partner owning a five-percent interest in a limited partnership borrows from an insured institution, the loan would not be attributed to the limited partnership under § 563.9–3, and a loan to the limited partnership itself would not be attributed to another limited partnership solely on the basis that the limited partner also has a limited partnership interest of less than ten percent in the latter. The Board believes this proposed exception to the partnership attribution rules would be consistent with the two policies underlying § 563.9–3, which are (1) to prevent an inordinate concentration of risk in one debtor and (2) to ensure a greater availability of credit to small borrowers. Because a limited partner has limited liability, and is not involved in the general management of the firm, a loan to a partnership is not made in reliance on the personal credit-worthiness or business acumen of its limited partner; consequently, separate extensions of credit to both the partnership and the limited partner do not result in an inordinate concentration of risk in one borrower. Furthermore, if a limited partner has less than a ten-percent interest in the partnership, the indirect benefit to the partner from a loan to the partnership is not significant enough to affect the policy of credit availability underlying § 563.9–3. The proposed amendment would alleviate the problem, faced by many institutions, of having to deny credit to a valuable customer on the ground that the customer has a limited partnership interest, albeit minimal, in a partnership that is already a borrowing customer of the institution.

In addition to the amendment regarding attribution based on limited-partner status, the Board proposes to make non-substantive revisions that would simplify the loans-to-one-borrower regulation.

The Board also requests comments regarding the present limitation on loans to one borrower in 12 CFR 563.9–3(b). Under this provision, loans to one borrower may not exceed (1) ten percent of the institution's withdrawable accounts, or (2) the institution's net worth, whichever is less; however, an institution's limit is always at least $200,000 (adjusted annually for inflation), regardless of the figure represented by the lesser of (1) or (2), above. As the net worth of many institutions has fallen to low levels in recent years, the $200,000 limitation has become applicable to a growing percentage of the industry. Although the Board does not propose a specific amendment to the loans-to-one-borrower formula at this time, it requests comment on the appropriateness of the formula in light of the dual purpose of avoidance or risk concentration and greater credit availability underlying the regulation.

2. *Composition of an institution's board of directors.* Section 563.33 of the Board's regulations (12 CFR 563.33) establishes guidelines regarding the composition of an insured institution's board of directors, one of which is that at least two-thirds of the board should be from outside the institution. Failure to comply with this guideline triggers Form AR reporting requirements under § 563.45 (12 CFR 563.45).

It has come to the Board's attention that this requirement has imposed a hardship for institutions surviving voluntary mergers, for if the surviving institution provides a directorship and employment to a manager of the disappearing institution (which is often desirable to provide continuity in management) two outside directors must be added to preserve the regulatory ratio. Because of the increasing number of mergers within the industry, many boards of directors have become unduly large. Consequently, the Board proposes to substitute a guideline calling for a *majority* of outside directors. Such a guideline would lessen the compliance burden imposed by the regulation while ensuring that control of a mutual institution will not become vested in a group of inside directors.

3. *Procurement fees, kickbacks, and unearned fees.* Section 563.40 of the Board's regulations (12 CFR 563.40) currently prohibits the receipt by an affiliated person of procurement fees in connection with a *loan* from an insured institution or subsidiary, and restates the prohibitions in section 8(a) and 8(b) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607(a), (b)) regarding referral fees and unearned fees to affiliated persons with regard to *any real property loan* made by an insured institution or subsidiary. The Board believes these restrictions have served to promote competition in the marketplace and ensure fair dealings between institutions and the general public. Since the nature of the savings and loan business has changed to include many services other than real property loans, and will no doubt continue to change in the future, the Board proposes to extend these provisions to *all services* offered by insured institutions. Thus for example, the proposed rule would (1) prohibit an affiliated person from receiving kickbacks for the referral of business in connection with trust services rendered by an association, (2) prohibit the affiliated person from receiving unearned fees in connection with such business, and (3) prohibit the affiliated person from accepting compensation for procuring trust services from the association; the same prohibitions would apply to all loans, deposits, credit cards, and other services offered by an association.

4. *Property transactions, deposit relationships, and service contracts with affiliated persons; Form AR.* The Board currently has several regulations relating to non-loan transactions of an insured institution involving an affiliated person. Section 563.34 (12 CFR 563.34) requires prior Principal Supervisory Agency approval of the placement of a deposit by an insured institution or its subsidiary with an affiliated person, and § 563.41 (12 CFR 563.41) requires prior board of directors and Principal Supervisory Agent approval of any transaction between an insured institution (or its subsidiary) and its affiliated person that involves

real property. There are no regulations that prohibit other transactions, such as personal property transactions, deposits placed by affiliated persons at insured institutions, and service contracts, that could involve a conflict of interest; however, any transactions involving more than $40,000 in which an affiliated person has a material interest triggers the Form AR reporting requirements, and must be reported in Form AR.

The Board believes, on the basis of the experience of its examination and supervisory staff, that all transactions between an insured institution or its subsidiary and an affiliated person present the risk of insider self-dealing. Thus, it would be appropriate to treat all these transactions in one regulation, applying the same types of regulatory safeguards. The Board proposes to treat all real and personal property transactions, deposit relationships, and service contracts between an insured institution or its subsidiary and an affiliated person in a revised § 563.41. All such transactions would be required to be on terms substantially the same as those prevailing at the time for comparable transactions with other than affiliated persons, and prior board-of-directors approval would be required for any such transaction involving consideration of $10,000 or more (except for an affiliated person's deposit with an insured institution of less than $100,000).

If a proposed transaction would cause the aggregate consideration received in such transactions by one affiliated person in one year to exceed $100,000 (which figure would be adjusted annually to account for inflation), prior notice of ten days to the Supervisory Agent would be required. The transaction could be completed unless, within ten days of receipt of the notice, the Supervisory Agent should notify the institution that the proposed transaction is not fair to or is not in the best interests of the insured institution. The Supervisory Agent would be permitted, in his or her discretion, to extend the review period up to fifteen days in cases where the nature of the proposed transaction requires more detailed supervisory review. In addition, if the Supervisory Agent should determine that a notice does not incorporate sufficient evidence to establish that a proposed transaction is fair to and in the best interests of the institution, the Supervisory Agent would be authorized to permit additional filings by the institution, in which case the ten-day period would not begin to run until such filings are complete.

In connection with the treatment of transactions with affiliated persons set forth in the proposed revisions to § 563.41, the Board proposes to remove transactions involving affiliated persons as a trigger mechanism for Form AR disclosure requirements. Currently, § 563.45 of the Board's regulations (12 CFR 563.45) requires Form AR reporting by a mutual institution with assets of $15,000,000 or more if (1) the composition of its board of directors does not meet guidelines set forth in 12 CFR 563.33(a), (2) the institution has engaged in transactions involving $40,000 or more in which an affiliated person has a direct or indirect material interest, or (3) voting of management-solicited proxies is not controlled by a majority of the board of directors.[1] The Board believes that the trigger relating to transactions in which affiliated persons have a material interest has not been effective in preventing actual and apparent conflicts of interest, and has imposed an unnecessary burden in many instances where no conflicts of interest existed. In light of the more comprehensive treatment given to transactions involving affiliated persons in the proposed revisions to § 563.41, the Board proposes to eliminate the related trigger for Form AR disclosures. Such transactions would, however, continue to be reported under Item 6(e) of Form AR if disclosure is required by one of the two remaining trigger mechanisms. In addition to this specific proposal, the Board requests general comments and recommendations regarding appropriate changes to the Form AR disclosure requirements in § 563.45.

5. *Loans and related transactions involving affiliated persons.* Section 563.43 of the Board's regulations (12 CFR 563.43) currently sets forth requirements regarding loans and related transactions involving affiliated persons. Only certain types of loans may be granted to affiliated persons: (1) Loans secured by a principal residence; (2) home improvement loans (not aggregating more than $10,000); (3) educational loans (not aggregating more than $10,000); (4) loans secured by savings accounts; (5) overdraft loans; and (6) consumer and credit card loans (not aggregating, together with home improvement loans, more than $10,000). All loans to affiliated persons require prior board-of-directors approval, with justification of any preferential terms. Loans and related investments that would indirectly benefit an affiliated person are prohibited.

The Board proposes to leave the basic structure of § 563.43 unchanged, but would amend the section to update certain provisions, clarify certain Board policies, and ease certain compliance burdens. First, the types of loans permitted would remain basically unchanged, but the limit on home improvement, educational, overdraft, consumer, and credit card loans would be revised to an aggregate figure of $100,000 (adjusted annually for inflation). The Board believes this figure constitutes a more realistic assessment of current costs of personal items, particularly home improvements and education. Second, the Board would codify its longstanding policy against a preferential loan interest rate below an institution's current cost of funds. (See, *e.g.*, R Memorandum No. 19–1, dated January 16, 1969.) A below-cost-of-funds loan interest rate necessarily creates an appearance of insider self-dealing; furthermore, the Board believes it is an undesirable form of officer or employee compensation because it involves a cost to the institution that is more difficult to evaluate than more traditional forms of employee compensation. For purposes of this requirement, the institution's cost of funds would be the average cost of all savings and borrowings, expressed as an annualized percentage figure, as most recently calculated by the institution. In connection with this specific proposal, the Board is formally withdrawing the proposed amendments in Resolution No. 79–344 of June 14, 1979 (44 FR 36064, June 20, 1979), which addressed the issue of preferential rates on loans to insiders of an institution. Third, the prior-board-approval requirement would be changed to permit an institution or its subsidiary to grant loans to officers and employees in accordance with terms specified in a blanket preapproval resolution adopted by the board of directors. This change would ease the compliance burden imposed by § 563.43 and would encourage compensation policies providing for uniform treatment of officers, employees, or classes of officers or employees. Finally, consistent with its recognition of the broader powers of institutions, the Board proposes minor amendments to restrictions on loan transactions with third persons in present § 563.43(c)(1) and (2) proposed (revised § 563.43(d)(1) and (2)) so that they would apply to loans secured by *personal property* as well as real property. Thus, for example, under proposed revised § 563.43(d)(1) an institution would not be permitted to make a loan secured by an automobile purchased from an affiliated person. The Board believes this change is

[1] Due to a technical error, part of § 563.45(b)(3), which describes these three trigger mechanisms, was omitted from the 1981 and 1982 editions of the CFR. This omission would be corrected by the proposed rule.

appropriate because the potential for insider self-dealing is identical whether the collateral involved in such a transaction is real property or personal property.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act (5 U.S.C. ch. 6) the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objective, and legal basis underlying the proposed rule.* These elements have been incorporated elsewhere into the supplementary information regarding the proposal.

2. *Small entities to which the proposed rule will apply.* The proposed rule would apply only to FSLIC-insured institutions.

3. *Impact of the proposed rule on small institutions.* The proposal would not have a disproportionate effect on small institutions. Deregulatory aspects of the proposed rule would ease the compliance burden of small institutions. The proposed provisions are designed not to interfere with legitimate business opportunities; thus, it is expected that the proposed rule would have no significant economic impact on a substantial number of small entities.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that may duplicate, overlap, or conflict with the proposal.

5. *Alternatives to the proposed rules.* Various supervisory tools may be used to prevent insider self-dealing at insured institutions: case-by-case supervision; disclosures to the Board, the public, the board of directors, or shareholders; prior Board or Supervisory Agent approval; or regulatory restrictions and prohibitions. The Board believes the proposed rule utilizes a combination of these tools that would impose the least burden on small institutions while achieving the desired regulatory objectives.

Regulatory Analysis

The elements of regulatory analysis for major proposed regulations required by Board Resolution No. 80–584 (September 11, 1980) have been incorporated into the supplementary information regarding the proposal.

List of Subjects in 12 CFR Parts 561 and 563

Savings and loan associations.

Accordingly, the Board hereby proposes to amend Parts 561 and 563, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

PART 561—DEFINITIONS

1. Revise paragraph (d) of § 561.29 as follows:

§ 561.29 Affiliated person.

* * * * *

(d) Any corporation or organization (other than the insured institution or a corporation or organization through which the insured institution operates) of which a director, officer or controlling person of such institution:

(1) Is an officer;

(2) Is a general partner;

(3) Is a limited partner who, directly or indirectly either alone or with his spouse and the members of is immediate family who are also affiliated persons of the institution, is entitled to 10 percent or more of the firm's profits, or is entitled, with other directors, officers, and controlling persons of such institution and their spouses and their immediate family members who are also affiliated persons of the institution, to 25 percent or more of the firm's profits; or

(4) Directly or indirectly either alone or with his spouse and the members of his immediate family who are also affiliated persons of the institution, owns or controls 10 percent or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such institution and their spouses and their immediate family members who are also affiliated persons of the institution, 25 percent or more of any class of equity securities; and

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PART 563—OPERATIONS

2. Revise paragraphs (a) and (b) of § 563.9–3 as follows:

§ 563.9–3 Loans to one borrower.

(a) *Limitatons.* No insured institution shall have outstanding any loan to one borrower if the sum of (1) the amount of the loan and (2) the total balances of all outstanding loans owed to the institution and its service corporation affiliates by the borrower exceed an amount equal to 10 percent of the institution's withdrawable accounts or an amount equal to the institution's net worth, which ever amount is less: Provided, that, notwithstanding any other limitation of this sentence, the loan may be made if it is secured by a lien on low-rent housing, or if the sum of the amounts described in paragraphs (a) (1) and (2) of this section does not exceed $200,000 and, beginning on January 1, 1982, and annually thereafter, such amount adjusted by the dollar amount that reflects the percentage increase, if any, in the Consumer Price Index during the previous 12 months as shown in the November-to-November index.

(b) *Rules of interpretation.* (1) For purposes of applying the limitations set forth in paragraph (a) of this section, any loan to a person or entity that is, or that upon the making of the loan will become, an obligor on the loan will be attributed also to:

(i) Nominees of such obligor;

(ii) All persons, trusts, partnerships, syndicates, and corporations of which such obligor is a nominee, a beneficiary, a member, a general partner, a limited partner entitled to 10 percent or more of profits, or a record or beneficial stockholder owning 10 percent or more of the capital stock; and

(iii) If such obligor is a trust, partnership, syndicate, or corporation, all trusts, partnerships, syndicates and corporations of which any beneficiary, member, general partner, limited partner entitled to 10 percent or more of the profits, or record or beneficial stockholder owning 10 percent or more of the capital stock, is also a beneficiary, member, general partner, limited partner entitled to 10 percent or more of the profits, or record or benefical stockholder owning 10 percent or more of the capital stock of such obligor.

(2) For the purposes of this section the term "total balances of all outstanding loans" means the original amounts loaned by an insured institution plus any additional advances and interest due and unpaid, less repayments and participating interests sold and exclusive of any loan on the security of such institution's savings accounts or real estate the title to which has been conveyed to a bona fide purchaser of such real estate.

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3. Revise paragraph (a)(2) of § 563.33 as follows:

§ 563.33 Directors, officers, and employees.

(a) *Directors.* * * *

(2) A majority of the directors of an insured institution should not be salaried officers or employees of the institution or of any subsidiary or holding company affiliate thereof.

* * * * *

4. Remove § 563.34 as follows:

§ 563.34 Deposit relationships involving affiliated persons. (Deleted effective —.) [Removed]

5. Revise § 564.4b as follows:

§ 563.40 Restrictions on procurement fees, kickbacks, and unearned fees.

(a) *General.*—(1) *Procurement fees.* No affiliated person of an insured institution may receive, either directly or indirectly, from the institution, a subsidiary thereof, or another source a fee or other compensation of any kind in connection with the procurement of any service from the institution or its subsidiary.

(2) *Referral fees.* No insured institution and no subsidiary or affiliated person of an insured institution shall give or accept a fee, kickback, or compensation of any kind pursuant to an agreement or understanding, oral or otherwise, that business incident to or a part of any service rendered by such insured institution or its subsidiary shall be referred to a person.

(3) *Unearned fees.* No insured institution and no subsidiary or affiliated person of an insured institution shall accept any portion, split, or percentage of a charge made or received for the rendering of any service in connection with a transaction involving a service rendered by an insured institution or its subsidiary.

(b) *Rules of construction.* The prohibitions in paragraphs (a)(2) and (3) of this section do not apply to the payment to a person of a bona fide salary, compensation or other payment for goods or facilities actually furnished or for services actually performed, or to the receipt of dividends by an insured institution from its subsidiary. For purposes of interpreting and enforcing paragraphs (a)(2) and (3), the Board will consider as relevant judicial and administrative interpretations of section 8 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607).

6. Revise § 563.41 as follows:

§ 563.41 Restrictions on transactions in which affiliated persons have a material interest.

(a) *Scope of section.* Section 584.3 of this Chapter is controlling with respect to transactions between an insured institution and its holding company.

(b) *Restrictions.* (1) No insured institution or subsidiary thereof may, either directly or indirectly,

(i) Purchase or lease from, jointly own with, or sell to, an affiliated person an interest in real or personal property,

(ii) Establish or maintain a deposit relationship with an affiliated person (either as depositor or depositary), or

(iii) Enter into a service contract or arrangement with an affiliated person, except in accordance with the requirements set forth in paragraphs (b)(2), (3), and (4) of this section.

(2) The terms of a transaction described in this paragraph (b) must be substantially the same as those prevailing at the time for comparable transactions with other than affiliated persons.

(3) A transaction described in this paragraph (b) that would involve consideration of $10,000 or more, except for a deposit of less than $100,000 placed by an affiliated person with the insured institution, must be approved in advance by a resolution duly adopted by at least a majority (with no director having an interest in the transaction voting) of the entire board of directors of such institution or subsidiary.

(4) If a proposed transaction would cause the aggregate value of all consideration received directly or indirectly by an affiliated person in transactions covered by this section to exceed $100,000 (which figure shall be adjusted annually, beginning January 1, 1984, by the dollar amount that reflects the percentage increase, if any, shown in the most recent November-to-November period for the Consumer Price Index) in a calendar year, the insured institution or subsidiary shall give written notice to its Supervisory Agent at least 10 days before executing the transaction. Such notice shall include:

(i) A description of the proposed transaction;

(ii) The identity of the affiliated person and his relationship to the institution;

(iii) The nature and amount of the affiliated person's interest in the transaction; and

(iv) If the transaction involves the sale or lease of real property, an independent appraisal of the property not prepared by an affiliated person or employee of the institution or subsidiary.

The Supervisory Agent shall provide a timely written acknowledgment to the insured institution or subsidiary stating when notice was received. The transaction may not be executed if the Supervisory Agent communicates to the insured institution or subsidiary, within 10 days of his receipt of notice of the transaction, his decision that the proposed transaction is either not fair to or not in the best interests of the insured institution. The Supervisory Agent may, in his discretion, extend the 10-day period by up to 15 more days for a proposed transaction requiring more detailed analysis, provided timely notice of the extension is given to the institution. If it appears to the Supervisory Agent that the information included with a notice provides an insufficient basis on which to determine whether to disapprove the transaction, he may, in his discretion, permit the institution to file additional information, in which case the 10-day period shall not begin to run until such filing is complete. A disapproval of a proposed transaction by the Supervisory Agent shall be final.

7. Revise § 563.43 as follows:

§ 563.43 Restrictions on loans and other investments involving affiliated persons.

(a) *Scope of section.* Section 584.3 of this Chapter is controlling with respect to transactions between an insured institution and a holding company.

(b) *Restrictions concerning loan transactions with affiliated persons.* (1) No insured institution or subsidiary thereof may, either directly or indirectly, make a loan to an affiliated person of such institution or purchase such a loan, except for loans in the ordinary course of the business of such institution or subsidiary which do not involve more than normal risk of collectibility or present other unfavorable features, and are of the following types:

(i) Loans secured by a single-family dwelling or a manufactured home occuped by the affiliated person as his principal residence;

(ii) Loans secured by savings accounts maintained by the affiliated person at the institution; and

(iii) An aggregate of loans for constructing, adding to, improving, altering, repairing, equipping, or furnishing the principal residence of the affiliated person, loans in the form of overdraft protection for checking or NOW accounts, loans for payment of education expenses, consumer loans, and extensions of credit in connection with credit cards, not exceeding $100,000 (which ceiling shall be adjusted annually, beginning January 1, 1984, by the dollar amount that reflects the percentage increase, if any, shown in the most recent November-to-November period for the Consumer Price Index).

(2) Any loan or line of credit to an affiliated person granted pursuant to paragraph (b)(1) of this section must be on substantially the same terms as those prevailing at the time for comparable loans to other than affiliated persons, except that the interest rate may be reduced to a rate not below the insured institution's current cost of funds (including all savings accounts and borrowings). If the loan features a variable rate with an index regularly used by the institution or subsidiary for loans to other than affiliated persons, it will be in compliance with this paragraph (b)(2) if the initial rate is not below cost of funds at the time the loan is granted. If a variable rate is achieved through some other index or mechanism, the rate may not be set below the institution's cost of funds as calculated at the time each adjustment is made.

(3) Each loan or line of credit granted pursuant to this paragraph (b) must be approved in advance by a resolution

duly adopted by at least a majority (with no director having an interest in the transaction voting) of the entire board of directors of such institution or subsidiary. If the interest rate on the loan is more favorable to the affiliated person than that prevailing at the time for comparable loans to other than affiliated persons, the resolution must set forth:

(i) The institutions's current cost of funds, including the basis on which it is calculated; and

(ii) A justification of the more favorable interest rate in the case of a loan to an affiliated person other than a salaried officer or employee of the institution or subsidiary.

With respect to a loan to a salaried officer or employee, the approval requirement of this paragraph (b)(3) will also be deemed satisfied if the loan is granted in conformance with a blanket preapproval resolution of the board specifying the terms on which loans may be made to all salaried officers, employees, or a class of such officers or employees.

(c) *Other investments involving affiliated persons.* No insured institution or subsidiary thereof may, either directly or indirectly:

(1) Invest in the stock, bonds, notes or other securities of an affiliated person of such institutions; or

(2) Purchase securities under a repurchase agreement from any affiliated person of such institution.

(d) *Loan transactions with third persons.* No insured institution or subsidiary thereof may, either directly or indirectly:

(1) Make a loan to, or purchase (other than through a secondary market such as that provided by the Federal Home Loan Mortgage Corporation) a loan made to, a third party on the security of real or personal property purchased from an affiliated person of such institution, unless the property was a single-family dwelling or manufactured home owned and occupied by the affiliated person as his principal residence;

(2) Make a loan to, or purchase a loan made to, a third party secured by real or personal property with respect to which an affiliated person of such institution holds a security interest;

(3) Accept the stock, bonds, notes, or other securities of an affiliated person of such institution as security for a loan to a third party made or purchased by such institution or subsidiary;

(4) Maintain a compensating balance or pay a fee with respect to a loan made by a third party to an affiliated person of such institution; or

(5) Enter into a guarantee arrangement or make a takeout commitment with respect to a loan made by a third party to an affiliated person of such institution.

(e) *Waiver.* The restrictions in paragraphs (b), (c), and (d) of this section may be waived by the Board in supervisory cases if the Board determines that the terms of the transaction in question are fair to, and in the best interests of, the insured institution or subsidiary. A supervisory case includes a merger instituted for supervisory reasons, and action taken pursuant to, or in order to obviate the necessity of, proceedings by the Board or the Corporation pursuant to paragraph (d) of section 5 of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464(d)), or section 407 of the National Housing Act, as amended (12 U.S.C. 1730).

8. Revise paragraph (b)(3) of § 563.45 as follows:

§ 563.45 Disclosure.

* * * * *

(b) * * *

(3) If: (i) The composition of the board of directors of such institution is in accordance with the guidelines set forth in § 563.33(a) of this Chapter as of the end of its audit period immediately preceding the annual meeting; and

(ii) Proxies solicited by management from savings account holders and borrowers for the election of directors (other than in connection with an annual proxy solicitation) will be voted as directed by a majority vote of such institution's entire board of directors, or of a committee of such directors if such committee's composition and authority are controlled by a majority vote of its entire board and if its authority is revocable by such a majority.

(12 U.S.C. 1464, 1725, 1726, 1730; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-27713 Filed 10-6-82; 8:45 am]

BILLING CODE 6720-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Statutory Lien; Proposed Interpretive Ruling and Policy Statement

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed Interpretive Ruling and Policy Statement.

SUMMARY: Even if a member's loan is not secured by shares, under the Federal Credit Union Act a Federal credit union has the power to impress and enforce a lien upon that member's shares and dividends. NCUA is requesting comments on whether it should interpret the Federal Credit Union Act to authorize a Federal credit union to enforce this lien by applying the member's share to the loan balance. Under this interpretation the credit union would not have to obtain a court judgment to enforce the lien, even if a court judgment would be required under state law before a statutory lien could be enforced.

DATE: Comments must be received on or before November 5, 1982.

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: John L. Culhane, Jr., Senior Attorney, Department of Legal Services, National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456 or telephone (202) 357–1030.

SUPPLEMENTARY INFORMATION: Section 107(11) of the Federal Credit Union Act states that a Federal credit union "shall have the power * * * to impress and enforce a lien upon the shares and dividends of any member to the extent of any loan made to him * * *" 12 U.S.C. 1757(11). Since 1979, NCUA has taken the position that before a Federal credit union can enforce this lien it must obtain a court judgment on the debt, unless state law allows the credit union to enforce the lien without going to court. Once the credit union obtains a court judgment, it can then apply the member's shares to the outstanding loan balance. *Credit Manual for Federal Credit Unions* 29 (Dec. 1979 ed.).

A credit union trade association and an attorney who represent several credit unions have asked NCUA to reconsider this interpretation, noting that it places a credit union at a disadvantage with respect to any other financial institution, which can usually offset a borrower's loan without going to court. NCUA has therefore reexamined both the legislative history of and prior administrative interpretations of the statute.

As originally introduced in the Senate, the bill that eventually became the Federal Credit Union Act only authorized a Federal credit union "to impress a lien." S. 1639, 73d Cong., 1st Sess. Section 7(12) (1933). This language was modified by the House to give a Federal credit union the power to

"impress and enforce a lien." 78 Cong. Rec. 12218–26 (1934). Consequently, because it was added the word "enforce" might be interpreted to grant a credit union a power not granted by the word "impress."

This seems to have been the contemporaneous interpretation of the statutory language. In a 1940 release from the Credit Union Section of the Farm Credit Administration, the agency then charged with administering the Federal Credit Union Act, the statute was said to permit "without the borrower's consent * * * the transfer of all or part of a borrower's share account to his loan account when in its ((the board of director's)) opinion the loan is uncollectible * * *" D. Bridewell, *Bridewell on Credit Unions* 710 (1942 ed.) (quoting from Farm Credit Administration Circular Letter No. 37, dated February 19, 1949). Similar language appears in other early editions of agency manuals. *Hanbook for Federal Credit Unions* 5 (Dec. 1969 ed.) ("The power ((to impress and enforce a lien on shares)) is similar to the ((self-executing)) lien which banks have on the deposits of their borrowers."); *Handbook for Federal Credit Unions* 18 (July 1947 ed.) ("The board of directors by recorded resolution may ((enforce the statutory lien)) and authorize the transfer of all or any part of a borrower's share account to his loan account when in its opinion the loan is uncollectible from the borrower * * *").

A return to the earlier interpretation would further the Board's policy of reducing regulation, in that it would allow operational decisions to be made by Federal credit union management. A Federal credit union would not be precluded from initiating court proceedings or otherwise providing advance notice of its intent to enforce the statutory lien. A member's interests would be protected as the lien would be self-executing only at such time as the member's loan would be legally in default and due and payable under the terms of the loan. Accordingly, the NCUA Board requests comments on whether it should adopt the new interpretation set forth below.

Proposed Interpretive Ruling and Policy Statement (IRPS) 82-5

Section 107(11) of the Federal Credit Union Act states that a Federal credit union "shall have the power * * * to impress and enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him * * *." In the event of default a Federal credit union may enforce a lien on the shares and dividends of a member by applying those shares to the outstanding loan balance. The credit union does not have to obtain a court judgment to enforce the lien, even if a court judgment is usuall required under state law before a statutory lien can be enforced.

By the National Credit Union Administration Board, September 23, 1982.

Rosemary Brady,

Secretary, National Credit Union Administration Board.

[FR Doc. 82-27588 Filed 10-6-82; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 23259, Notice No. SC-82-3CE]

Special Conditions: Lear Fan Model 2100 Airplane; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of Comment Period.

SUMMARY: This notice extends the period for the submission of public comments relating to Notice SC-82-3CE (47 FR 38140), August 30, 1982, which was to close on September 30, 1982. That notice proposed special conditions necessary for certification of the Lear Fan Research Limited Partnership (Lear Fan) Model 2100 airplane. The extension is in response to a petition from the Beech Aircraft Corporation (Beech) who contends that the proposed special conditions are too complex to evaluate within the specified comment period. The FAA has determined that it would be in the public interest to extend the comment period.

DATE: Comments must be received on or before October 29, 1982.

ADDRESS: Comments on Notice No. SC-82-3CE may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 23259, Room 1558, Federal Office Building, 601 E. 12th Street, Kansas City, MO 64106. All comments must be marked: Docket No. 23259. Comments may be inspected in the Rules Docket weekdays, except Federal holidays between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: William L. Olson, Aerospace Engineer, Aircraft Certification Division, 601 E. 12th Street, Room 1659, Federal Office Building, Kansas City, MO 64106, Telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for documents specified above will be considered by the Administrator before taking action on this proposal. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice and Notice SC-82-3CE (previously published in the Federal Register on August 30, 1982) by submitting a request to the Federal Aviation Administration, Office of Regulations and Policy, ACE-110 Attn: ACE-112, Room 1659, Federal Office Building, 601 E. 12th Street, Kansas City, MO 64106, or by calling (816) 374-5688. Communications must identify the notice number of this NPRM.

Background

On December 15, 1977, Lear Fan Research, Limited Partnership, Box 60000, 14505 Mt. Anderson, Reno, NV 89506, (formerly Lear Avia Corporation) applied to the FAA Western Region for the type certification of the Model 2100 airplane.

The Model 2100 is a small, fixed-wing pressurized airplane with two turboshaft engines in the aft fuselage section. These engines couple into a single transmission whose output is a single propeller shaft. A four-bladed propeller is mounted on this shaft in a pusher configuration at the aft end of the fuselage. The basic airframe structure is made of a graphite/epoxy composite material with adhesive bonding utilized as the primary means of assembly. The empennage is a Y-tailed configuration with a tail bumper incorporated in the lower fin.

The aircraft seating configuration provides for eight passengers, excluding two pilot seats, with a maximum takeoff weight of 7,350 pounds. The proposed maximum certificated operating altitude is 41,000 feet. The stall speed in landing configuration is approximately 84 knots indicated at maximum takeoff weight.

The proposed type design of the Model 2100 airplane contains a number

of novel or unusual design features with respect to the state of technology not envisaged by the applicable FAR Part 23 airworthiness standards for an airplane to be type certificated under Part 23 requirements. Special conditions are necessary because the airworthiness requirements do not contain adequate or appropriate safety standards for the novel and unusual design features for the Model 2100 airplane and to support a finding by the Administrator that no feature or characteristic of the airplane makes it unsafe for the category in which certification is requested.

On September 14, 1982, Beech petitioned for a 45 day extension of the comment period for Notice No. SC–82–3CE. In its petition, Beech contended that the majority of proposals in these special conditions are sufficiently complex and far-reaching that a substantive engineering evaluation cannot be adequately accomplished within the specified 30 day comment period. Also, Beech believes that the Lear Fan Model 2100 design features of composite airframe construction and aft-located propeller have long-range potential in future general aviation airplane design.

The FAA has reviewed this petition and determined that extending the comment period would afford the petitioner, as well as other interested persons, the opportunity to participate in the development of these final rules.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

Extension of Comment Period

In consideration of the Beech petition, the FAA concludes that extending the comment period for an additional month would serve the public interest. Accordingly, the comment period for Notice SC–82–1–3CE is extended. The comment period will close on October 29, 1982.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); §§ 11.28 and 11.29(b) of the Federal Aviation Regulations (14 CFR 11.28 and 11.29(b))

Issued in Kansas City, MO, on September 29, 1982.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82–27681 Filed 10–6–82; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket Number 82–ACE–19]

Proposed Revocation—Hastings, Nebraska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This action withdraws a proposal published in the **Federal Register** on July 26, 1982 (47 FR 32157), to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71). The proposed amendment would have revoked the Hastings, Nebraska, control zone due to the discontinuance of required weather observations. Subsequent to the publication of the Notice of Proposed Rulemaking, the Hastings Airport Manager has assumed the responsibility for recording and providing the required weather observations. The service was reestablished on September 3, 1982, in accordance with standard procedures, and all indications are that they will continue to provide the necessary weather data in the future. As a result, the FAA has determined that the proposed amendment is no longer required.

FOR FURTHER INFORMATION CONTACT: Don A. Peterson, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

Withdrawal of the Proposal

Pursuant to the authority delegated to me, the proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as described in Airspace Docket No. 82–ACE–19 and published in the **Federal Register** on July 26, 1982 (47 FR 32157), is hereby withdrawn.

List of Subjects in 14 CFR Part 71

Control zone, Aviation safety.

Note.—The FAA certifies that this Withdrawal of Proposed Rulemaking only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is certified that this (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Issued in Kansas City, Missouri, on September 22, 1982.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82–27360 Filed 10–6–82; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 82–ASW–69]

Proposed Alteration of Transition Area: San Marcos, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to alter the transition area at San Marcos, TX. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing new instrument approach procedures to the San Marcos Municipal Airport. This action is necessary since there is a proposed change in standard instrument approach procedures (SIAP's) using the proposed VORTAC and ILS to Runway 12.

DATES: Comments must be received on or before November 8, 1982.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW–535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 624–4911,extension 302.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart G 71.181 as republished in Advisory Circular AC 70–3 dated January 29, 1982, contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the transition area at San Marcos, TX, will necessitate an

amendment to this subpart. This amendment will be required at San Marcos, TX, since there is a proposed change in IFR procedures to the San Marcos Municipal Airport.

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82-ASW-69." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones and/or transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

San Marcos, TX Revised

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the San Marcos Municipal Airport (latitude 29°53'36" N., longitude 97°51'52" W.)

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on September 27, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-27682 Filed 10-6-82; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-42-78]

Group-Term Life Insurance; Individual Selection

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to group-term life insurance purchased for employees. Questions have arisen concerning the extent to which insurance provided to employees is underwritten on a group basis. The proposed regulations help employers and others determine when insurance is group-term life insurance that is excludable from the income of insured employees.

DATES: Written comments and requests for a public hearing must be delivered or mailed by December 6, 1982. The amendments are proposed to be effective for insurance provided in taxable years beginning after December 31, 1982.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-42-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Phoebe A. Mix of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 202-566-3288, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 79 of the Internal Revenue Code of 1954. These proposed amendments prescribe rules for the tax treatment of insurance provided to employees under policies that are not underwritten on a group basis. The amendments are to be issued under the authority of section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Individual Selection—Evidence of Insurability

Section 79 applies only to group life insurance. One essential characteristic of group life insurance is the prohibition of individual selection of amounts of insurance. This requirement is contained in both the Group Life Insurance Definition of the National Association of Insurance Commissioners (NAIC) and the current regulations under section 79. [1956] 2 NAIC PROCEEDINGS 361; § 1.79-1(a)(4).

If individual selection is permitted, the rules for determining the cost of group-term life insurance do not produce an appropriate result. Section 79(c) provides that the cost of group-term life insurance is determined under a uniform premium rate table prescribed by the Secretary of the Treasury. Such a uniform table based on group mortality can be assured of measuring accurately the cost of insurance only if amounts of insurance are not individually selected and if the insurer does not use evidence of insurability to determine premiums on an individual basis.

In the case of groups of 10 or more employees, it is understood that insurers frequently conduct thorough investigations of insurability that include medical examinations. The Service has concluded that the evidence of individual insurability obtained in these investigations is used to determine the premium for, or amount of, insurance provided to particular employees. Thus, the insurer uses such evidence to protect itself from the adverse consequences of

individual selection of amounts of insurance just as it does when it sells individual insurance. When used in this manner, evidence of individual insurability facilitates individual selection.

Because of this relationship, the proposed amendments provide that if the evidence of individual insurability provided to the insurer is based on a physical examination, only the amount of insurance that would be provided without evidence of individual insurability will be treated as group-term life insurance. The amount of group-term life insurance that would be provided without evidence of individual insurability is generally determined under the insurer's table of limits.

The Service believes that, in some instances, insurers may be more cautious than necessary to protect against individual selection. Thus, in those instances in which the actual amount of insurance that would be provided without evidence of individual insurability is less than $50,000, the amount that would be so provided is considered to be at least $50,000.

Definition of Policy

Under the present regulations, all benefits provided by an insurer to a group of employees because of the employment relationship are treated as a single policy for purposes of section 79. The proposed amendments would, at the election of the employer, except from this aggregation rule certain separately available benefits that are not provided by the employer.

Permanent Benefits

Under the amendments to the regulations adopted in 1979, a policy that includes permanent benefits does not qualify under section 79 unless pure term insurance is provided to employees who elect not to receive the permanent benefit. This provision disqualifies substantial amounts of insurance provided under policies that would have been part of a plan of group-term life insurance under the regulations in effect before the 1979 amendments. The Service has reconsidered its position and concluded that the presence or absence of an option to obtain pure term insurance does not affect the nature of the insurance actually provided. Accordingly, the proposed regulations would not require such an option.

Groups of Fewer Than 10 Employees

The proposed regulations limit the extent to which employees declining insurance are considered to receive such insurance for purposes of the under-10 rules. The proposed change to the under-10 rules provides that employees are not considered to receive insurance that they decline if, in order to receive the insurance, they are required to contribute to the cost of a benefit other than term life insurance. Under the proposed rule, employees who decline insurance subject to such a condition would not be taken into account in determining whether the insurance is provided to 10 or more employees. In addition, insurance subject to such a condition is not provided to all full-time employees for purposes of the under-10 rules if it is declined by any employee.

Effective Dates

These proposed amendments apply to insurance provided in employee taxable years beginning after December 31, 1982.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply because the rules proposed are interpretative. Accordingly, a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these proposed regulations was John H. Parcell of the Legislation and Regulations Division of the Office of Chief Council, Internal Revenue Service. However, other personnel in the Internal Revenue Service and Treasury Department participated in developing the regulation on matters of both substance and style.

List of Subjects in 26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed Amendments to the Regulations

PART 1 [AMENDED]

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Section 1.79–0 is amended by the addition of two sentences at the end of the definition of "policy." The revised definition reads as follows:

§ 1.79–0 Group-term life insurance—definitions of certain terms.

The following definitions apply for purposes of section 79, this section, and §§ 1.79–1, 1.79–2, and 1.79–3.

* * * * *

Policy. The term "policy" includes two or more obligations of an insurer (or its affiliates) that are sold in conjunction. Obligations that are offered or available to members of a group of employees are sold in conjunction if they are offered or available because of the employment relationship. The actuarial sufficiency of the premium charged for each obligation is not taken into account in determining whether the obligations are sold in conjunction. In addition, obligations may be sold in conjunction even if the obligations are contained in separate documents, each document is filed with and approved by the applicable state insurance commission, or each obligation is independent of any other obligation. Thus, group of individual contracts under which life insurance is provided to a group of employees may be a policy. Similarly, two benefits provided to a group of employees, one term life insurance and the other a permanent benefit, may be a policy, even if one of the benefits is provided only to employees who decline the other benefit. However, an employer may elect to treat two or more obligations each of which provides no permanent benefits as separate policies if the premiums are properly allocated among such policies. An employer also may elect to treat an obligation which provides permanent benefits as a separate policy if—

(1) The insurer sells the obligation directly to the employee who pays the full cost thereof;

(2) The participation of the employer with respect to sales of the obligation to employees is limited to selection of the insurer and the type of coverage and to sales assistance activities such as

providing employee lists to the insurer, permitting the insurer to use the employer's premises for solicitation, and collecting premiums through payroll deductions;

(3) The insurer sells the obligation on the same terms and in substantial amounts to individuals who do not purchase (and whose employers do not purchase) any other obligations from the insurer; and

(4) No employer provided benefit is conditioned on purchase of the obligation.

Par. 2. Section 1.79–1 is amended by revising paragraphs (b), (c)(5), and (g), and adding a new paragraph (h). The amended section reads as follows:

§ 1.79–1 Group-term life insurance-general rules.

* * * * *

(b) *May group-term life insurance be combined with other benefits?* No part of the life insurance provided under a policy that provides a permanent benefit is group-term life insurance unless—

(1) The policy or the employer designates in writing the part of the death benefit provided to each employee that is group-term life insurance; and

(2) The part of the death benefit that is provided to an employee and designated as the group-term life insurance benefit for any policy year is not less than the difference between the total death benefit provided under the policy and the employee's deemed death benefit (DDB) at the end of the policy year determined under paragraph (d)(3) of this section.

(c) *May a group include fewer than 10 employees?* * * *

(5) For purposes of paragraph (c) (1) and (2) of this section, insurance is considered to be provided to an employee who elects not to receive insurance unless, in order to receive the insurance, the employee is required to contribute to the cost of benefits other than term life insurance. Thus, is an employee could receive term life insurance by contributing to its cost, the employee is taken into account in determining whether the insurance is provided to 10 or more employees even if such employee elects not to receive the insurance. However, an employee who must contribute to the cost of permanent benefits to obtain term life insurance is not taken into account in determining whether the term life insurance is provided to 10 or more employees unless the term life insurance is actually provided to such employee.

* * * * *

(g) *When does individual selection occur?*—(1) *In general.* Insurance provided to an employee is not computed under a formula that precludes individual selection if the evidence of insurability provided to the insurer includes a physician's report of a physical examination or is based on a physician's records of such an examination. Such insurance does not meet the condition of paragraph (a)(4) of this section and is not group-term life insurance for purposes of section 79 to the extent the amount of such insurance exceeds the amount of insurance that would be provided without evidence of individual insurability to a member of the group of employees.

(2) *Limit less than $50,000.* For purposes of paragraph (g)(1) of this section, the amount of insurance that would be provided to a member of the group of employees without evidence of individual insurability is considered to be $50,000 if the actual amount that would be so provided is less.

(3) *Evidence of insurability.* For purposes of this paragraph—

(i) Evidence of individual insurability includes a medical questionnaire completed by the employee; and

(ii) Evidence of individual insurability does not include information obtained before [INSERT DATE 30 DAYS AFTER PUBLICATION].

(4) *Employees declining coverage*—(i) *Restrictions not taken into account.* For purposes of this paragraph, restrictions or conditions applicable to employees who previously declined or terminated coverage are not taken into account in determining the amount of insurance that would be provided to a member of the group without evidence of individual insurability.

(ii) *Illustration.* The following example illustrates the application of this (4):

Example. A, an employee of corporation X, previously declined coverage under X's policy of group-term life insurance. In 1982, A requests coverage under the policy. Under the policy formula for determining the amount of insurance provided to an employee, A receives $120,000 of coverage. However, to obtain the coverage, A is required to take a physical examination because the insurer does not provide any insurance to employees who have previously declined coverage without a physical examination. If A had not previously declined coverage, the insurer would have provided $100,000 of insurance without evidence of individual insurability. Only $20,000 of A's insurance does not meet the condition of § 1.79–1(a)(4) by reason of the evidence of individual insurability provided to the insurer.

(h) *Effective date.* Sections 1.79–0 through 1.79.3 apply to insurance provided in employee taxable years beginning after December 31, 1982. See 26 CFR 1.79–1 through 1.79–3 (revised as of April 1, 1982) for rules applicable to insurance provided in employee taxable years beginning before January 1, 1983.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 82–27590 Filed 10–4–82; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[LR–18–82]

Filing of Life-Nonlife Consolidated Returns; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the filing of a consolidated return by an affiliated group of corporations composed of at least one life or mutual insurance company and one or more different companies.

DATES: The public hearing will be held on November 1, 1982, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by October 18, 1982.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR–18–82), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington D.C. 20224, 202–566–3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1504 (c) (2) of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Tuesday, June 8, 1982 (47 FR 24737).

The rules of § 601.601 (a) (3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by

October 18, 1982. Each speaker will be limited to 10 minutes for oral presentation exclusive of time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving government regulations appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue.

Fred T. Goldberg, Jr.,

Acting Director, Legislation and Regulations Division.

[FR Doc. 82-27591 Filed 10-4-82; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 82-09]

Drawbridge Operation Regulations; South Fork Willapa River, Washington

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Burlington Northern Railroad Company, the Coast Guard will consider changing the regulations governing the railroad drawbridge across the South Fork Willapa River, mile 0.3, at Raymond, Washington, by requiring 24-hour advance notice for openings. This proposal is being made because of a decrease in the level of vessel activity on the waterway. This action should relieve the Burlington Northern Railroad Company of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before November 22, 1982.

ADDRESS: Comments should be submitted to and are available for examination from 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays, at the office of the Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174 (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowlegment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in the light of comments received.

Drafting Information

The principal persons involved in drafting this proposal are: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, Thirteenth Coast Guard District, and Lieutenant Commander D. Gary Beck, Project Attorney, Thirteeth Coast Guard District.

Disclussion of the Proposed Regulations

During the existence of the Burlington Northern Railroad Company bridge across the South Fork Willapa River, navigation on that waterway has undergone considerable change. Initially, coastal lumber vessels docked at points upstream from the bridge and the waterway was used extensively for log rafting and towing to the mills in the Raymond area. This activity ceased a number of years ago. Present navigation on the South Fork Willapa River consists of occasional passages by small recreational boats and infrequent trips by pile drivers, crane barges, etc. to work sites upstream from the bridge. Existing regulations require the draw of the bridge to open for the passage of vessels immediately upon signal. The bridge is presently maintained in the fully open postion and closes only for the passage of trains, with operators being in attendance for a regular day shift five days a week to accomplish such closures. The proposed change would require that requests for bridge openings be made at least 24 hours in advance of the required opening. The proposal would allow Burlington Northern to maintain the bridge in the closed position without an operator in attendance unless required by advance notice. This would result in significant savings in operating costs to the bridge owner and would not unreasonably affect the limited navigation on the waterway.

Under the existing regulations, the bridge is identified as the Northern Pacific Railroad bridge. This is in error and has been corrected in the proposed regulation change.

The portion of the existing regulations which provides that vessels requiring bridge openings shall give advance notice of "not more than * * * hours", has been determined to be in error. It has been corrected to read "not less than * * * hours".

Other than the Burlington Northern Railroad Company, there are no known businesses, including small entities, that would be affected by the proposed change. There are only minimal economic impacts on navigation or other interests. Therefore, an economic evaluation has not been prepared for this action. The Burlington Northern Railroad Company would benefit because it would be relieved of the burden of providing a salaried full time operator for infrequent bridge openings.

These proposed requlations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). As explained above, an economic evaluation has not been conducted.

In accordance with § 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by revising § 117.770(b)(1)(ii) and § 117.770(b)(2) to read as follows:

§ 117.770 Willapa Harbor and navigable tributaries, Wash.; bridges.

* * * * *

(b) * * *

(1) * * *

(ii) Burlington Northern Railroad Company bridge, South Fork Willapa River at Raymond, Washington; Two long blasts of a horn or whistle, followed quickly by one short blast.

* * * * *

(2) Constant attendance by draw tenders is not required at the State highway bridge across the North Fork Willapa River at Raymond, the State highway bridge across the Naselle River about 6 miles downstream from Naselle, and at the Burlington Northern Railroad Company bridge across the South Fork Willapa River at Raymond. Vessels requiring openings of the State highway bridges shall give advance notice of not less than 2 hours for openings between 8 a.m. and 5 p.m. on all days except Saturdays, Sundays, and legal holidays, and advance notice of not less than 8 hours for openings at any other time.

Vessels requiring openings of the Burlington Northern Railroad Company bridge shall give at least 24 hours advance notice. The owners of the bridges shall keep conspicuously posted on both the upstream and downstream sides, in such a manner that they can be easily read at any time, copies of the regulations of this section, together with notices stating exactly how the bridge operators may be reached to obtain openings of the bridges, including names, addresses, and telephone numbers.

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33CFR 1.05(g)(3))

Dated: August 18, 1982.

C. F. DeWolf,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 82-27686 Filed 10-6-82; 8:45 am]

BILLLING CODE 4910-14-M

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33 CFR Part 117

[CGD3-82-018]

Drawbridge Operation Regulations; Mantua Creek, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of New Jersey Department of Transportation, the Coast Guard will consider changing the regulations governing the State Highway 44 Bridge at Paulsboro, New Jersey by permitting the draw to remain closed to navigation between 11 p.m. and 7 a.m. unless 4 hours advance notice is given. This proposal is being made because of minimal requests for opening the draw. The action will relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before November 22, 1982.

ADDRESS: Comments should be submitted to and are available for examination from 9 a.m. to 3 p.m., Monday through Friday, except holidays, at the office of the Commander (oan-br), Third Coast Guard District, Bldg. 135A Governors Island, NY 10004. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (oan-br), Governors Island, New York 10004, 212-668-7994.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Third Coast Guard District, will evaluate all communications received and will determine a course of final action on this proposal. The proposed regulations may be changed in the light of comments received.

Drafting Information

The principal persons involved in drafting this proposal are: Ernest J. Feemster, Project Manager, and LCDR Frank E. Couper, Project Attorney, District Aids to Navigation Branch and Legal Office, respectively.

Discussion of the Proposed Regulations

Bridge opening logs for 1979, 1980 and 1981 show an average of 3.3 openings between 11 p.. and 7 a.m. This is a significant reduction from the average of 48.5 for 1977 and 1978. Additionally, there has been only one opening for a commercial vessel during these hours from 1979 through 1981. The scattered openings during the three years between 11 p.m. and 7 a.m. are not thought to adequately justify keeping a drawtender on the bridge. Because these regulations appear to result in only minor inconvenience to the mariner, the Coast Guard is proposing that they be issued. A draft economic evaluation has not been prepared because of minimal economic impact. Since there is little or no commercial traffic presently using the waterway, it is not felt that commerce will be affected. Also, any vessel requiring an opening may obtain a bridge opening simply by giving four hours notice. These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). As explained above, an economic evaluation has not been conducted. In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. This is because the waterway is almost exclusively used by pleasure boaters.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by adding a new § 117.225(f)(4) to read as follows:

§ 117.225 Navigable waters in the State of New Jersey; bridges where constant attendance of draw tenders is not required.

* * * * *

(f) * * *

(4) Mantua Creek, mile 1.7; New Jersey Department of Transportation Route 44 bridge at Paulsboro. Between 11 p.m. and 7 a.m., the draw shall be required to open on signal if at least four hours notice is given.

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: August 9, 1982.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard Commander, Third Coast Guard District.

[FR Doc. 82-27685 Filed 10-6-82; 8:45 am]

BILLING CODE 4910-14-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM82-3]

Rate and Classification Proposals; Test Period Rule

September 28, 1982.

AGENCY: Postal Rate Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Current Commission rule 54(f)(2), 39 CFR 3001.54(f)(2), requires that requests for recommended rate or classification decisions be supported by projections of estimated accrued costs "for a fiscal year beginning not more than 12 months subsequent to the filing date of the formal request."

In each of the last three omnibus rate requests filed, the Postal Service has requested a waiver of this rule, and twice waivers have been granted. The Governors of the Postal Service have indicated desire for rate stability which may impact on the suitability of the current test period rule. This advance notice requests comments on how the rule can be improved.

DATE: Comments responsive to this Notice should be filed on or before November 10, 1982.

ADDRESSES: Comments and correspondence relating to this Notice should be sent to David F. Harris, Secretary of the Commission, 2000 L Street, NW., Washington, D.C. 20268 (telephone: 202/254-3880).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Assistant General Counsel, 2000 L Street NW., Washington, D.C. 20268 (telephone: 202/254-3836).

SUPPLEMENTARY INFORMATION: To secure an understanding of the cost, revenue and volume effects of both classification and rate proposals, the Commission requires parties to project the consequences of such proposals in a test period which hypothetically assumes adoption of the proposals. This objective is manifested by § 3001.54(f)(2) of the Commission's rules of practice which requires that projections of estimated accrued costs be provided "for a fiscal year beginning not more than 12 months subsequent to the filing date of the formal request." [1]

The Commission believes that the suitability of the current rule to the objectives it seeks to accomplish needs to be examined. For this reason, we are issuing this advance notice requesting parties to file comments expressing their opinions as to wehther changes in the rule are in order. Parties recommending changes in the rule are encouraged to submit appropriate revisions to the language of the rule incorporating their proposed amendments. Depending on the nature and scope of responses to this notice, we may convene an on the record conference to facilitate complete understanding of the impact of potential amendments, request additional written comments, or issue one or more specific proposals in notices of proposed rulemaking.

The remainder of this notice will be divided into two parts. The first part addresses rule 54(f)(2) in the context of general or omnibus rate case filings. The second part addresses test year concepts in connection with classification proceedings and limited rate cases, *i.e.*, rate cases which do not significantly change rates or alter the extant cost-revenue relationships of the various classes of mail.

General Rate Cases

The test year in the general rate case should be representative of the period the proposed rates are to be in effect.[2] Attempts to achieve this objective have resulted in mixed success.

The test year in our five major rate cases, and the periods in which rates emanating from these rate cases were in effect, are set out below.

TABLE

Rate case	Test year	Period rates in effect
R71-1	July 1, 1971	May 16, 1971*.
	June 30, 1972	Mar. 1, 1974.
R74-1	July 1, 1974	Mar. 2, 1974*.
	June 30, 1975	Dec. 30, 1975.
R76-1	July 1, 1975	Dec. 31, 1975*.
	June 30, 1976	May 29, 1978.
R77-1	Mar. 25, 1978	May 19, 1978.
	Mar. 24, 1979	Mar. 21, 1981.
R80-1	Mar. 21, 1981	Mar. 22, 1981.
	Mar. 20, 1982	Nov. 1, 1981.**

* Period rates in effect includes both temporary and permanent rates.

** Commission Recommended Rates substantially placed into effect on March 22, 1981. On November 1, 1981, rates as modified by the Governors were placed into effect.

During each of the last three rate cases the Postal Service applied for waivers from certain requirements of rule 549(f)(2). Anticipating the filing of Docket No. R76-1, in December 1974, the Postal Service filed a request to use FY 1977 as the test year. In its letter requesting the waiver the Postal Service stated that because the filing of its Docket No. R76-1 rate case would be approximately three months prior to the beginning of FY 1976

> Given the length and complexity of rate proceedings, the practical effect of the application of the rule for determining the test year * * * will be to litigate issues on the basis of a test year which will expire at a time when the permanent rates will have had a very short life, and quite possibly even before the permanent rates are implemented. [3]

The Postal Service's request in Docket No. R76-1 was denied by the Commission because the requested test year was too prospective. Instead, the Commission suggested that if necessary the Postal Service could amend its filing to update the test period. [4] Nevertheless, even though the Postal Service did not file its case using FY 1976 as the test year until September 18, 1975, the Postal Service did not amend its filing. This resulted in permanent rates not becoming effective until July 6, 1976, which was after completion of FY 1976. This failure to amend was perhaps because temporary rates generally reflecting the rate levels requested by the Postal Service went into effect on December 31, 1975. However, under the Postal Reorganization Act Amendments of 1976 this practice of implementing temporary rates before the Commission issues its opinion is no longer feasible as long as the Commission acts within ten months of the filing of the rate cases. [5]

Having been unsuccessful in obtaining a more prospective test year in Docket No. R76-1, in Docket Nos. R77-1 and R80-1 the Postal Service sought and obtained a waiver of that portion of rule 54(f)(2) that requires the test year be a fiscal year. By this means the Postal Service, with the Commission's approval, was able to use a "hybrid test year" consisting of two quarters of FY 1978 and two quarters of FY 1979 in Docket No. R77-1. This had the effect of permitting the Postal Service to use a test period approximately 6 months more prospective than would have been otherwise allowed under Rule 54(f)(2). The relaxation of the requirement of rule 54(f)(2) [6] coupled with the Commission's issuance of an opinion within 10 months of the Postal Service's July 13, 1977 filing allowed permanent rates to become effective two months after the beginning of the test year.

As indicated above, in Docket No. R80-1, the timing of the rate filing coupled with the waiver of the fiscal year filing requirement allowed the Commission sufficient time to issue an Opinion and Recommended Decision

[1] 39 CFR 3001.54(f)(2). Section 3001.54(j) requires submission of projections of volumes and revenues for this test period.

[2] PRC Op. R76-1, Appendix B.

[3] Docket No. R76-1, Tr. 39/7810.

[4] Docket No. R76-1, Tr. 39/7812.

[5] Pub. L. 94-421, September 24, 1976, 90 Stat. 1306.

[6] *See* National Association of Greeting Card Publishers v. United States Postal Service, 607 F. 2d 392, 397, n. 7 (D.C. Cir. 1979), wherein the Appeals Court does take note of the restrictiveness of the operation of rule 54(f)(2).

affording the Governors an opportunity to implement new rates by the beginning of the test year. The Commission's recommended rates, designed to break even in the test year, were forwarded to the Governors in time to have become effective at the beginning of the test year on March 22, 1981.

In its remand of our Initial Opinion and Recommended Decision in Docket No. R80–1, the Governors of the Postal Service expressed dissatisfaction with limiting application of the breakeven [7] concept for rate setting purposes to a single year. The Governors envision a period wherein "the net financial gain in one year or an eighteen month period is roughly balanced by the net loss of the next period." [8]

This practical approach to the test year period, which is based more on a management philosophy than a legal standard, may be inconsistent with the single year test period embodied in Rule 54(f)(2), and the methodology employed in Docket No. R80–1 wherein rates were designed to generate sufficient revenues for only a single test year, the period March 21, 1981 to March 20, 1982. In this rulemaking the Commission is interested in receiving comments on the benefits of a 12 month test period versus extending the test period beyond one year to perhaps 2½ to 3 years. By this means it might be possible to provide—without artificially inflating the test year revenue requirement—the rate stability desired by the Governors.

In this connection, it should be noted that the revenue requirement already included a provision for accounting surpluses in the test year consisting of the provisions for contingency and the recovery of prior year losses. Presumably it is these profits that the Governors presently envision as being the surplus arising in the first year which will offset losses in future years. [9] The Commission requests the parties to address the need for these accounting surpluses if the test period is increased to a period in excess of one year, for example, a three year period. It would appear that the necessity to include within the revenue requirement these forms of surplus would be diminished substantially if the revenue requirement from the outset incorporates a surplus for the first year of a hypothetical two to three year test period.

To the extent any surplus achieved by the Postal Service in a hypothetical three year test period is either excessive or inadequate, the Postal Service will be able to negate the effects thereof by either delaying or filing earlier its next request for rates changes. The timing of its rate filing, which is totally within the Postal Service province pursuant to § 3622 of the Act [10], would then be a major Postal Service vehicle to achieving breakeven.

Another possibility would be to allow a more prospective test year. The current Rule 54(f)(2) limits test years to fiscal years beginning not more than 12 months after a request is filed. This limitation could be eased. A 2 or 3 year test period would contemplate projections farther into the future then those presently allowed by rule 54(f)(2). Perhaps accepting a test period beginning up to 21 months after the date of filing would achieve the desired result more manageably.

In any case, a primary concern of the Commission will be that any test period be sufficiently proximate so that reasonably reliable projections of costs and revenues are possible. The fact that the Postal Service has felt constrained to request a waiver of rule 54(f)(2) in each of the last three rate cases is grounds to consider whether our present rule can be improved.

It is the Commission's intent to explore changes to Rule 54(f)(2) insofar as it relates to omnibus rate cases in two stages. In this stage we seek both general comments and specific proposals to change Rule 54(f)(2) to reflect the evolution, and make further improvements, in our ratemaking procedures. Since the policy regarding rate change timing is a matter peculiarly within the ambit of the Governors' responsibilities as the policymaking body of the Postal Service, we are particularly interested in receiving a full explication of the goals and concerns of the Governors, so that we can strive to develop rules in a cooperative spirit which meet both the needs of management, to generate adequate revenues; and those of the Commission, to develop rates which fairly and equitably generate those revenues. We do not mean, of course, that any additional contributions reflecting the views of Postal Service management are not equally welcome.

Also parties, a long with their own suggestions, are specifically requested to address the following:

1. Eliminating the fiscal year requirement in Rule 54(f)(2) and replacing it with a requirement of four consecutive accounting quarters.

2. Maintaining the fiscal year requirement, but allowing the year to begin 21 months, or some other period in excess of the current 12 months, subsequent to the filing of a request.

3. Expanding the test period to more than one year including related issues such as the feasibility of stepped rates.

4. Potential analytical difficulties introduced by permitting a test period greater that 12 months.

As indicated above, the aforementioned proposals are interlaced with consideration of the effect of the proposals on the revenue requirement. Matters involving the revenue requirement should take into account the Commission's role in establishing the revenue requirement in light of the Second Circuit opinions in the Newsweek [11] and Time cases. [12]

Classification and Limited Rate Cases

Another significant issue which warrants attention is the appropriate test period for cases in which the rates for most subclasses of mail are not at issue. Currently, rule 54(f)(2) applies to all Postal Service requests. [13] The question is whether this regulation in its present form, or any new regulation developed for use in omnibus rate cases, should be applicable in all rate and classification cases, or should separate rules apply in certain less general cases.

The current rule allows the Postal Service considerable flexibility in choosing a test period. Thus in R78–1, filed in April 1978, the Service used the hybrid test year cost and revenue projections from the pending omnibus rate case, R77–1; while in concurrent classification cases MC78–1, 2 and 3 filed five months later, it used projections for a prospective fiscal perod, FY 1979. While these classification cases were before us, the difficulties of developing projections which achieve both reliable and equitable results became more sharply focused.

In Docket MC78–1, the Commission did not recommend adoption of classification and rate changes within fourth class which were supported by

[7] The concept of "breakeven" is embodied in section 3621 of the Postal Reorganization Act which states that "Postal rates and fees shall provide sufficient revenues so that the total estimated income and appropriations * * * will equal as nearly as practical total estimated costs of the Postal Service."

[8] *See* Decision of the Governors of the United States Postal Service on Rates and Fees for Postal Services, March 10, 1981, p. 11.

[9] Of course the Service's volume growth and imporved productivity also engender rate stability.

[10] *See* Newsweek, Inc. v. Unitd States Postal Service, 663 F. 2d 1186 (2d Cir. 1981), *cert. granted*, 50 U.S.L.W. 3832 (Apr. 20, 1982).

[11] *Id.*

[12] Time, Inc., v. United States Postal Service, Nos. 81–4183, 81–4185, 81–4103, 81–4205, 81–6216 (2d Cir., July 9, 1982).

[13] *See* rule 64(d), which makes rules 54(f) and (j) applicable to classification requests.

projecting R77–1 base year data to fiscal year 1979. In our opinion we criticized the use of the extended projections, reiterating that reliable results were far more likely when projections are based on the most recent information available. At the same time, however, we rejected arguments that documented cost increases occurring since the R77–1 test year should be reflected in rates recommended in MC78–1, finding "that any reflection of these increases should await the more appropriate context of a general rate proceeding in which evidence bearing upon all the criteria of 39 U.S.C. 3622(b) can be presented for our consideration." [14]

In Docket No. MC78–2, which was a classification proceeding to recommend presort discounts for bulk third-class rates, FY 1979 was used as the test year to generate new third-class rates. Eventually rates were adopted arising from this proceeding which were based on FY 1979 as the test year. At the time these third-class rates were in effect, rates for all other classes of mail were based on projected costs for the period March 25, 1978 to March 24, 1979.[15] As a consequence, from the period April 23, 1980, to March 21, 1981, third-class bulk rates were based on a different set of costs than rates for all other classes of mail.[16]

In Docket No. MC78–3, the Commission recommended rates which were designed to cover costs to be incurred by a new service, E–COM, in the first year of its operation, FY 1970. The use of the Docket No. R77–1 test year—as suggested by the preceding paragraph—would have resulted in rates based on cost levels projects for the period March 1978 to March 1979. Rates resulting from use of this historical test year would have been substantially below those which would have been necessary to "break-even" based on costs prevailing in FY 1980.

Our initial thoughts are that the appropriate test year in classification and limited rate cases depends upon the type of proceeding before the Commission. Normally, it would be expected that rates to be assessed for new services should be compensatory from the outset. Thus rates emanating from proceedings involving the offering of a new service (or in certain situations changes in classifications which involve substantial capital expenditures) should be based on a prospective test year. Conversely, proceedings essentially involving a refinement of the classification structure such as proceedings recognizing cost savings, *e.g.*, Docket No. MC78–1, or cost incurrences, *e.g.*, Docket No. R78–1 [17] might be based on costs of the test year of the pending or most recent omnibus rate case. By this means, the inter-class rate relationships recommended in an omnibus rate proceeding will be maintained.

However, the viability of the test year from the previous rate case may be affected by the passage of time. A proposal to effect needed adjustments to classifications within a subclass might be totally frustrated by the use of an historical test year if the proposal is made several years after the previous rate case. The availability of alternative services, inter-class shifts, or inflation could render previous cost projections inaccurate, and new subclasses or rate categories intended to reflect cost distinctions might not be justifiable if outdated cost projections are used.

Another consideration is that when the rates for a subclass are failing to recover attributable costs because of changes in cost incurrence patterns, it may be proper to adjust them in a limited rate or classification proceeding using the most current available cost data. Similarly, if it becomes clear that actual costs for one or more subclasses differ significantly from those projected in the previous omnibus rate case, new analysis may be justified to bring rates for the affected subclasses into conformance with section 3622(b)(3).

As can be seen from the foregoing discussion, crafting a single rule to dictate the test period in the numerous factual situations giving rise to rate and classification proposals is no easy task. The current rule allows the Postal Service discretion to select any test year "not more than 12 months subsequent to the filing date of the formal request." This gives the Postal Service significant flexibility to utilize whatever test period it believes will provide the most support for any particular proposal, since the Service generally has the burden of justifying changes. Because the Service has control over relevant data sources however, parties seeking to utilize alternative test year presentations are at a disadvantage. Thus, a secondary yet essential question becomes: if the test period rule for limited rate cases and classification cases should be different from the rule applicable to omnibus rate cases, how should it differ.

Interested persons are requested to provide their views on the various aspects of appropriate test period issues by November 10, 1982.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service rates and fares.

By the Commission.

David F. Harris,

Secretary.

[FR Doc. 82–27625 Filed 10–6–82; 8:45 am]

BILLING CODE 7715–01–M

[14] PRC Op. MC78–1, at 48.

[15] In Docket No. MC78–2, at p 21, n. 1, the Commission took note of this problem stating that because of the operation of rule 54(f)(2), "there has been no discussion in these proceedings as to the propriety of premising the cost analysis using FY 1979 as the test year even though the rates which are being adjusted are predicated upon another test year which is now historical.

[16] A separate, but no less important problem, arose from the Service's failure to incorporate costing principles from previous cases in its presentation. When the test year from a previous omnibus rate case is used to support a subsequent classification proposal, that test year must, perforce, be the test year used to support permanent rates.

[17] Docket No. R78–1 involved the assessment of a non-standard surcharge for mail not meeting certain size characteristics.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–2190–2]

Standards of Performance for New Stationary Sources; Appendix A; Calibration Revisions and Amendment to Methods 5 and 6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this action is to propose revisions to Appendix A of 40 CFR Part 60 to allow the use of a standardized dry gas meter in lieu of the wet test meter as a calibration standard in Methods 5 and 6 and to correct the calibration procedure in Method 6. Procedures for standardizing, calibrating, and recalibrating the dry gas meter are proposed. The dry gas meter alternative would reduce the cost of capital equipment, and the Method 6 amendment would increase the accuracy of sample volume measurements.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed revisions.

DATES: *Comments.* Comments must be received on or before December 6, 1982.

Public Hearing. A public hearing will be held, if requested. Persons wishing to request a public hearing must contact EPA by November 8, 1982. If a hearing is requested, an announcement of the date

and place will appear in a separate **Federal Register** notice.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A–130), Attention: Docket Number A–82–06, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Public Hearing. Persons wishing to present oral testimony should notify Mrs. Naomi Durkee, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Docket. Docket No. A–82–06, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Shigehara, Emission Measurement Branch (MD–19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION: The proposed revisions are being made because studies have shown that the dry gas meter can be used as a calibration standard in place of a wet test meter, provided that the dry gas meter is properly calibrated initially and recalibrated periodically. The Method 6 dry gas meter calibration procedure is being revised to eliminate an error caused by moisture from the wet test meter.

These revisions would apply to all sources subject to standards of performance specifying the use of Method 5 for the measurement of particulate matter emissions or Method 6 for the measurement of sulfur dioxide emissions, including standards that have already been promulgated. This rulemaking would not impose any additional emission measurement requirements on any facilities. Rather, the rulemaking would simply revise a test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

Miscellaneous

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metal, Motor vehicles, Nitric acid plants, Paper and paper products industry, and Petroleum.

(Secs. 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)))

Dated: September 28, 1982.

Anne M. Gorsuch,

Administrator.

PART 60 [AMENDED]

It is proposed that Method 5 and 6 of Appendix A of 40 CFR Part 60 be amended as follows:

1. In Method 5, by changing the words "Section 7" to "Bibliography" in the following three places:

a. Method 5, Section 2.1, first paragraph.

b. Method 5, Section 2.1, second paragraph.

c. Method 5, Section 4.1.5, third paragraph.

2. In Method 5, by redesignating "7. *Bibliography*" as "8. *Bibliography.*"

3. In Method 5, by adding a new Section 7 and Citation 10 as follows:

Appendix A—Reference Methods

* * * * *

Method 5.—Determination of Particulate Matter From Stationary Sources

* * * * *

7. *Alternative Procedures*

7.1 Dry Gas Meter as a Calibration Standard. A dry gas meter may be used as a calibration standard for volume measurements in place of the wet test meter specified in Section 5.3, provided that it is calibrated initially and recalibrated periodically as follows:

7.1.1 Standard Dry Gas Meter Calibration.

7.1.1.1 The dry gas meter to be calibrated and used as a secondary reference meter should be of high quality and have an appropriately sized capacity, e.g., 3 liters/rev (0.1 ft^3/rev). A spirometer (400 liters or more capacity) may be used for this calibration, although a wet test meter is usually more practical. The wet test meter should have a capacity of 30 liters/rev (1 ft^3/rev) and capable of measuring volume to within ±1.0 percent; wet test meters should be checked against a spirometer or a liquid displacement meter to ensure the accuracy of the wet test meter. Spirometers or wet test meters of other sizes may be used, provided that the specified accuracies of the procedure are maintained.

7.1.1.2 Set up the components as shown in Figure 5.5. A spirometer may be used in place of the wet test meter in the system. Run the pump for at least 5 minutes at a flow rate of about 10 liters/min (0.35 cfm) to condition the interior surface of the wet test meter. The pressure drop indicated by the manometer at the inlet side of the dry gas meter should be minimized [no greater than 100mm H_2O (4 in. H_2O) at a flow rate of 30 liters/min (1 cfm)]. This can be accomplished by using large diameter tubing connections and straight pipe fittings.

7.1.1.3 The data to be collected for each run include: flow rate setting, wet test meter volumes, dry gas meter volumes, meter temperatures, dry gas meter inlet pressure, barometric pressure, and run time. Figure 5.6 shows an example data sheet that may be used in data collection. Repeat runs at each of the orifice settings at least three times.

Repeat the calibration runs at no less than five different flow rates. The range of flow rates should be between 10 and 34 liters/min (0.35 and 1.2 cfm).

7.1.1.4 Calculate flow rate, Q, for each run using the wet test meter gas volume, V_w, and the run time, Θ. Calculate the dry gas meter coefficient, Y_{ds}, for each run. These calculations are as follows:

$$Q = K_1 \frac{P_b}{t_w + t_{std}} \frac{V_w}{\Theta}$$

$$Y_{ds} = \frac{V_w}{V_{ds}} \frac{(t_{ds} + t_{std})}{(t_w + t_{std})} \frac{P_b}{(P_b + \frac{\Delta p}{13.6})}$$

Where:

K_1 = 0.3858 for international system of units (SI); 17.64 for English units.

V_w = Wet test meter volume, liters ($ft.^3$).

V_{ds} = Dry gas meter volume, liters ($ft.^3$).

t_{ds} = Average dry gas meter temperature. °C (°F).

t_{std} = 273° C for SI units; 460° F for English units.

t_w = Average wet test meter temperature, °C (°F).

P_b = Barometric pressure, mm Hg (in. Hg).

Δ = Dry gas meter inlet differential pressure, mm H_2O (in. H_2O).

Θ = Run time, min.

7.1.1.5 Compare the three Y_{ds} values at each of the flow rates and determine the maximum and minimum values. The difference between the maximum and minimum values at each flow rate should be no greater than 0.030. Extra runs may be made in order to complete this requirement. In addition, the meter coefficients should be between 0.95 and 1.05. If these specifications cannot be met in six successive runs, the meter is not suitable as a calibration standard and should not be used as such. If these specifications are met, average the three Y_{ds} values at each flow rate resulting in five average meter coefficients, $\bar{Y}_{ds}$.

7.1.1.6 Prepare a curve of meter coefficient, Y_{ds}, versus flow rate, Q, for the dry gas meter. This curve shall be used as a reference when the meter is used to calibrate other dry gas meters and to determine whether recalibration is required.

7.1.2 Standard Dry Gas Meter Recalibration.

7.1.2.1 Recalibrate the standard dry gas meter against a wet test meter or spirometer annually or after every 200 hours of operation, whichever comes first. This requirement is valid provided the standard dry gas meter is kept in a laboratory and, if transported, cared for as any other laboratory instrument. Abuse to the standard meter may cause a change in the calibration and will require more frequent recalibrations.

7.1.2.2 As an alternative to full recalibration, a two-point calibration check may be made. Follow the same procedure and equipment arrangement as for a full recalibration, but run the meter at only two flow rates [suggested rates are 14 and 28 liters/min (0.5 and 1.0 cfm)]. Calculate the meter coefficients for these two points, and compare the values with the meter calibration curve. If the two coefficients are within ±1.5 percent of the calibration curve values at the same flow rates, the meter need not be recalibrated until the next date for a recalibration check.

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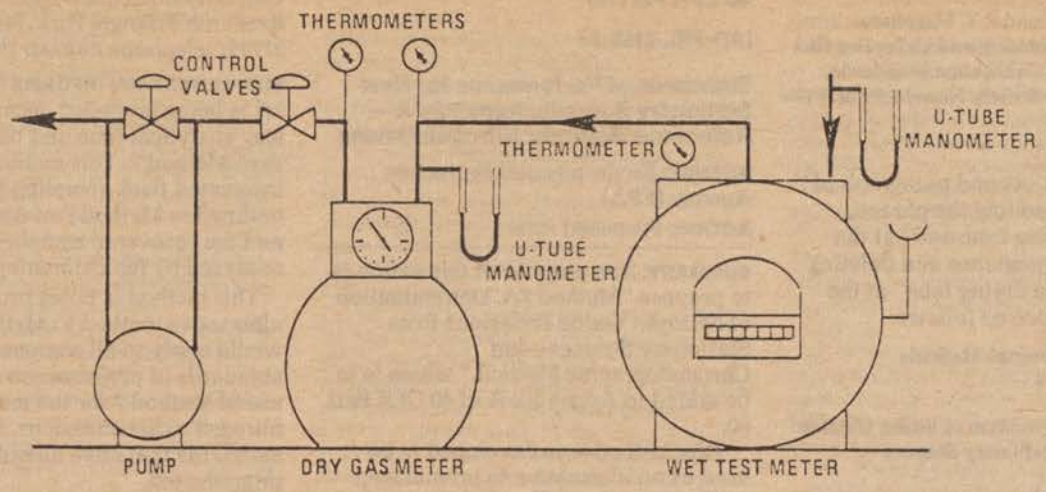


Figure 5.5. Equipment arrangement for dry-gas meter calibration.

DATE: _____

DRY GAS METER IDENTIFICATION: _____

BAROMETRIC PRESSURE (P_b): _____ in. Hg

APPROXIMATE FLOW RATE ($\tilde{Q}$) cfm	SPIROMETER (WET METER) GAS VOLUME (V_s) ft^3	DRY GAS METER VOLUME (V_{dg}) ft^3	TEMPERATURES				DRY GAS METER PRESSURE (Δp) in. H_2O	TIME (Θ) min.	FLOW RATE (Q) cfm	METER METER COEFFICIENT (Y_{ds})	AVERAGE METER COEFFICIENT ($\bar{Y}_{ds}$)
			SPIROMETER (WET METER) (t_s) °F	DRY GAS METER							
				INLET (t_i) °F	OUTLET (t_o) °F	AVERAGE ($\bar{t}_d$) °F					
0.40											
0.60											
0.80											
1.00											
1.20											

$$Q = 17.64 \frac{V_s}{\Theta} \cdot \frac{P_b}{(t_s + 460)}$$

$$Y_{ds} = \frac{V_s}{V_{dg}} \cdot \frac{(\bar{t}_d + 460)}{(t_s + 460)} \cdot \frac{P_b}{\left(P_b + \frac{\Delta P}{13.6}\right)}$$

Figure 5.6. Example data sheet for calibration of a standard dry gas meter for method 5 sampling equipment (English units).

BILLING CODE 6560-50-C

8. * * *

10. Westlin, P.R. and R.T. Shigehara. Procedure for Calibrating and Using Dry Gas Volume Meters as Calibration Standards. Source Evaluation Society Newsletter 3(1):17–30. February 1978.

* * * * *

4. In Method 6, second paragraph of Section 5.1.1 by adding the phrase, "remove the drying tube and" at the beginning of the sentence and deleting the words "of the drying tube" at the end of the sentence as follows:

Appendix D—Reference Methods

* * * * *

Method 6.—Determination of Sulfur Dioxide Emissions From Stationary Sources

* * * * *

5.1.1 * * *

Next, remove the drying tube and calibrate * * * to the inlet. * * *

* * * * *

5. In Method 6, by redesignating "7. *Bibliography*" as "8. *Bibliography.*"

6. In Method 6, by adding a new Section 7 and Citations 9 and 10 as follows:

Appendix A—Reference Methods

* * * * *

Method 6.—Determination of Sulfur Dioxide Emissions From Stationary Sources

* * * * *

7. *Alternative Procedures*

7.1 Dry Gas Meter as a Calibration Standard. A dry gas meter may be used as a calibration standard for volume measurements in place of the wet test meter specified in Section 5.1, provided that it is calibrated initially and recalibrated periodically according to the same procedures outlined in Method 5, Section 7.1, with the following exceptions: (1) the dry gas meter is calibrated against a wet test meter having a capacity of 1 liter/rev or 3 liters/rev and having the capability of measuring volume to within ±1 percent; (2) the dry gas meter is calibrated at 1 liter/min (2 cfh); and (3) the meter box of the Method 6 sampling train is calibrated at the same flow rate.

8. * * *

9. Westlin, P.R. and R.T. Shigehara. Procedure for Calibrating and Using Dry Gas Meter Volume Meters as Calibration Standards. Source Evaluation Society Newsletter 3(1):17–30. February 1978.

10. Yu, K.K. Evaluation of Moisture Effect on Dry Gas Meter Calibration. Source Evaluation Society Newsletter. Vol. V, No. 1. February 1980.

[FR Doc. 82-27518 Filed 10-6-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 60

[AD-FRL 2189-8]

Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The purpose of this action is to propose "Method 7A, Determination of Nitrogen Oxide Emissions from Stationary Sources—Ion Chromatographic Method," which is to be added to Appendix A of 40 CFR Part 60.

This method was developed to be used as an alternative to promulaged Method 7 and would at present apply to fossil-fuel fired steam generators (Subpart D), electric utility steam generating units (Subpart Da), and nitric acid plants (Subpart G). It offers improvements over Method 7 in that the sample analytical time is shortened and precision is improved. Laboratories already equipped with an ion chromatograph will have reduced equipment costs.

DATES: *Comments.* Comments must be received on or before December 6, 1982.

Public Hearing. A public hearing will be held, if requested. Persons wishing to request a public hearing must contact EPA by November 8, 1982. If a hearing is requested, an announcement of the date and place will appear in a separate **Federal Register** notice.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A–130), Attention: Docket Number A–81–41, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Pubic Hearing. Persons wishing to present oral testimony should notify Mrs. Naomi Durkee, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Docket. Docket No. A–81–41, containing material relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Shigehara, Emission Measurement Branch (MD–19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2237.

SUPPLEMENTARY INFORMATION: Method 7A is being proposed because it offers less analytical time and better precision than Method 7. This method utilizes the evacuated flask sampling procedure outlined in Method 7 of Appendix A, and the recovered sample is then analyzed by ion chromatograph.

This method is being proposed as an alternative method to Method 7. It would apply to all sources subject to standards of performance specifying the use of Method 7 for the measurement of nitrogen oxide emissions, including standards that have already been promulgated.

Miscellaneous

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metal, Motor vehicles, Nitric acid plants, Paper and paper products industry, and petroleum.

(Secs. 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)))

Dated: September 28, 1982.

Anne M. Gorsuch,

Administrator.

PART 60 [AMENDED]

It is proposed that 40 CFR Part 60 be amended as follows:

§§ 60.45, 60.46, 60.47, 60.73, 60.74 [Amended]

1. By amending §§ 60.45, 60.46, 60.47a, 60.73, and 60.74 by removing the number "7" and inserting, in its place, "7 or 7A" in the following places:

a. 40 CFR 60.45(c)(1);

b. 40 CFR 60.46 (a)(2), (a)(5), (c), (e), and (f)(3)(i);

c. 40 CFR 60.47a (h)(1), (h)(3), (h)(4), and (h)(5)(i)(1);

d. 40 CFR 60.73(a);

e. 40 CFR 60.74 (a)(1) and (b).

2. By amending Appendix A by adding a new method as follows:

Appendix A—Reference Methods

* * * * *

Method 7A. Determination of Nitrogen Oxide Emissions From Stationary Sources—Ion Chromatographic Method

1. Applicability and Principle

1.1 Applicability. This method applies to the measurement of nitrogen oxides emitted from stationary sources; it may be used as an alternative to Method 7 [as defined in 40 CFR Part 60.8(b)] to determine compliance if the stack concentration is within the analytical range. The analytical range of the method is from 125 to 1,250 mg NO_x/m^3 as NO_2 (65 to 655 ppm), and higher concentrations may be analyzed by diluting the sample. Concentrations down to 19 mg/m^3 (10 ppm) may be analyzed by preparing additional standards in this lower range.

1.2 Principle. A grab sample is collected in an evacuated flask containing a dilute sulfuric acid-hydrogen peroxide absorbing solution. The nitrogen oxides, except nitrous oxide, are oxidized to nitrate and measured by ion chromatography.

2. Apparatus

2.1 Sampling. Same as in Method 7, Section 2.1.

2.2 Sample Recovery. Same as in Method 7, Section 2.2, except the stirring rod and pH paper are not needed.

2.3 Analysis. For the analysis, the following equipment is needed:

2.3.1 Volumetric Pipets. Class A; 1-, 2-, 4-, 5-ml (two for the set of standards and one per sample), 6-, 10-, and graduated 5-ml sizes.

2.3.2 Volumetric Flasks. 50-ml (two per sample and one per standard), 200-ml, and 1-liter sizes.

2.3.3 Analytical Balance. To measure to within 0.1 mg.

2.3.4 Ion Chromatograph. The ion chromatograph must have at least the following components:

2.3.4.1 Columns. A 3x500 mm anion separation column capable of resolving the nitrate ion from sulfate and other species present and a 6x250 mm standard anion suppressor column with 100 to 400 mesh resin. Some manufacturers produce these columns as proprietary items.

2.3.4.2 Pump. Capable of maintaining a steady system flow rate between 50 to 160 ml per hour.

2.3.4.3 Flow Gauges. Capable of measuring the specified system flow rate.

2.3.4.4 Conductivity Detector.

2.3.4.5 Recorder. Compatible with the output voltage range of the detector.

3. Reagents

Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

3.1 Sampling. An absorbing solution consisting of sulfuric acid (H_2SO_4) and hydrogen peroxide (H_2O_2) is required for sampling. To prepare the absorbing solution, cautiously add 2.8 ml concentrated H_2SO to a 100-ml flask containing deionized distilled water and dilute to volume with mixing. Add 10 ml of this solution, along with 6 ml of 3 percent H_2O_2 that has been freshly prepared from 30 percent solution, to a 1-liter flask. Dilute to volume and mix well. This absorbing solution should be used within 1 week of its preparation. Do not expose to extreme heat or direct sunlight.

3.2 Sample Recovery. Deionized distilled water that conforms to American Society for Testing and Materials specification D 1193–74, Type 3, is required for sample recovery. At the option of the analyst, the $KMnO_4$ test for oxidizable organic matter may be omitted when high concentrations of organic matter are not expected to be present.

3.3 Analysis. For the analysis, the following reagents are required:

3.3.1 Stock Standard Solution, 1 mg NO_2/ml. Dry an adequate amount of sodium nitrate ($NaNO_3$) at 105 to 110° C for a minimum of 2 hours just before preparing the standard solution. Then dissolve exactly 1.847 g of dried $NaNO_3$ in deionized distilled water, and dilute to 1 liter in a volumetric flask. Mix well. This solution is stable for 1 month and should not be used beyond this time.

3.3.2 Working Standard Solution, 25 μg/ml. Dilute 5 ml of the standard solution to 200 ml in a volumetric flask, and mix well.

3.3.3 Eluent Solution. Weigh 2.544 g of sodium carbonate (Na_2CO_3) and 1.008 g of sodium bicarbonate ($NaHCO_3$), and dissolve in 4 liters of deionized distilled water. This solution is 0.0024 M Na_2CO_3/0.003 M $NaHCO_3$.

3.3.4 Water. Deionized distilled as in Section 3.2.

3.3.5 Quality Assurance Audit Samples. Nitrate samples in glass vials prepared by the Environmental Monitoring Systems Laboratory of the Environmental Protection Agency (EPA) at the Research Triangle Park, North Carolina. Each set will consist of three vials with one known and two unknown concentrations. Only when making compliance determinations, obtain the audit samples from the Quality Assurance Management Office of the EPA regional office.

4. Procedure

4.1 Sampling. Same as in Method 7, Section 4.1.

4.2 Sample Recovery. Same as in Method 7, Section 4.2, except delete the steps on adjusting and checking the pH of the sample. Do not store the samples more than 4 days between collection and analysis.

4.3 Analysis. Note the level of the liquid in the container and confirm whether any sample was lost during shipment; note this on the analytical data sheet. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Immediately before analysis, transfer the contents of the shipping container to a 50-ml volumetric flask, and rinse the container twice with 5-ml portions of deionized distilled water. Add the rinse water to the flask, and dilute to the mark with deionized distilled water. Mix thoroughly.

Pipet a 5-ml aliquot of the sample into a 50-ml volumetric flask, and dilute to the mark with deionized distilled water. Mix thoroughly. For each set of determinations, prepare a reagent blank by diluting 5 ml of absorbing solution to 50 ml with deionized distilled water.

Prepare a standard calibration curve according to Section 5.2 Analyze the set of standards followed by the set of samples. Repeat this analysis sequence followed by a final analysis of the standard set. Average the results. The two sample values shall agree within 5 percent of their mean for the analysis to be valid. Perform this duplicate analysis sequence on the same day. Dilute any sample and the blank with equal volumes of deionized distilled water if the concentration exceeds that of the highest standard.

Document each sample chromatogram by listing the following analytical parameters: injection point, injection volume, nitrate and sulfate retention times, flow rate, detector sensitivity setting, and recorder chart speed.

4.4 Audit Analysis. With each set of compliance samples or once per week for continuous analyses, analyze the two unknown audit samples in the same manner as the source samples to evaluate the technique of the analyst and the standards preparation. The sample with the known concentration may be used as a quality control check. The same person, reagents, and analytical system shall be used both for compliance determination samples and the EPA audit samples.

Calculate the concentration in mg/m^3 using the specified gas volume in the audit instructions. The concentratons obtained by the analyst shall agree within 7 percent of the actual concentrations for the compliance test to be valid. However, if the audit results do not affect the compliance status of the affected facility, the Administrator may waive this requirement. Report the results of both audit samples with the results of the compliance determination samples to the EPA regional office or the appropriate enforcement agency. (The actual concentration of the audit samples may be obtained immediately by reporting the audit and compliance results by telephone.)

5. Calibration

5.1 Flask Volume. Same as Method 7, Section 5.1.

5.2 Standard Calibration Curve. Prepare a series of five standards by adding 1.0, 2.0, 4.0, 6.0, and 10.0 ml of working standard solution (25 μg/ml) to a series of five 50-ml volumetric flasks. Dilute each flask to volume with deionized distilled water, and mix well. Analyze with the samples as described in Section 4.3 and substract the blank from each value. Prepare a linear regression plot of the standard concentrations in μg/ml (x-axis) versus their peak height responses in millimeters (y-axis). (Take peak height measurements with symmetrical peaks; in all other cases, calculate peak areas.) If any point deviates from the line by more than 7 percent of the concentration at that point, remake and reanalyze that standard. From this curve, or equation, determine the slope, and calculate its reciprocal to denote as the calibration factor, S.

5.3 Conductivity Detector. Calibrate according to manufacturer's specifications prior to initial use.

5.4 Barometer. Calibrate against a mercury barometer.

5.5 Temperature Gauge. Calibrate dial thermometers against mercury-in-glass thermometers.

5.6 Vacuum Gauge. Calibrate mechanical gauges, if used, against a mercury manometer such as that specified in Section 2.1.6 of Method 7.

5.7 Analytical Balance. Calibrate against standard weights.

6. Calculations

Carry out the calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after final calculations.

6.1 Sample Volume. Calculate the sample volume V_{sc} (in ml) on a dry basis, corrected to standard conditions, using Equation 7–2 of Method 7.

6.2 Sample Concentration of NO_x as NO_2. Calculate the sample concentration C (in mg/dscm) as follows:

$$C = \frac{HSF \times 10^4}{V_{sc}} \qquad \text{Eq. 7A–1}$$

Where:

H = Sample peak height, mm.
S = Calibration factor, μg/mm.
F = Dilution factor (required only if sample dilution was needed to reduce the concentration into the range of calibration).
10^4 = 1:10 dilution times conversion factor of 10^3 μg/mg.

If desired, the concentration of NO_x may be calculated as ppm NO_x at standard conditions as follows:

$$\text{ppm } NO_x = 0.5228\ C \qquad \text{Eq. 7A–2}$$

Where: 0.5228 = ml/mg NO_x.

7. Bibliography

1. Mulik, J.D. and E. Sawicki. Ion Chromatographic Analysis of Environmental Pollutants. Ann Arbor Science Publishers, Inc. Vol. 2. 1979.

2. Sawicki, E., J.D. Mulik, and E. Wittgenstein. Ion Chromatographic Analysis of Environmental Pollutants. Ann Arbor, Ann Arbor Science Publishers, Inc. Vol. 1 1978.

3. Siemer, D.D. Separation of Chloride and Bromide from Complex Matrices Prior to Ion Chromatographic Determination. Analytical Chemistry. 52(12:1874–1877). October 1980.

4. Small, H., T.S. Stevens, and W.C. Bauman. Novel Ion Exchange Chromatographic Method Using Conductimetric Determination. Analytical Chemistry. 47(11:1801). 1975.

5. Yu, King K. and Peter R. Westlin. Evaluation of Reference Method 7 Flask Reaction Time. Source Evaluation Society Newsletter. *4*(4). November 1979. 10 p.

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[FR Doc. 82–27519 Filed 10–6–82; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

Acreage Limitation: Reclamation Rules and Regulations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public hearing.

SUMMARY: A public hearing is hereby scheduled for October 28, 1982, in Salt Lake City, Utah. The complete address for the hearing place is given below. This hearing will be held to gather information and seek comments on the acreage limitation provisions of Federal Reclamation law, specifically the new legislation modifying existing law recently passed by Congress, for the purpose of scoping and preparing new rules and regulations to implement the new law. An opening statement briefly summarizing the new legislation will be made and suggestions will be welcomed on the content and focus of the implementing rules and regulations. The testimony taken at the hearing will be considered in preparing proposed and final rules.

Subsequent hearings are planned. Announcements will be made once dates and locations for them have been established.

DATE: The hearing to be held on October 28, 1982, will begin at 9 a.m. and continue until all comments have been heard.

ADDRESS: The hearing will be held at the Salt Palace, Room 220, 100 South West Temple, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon S. Cooper, (303) 234–7195.

SUPPLEMENTARY INFORMATION: Hearing statements will be limited to 15 minutes. Speakers will not be permitted to trade their time to obtain a longer presentation; however, the hearing officer may allow any person additional time after all other comments have been heard. Speakers will be scheduled according to the time preference mentioned in their letter or telephone request, whenever possible. Any scheduled speaker not present when called, will lose his or her privilege in the scheduled order, but will be recalled after all the scheduled speakers have been heard. Speaker requests will be scheduled up to one working day preceding the hearing, any request received after the scheduling cutoff will be honored on a first-come-first-served basis.

Individuals or organizations wishing to speak at the hearing or who desire additional information should contact: Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, P.O. Box 11568, Salt Lake City, Utah 84147 (801) 524–5435.

Those wishing to supplement their testimony with a written statement or those who prefer to submit only a written statement for the public hearing testimony should address them to: Mr. Vernon S. Cooper, Bureau of Reclamation, E&R Center, Code D–410, P.O. Box 25007, Denver, Colorado 80225.

Dated: October 1, 1982.

Robert N. Broadbent,

Commissioner, Bureau of Reclamation.

[FR Doc. 82–27544 Filed 10–6–82; 8:45 am]
BILLING CODE 4310–09–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM166P; Notice No. 82–8]

Radiation Level Limits for Exclusive Use Shipments of Radioactive Materials

AGENCY: Material Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Materials Transportation Bureau (MTB) proposes to amend a section of the Hazardous Materials regulations (HMR) to state more explicitly the external radiation level limitations applicable when radioactive materials are transported under provisions for exclusive-use shipments. The existing wording of § 173.393(j) has resulted in interpretations by shippers, carriers and others which are not consistent with regulatory intent, and has contributed to some cases of noncompliance. The proposed amendment is intended to eliminate apparent inconsistencies in radiation safety that might result from misinterpretation of limitations for "open" and "closed" transport vehicles.

The maximum allowable radiation level for radioactive material packages transported under exclusive-use provisions is proposed to be reduced to 1000 millirem per hour at the surface of the package instead of at one meter from the package. This is consistent with international safety standards and changes MTB and the Nuclear Regulatory Commission proposed in 1979 (44 FR 1852 and 44 FR 48234, respectively). During transportation, it is

also proposed to establish radiation level limitations referenced to points on and near accessible external surfaces of the vehicle or load. They are, 200 millirem per hour at the surface and 100 millirem per hour at a distance of 2 meters. This would eliminate consideration of imaginary planes projected from edges of "open" transport vehicles. The proposed amendment would also clarify requirements applicable to private carriers when excepted from the radiation level limitation of 2.0 millirem per hour in normally occupied spaces, such as cabs or sleeper compartments of trucks.

The definition of "exclusive-use" in § 173.389(o) would be modified by adding radiological safety capabilities for qualification as a "designated agent" involved in loading and unloading operations under "exclusive-use" provisions.

DATE: Comments are due on or before December 6, 1982.

ADDRESS: Send comments to Dockets Branch, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590, (202) 426–3148. Comments should identify the docket number, and five (5) copies should be submitted. The Dockets Branch is located in Room 8426, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: A. Wendell Carriker, Office of Hazardous Materials Regulation, Materials Transportation Bureau, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–2311

SUPPLEMENTARY INFORMATION:

I. Basis for Proposed Rule

1. Background

The radiation level limitations for exclusive use, or full-load, shipments of radioactive materials have been a part of domestic and international regulatory standards for many years. MTB published a notice of proposed rulemaking (NPRM), Docket HM–169, in the **Federal Register** (44 FR 1852) on January 8, 1979, which includes a broad historical relationship between DOT and the International Atomic Energy Agency (IAEA) regulatory standards. Without extensive elaboration about radiation levels for exclusive-use shipments, HM–169 proposed changes which include restricting packages to 1000 millrem per hour at any point on the surface rather than 1000 millirem per hour at one meter from any point on the package surface. Other minor proposals in HM–169 related to external radiation levels for exclusive-use shipments are mainly nonsubsantive, rewordings of existing provisions.

Subsequent to issuance of the NPRM in HM–169, there have been a number of requests for interpretation of § 173.393(j) with respect to "open vehicles" and "closed vehicles" operating under exclusive-use conditions. The meaning and application of § 173.393(j) have been difficult to interpret for purposes of compliance and enforcement. It was determined by both the Department of Transportation and the Nuclear Regulatory Commission (NRC) in meeting with representatives of the nuclear industry that even the wording of the changes proposed in Docket HM–169 does not adequately clarify the issues, and further consideration is needed.

Another area of confusion in interpretation involves the relationship between § 173.393(j) and § 177.842(a). Some carriers and shippers erroneously concluded that the exception in § 177.842(a) from the total transport index limitation of 50 per vehicle for packages complying with § 173.393(i) is applicable to their operation, provided the radiation levels on and around their vehicle are within the limits of § 173.393(j) (2), (3) and (4). That misinterpretation stems from a failure to consider the first sentence in § 173.393(j) as presently written, which excludes packages meeting limits of § 173.393(i).

2. Applications Concept

The provisions of § 173.393(j) are intended to apply to special conditions which consider radiation safety aspects of the shipment and the resulting radiation exposures. When package radiation levels exceed the limits of § 173.393(i), the package may be shipped if the shipper assumes certain carrier responsibilities and makes arrangements with the carrier to maintain the required exclusive-use conditions, wherein radiation levels of the vehicle and not just the packages are considered.

Similarly, shippers make arrangements with carriers for exclusive-use shipments of some packages of radioactive materials that are classified as fissile or low specific activity. For the more common non-exclusive use shipments, the primary mechanisms for controlling radiation exposure of carrier personnel are: (1) package radiation limits specified in § 173.393(i), (2) the total transport index of the packages in the vehicle, and (3) their separation distance from normally occupied spaces. However, when reasonable radiation level reduction efforts do not achieve § 173.393(i) limits, packages may be transported in exclusive-use vehicles with radiation exposure controlled by limiting radiation levels on and near the vehicles, as well as the package, and by the imposed exclusive-use shipment controls.

Basically, the proposed radiation level limitations for packages and vehicles in § 173.393(j) would apply to shipments of radioactive materials only when the package surface radiation level or transport index limits exceed the § 173.393(i) limits and some other method of controlling radiation exposure is necessary.

3. Package Limits

The existing limitation of 1000 millrem per hour at one meter from the surface of the package is considered to be unsatisfactory. IAEA standards in effect since 1973 have set a limit of 1000 millrem per hour at the surface of the package, and the United States is the only major industralized country that has not yet adopted the IAEA standards. A soon to be issued final rule under HM–169 is expected to impose the limit of 1000 millrem per hour at the package surface.

Without a package surface limitation, it is hypothetically possible for a package of minimum dimensions (4″ × 4″ × 4″) to have radiation levels near 400 rem per hour at the surface and still meet a limit of 1000 millrem per hour at one meter. In the interest of safety for carrier personnel, emergency services personnel, and the public, the 1000 millrem per hour at the surface is considered to be a more appropriate limit. At the present time, most exclusive-use shipments are probably restricted by vehicle radiation level limits rather than by package radiation level lmits.

If a packaging design is such that it cannot be offered for transport as a package in full compliance with the HMR because the surface radiation level is to high, then the activity of its contents must be lowered, or the unit must be provided with additional shielding. The new configuration must satisfy all requirements of a package before it may be offered for transportation.

4. Accessible Surface Limits

It is proposed that external radiation level limits for vehicle and/or packages be established with respect to accessibility by personnel during transport. Establishing limits with respect to readily accessible surfaces

should eliminate most interpretative difficulties and discrepancies present in existing provisions for "open" and "closed" vehicles in the current regulations. The basic concern is to establish a maximum rate of exposure that might be received by any transport worker, or general public personnel, and that maximum rate need not be different for "open" and "closed" vehicles.

Controls established by the shipper for exclusive-use transport of a package with surface levels above 200 millrem per hour or a transport index above 10 would, in may cases, include the use of a "closed transport vehicle" (see § 173.389(q)) to achieve radiation levels on external surfaces at or below 200 millirem per hour. In some cases, in lieu of a permanently enclosed vehicle, the shipper may make arrangements with a carrier to use a flatbed trailer or other "open" vehicle and convert it to a "closed transport vehicle" by means of permanent or temporary personnel barriers. This conversion must be within the basic carrier safety requirements (such as tie downs, blocking and bracing, materials integrity, etc). As proposed, the package radiation level limitation for a package within such a personnel barrier would be 1000 millrem per hour at the surface. All readily accessible external surfaces of the vehicle or the barrier could not exceed the 200 millrem per hour limit. Another example of such an arrangement is an "open" vehicle which employs barriers that do not result in the vehicle being converted to a "closed transport vehicle," but still it achieves radiation levels which do not exceed the 200 millrem per hour limit at readily accessible surfaces. An example of this is the use of shielded outer packages such as casks which are commonly used to transport drums of low specific activity (LSA) waste.

It is emphasized that the 200 millirem per hour is a maximum not a goal. In keeping with the principle of "as low as reasonably achievable" (ALARA), the radiation levels at all accessible surfaces (sides, ends, top, and bottom) should be kept ALARA.

In the existing regulations, the absence of a stated radiation level limit at the vertical planes projected from the lateral edges of a package being carried on an open transport vehicle is also believed to be a significant omission. The proposed revision should eliminate the problem and reduce misinterpretations.

5. Two Meters From Accessible Surfaces Limits

The proposed limitation of 10 millirem per hour at any point two meters from any accessible external surface of the vehicle or load constitutes no significant change from existing rules for most conventional closed vehicles such as vans, but it would restrict slightly the presently allowed radiation levels for packages with surface levels less than 200 millirem per hour that are transported on vehicles like flatbeds. At present, the 10 millirem per hour limit is at the plane 2 meters from the lateral edges of the flatbed. In cases such as a package on an "open" flatbed, the proposed amendment would set the 10 millirem per hour limit at 2 meters from the package surface. The proposed revision also excludes the 10 millirem per hour limitations at 2 meters from the top and underside of vehicle surfaces. This is a practical consideration since it is uncommon for persons to be 2 meters above or below accessible surfaces of exclusive-use vehicles, and it would be an unreasonable burden in most facilities to obtain radiation measurements 2 meters below the underside of a vehicle and 2 meters above the top surface. The proposed revision would eliminate all reference to vertical planes projected form vehicle surfaces. Instead, the 10 millirem per hour limit would refer directly to readily accessible external surfaces.

The radiation level limitation at two meters is intended to control radiation exposure to personnel not associated with the shipment, such as people in other vehicles moving along side the shipment, persons nearby when the vehicle is stopped temporarily, or persons refueling or servicing the vehicle. In combination with the proposed accessible surface limitation, these revisions should improve controls on radiation exposure to members of the general public.

6. Occupied Spaces Limit

The proposed revision does not change the maximum radiation level for locations normally occupied during transport. The only change is to state more clearly the intended conditions under which a private carrier is excepted from the 2 millirem per hour limit. It was previously assumed that all personnel of a private carrier involved in transporting radioactive material under exclusive-use provisions would be operating under a regulated radiation safety program. Since this is not always the case, a qualifying requirement to assure radiation safety would be added to the regulations.

It is assumed that the carrier's personnel responsible for its regulated radiation safety program will assure that all exposures are kept as low as reasonably achievable, monitor operations, and establish limits in line with appropriate radiation safety requirements.

This 2 millirem per hour limit does not apply to vehicles carrying radioactive materials packages under conditions controlled by the total transport index limit per vehicle and separation distance requirements between normally occupied areas and the nearest package. The 2 millirem per hour is not an unreasonably low upper limit for occupied spaces. It is noted that the existing transport index and separation distance tables in Parts 174 and 177 do not always result in such a limit. MTB plans to propose amendments in the near future which will assure better radiation exposure control via transport index and separation distance criteria.

7. Designated Agent Requirements

The carrier responsibilities assumed by the shipper for exclusive-use shipments include controlling certain aspects of the shipment from point of origin to destination.

As stated in the regulations, instructions provided by the shipper to the carrier for maintaining exclusive-use conditions must be included with the shipping papers. Part of the requirements in the definition of "exclusive-use" in § 173.389(o)(2) refer to initial, final, and intermediate loading and unloading by the consignor, consignee, or designated agent. Under these proposals, it would be made clear that a designated agent must have radiological expertise appropriate for handling the radioactive material being transported for the shipper. The assurance that the designated agent has the appropriate radiological capabilities must be the responsibility of the shipper when he establishes exclusive use controls.

Consignors and consignees in nearly all cases are licensed by the NRC or a State agency, to possess, use, or transfer the radioactive materials in a consignment. To be licensed, they must demonstrate necessary capabilities for handling the radioactive materials authorized by their license. It would be inappropriate for the HMR to require all initial, intermediate, and final loading and unloading of exclusive-use shipments by the consignor, consignee or their designated agent and then be silent on requirements for designated agents. As a minimum, the radiological capabilities should include knowledge of methods and procedures for minimizing radiation exposures when handling radioactive materials shipments, and the ability to recognize and control radiological emergencies

that could occur in handling the consignment. The designated agents radiation protection practices should conform to recognized national standards on such matters as probable annual radiation exposure and use of personnel radiation dosimetry equipment.

This requirement for radiological capabilities should complement radiation level limitations in assuring safety for persons involved with the shipment and the general public, for exclusive-use shipments.

II. Classification of Rule, Reporting Requirements, and Impact on Small Entities

Non-major rule

MTB has determined that this proposed rule will not result in a "major rule" under the terms of Executive Order 12291 and DOT procedures (44 FR 11034). This determination is made on the bases that (1) the rule as proposed would not have an annual effect on the nation's economy exceeding $100 million; (2) there will be no major increase in costs or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) the rule as proposed would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Although a regulatory impact analysis is not required, MTB has prepared a draft regulatory evaluation and environmental assessment and made it a part in the Docket, available for inspection at the address shown above.

Paperwork Reduction Act.

Recordkeeping requirements contained in proposed § 173.393(j)(3) are subject to clearance requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3502 et seq.). A request for approval will be submitted to the Office of Management and Budget. These requirements would not be effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation. Comments on the requirement for shippers to prepare spacific instructions for use by the carrier in maintaining exclusive-use shipment controls, as well as estimates of the number of shippers affected and the burden-hours imposed, are solicited.

Impact on Small Entities

Based on limited information available concerning size and nature of entities likely to be affected, I certify that this proposal will not, if promulgated, have a significant economic impact on a subtantial number of small entities. The most restrictive aspect of this revision to the HMR involves the reduction of external radiation levels from the present limit of 1000 millirem per hour at one meter from any point on the external surface of the package to 1000 millirem per hour on any accessible surface of the package, and would most likely only affect operators of large reactors.

III. Thesaurus of Indexing Terms

List of Subjects in 49 CFR Part 173

Hazardous materials transportation.

In consideration of the foregoing, 49 CFR Part 173 would be amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. In § 173.389, paragraph (o)(2) would be amended by adding a new sentence at the end of the paragraph to read as follows:

§ 173.389 Radioactive materials; definitions.

* * * * *

(o) * * *

(2) * * * A designated agent must have radiological training and resources appropriate for safe handling of the consignment while in transit.

* * * * *

2. In § 173.393, paragraph (j) would be revised to read as follows:

§ 173.393 General packaging and shipment requirements.

* * * * *

(j) Packages otherwise complying with requirements of this section which, despite reasonable efforts and accepted radiation safety practices, do not comply with the radiation level limits of paragraph (i) of this section, and packages provided for under § 173.392(c) or § 173.396(f), may be transported in a vehicle (except aircraft) which as been consigned as exclusive-use if:

(1) The maximum radiation level on the external surface of a package does not exceed 1000 millirem per hour;

(2) The maximum radiation level for locations readily accessible during transport does not exceed—

(i) 200 millirem per hour on the external surface of the vehicle or load;

(ii) 10 millirem per hour, two (2) meters from external surfaces of the vehicle or load (excluding the top and underside of the vehicle or load); and

(iii) 2.0 millirem per hour, in normally occupied spaces, except for private carriers if exposed personnel under their control wear radiation dosimetry devices and operate under provisions of a State or Federally regulated radiation protection program; and

(3) The shipper must provide the carrier with specific instructions for maintaining controls for exclusive-use shipments. These instructions shall be sufficient to assure that the carrier will not unnecessarily delay or take unnecessary actions while in transit that result in increased radiation levels or radiation exposures. These instructions must be included with the shipping paper information.

* * * * *

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 App. A to Part 1, and paragraph (a)(4) of App. A to Part 106)

Issued in Washington, D.C., on September 29, 1982.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 82-27315 Filed 10-6-82; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1206 and 1207

[No. 37109]

Disclosure of Depreciation Policy

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of rulemaking proceeding.

SUMMARY: On April 27, 1979 (44 FR 26131, May 4, 1979), the Commission issued a Notice of Proposed Rulemaking (NPR) proposing the disclosure of depreciation policy in the Annual reports of Motor Carriers of Passengers and Motor Carriers of Property. Responses to the NPR were negative and indicated that depreciation policy should be left to the discretion of carrier management. Subsequent to the issuance of the NPR, the Commission issued a policy statement on financial and statistical reporting May 10, 1979; 44 FR 27537). Under this policy, reports filed on a regular basis by Motor Carriers need contain only information that is either used by the Commission on a regular basis or that the Commission is required by statute to collect for other agencies. Disclosure of the depreciation

policy used by individual Motor Carriers does not fall within either of these categories.

DATE: This action is effective October 6, 1982.

ADDRESSES: Copies of this Order may be purchased by contacting: TS Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, D.C. 20423, (202) 289–4357—D.C. Metropolitan Area, (800) 424–5403—toll free for outside D.C. area.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., (202) 275–7448.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

This order will not have a significant economic impact on a substantial number of small entities. This decision terminates a proceeding. Therefore, no carrier will be affected by this decision.

This action does not significantly affect the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Parts 1206 and 1207

Buses, Motor carriers, Uniform system of accounts.

(49 U.S.C. 10321 and 5 U.S.C. 553)

Decided: September 28, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–27589 Filed 10–6–82; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 47, No. 195
Thursday, October 7, 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

Foreign Agricultural Service

Privacy Act of 1974; System of Records

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notification of new system of records under the Privacy Act of 1974.

SUMMARY: This system will contain employee records of Foreign Service employees of the Foreign Agricultural Service. Access to, and use of, these records is restricted to persons who have a legitimate need to review such records in the performance of official duties.

EFFECTIVE DATE: November 8, 1982.

FOR FURTHER INFORMATION CONTACT: Charles E. Soisson, Chief, Personnel Programs, Personnel Division, Foreign Agricultural Service, Department of Agriculture, 14th and Independence Avenue SW., Room 5649–S, Washington, D.C. 20250 (202–382–1587).

The new system is as follows:

USDA/FAS–4

SYSTEM NAME:

Foreign Service Employee Records.

SYSTEM LOCATION:

Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C. 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Foreign Service employees of the Foreign Agricultural Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of official personnel files; performance records (Foreign Service ratings, development appraisal reports, and related correspondence); biographical data; career development and counseling records (including training and assignment records); records of security clearances; conflict of interest reports; recruitment and employment files; promotion and conversion files (lateral entry); retirement and annuitant files; informal grievance files; computer printouts from automated personnel system (alphabetical list and staffing patterns); reports of medical clearances; awards and leave information; health and life insurance plans; accident reports; time and attendance records; earning statements; travel vouchers; and payroll data needed to conform to all applicable laws, Government regulations and procedures, and the needs of the Agency in carrying out its personnel management responsibilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Foreign Service Act of 1980, FPM Chapters 293–294.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is made available to persons who have a legitimate need to review such records, as may be required in the performance of their official duties (in connection with appointments, transfers, details, promotions, training, retirements, reassignments, disciplinary or adverse actions, grievances, operations of the automated personnel/payroll systems and the preparation of the statistical reports, analyses, and other by-products of these systems).

Referral of information is made to (1) U.S. Congress and OPM for special reports; (2) accredited investigative agents of any Federal agency to carry out investigative functions; (3) authorized officials of the Department of State, Agency for International Development, U.S. International Communication Agency and Foreign Commercial Service of the Department of Commerce in connection with proposed details of Foreign Service employees or consideration by promotion boards; (4) authorized individuals of other Federal agencies, international organizations or State and local governments in cases where Foreign Service employees are being considered for detail or assignment to the agency or organizational entity concerned; (5) National Personnel Records Center and Washington National Records Center for records retirement and/or destruction; (6) private organizations, institutions or individuals to verify employment and to request record or credit checks; (7) current and former FAS employees to review their own personnel records; (8) appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation or order issued pursuant thereto; and (9) a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders at the applicable address listed above, except for the National Finance Center (P.O. Box 60,000, New Orleans, Louisiana) where they are maintained on computer tape and disk storage.

RETRIEVABILITY:

Records are indexed by name of employee and/or identification number.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets and in secured computer tape storage rooms.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until employees are separated from the Foreign Agricultural Service and are then retired or transferred to a new employing agency or destroyed in conformance with appropriate General Services Administration retirement and/or destruction schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Administrator, Management, Foreign Agricultural Service, United States Department of

Agriculture, 14th and Independence Avenue, S.W., Room 5095–S, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

A request for information should be addressed to the Assistant Administrator, Management, Foreign Agricultural Service (address above).

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should submit a written request to the Assistant Administrator, Management, Foreign Agricultural Service (address above).

CONTESTING RECORD PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system comes from the employee or former employee, employment applications, employee's supervisors, colleges and universities, Department of State Foreign Service Institute and Office of Medical Services, USDA Office of Security, overseas administrative/personnel officers, and other officials involved in personnel and payroll.

Signed at Washington, D.C., on October 1, 1982.

John R. Block,

Secretary of Agriculture.

[FR Doc. 82-27691 Filed 10-6-82; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

Los Padres National Forest Grazing Advisory Board; Meeting

The Los Padres National Forest Grazing Advisory Board will meet at 9:00 a.m. on November 9, 1982, at the Santa Lucia District Ranger Station, 1616 Carlotti Drive, Santa Maria, California. The purpose of this meeting is to consider (1) priorities for use of range betterment funds, (2) allotment management plans, and (3) review practice of summer field tour. A short movie, "A Cowhand's Song", will be previewed.

The meeting will be open to the public. Persons who wish to attend should notify me at 42 Aero Camino, Goleta, California 93117 (805–968–1578). Written statements may be filed with the committee before or after the meeting.

Dated: October 1, 1982.

Frederik G. deHoll,

Forest Supervisor,.

[FR Doc. 82-27573 Filed 10-6-82; 8:45 am]

BILLING CODE 3410-11-M

Sawtooth National Forest Grazing Advisory Board Committee; Meeting

The Sawtooth National Forest Grazing Advisory Board will meet at 1 p.m., November 5, 1982, at the Forest Supervisor's Office conference room, 1525 Addison Avenue East, Twin Falls, Idaho. The purpose of the meeting will be to review the use of Range Betterment Funds for FY 83 and to obtain board member's input for use of Range Betterment Funds in FY 85.

The Board will also receive a list of allotment management plans scheduled for FY 83, and be asked for input on plans scheduled for FY 84 and 85.

Written statements may be filed with the committee before or after the meeting.

The meeting will be open to the public. Their views and comments will be addressed at the end of the meeting. Written statements will be received up to within two weeks of the meeting.

Dates: September 30, 1982.

Bert F. Webster,

Acting Forest Supervisor.

[FR Doc. 82-27574 Filed 10-6-82; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Carbon Steel Wire Rod From Venezuela; Suspension of Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of suspension of investigation.

SUMMARY: The Department of Commerce has decided to suspend the antidumping investigation involving carbon steel wire rod from Venezuela. The basis for the suspension is an agreement by the only known producer and exporter in Venezuela of the subject product which is exported to the United States to cease exports of the subject product to the United States.

EFFECTIVE DATE: October 7, 1982.

FOR FURTHER INFORMATION CONTACT: Michael J. Altier, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone (202) 377–1785.

SUPPLEMENTARY INFORMATION: .

Case History

On February 8, 1982, we received a petition in proper form from Atlantic Steel Corp., Georgetown Steel Corp., Georgetown Texas Steel Corp., Keystone Consolidated, Inc., Korf Industries, Inc., Penn-Dixie Steel Corp., and Raritan River Steel Co. filed on behalf of the United States industry producing carbon steel wire rod. The petitioners alleged that carbon steel wire rod from Venezuela was being sold at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act).

On March 1, 1982, upon examining the petition as required under section 732 of the Act, we determined that there existed sufficient grounds upon which to initiate an antidumping investigation (47 FR 9259).

On March 25, 1982, the United States International Trade Commission (ITC) determined that there was a reasonable indication that an industry in the United States was being materially injured or was threatened with material injury by reason of imports of carbon steel wire rod from Venezuela which were alleged to be sold at less than fair value. The ITC published notice of its determination on April 1, 1982 (47 FR 13927).

On March 15, 1982, we presented a questionnaire concerning the allegations to CVG-Siderurgica del Orinoco, C.A. (Sidor), the only known producer and/or exporter from Venezuela of the subject product.

The petitioners alleged that sales of the subject product to the United States had been made during the calendar year 1981, the time originally chosen as the period of investigation. Subsequently, Sidor informed us that although several shipments of its merchandise had entered the United States during 1981, the actual sales for those entries were made in late 1980. Accordingly, the period of investigation was extended to include these sales. However, Sidor refused to include in its response to our questionnaire any of the requested sales information. Since the requested information was essential to the investigation, we therefore based our preliminary determination, in accordance with section 776(b) of the Act, on the best information otherwise available.

On July 19, 1982, we preliminarily determined that there was a reasonable basis to believe or suspect that carbon

steel wire rod from Venezuela was being sold, or was likely to be sold at less than fair value within the meaning of the antidumping laws. Notice of the preliminary affirmative determination was published in the Federal Register on July 23, 1982 (47 FR 31910). We directed the United States Customs Service to suspend liquidation of all entries of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after July 23, 1982, and to require a cash deposit or bond for each such entry of the merchandise in the amount of 40 percent of the f.o.b. value.

On August 31, 1982, the Department of Commerce (the Department) initialed a proposed agreement to suspend this investigation. The basis for the suspension was a proposed agreement between the Department and Sidor to cease exports of the subject product to the United States.

On the same date, in compliance with the procedural requirements of section 734(e) of the Act, we notified the petitioners of, and consulted with them regarding, the proposed agreement. At that time, we explained how the proposed agreement would be performed and enforced, how the agreement would meet the requirements of subsections 734 (b) and (d) of the Act, and offered to answer any questions. Petitioners also received copies of the proposed agreement on that date and all parties to the investigation were permitted to submit comments and information for the record. In addition, the ITC was notified of the proposed agreement.

Scope of Investigation

The product covered by this investigation is carbon steel wire rod which is a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, and not partly manufactured, valued over four cents per pound, currently provided for in item 607.17 of the *Tariff Schedules of the United States*.

Suspension of the Investigation

No negative comments have been submitted with respect to the proposed suspension agreement to cease exports of the subject product to the United States. We have determined that the agreement can be monitored effectively, and that the agreement is in the public interest. We find, therefore, that the criteria for suspending an investigtion pursuant to section 734 of the Act have been met. The terms and conditions of the agreement, signed October 1, 1982, are set forth in Annex I to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries, entered or withdrawn from warehouse, for consumption of carbon steel wire rod from Venezuela effective July 23, 1982, as directed in our notice of "Preliminary Determination of Sales at Less Than Fair Value" is hereby terminated. Any cash deposits on entries of carbon steel wire rod from Venezuela pursuant to that suspension of liquidation shall be refunded and any bonds posted shall be released.

The Department intends to conduct an administrative review within twelve months of the anniversary date of publication of this suspension as provided in section 751 of the Act.

Notwithstanding the suspension agreement, the Department will continue the investigation if we receive such a request in accordance with section 734(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

October 1, 1982.

Annex I—Suspension Agreement Carbon Steel Wire Rod from Venezuela

Pursuant to the provisions of sections 734 of the Tariff Act of 1930, as amended (19 U.S.C. 1673c) (the Act), and § 353.42 (19 CFR 353.42) of the Department of Commerce Regulations, the Department of Commerce (the Department) and CVG-Siderurgica del Orinoco, C.A. (Sidor), Apartado Postal 69.000—Altamira, Caracas, 106 Venezuela, enter into the following suspension agreement (the agreement) on the basis of which the Department shall suspend its antidumping investigation initiated on March 4, 1982 (47 FR 9259) with respect to carbon steel wire rod from Venezuela subject to the terms and provisions set forth below.

A. *Product Coverage.* This agreement applies to carbon steel wire rod from Venezuela which is the subject of the above referenced investigation, manufactured or exported by Sidor, and is currently provided for under item number 607.17 of the *Tariff Schedules of the United States* (hereinafter the subject product).

B. *Basis for the Agreement.* As of the effective date of this agreement, Sidor, the only known producer and exporter in Venezuela of the subject product which is exported to the United States, agrees not to make further exports of the subject product to the United States, either directly or through intermediaries, from Venezuela or through third countries.

C. *Monitoring.* Sidor will supply to the Department such information as the Department deems necessary to ensure that Sidor is in full compliance with the terms of this agreement, so as to enable the Department to monitor this agreement effectively in accordance with section 734 of the Act (19 U.S.C. 1673c) and § 353.42 (19 CFR 353.42) of the Department of Commerce Regulations. Such information, at a minimum, shall include a quarterly statement of Sidor's exports of the subject product to all countries. The statement shall include the volume of the subject product exported either directly or through intermediaries, together with any information Sidor possesses as to the ultimate destination of the merchandise, if this differs from the country to which the initial exportation is made. The statement shall be itemized by country of destination. In the absence of exports of the subject product to the United States, either directly or through intermediaries, Sidor's quarterly statement shall so indicate. Sidor agrees to submit such quarterly statements to the Department within 30 days after the beginning of the subsequent calendar quarter. Sidor will permit such data collection and verification as the Department deems necessary for monitoring this agreement. The Department may also request such information and conduct such verifications periodically pursuant to the administrative reviews conducted under section 751 of the Act. If the Department requests information in addition to the quarterly statements specified above, it will explain upon making such request the reason or reasons why it considers such information and/or verification thereof necessary to ensure full compliance with terms of this agreement. Sidor will notify the Department immediately should it alter its position with respect to any terms of this agreement.

D. *Violation of the Agreement.* The Department shall rescind this agreement and resume the investigation or issue an antidumping order, as appropriate under section 734(i) of the Act (19 U.S.C. 1673c(i)) and § 355.43 of the Department of Commerce's Regulations (19 CFR 353.43), with respect to the subject product if the Department determines pursuant to section 734(i)(1) of the Act that Sidor has not honored its obligations under this agreement. Additionally, the Department will resume this investigation or issue an antidumping duty order, as appropriate

under section 734(i) of the Act, if it determines that the agreement no longer complies with provisions of section 734 (b) and (d) of the Act (19 U.S.C., 1673c (b) and (d)).

E. *Other Provisions.* In entering into this agreement, Sidor does not admit that any sales of the subject product have been made at less than fair value.

The effective date of this suspension agreement is the date of publication of notice of suspension of investigation in the **Federal Register.**

Signed on this 1st day of October 1982.

For CVG-Siderurgica del Orinoco, C.A.

Andrew W. Sheldrick.

I have determined that the provisions of Paragraph B provide for the cessation of exports to the United States of the subject product and that the provisions of Paragraph C ensure that this agreement can be monitored effectively pursuant to section 734(d) of the Act. Furthermore, I have determined that this agreement meets the requirements of section 734(b) of the Act and is in the public interest as required under section 734(d) of the Act.

U.S. Department of Commerce.

Gary N. Horlock,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-27472 Filed 10-6-82; 8:45 am]

BILLING CODE 3510-25-M

Department of Interior; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00342. Applicant: U.S. Department of Interior, Bureau of Reclamation, P.O. Box 25007, Code D-1523, Denver, CO 80225. Instrument: High Resolution Double-Focusing Mass Spectrometer, VG-7070H with Accessories. Manufacturer: VC-Organic Limited, United Kingdom. Intended use of instrument: See Notice on page 45791 in the **Federal Register** of September 15, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument is intended to be used, and have it available to the applicant without unreasonable delay in accordance with Subsection 301.5(d)(4)(i) of the regulations, at the time the foreign instrument was ordered (May 21, 1981). Reasons: The applicant sent a letter dated April 13, 1981 to Nuclide Corporation (Nuclide) seeking information but never received a response. Nuclide quoted a delivery time of 180-270 days and admitted on the telephone it could not provide an instrument on time. Vacuum Generators, on the purchase order (dated May 21, 1981), offered a delivery time of 125 calendar days for the foreign instrument. Mass spectrometers fall in the category of instruments that are produced on order. As to the domestic availability of such instruments the regulations provide:

> * * * In determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case * * * Whether or not the domestic manufacturer has field tested or demonstrated the instrument will not, in itself, enter into the decision regarding the manufacturer's ability to manufacture an instrument. Similarly, in determining whether a domestic manufacturer is willing to produce an instrument, the Director may take into account the nature of the bid process, the manufacturer's policy toward manufacture of the product(s) in question, the minimum size of the manufacturer's production runs, whether the manufacturer has bid similar instruments in the past, etc. Also, if a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument.

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purpose of comparison with the foreign instrument. Where an applicant, as in this case, extends in good faith a letter to a domestic manufacturer and receives no reply, it is apparent that the domestic manufacturer is either not willing or able to produce an instrument of equivalent scientific value to the foreign instrument. Accordingly, the Department of Commerce finds that no domestic manufacturer was both "able and willing" to manufacture a domestic instrument of equivalent scientific value to the foreign instrument for such purpose as the foreign instrument is intended to be used at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-27602 Filed 10-6-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: The Mid-Atlantic 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 which will meet to discuss the role of the Scientific and Statistical Committee in relation to the Council; quota recommendations for fishing year 1983-84 for Atlantic mackerel and for 1983 for surf clams and ocean quahogs.

DATES: The public meeting will convene on Wednesday, November 3, 1982, at approximately 10 a.m., and will adjourn at approximately 4 p.m. The meeting may be lengthened or shortened or agenda items rearranged depending upon progress of same and will take place at the Best Western Airport Motel, Philadelphia International Airport, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, Room 2115-Federal Building, 300 South New Street, Dover, Delaware 19901, Phone: (302) 674-2331.

Dated: October 4, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-27622 Filed 10-6-82; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Soliciting Public Comment on Bilateral Textile Consultations With the Government of the Republic of the Maldives on Category 446 (Women's, Girls', and Infants' Wool Sweaters)

On September 29, 1982, the United States Government, under Section 204 of the Agricultural Act of 1956, as amended, requested the Government of the Republic of Maldives to enter into consultations concerning exports to the United States of wool sweaters in Category 446, produced or manufactured in the Maldives.

A complete description of these categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654)).

The purpose of this notice is to advise that, if no solution is agreed upon between the two governments within sixty days of the date of delivery of the aforementioned note, entry and withdrawal from warehouse for consumption of wool textile products in Category 446, produced or manufactured in the Maldives and exported to the United States during the twelve-month period beginning on September 29, 1982, may be restrained at a level of 15,210 dozen. The United States reserves the right to invoke the import control mechanism during the consultation period to forestall market disruption.

Anyone wishing to comment or provide data or information regarding the treatment of Category 446 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the consultations is not yet certain, it is requested that comments be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Texitiles and Apparel, Room 3100, U. S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 1, 1982.

[FR Doc. 82-27603 Filed 10-6-82; 8:45 am]

BILLING CODE 3510-25-M

CONSUMER PRODUCT SAFETY COMMISSION

Privacy Act of 1974; Systems of Records; Annual Publications and Revisions

AGENCY: Consumer Product Safety Commission

ACTION: Annual Publication of Systems of Records.

SUMMARY: The Consumer Product Safety Commission is publishing the complete text of its Privacy Act systems of records, as amended.

DATES: Effective October 7, 1982.

FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires agencies to publish annually in the **Federal Register** a notice of the existence and character of their systems of records. the Commission last published the full text of its systems of records at 47 FR 69, January 4, 1982. Since that publication, the Commission has published two new systems of records: CPSC–23, Health Unit Medical Records, at 47 FR 18165, April 28, 1982, and CPSC–6 Office of the General Counsel Timesheets, at 47 FR 39227, September 7, 1982.

The Commission is now making further revisions to its systems of records, as described below, and publishing them in full text.

SUPPLEMENTARY INFORMATION:

Notifications

The notification, record access, and contesting procedures have been changed so that all requests for information about, access to, or correction to any of the Commission's Privacy Act record systems will be directed to the Commission's Freedom of Information/Privacy Act officer.

System Managers

New system managers have been designated for systems CPSC–1, CPSC–2, and CPSC–17. In CPSC–1, Accident Reports, the system manager has been changed from the Deputy Associate Director for Epidemiology to the Director, Division of Hazard and Injury Data Systems of the Directorate for Epidemiology. In CPSC–2, Advisory Committee Records, the position of the Committee Management Officer, who is the system manager for these records, has been relocated from the Office of Public Affairs to the Directorate for Health Sciences. In CPSC–17, Commissioned Officers Personal Data File, the Commission's Regional Office Directors have been designated as systems managers to reflect the relocation of these records from Commission headquarters to the various Regional Offices with which the commissioned officers are associated. The system location paragraph of this notice has also been amended to reflect this change.

Authority

The authority citation for CPSC–2, Advisory Committee Records, has been changed by deleting the statutory authorities for two former advisory committees and adding the authority for the Commission's Toxicological Advisory Board. The authority cited for CPSC–7, Employee Discrimination Complaint and Investigation File and CPSC–16, Upward Mobility Counseling Files, has been changed from a chapter of the Federal Personnel Manual to a Part of the Code of Federal Regulations.

Purposes

A sentence has been added to CPSC–13, Personnel Data System, to more fully describe the internal uses of this system.

Other Changes

Other minor, non-substantive, corrections or changes in language have been made and will not be enumerated.

Since the revisions made in connection with this annual publication do not affect the scope, usage, or routine uses of any system of records, they are being made effective immediately.

Dated October 1, 1982.

Sayde E. Dunn,

Secretary, Consumer, Product Safety Commission.

Consumer Product Safety Commission

Table of Contents

CPSC–1 Accident Reports (In-Depth)
CPSC–2 Advisory Committee Records
CPSC–3 Claims
CPSC–4 Consumer Volunteer Roster

CPSC–5 Employee Biographies
CPSC–6 Office of the General Counsel Timesheets
CPSC–7 Employee Discrimination Complaint and Investigation File
CPSC–8 Employee Executive Development Records
CPSC–9 [Reserved]
CPSC–10 Employee Merit Promotion Program Files
CPSC–11 Employee Motor Vehicle Operators and Accident Report Records
CPSC–12 Employee Outside Activity Notices
CPSC–13 Personnel Data System
CPSC–14 [Reserved]
CPSC–15 Employee Relations Files
CPSC–16 Employee Upward Mobility Counseling Files
CPSC–17 Commissioned Officers Personal Data File
CPSC–18 Job Applicant File
CPSC–19 Labor-Management Relations File
CPSC–20 [Reserved]
CPSC–21 [Reserved]
CPSC–22 Management Information System
CPSC–23 Health Unit Medical Records
Appendix I—Regional Office Addresses
Appendix II—Pertinent Record Systems of Other Agencies

CPSC–1

SYSTEM NAME:

Accident Reports (In-Depth)—CPSC–1

SYSTEM LOCATION:

Consumer Product Safety Commission, Directorate for Epidemiology, 5401 Westbard Avenue, Washington, D.C. 20207

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Victims of Consumer produce-related injuries on which specific epidemiologic data is needed in order to analyze and correct product hazards.

CATEGORIES OF RECORDS IN THE SYSTEM:

This record contains demographic data on an injured person, location of accident, data on injury, product and manufacturer identification, and a narrative description of the accident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Consumer Product Safety Act, section 5 (15 U.S.C. 2054).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used as a compilation of statistical information on product-related injuries to support CPSC staff work in analysing the incidence and severity of product related injuries and to respond to Congressional inquiries and requests for information from private individuals and private and public organizations.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Records may be provided to another Federal, State or local agency or authority engaged in activities relating to health, safety or consumer protection in accordance with section 29(e) of the Consumer Product Safety Act, as amended (Pub. L. 92–573, as amended by Pub. L. 94–284, 15 U.S.C. 2078(e)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic data bank disk. The original hard copy of the investigation report is maintained by the National Injury Information Clearinghouse, Directorate for Epidemiology in file folders.

RETRIEVABILITY:

Records are retrievable by a coded number which indicates the date of assignment of the investigation, the Commission unit requesting the report, the product involved and a sequential number assigned to the investigation.

SAFEGUARDS:

Confidentiality of the name of the accident victim and attending physician are guaranteed by the Consumer Product Safety Act, section 25(c) (15 U.S.C. 2074(c)) and, therefore, names do not appear in the record and are not used for retrieval.

RETENTION AND DISPOSAL:

Records are maintained for a period of 10 years subject to change in Commission policy. Disposal is by normal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Hazard and Injury Data Systems, Directorate for Epidemiology, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is subject to the specific exemption provided for in 5 U.S.C. 552a(k)(4) and is therefore exempt from subsections (c)(3), (d) (2) and (3), (e)(1), (e)(4)(G), (H) and (I) and (f) of section 552a. The data is required to be maintained by 15 U.S.C. 2054 and is used solely as statistical records.

CPSC–2

SYSTEM NAME:

Advisory Committee Records—CPSC–2

SYSTEM LOCATION:

Consumer Product Safety Commission, Directorate for Health Sciences, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals seeking or nominated for or selected for membership on CPSC Advisory Committees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of applicants contain an individual's name, address, personal history and qualifications, any correspondence with the individual and any Commission memoranda relating to the selection of the individual. Records of members additionally contain information about the member's financial compensation and Commission documents relating to the individual's service as a member.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 2077 and 15 U.S.C. 1275.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used to select candidates for filling vacancies on advisory committees and to administer the operation of the committees.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy.

RETRIEVABILITY:

Records are indexed alphabetically by name of committee and then by name of applicant or member.

SAFEGUARDS:

Records are maintained in file cabinets in a secured area.

RETENTION AND DISPOSAL:

Applicants' and nominees' records are retained until new applications are solicited or committee is terminated and then destroyed. Members' records are retained for 2 years after termination of membership and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Committee Management Officer, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information is provided by applicants, nominees for, and members of Advisory Committees and by Commission staff.

CPSC-3

SYSTEM NAME:

Claims—CPSC-3

SYSTEM LOCATION:

Consumer Product Safety Commission, Division of Personnel Management, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CPSC employees sustaining personal property damage or loss incident to service; CPSC employees involved in situations where personal injury or property damage to others results from wrongful or negligent act or omission of employee acting within scope of employment; claimants sustaining injury or property damage due to activities of CPSC or its employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain claims for money damages, accident and investigative reports, and correspondence and other documents concerning claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 240–243; 28 U.S.C. 1346(b), 2672.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) For processing claims and litigation under the Federal Tort Claims Act or the Military Personnel and Civilian Employee's Claims Act; (b) For preparation of reports.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Information from a record in this system of records may be disclosed to a person or entity having a legal interest in the claim.

Information may be disclosed to Federal, state, or local law authorities, court authorities, administrative authorities, for use in connection with civil, criminal, administrative, and regulatory proceedings and actions relating to the claim.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy.

RETRIEVABILITY:

Records are indexed alphabetically by name of individual claimant.

SAFEGUARDS:

Records are maintained in combination lock metal file cabinet in a secured area. Access to such area is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained up to six years after case is closed. Disposal is by normal procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Labor and Employee Relations Branch, Division of Personnel Management, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information is provided (1) the individual to whom the record pertains (2) CPSC and/or its employees (3) affidavits, statements, or testimony of witnesses (4) official documents relating to claim (5) correspondence from organizations or persons involved.

CPSC-4

SYSTEM NAME

Consumer Volunteer Roster—CPSC-4.

SYSTEM LOCATION:

Consumer Product Safety Commission, Office of the Secretary, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consumers who wish to volunteer their services in the development of safety standards as members of development committees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This record contains consumer's name, address, and qualification for serving in the Standards development process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7, Consumer Product Safety Act (15 U.S.C. 2056).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information is made available to organizations developing safety standards for consumer products in order to obtain consumer participation.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on hard copy and on computer magnetic media.

RETRIEVABILITY:

Records are indexed by state and name of consumer. Computer records are retrieved by any one or any combination of data elements.

SAFEGUARDS:

Hard copy records are maintained in secure file cabinets. Access to computer records is restricted to the staff of the Office of the Secretary by use of computer passwords.

RETENTION AND DISPOSAL:

Records are retained until new set of volunteer's names are solicited by the Commission; e.g., each 12 months. Hard copy records are destroyed. Computer records are made available for reuse.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information is provided by individuals on whom the record is maintained.

CPSC-5

SYSTEM NAME:

Employee Biographies—CPSC-5

SYSTEM LOCATION:

Consumer Product Safety Commission, Office of Public Affairs, 5401 Westbard Avenue Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CPSC employees who have submitted biographical information.

CATEGORIES OF RECORDS IN THE SYSTEM:

This record contains a brief statement of information relating to educational and professional background and present position and responsibilities within the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Consumer Product Safety Act (15 U.S.C. 2051–83).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is furnished to the public media in connection with employee activities and employee participation in conferences, meetings and other functions.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy.

RETRIEVABILITY:

Records are indexed alphabetically by name of employee.

SAFEGUARDS:

Records are maintained in locked file cabinets in secured areas.

RETENTION AND DISPOSAL:

Records are maintained until employee terminates employment at agency. Disposal is by normal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Public Affairs, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in this record is furnished by the employes to whom it pertains.

CPSC-6

SYSTEM NAME:

Office of the General Counsel Timesheets—CPSC-6

SYSTEM LOCATION:

Office of the General Counsel, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys in the Office of the General Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Timesheet forms filled out daily by each attorney, and containing a chronological record of the time intervals devoted to each of the attorney's activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C.; 15 U.S.C. 2053; U.S.C. Chapter 43.

PURPOSE(S):

a. To document the workload of the Office of the General Counsel and of its organizational units in order to provide a factual basis for staffing decisions.

b. To help attorneys make more effective use of their time.

c. To provide a factual basis for performance appraisals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system will be used solely as a management tool within the Consumer Product Safety Commission.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Filed by attorney name and organizational unit.

SAFEGUARDS:

Records are stored in lockable metal file cabinets with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are destroyed after two and one half years.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual to whom it applies.

CPSC-7

SYSTEM NAME:

Employee Discrimination Complaint and Investigation File—CPSC-7

SYSTEM LOCATION:

Consumer Product Safety Commission, Office of Equal Employment Opportunity and Minority Enterprise (OEEOME), 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commission employees and applicants for employment who have filed complaints of discrimination based on race, color, religion, sex, national origin or age.

CATEGORIES OF RECORDS IN THE SYSTEM:

This record contains information pertaining to the complainant, any alleged discriminatory official, and others having a relationship to the complaint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR Part 1613.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records is used or a record may be used for: (1) Review by the assigned EEO Investigator (2) review by the Director, Office of Equal Employment Opportunity and Minority Enterprise (3) referral to Office of General Counsel for legal analysis and action.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in hard copy.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in locked file cabinets in secured areas.

RETENTION AND DISPOSAL:

Records are retained indefinitely. Disposal is by normal procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Equal Employment Opportunity and Minority Enterprise, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in this file is furnished by supervisors, co-workers and others who are involved in the complaint or have information pertaining thereto.

CPSC-8

SYSTEM NAME:

Employee Executive Development Program Records—CPSC-8

SYSTEM LOCATION:

Consumer Product Safety Commission, Division of Personnel Management, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commission employees in grade GS-13 and above.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the education training; employment history and earnings; appraisals of 1st and 2nd line supervisors; honors, awards or fellowships; military service; birthplace, birthdate, social security number, home address of applicants for the various executive development programs which are offered on an open Commission competitive basis. Also, records contain panel evaluations and selection rating information on successful and unsuccessful nominees; correspondence to training facilities and employees pertaining to the various executive developmental programs; statistical compilation reports submitted to OMB and OPM covering reporting requirements on CPSC employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11348, 5 U.S.C. 4103, 4104, 4108, 4109, 4110, 4113, 4118.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records is used or a record may be used:

(a) To facilitate career development of employees.

(b) To provide statistical reports to Congress, agencies, and the public on characteristics of the Federal work force.

(c) To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(d) To request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information concerning the hiring or retention of an employee.

(e) To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to the appropriate agency, whether Federal, state, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rules, regulation, or order issued pursuant thereto.

(f) As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions of manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

(g) To provide data for the automated Central Personnel Data File (CPDF).

(h) By the Office of Personnel Management for purposes of making a decision when a Federal employee or former Federal employee is questioning the validity of a specific document in an individual file.

(i) To any agency of the Federal Government having oversight or review authority with regard to Office of Personnel Management activities.

(j) To provide data to update the Federal Automated Career Systems (FACS).

(k) To provide data to the Executive Inventory Files.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by combination of names or subject matter.

SAFEGUARDS:

Records are located in metal file cabinets with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are maintained indefinitely. Disposal is by normal procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Policy and Evaluation Branch, Division of Personnel Management, Consumer Product Safety Commission, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary,

Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RESOURCE SOURCE CATEGORIES:

Information in this system of records is provided by the individual to whom it applies or is derived from information he/she supplied, and information provided by other agency officials.

CPSC-10.

SYSTEM NAME:

Employee Merit Promotion Program—CPSC-10

SYSTEM LOCATION

Consumer Product Safety Commission, Division of Personnel Management, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants, current and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to promotions subject to the merit promotion plan. The records consist of employment applications and performance appraisals, rating sheets and material placed into the records to support the rating.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

FPM Chapter 335.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used:

(1) To respond to requests from employees regarding the status of their merit promotion case.

(2) To provide information to the Office of Equal Employment Opportunity when an individual files a discrimination complaint.

(3) To respond to a court subpoena and/or refer to a court in connection with a civil suit.

(4) To adjudicate an appeal, complaint, or grievance.

(5) To effectuate promotion of employees concerned.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained and by Merit Promotion case numbers.

SAFEGUARDS:

Records are located in a metal file cabinet and access is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

The records are maintained up to two years after a selection has been made.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Employment Branch, Division of Personnel Management, Consumer Product Safety Commission, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in this record is provided by:

(1) Individual to whom the record pertains,

(2) Agency and/or Commission officials,

(3) Affidavits or statements from employee,

(4) Official documents relating to appeal, grievance, or complaint,

(5) Correspondence from specific organization or persons.

CPSC-11

SYSTEM NAME:

Employee Motor Vehicle Operators and Accident Report Records—CPSC-11.

SYSTEM LOCATION:

Consumer Product Safety Commission, Division of Management Services, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Commission who (1) hold Government motor vehicle operator's permit and who regularly operate vehicles (2) are involved in automobile accidents.

CATEGORIES OF RECORDS IN THE SYSTEM:

This record contains data on employees issued a Government motor vehicle operator's permit, and reports, correspondence and fiscal documents concerning employees involved in automobile accidents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Consumer Product Safety Act (15 U.S.C. 2051–2081) and 28 U.S.C. Chap. 171.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used as indicated below:

(1) To identify those CPSC employees authorized to operate Government-owned or Government-leased vehicles.

(2) For use by the Office of General Counsel in connection with claims litigation.

(3) To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to the appropriate agency, whether Federal, State, or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(4) To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant information to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, or the issuance of a license, grant, or other benefit.

(5) To provide information or disclose to a Federal Agency, in response to its request, in connection with the hiring or retention of an employee, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy.

RETRIEVABILITY:

Records are indexed by employee name.

SAFEGUARDS:

Records are maintained in a secured area.

RETENTION AND DISPOSAL:

Records on driver's permits are retained for one year after employee is terminated. Records on automobile accidents are retained for two years after accident. Disposal is by normal procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Management Services, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

The information in this record is furnished by the employee. Information on accidents is furnished by the employee and witnesses to the accident.

CPSC-12

SYSTEM NAME:

Employee Outside Activity Notices—CPSC-12.

SYSTEM LOCATION:

Consumer Product Safety Commission, Ethics Counselor, Deputy General Counsel, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commission employees carrying on outside activities such as consultative services, practice of law, or teaching.

CATEGORIES OR RECORDS IN THE SYSTEM:

This system of records contains information concerning the employee's position, nature of outside activity, relation of official duties to activity, and method of compensation for outside activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records is used by the Ethics Counselor in making a determination as to whether an employee's outside activity constitutes a real or apparent conflict of interest.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on hard copy.

RETRIEVABILITY:

Records are indexed by employee name.

SAFEGUARDS:

Records are maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Records are maintained until employee terminates employment with agency. Disposal is by normal procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Ethics Counselor, Deputy General Counsel, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

The information in these records is furnished by the employees to whom it pertains.

CPSC-13

SYSTEM NAME:

Personnel Data System—CPSC-13

SYSTEM LOCATION:

Consumer Product Safety Commission, Associate Executive Director for Administration, 5401 Westbard Avenue, Washington, D.C. 20207 and the Headquarters unit or Regional Office to which an employee is assigned. Regional Office addresses are listed in Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of CPSC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of payroll records, personnel security records, safety records, EEO records, and personnel records. In addition, the system contains data necessary to update the Central Personnel Data File at the Office of Personnel Management, to process personnel actions, to perform detailed accounting distributions, to automatically provide for such tasks as mailing checks and bonds, and to prepare and mail tax returns and reports. Records include, but are not limited to the following categories of records:

1. Employee identification and status data such as name, social security number, date of birth, sex, work schedule, type of appointment, education, veteran's preference, military service, and race/national origin.

2. Relevant data such as service computation date for leave, date probationary period began, and date of performance rating.

3. Position and pay data such as pay plan, occupational series, grade, step, salary, merit pay, organization location.

4. Employment data such as merit pool identifier, position description, special employment program, and target occupational series and grade.

5. Payroll data such as time; attendance; leave; Federal, State, and local tax; allotments; savings bonds; and other pay allowances and deductions.

6. Personnel security data such as security clearance level and basis with dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., Part III, is the authority for the overall system. Specific authority for use of Social Security numbers is contained in Executive Order 9397, 26 CFR 31.6011(b)(2), and 26 CFR 31.6109-1. The authority for the personnel security clearance and statistical records is contained in Executive Order 19450, April 27, 1953, as amended; Executive Order 12065, June 28, 1978; 31 U.S.C. 686; and 40 U.S.C. 318(a) through (d).

PURPOSE(S):

This system supports the day to day operating requirements associated with personnel oriented program areas from hiring employees and paying employees to calculating estimated retirement annuities. Payroll-related outputs include a comprehensive payroll;

detailed accounting distribution of costs; leave data summary reports; an employee's statement of earnings, deductions and leave every payday for each employee; State, city, and local unemployment compensation reports; Federal, State, and local tax reports; W–2 wage and tax statements; and reports of withholdings and contributions. Personnel-related reports include automated personnel actions as well as organization rosters, retention registers, retirement calculations, reports of the Federal civilian employment, employee master record printouts, length of service lists, and listings of within-grade increases. These records are use to provide data for agency reports and internal workforce statistics and information regarding such matters as average grade, minority, veteran and handicap employment, retention-standing, within-grade due dates, occupational groupings, geographic employment and others related to the operation of the personnel office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses of records maintained in the system include:

a. Providing data to the Office of Personnel Management's Central Personnel Data File (CPDF).

b. Providing a copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, and 5520.

c. Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed tax withholding certificates shall be furnished the city in response to a written request from an appropriate city official to the Assistant Administrator for Plans, Programs, and Financial Management, General Services Administration (B), Washington, D.C. 20405.

d. To the extent necessary, records are available to Commission and outside government agencies to monitor and document grievance proceedings, EEO complaints, and adverse actions; and to provide reference to other agencies and persons for employees seeking employment elsewhere.

e. Some records or data elements in this system of records may also be in the Office of Personnel Management's government-wide system OPM/GOVT–1 and are subject to that system's routine uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper in file folders and on computer magnetic media.

RETRIEVABILITY:

Paper records are filed by name. Computer records are retrievable by any data element or combination of data elements.

SAFEGUARDS:

Paper records are stored in lockable metal cabinets or in secured rooms. Password system protects access to the computerized records. Information is released only to authorized officials on a need-to know basis.

RETENTION AND DISPOSAL:

Payroll-related records are sent to storage 2 years after the end of the fiscal year to which they pertain.

Personnel-related records are disposed of 2 years after termination of employment.

SYSTEM MANAGER(S) AND ADDRESS:

For payroll-related records: Director, Division of Financial and Management Services, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

For personnel-related records: Chief, Employment Branch, Division of Personnel Management, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

The individuals themselves, other employees, supervisors, other agencies' management officials, non-Federal sources such as private firms, and data from the systems of records OPM/GOVT–1 and EEOC/GOVT–1.

CPSC–15

SYSTEM NAME:

Employee Relations Files—CPSC–15

SYSTEM LOCATION:

Consumer Product Safety Commission, Division of Personnel Management, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Consumer Product Safety Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to: (1) Disciplinary actions, complaints, grievances, potential adverse actions, and proposals, decisions, or determinations made by management relative to the foregoing; (2) retirement records.

The records consist of the notices to the individuals, records of resolutions of complaints, materials placed into the record to support the decision or determination, affidavits or statements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 4308, 5115, 5338, 7151, 7301, 7701, 8347, Executive Orders 9830, 10987, 11222, 11478.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used: (1) To repond to a request from a Member of Congress regarding the status of an appeal, complaint or grievance. (2) To provide information to the public on the decision of an appeal, complaint, or grievance required by the Freedom of Information Act. (3) To respond to a court subpoena and/or refer to a district court in connection with a civil suit. (4) To adjudicate or resolve an appeal, complaint, or grievence. (5) As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions of manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel mangement functions. (6) To refer, where there is an indication of a violation or potential violation of

law, whether civil, criminal, or regulatory in nature, to the appropriate agency, whether federal, state, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto. (7) To request information from a federal, state or local agency maintaining Civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, if necessary to obtain relevant information to an angency decision concerning the hiring or retention of an employee, the issuance of a security clearance, or the issuance of a license, grant, or other benefit. (8) To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, or issuance of a license, grant or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision of that matter.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Records are located in a combination lock metal file cabinet and access is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

The records are maintained up to 2 years after an employee has left the Consumer Product Safety Commission. Disposal is by normal procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Labor and Employee Relations Branch, Division of Personnel Management, Consumer Product Safety Commission, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in these records is furnished by: (1) Individual to whom the record pertains (2) Agency and/or Commission officials (3) Affidavits or statements from employee (4) Testimonies of witnesses (5) Official documents relating to appeal, grievance, or complaints (6) Correspondence from specific organization or persons.

CPSC-16

SYSTEM NAME:

Employee Upward Mobility Counseling Files—CPSC-16

SYSTEM LOCATION:

Office of Equal Employment Opportunity and Minority Enterprise, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons participating in the Upward Mobility Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This record contains information regarding the counseling of employees to assist them in enhancing their career in the Federal system; contains personal data on employees seeking advancement or Upward Mobility assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR Part 1613.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records is reviewed by the Upward Mobility Counselor and Director, OEEOME, in counseling and placing employees.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in locked files in a secured area.

RETENTION AND DISPOSAL:

Records are retained until employee reaches goal. Disposal is by normal procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Equal Employment Opportunity and Minority Enterprise, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in this record is furnished by the employee to whom it pertains and by employee's supervisors.

CPSC-17

SYSTEM NAME:

Commissioned Officers Personal Data File—CPSC-17.

SYSTEM LOCATION:

A complete record on every commissioned officer is maintained in the Regional Office to which the commissioned officer is assigned. Records concerning the commissioned officer's activities and performance are also maintained by the CPSC Regional Office to which the individual is assigned. Regional Office addresses are listed in Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

State employees commissioned as officers of CPSC.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains documents related to the commissioning of the individual and personal data including name, social security number, date of birth, educational background, employment history, security clearance information, medical information, fingerprints, home address and phone number, duty station, service computation date and benefits information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 29(a)(2), Consumer Product Safety Act (15 U.S.C. 2078(a)(2)); E.O. 10450, sections 8(c), 9(a), 9(b); E.O. 10561.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) By agency officials for purposes of review in connection with appointments, reassignments, and determination of qualifications for reappointment of an individual.

(2) To provide statistical reports to Congress, agencies and the public on characteristics of the Commissioned officer program.

(3) As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personal management functions.

(4) To provide information or disclose to a Federal or state agency, in response to its request, in connection with the hiring or retention of an employee, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(5) To request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a license, grant, or other benefit.

(6) Disclosure to a congressional office in response to an inquiry from the congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are located in lockable metal file cabinets or metal file cabinets in secured rooms with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

The records are maintained and disposed of in accordance with Commission records management policies and procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Office Directors, Consumer Product Safety Commission, (Regional Office addresses are listed in Appendix I).

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in these records comes either from the individual to whom it pertains or from agency officials, CPSC supervisions, or state officials.

CPSC-18

SYSTEM NAME:

Job Applicant Files—CPSC-18

SYSTEM LOCATION:

Consumer Product Safety Commission, Division of Personnel Management, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment who have forwarded resumes or Standard Form 171's to the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain personal data and job history in the form of a resume or Standard Form 171.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

FPM Chapters 333 and 713.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these files is reviewed as vacancies occur for the purpose of placement.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy.

RETRIEVABILITY:

Records are indexed alphabetically by name of applicant within general job categories.

SAFEGUARDS:

Records are maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Record are maintained up to two years and disposal is by normal procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Employment Branch, Division of Personnel Management, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in this record is furnished by the person to whom it pertains.

CPSC-19

SYSTEM NAME:

Labor Management Relations Files—CPSC-19.

SYSTEM LOCATION:

Consumer Product Safety Commission, Division of Personnel Management, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CPSC employees involved in union activity, whether in the capacity of an officer or a rank and file employee.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain data relating to (1) employees involved in the maintenance of the labor-management program (2) employees presenting grievances under the collective bargaining agreement (3) employees involved in unfair labor practice charges pursuant to statute or (4) employees whose grievances are presented to arbitration.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 71.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Materials in these records are used primarily for reference except in the cast of grievances, unfair labor practice charges, and arbitrations, where information may be essential to prepare for a hearing.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

Those records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Records are located in a combination lock metal file cabinet and access is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

The records are maintained up to two years after an employee has left the Consumer Product Safety Commission.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Labor and Employee Relations Branch, Division of Personnel Management, Consumer Product Safety Commission, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in this record is furnished by:

(1) Individual to whom the records pertains

(2) Agency and/or Commission official

(3) Affidavits or statements from employee

(4) Testimony of witnesses

(5) Official document relating to grievance

(6) Correspondence from specific organization or persons.

CPSC-22

SYSTEM NAME:

CPSC Management Information System—CPSC-22.

SYSTEM LOCATION:

Consumer Product Safety Commission, Associate Executive Director for Administration, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CPSC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain information on work and leave hours charged by individual employees against CPSC programs, projects, and organization categories. The data included are: Program Codes, Project Codes, Organization Codes, Reporting Period, Employee Name and CPSC Employee Number, and hours charged.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 2051 et seq.; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used to produce periodic printed reports which show total employee time and costs allocated to Commission programs and projects by organizational elements. The cost information includes information derived from the Commission's accounting system. Some of the reports will display the time charged by individual employees by programs and projects within organizational elements.

These reports are distributed to CPSC managers and staff at all levels as a management tool to:

(a) Inform project managers of time worked by individuals on specified program and project activities;

(b) Assure accurate reporting and recording of time worked on Agency programs and projects;

(c) Track the agency's work in terms of programs and projects;

(d) Assist in the preparation of the CPSC Fiscal Year Operating Plan;

(e) Assess achievement of planned goals established in the CPSC Fiscal Year Operating Plan;

(f) Identify resource allocation deficiencies;

(g) Provide an historical record of Agency program, project, and organization resource expenditures;

(h) Assure effective distribution of staff skills for planned workloads;

(i) Provide reports to top level management on Agency accomplishment.

Printed reports produced by the system are distributed to project leaders, management, and supervisory personnel within the Commission.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy, on computer punch cards, and on computer magnetic media.

RETRIEVABILITY:

Records are retrievable by any of the data items on the records.

SAFEGUARDS:

Access to individual computer records is restricted to staff of the Associate Executive Director for Administration through the use of special computer identification codes. Hard copy individual records and punch cards are kept in locked file cabinets with access also restricted to the staff of the Associate Executive Director for Administration. Management Information System data will not be used as evidence against the supplying employee in employee performance evaluations or adverse actions.

RETENTION AND DISPOSAL:

Individual hard copy employee records, punch cards, and computer records, other than time and cost totals, are retained for not more than one year. Disposal is accomplished through magnetic disc or magnetic tape erasure for computer-stored records, and direct disposal into trash for hard copy individual records and punch cards.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Executive Director for Administration, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in these records is furnished by the employees to whom it pertains.

CPSC-23

SYSTEM NAME:

Health Unit Medical Records—CPSC-23.

SYSTEM LOCATION:

CPSC Employee Health Unit, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CPSC Headquarters employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records of CPSC employees who have received health care or health maintenance examinations in the Employee Health Unit, and names and addresses of relatives or friends of these employees to be contacted in case of emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901, 44 U.S.C. 3101.

PURPOSE(S):

a. To document single incidences of walk-in patients, symptoms and treatment.

b. To maintain a continuing history file on each patient.

c. To document physical examinations, complete with histories and laboratory reports (physicals normally limited to CPSC laboratory and warehouse personnel whose work involves a possible health risk).

d. For use by Health Unit nurses and doctors in the course of providing medical treatment and advice to Commission employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To report individual cases of certain diseases and injuries to Federal, state, and local health authorities, as required by law.

b. To make available records of occupational injuries and illnesses to Federal and state health officials as required by law.

c. To notify employee-designated relative or friend in case of health emergency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records, primarily handwritten or typed cards and forms, plus EKG tracings mounted on forms, are stored in locked file cabinets.

RETRIEVABILITY:

Filed alphabetically by patient's name.

SAFEGUARDS:

Access to records is limited to Health Unit personnel. Records are released only upon written request of the employee.

RETENTION AND DISPOSAL:

Records are retained for duration of CPSC employment. On termination of employment records are given to employee or forwarded to employee's physician as requested by employee. if terminated employee does not take possession of his or her records or direct that they be forwarded to a physician, the records are sealed and sent to the Personnel Office for inclusion in the employee's official personnel folder, which is sent to the Federal Records Center in St. Louis, Missouri for retention, or to a new Federal employer, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Management Services, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the employee to whom a record pertains, Health Unit personnel, an employee's personal physician when the employee approves, witnesses of accident or illness incidents, and medical records transferred from an employee's previous employer.

Appendix I— Regional Office Addresses

Southeastern Regional Office, 800 Peachtree Street, N.E., Suite 210, Atlanta, Georgia 30308.

Midwestern Regional Office, 230 S. Dearborn Street, Room 2945, Chicago, Illinois 60604.

Southwestern Regional Office, 1100 Commerce Street, Room 1C10, Dallas, Texas 75242.

Northeastern Regional Office, 6 World Trade Center, Vesey Street, 6th Floor, New York, New York 10048.

Western Regional Office, 555 Battery Street, Room 416, San Francisco, California 94111.

Appendix II—Pertinent Record Systems of Other Agencies

Other Federal agencies maintain government-wide systems of records which may contain information about CPSC employees. Some of these records may be physically located at CSPC. These systems include:

1. Office of Personnel Management, OPM/GOVT-1, General Personnel Records (includes official personnel folders).

2. Office of Personnel Management, OPM/GOVT-2, Performance Appraisal Records.

3. Office of Personnel Management, OPM/GOVT-3, Adverse Action Records.

4. Office of Personnel Management, OPM/GOVT-4, Executive Branch Public Financial Disclosure Records (includes financial interest disclosure forms of CPSC employees subject to the Ethics in Government Act).

5. Office of Personnel Management, OPM/GOVT-5, Recruiting, Examining, and Placement Records.

6. Office of Personnel Management, OPM/GOVT-6, Personnel Research and Test Validation Records.

7. Office of Personnel Management, OPM/GOVT-7, Applicant Race, Sex, National Origin, and Disability Status Records.

8. Office of Personnel Management, OPM/GOVT-8, Confidential Statements of Employment and Financial Interests (contains CPSC employees' Form 219).

9. Office of Personnel Management, OPM/GOVT-9, File, on Position Classification Review Requests (Appeals) and Grade and Pay Retention Appeals.

10. Federal Emergency Management Agency, FEMA/GOVT-1, Uniform Identification System for Federal Employees Performing Essential Duties During Emergencies.

11. Equal Employment Opportunity Commission, EEOC/GOVT-1, Equal Employment Opportunity Complaint Records and Appeal Records.

12. Merit System Protection Board, MSPB/GOVT-1, Appeal and Case Records.

[FR Doc. 82-278647 Filed 10-6-82; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Preparation of Draft Environmental Impact Statement (DEIS) for Proposed Harbors on Akutan and Unalaska Islands, Alaska.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. The proposed action is to determine the engineering, environmental, and economic feasibility of two potential harbor sites near Akutan, Alaska. Each alternative would provide a sheltered area of about 19 acres for a fleet size of 42 bottomfishing vessels. Harbor depth would be 16 feet with an entrance channel depth of 18 feet.

2. Two alternatives will be considered in detail for Akutan.

a. Site 1 is located on the southeastern side of Akutan Harbor, across the bay from Akutan village.

Three rubblemound breakwaters would provide protection. Two breakwaters with crest heights of +14 feet MLLW would be connected, one perpendicular to shore and one parallel to the shoreline, both 910 feet long. The third breakwater, 710 feet long with a crest height of +9.5 feet would be placed perpendicular to shore on the west side. Approximately 242,000 cubic yards of rock would be required for breakwater construction and 185,000 cubic yards of dredged material would be removed.

b. Site 2 is located adjacent to the village of Akutan on the north side of the Akutan Harbor. Two floating breakwaters, each 800 feet long, 60 feet wide, and 20 feet deep would be joined at right angles. The section perpendicular to the shore would abut a short rubblemound breakwater that extends to the 30 foot depth. The floating breakwaters would be of reinforced concrete covering polystyrene foam. Large anchors and heavy chains or cable would anchor them to the bottom of the harbor. Approximately 10,200 cubic yards of dredged material would be removed.

c. Additional sites near Unalaska Islands may also be investigated in detail.

3. A Public Notice, No. NPAEN–08205, was circulated July 15, 1982 to Federal, State and local agencies and private interest groups requesting comments or suggestions for consideration in the reconnaissance report. Coordination has been initiated with concerned State and Federal agencies. At this time a scoping meeting has not been scheduled; however, notification will be made prior to meetings concerning the proposed project.

4. Significant issues to be discussed in the DEIS include the need for the project and project impacts on the fish, wildlife, and cultural resources as well as the social-economic impacts on local communities.

5. The draft feasibility report and environmental impact statement are estimated to be available for public review in 1984.

ADDRESS: Questions about the proposed action and the DEIS can be answered by: William Lloyd, Chief, Environmental Section, U.S. Army Engineer District, Alaska, P.O. Box 7002, Anchorage, Alaska 99510.

Dated: September 30, 1982.

Neil E. Saling,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 82-27716 Filed 10-6-82; 8:45 am]

BILLING CODE 3710-NL-M

Intent to Prepare Draft Environmental Impact Statement (DEIS) for a Proposed Harbor at Yakutat, Alaska

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The proposed action is to determine the engineering, environmental, and economic feasibility of four potential harbor sites near Yakutat, Alaska. Each site would enclose a five acre harbor with a depth of 16 feet for a fleet size of about 12 bottomfishing vessels.

2. Four alternatives will be considered.

a. Site 1 is located in Yakutat Roads, east-southeast of Tzse Shoal. Two breakwaters, 600 feet and 650 feet in length would adjoin at right angles and have a crest height of +17 feet MLLW. Approximately 129,000 cubic yards of rock would be required for breakwater construction and 100,000 cubic yards of dredged material would be removed.

b. Site 2 is located to the north of Site 1. Two rubblemound breakwaters, each about 400 feet long, would be constructed perpendicular to shore. A 950 foot floating breakwater would be parallel to the shore between the rubblemound breakwaters. Approximately 153,000 cubic yards of rock would be required for breakwater construction and 21,000 cubic yards of dredged material would be removed.

c. Site 3 is located in the eastern portion of Monti Bay, close to the community of Yakutat. A single rubblemound breakwater, 750 feet long with a crest height of +22 MLLW perpendicular to the shoreline, would be required. Approximately 126,700 cubic yards of rock would be required for breakwater construction and 93,000 cubic yards of dredged material would be removed.

d. Site 4 is located on the south shore of Monti Bay, west of Site 3. Two breakwaters with crest heights of +22 feet MLLW would be constructed. A 650 foot long breakwater would extend perpendicular to shore and adjoin a 550 foot breakwater parallel to shore. Approximately 115,500 cubic yards of rock would be required for breakwater construction and 71,000 cubic yards of dredged material would be removed.

3. A Public Notice, No. NPAEN–08205 was circulated 15 July 1982 to Federal, State and local agencies and private interest groups requesting comments or suggestions for consideration in the reconnaisance report. Coordination has been inititated with concerned State and Federal agencies. At this time a scoping meeting has not been scheduled; however, notification will be made prior to meetings concerning the proposed project.

4. Significant issues to be discussed in the DEIS include project impacts on the fish, wildlife, and cultural resources as well as the social-economic impacts on local communities and the bottomfishing industry.

5. The draft feasibility report and environmental impact statement are estimated to be available for public review in 1985.

ADDRESS: Questions about the proposed action and the DEIS can be answered by: William Lloyd, Chief, Environmental Section, U.S. Army Engineer District, Alaska, P.O. Box 7002, Anchorage, Alaska 99510.

Dated: September 30, 1982.

Neil E. Saling,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 82-27718 Filed 10-6-82; 8:45 am]

BILLING CODE 3710-NL-M

Intent To Prepare Draft Environmental Impact Statement (DEIS) For Proposed Channel Improvements near False Pass, Alaska

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS)

SUMMARY: 1. The proposed action is to determine the engineering, environmental, and economic feasibility of improving a channel extending between the Gulf of Alaska on one side of the Alaska Peninsula and the Bering Sea on the other side.

2. Three different channel alinements will be considered as well as alternative channel dimensions for three alinements, 20 feet deep by 250 feet wide and 25 feet deep by 300 feet wide.

All alternatives would require dredging significant quantities of sandy material from the bottom, disposing of the material at some distance and maintaining the dredged depths as needed. Approximate quantities of materials to be dredged ranged from 3.32 million cubic yards to .4 million cubic yards.

3. A Public Notice, No. NPAEN-08205, was circulated 15 July 1982 to Federal, State and local agencies and private interest groups requesting comments or suggestions for consideration in the reconnaissance report. Coordination has been initiated with concerned State and Federal agencies. At this time a scoping meeting has not been scheduled; however, notification will be made prior to meetings concerning the proposed project.

4. Significant issues to be discussed in the DEIS include project impact on the fish, wildlife, and cultural resources as well as the social-economic impacts on local communities and the bottomfishing industry.

5. The draft feasibility report and environmental impact statement are estimated to be available for public review in 1985.

ADDRESS: Questions about the proposed action and the DEIS can be answered by: William Lloyd, Chief, Environmental Section, U.S. Army Engineer District, Alaska, P.O. Box 7002, Anchorage, Alaska 99510.

Dated: September 30, 1982

Neil E. Saling,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 82-27717 Filed 10-6-82; 8:45 am]

BILLING CODE 3710-NL-M

Preparation of Draft Environmental Impact Statement (DEIS) For a Proposed Harbor at Atka, Alaska

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. The proposed action is to determine the engineering, environmental, and economic feasibility of five potential harbor sites near Atka, Alaska. Each alternative would provide a sheltered area of approximately 5 acres, with a harbor depth of 16 feet, and an entrance channel depth of 18 feet to accommodate a fleet size of about 12 vessels.

2. Specific site locations may vary as the study progresses; however, 5 alternatives have been identified for initial study.

a. Site 1 is located halfway between the village to the south and the airstrip to the north and would be protected by two breakwaters with a crest height of +11 feet MLLW, one 510 feet long and the other 530 feet long. Approximately 33,500 cubic yards of rock for breakwater construction and 110,000 cubic yards of dredged material removal would be required.

b. Site 2 is located at the north end of Nazan Bay. Three breakwaters would be required with a crest elevation of +10 MLLW. Two would be perpendicular to shore, one 250 feet long and the other 530 feet long. The third would be 590 feet long parelleling the shore and connected at right angles to the east breakwater. Approximately 72,500 cubic yards of rock for breakwater construction and 61,000 cubic yards of dredged material removal would be required.

c. Site 3 is located adjacent to the southern side of Atka. A single 650 foot breakwater with a crest height of + 10 feet MLLW would require approximately 30,500 cubic yards of rock. A sedimentation barrier might be required at the north end of the harbor and approximately 80,000 cubic yards of material would be dredged from the harbor.

d. Site 4 is located on the northwest side of Nazan Bay. Three breakwaters would be required with a crest height of +16 feet MLLW. Breakwaters of 240 feet and 540 feet would be constructed perpendicular to shore.

A 610 foot long breakwater would be constructed parallel to shore and attached to the southern breakwater. Approximately 131,000 cubic yards of rock would be required for breakwater construction and 62,000 cubic yards of dredged material would be removed.

e. Site 5 is located a short distance south of the village. No wave protection would be required. Approximately 24,000 cubic yards of material would be dredged.

3. A Public Notice, No. NPAEN-08205, was circulated 15 July 1982 to Federal, State and local agencies and private interest groups requesting comments or suggestions for consideration in the reconnaissance report. Coordination has been initiated with concerned State and Federal agencies. At this time a scoping meeting has not been scheduled; however, notification will be made prior to meetings concerning the proposed project.

4. Significant issues to be discussed in the DEIS include the need for the project and project impacts on the fish, wildlife, and cultural resources as well as the social-economic impacts on local communities.

5. The draft feasibility report and environmental impact statement are estimated to be available for public review in 1984.

ADDRESS: Questions about the proposed action and the DEIS can be answered by: William Lloyd, Chief, Environmental Section, U.S. Army Engineer District, Alaska, P.O. Box 7002, Anchorage, Alaska 99510.

Dated: September 30, 1982.

Neil E. Saling,

Colonel, Corps of Engineers, District Engineer

[FR Doc. 82-27714 Filed 10-6-82; 8:45 am]

BILLING CODE 3710-NL-M

Preparation of Draft Environmental Impact Statement (DEIS) for a Proposed Harbor at King Cove, Alaska

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. The proposed action is to determine the engineering, environmental, and economic feasibility of two potential harbor sites near King Cove, Alaska. All sites would provide a 15 acre harbor area, 16 feet deep with an entrance channel depth of 18 feet. This would provide for a fleet size of 31 bottomfishing vessels.

2. Two alternatives will be considered.

a. Site 1 is an eastward expansion of the existing harbor. Protection would be provided by a shore connected rubblemound breakwater with a crest height of +16 MLLW. This would extend eastward 600 feet then parallel the shore for 1,000 feet. Part of the existing southern breakwater would be removed to widen the entrance channel. Approximately 39,200 cubic yards of rock would be required for breakwater construction and 500,000 cubic yards of dredged material would be removed.

b. Site 2 is located south of the existing harbor. Two adjoining breakwaters would be constructed, each 1,000 feet long with a crest height of +16 MLLW. One would be perpendicular and one parallel to shore. Approximately 84,050 cubic yards of rock would be required for breakwater construction and 470,000 cubic yards of dredged material would be removed.

3. A Public Notice, No. NPAEN–08205, was circulated 15 July 1982 to Federal, State and local agencies and private interest groups requesting comments or suggestions for consideration in the reconnaissance report. Coordination has been initiated with concerned State and Federal agencies. At this time a scoping meeting has not been scheduled; however, notification will be made prior to meetings concerning the proposed project.

4. Significant issues to be discussed in the DEIS include the need for the project and project impacts on the fish, wildlife, and cultural resources as well as the social-economic impacts on local communities.

5. The draft feasibility report and environmental impact statement are estimated to be available for public review in 1984.

ADDRESS: Questions about the proposed action and the DEIS can be answered by: William Lloyd, Chief, Environmental Section, U.S. Army Engineer District, Alaska, P.O. Box 7002, Anchorage, Alaska 99510.

Dated: September 30, 1982.

Neil E. Saling

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 82–27715 Filed 10–6–82; 8:45 am]

BILLING CODE 3710–NL–M

Defense Logistics Agency

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paper-Work Reduction Act (44 U.S.C. Chapter 35).

Revision

Questionnaire—Request for Assignment (DD Form 2051) and Information/Verification (DD Form 2051–1) of Commercial and Government Entity (CAGE) Code.

The Defense Logistics Agency, Office of the Secretary of Defense had to revise the DD Form 2051/2051–1 to verify name, address and affiliation required by Chapter 145, Title 10 of the United States Code, and also acquire socioeconomic data in compliance with Presidential Executive Order 12138, and the Small Business Act, from all entities, contractors that do business with the government. These forms are used exclusively by government activities.

The DD Form 2051 is used to make the initial solicitation for information for code assignment. The DD Form 2051–1 is for triennial verification of the information recorded in the central data bank for each entity assigned a code. Additionally, these forms may be used to report changes, in each entity's status as they occur. The Defense Logistics Services Center (DLSC) is responsible for assigning CAGE codes.

Respondent Universe 275,000; .25 hours
Information is elicited on a voluntary basis.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB Washington, DC 20503, and John V. Wenderoth, DOD Clearance Officer, OASD(c), DIRMS, IRAD, Room 1A658, Pentagon, Washington, DC 20301, telephone (202) 697–1195.

A copy of the information collection proposal may be obtained from G. Frye, Action Officer, Defense Logistics Agency, Cameron Station, Alexandria, VA 22314, ATTN: DLA–SC, telephone (202) 274–6491.

October 4, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82–27539 Filed 10–6–82; 8:45 am]

BILLING CODE 3620–01–M

Department of the Army

Privacy Act of 1974; Amendment to a System Notice

AGENCY: Department of the Army, DOD.

ACTION: Amendment to a system notice.

SUMMARY: The Department of the Army proposes to amend the system notice for one of its system notices for a system of records subject to the Privacy Act of 1974. The system notice as amended is set forth below.

DATES: The system as amended will become effective November 8, 1982.

ADDRESSES: Send any comments to headquarters, Department of the Army, ATTN: DAAG–AMR–R, Room 1146, Hoffman Building 1, 2461 Eisenhower Ave., Alexandria, VA 22331.

FOR FURTHER INFORMATION CONTACT: Mrs. Dorothy Karkanen, Office of the Adjutant General, Department of the Army, at the above address, Telephone: 703/325–6163.

SUPPLEMENTARY INFORMATION: This change will modify the current system notice for system A0917.09aDASG in the following manner: Statistical data (minus individual identifying particulars) on individuals (clients) entered into the drug and alcohol rehabilitation process is collected in an automated data base for retrieval of summary program information and other research purposes. The only records now contained in the automated Client Oriented Drug Abuse Reporting System (CODARS) are those collected from 1 January 1976 to the present time. (Records from earlier drug and alcohol reporting systems have been destroyed.) CODARS is undergoing major revision which will feature collection of the full Social Security Number on active duty/active duty for training military clients, including those in the Reserve and National Guard. A client ID code, consisting of the first three digits of the SSN and date of birth, will be utilized for all other clients (other military and civilians). This change will enable the Army to engage in long range evaluation of the rehabilitation process. Previously, individuals were identified by a program number which, in and of itself, did not identify the individual.

The Department of the Army inventory of system notices as required by the Privacy Act of 1974, Title 5 United States Code 552a (Pub. L. 93–579, 88 Stat. 1896, *et seq.*) appears in the **Federal Register** at:

FR Doc 82–674 (47 FR 2544) January 18, 1982
FR Doc 82–5277 (47 FR 8610) March 1, 1982
FR Doc 82–11002 (47 FR 17324) April 22, 1982
FR Doc 82–12993 (47 FR 20654) May 13, 1982
FR Doc 82–16040 (47 FR 25780) June 15, 1982
FR Doc 82–16228 (47 FR 25987) June 16, 1982
FR Doc 82–20786 (47 FR 33314) August 2, 1982
FR Doc 82–23089 (47 FR 36880) August 24, 1982

An altered system report as required by 5 U.S.C. 552(o) was submitted on September 2, 1982.

M.S. Healy,

OSD Federal Register Liaison officer, Department of Defense.

October 4, 1982.

AO917.09aDAPE

SYSTEM NAME:

Alcohol and Drug Abuse Rehabilitation Files.

SYSTEM LOCATION:

Primary: Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) rehabilitation/counseling facilities (e.g., Community Counseling Centers/ADAPCP Counseling Facilities) at Army installations and activities.

Secondary: US Army Patient Administration Systems and Biostatistics Activity, Ft Sam Houston, TX 78234.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual (military, civilian, family member) who is eligible for care and enrolls in the ADAPCP for

rehabilitation, pursuant to Army Regulation 600–85.

CATEGORIES OF RECORDS IN THE SYSTEM:

Primary: Copies of client intake records, progress reports, psychosocial histories, counselor observations and impressions of client's behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinalysis for alcohol/drug abuse, and similar or related documents.

Secondary: Copies of client intake records, progress reports, and demographic composites thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Act of September 28, 1971, Pub. L. 92–129, Title V, Section 501, 85 Stat. 381 (reprinted in 10 U.S.C 1071 note (1976)); Section 413, Pub. L. 92–255.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Primary: To treat, counsel, and rehabilitate individuals who participate in the Army's Alcohol and Drug Abuse Prevention and Control Program.

Secondary: Client intake and progress reports are used to provide essential management information concerning the ADAPCP to measure the magnitude of alcohol and other drug abuse within the Army, to measure progress in the Army prevention program, to measure progress in the rehabilitative medical treatment aspects of the program, to provide statistical trends ot support policy and procedural changes, to support and justify funding and manpower requirements for the program, and to provide statistical information in response to the public media, members of Congress, or other government agencies.

Information for this system of records is exempt from the blanket "routine uses of general applicability" identified at 46 FR 6460. Information is disclosable only to the following persons/agencies:

a. To health care components of the Veterans Administration.

b. To qualified personnel conducting scientific research, or audits or program evaluations, provided that a patient may not be identified in such reports, or his or her identity further disclosed by such personnel.

c. In response to a court order based on the showing of good cause in which the need for disclosure and the public's interest is shown to exceed the potential harm that would be incurred by the patient, the physician-patient relationship, and the Army's treatment program.

Note.— Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 21 U.S.C. 1175, as amended by 88 Stat. 137, and 42 U.S.C. 4582, as amended by 88 Stat. 131. These statutes are controlling and supersede the Privacy Act of 1974 to the extent that disclosure is more limited. However, access to the record by the individual to whom the record pertains is governed by the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Primary: Paper records maintained in file folders at Alcohol and Drug Abuse Prevention and Control Program facilities for 1 year following termination of treatment. Selected forms are transferred to individual's health record.

Secondary: Paper records (client intake and progress reports) are stored in locked file cabinets. Computer data are stored in random access on mangnetic disk and tape.

RETRIEVABILITY:

Primary: Alphabetically by individual's surname.

Secondary: By client's SSN or ID code, date and installation where individual was in the Alcohol and Drug Abuse Prevention and Control Program.

SAFEGUARDS:

Primary: Records are maintained in central storage areas in locked file cabinets where access is restricted to authorized persons having an official need-to-know.

Secondary: Manual records are stored in locked file cabinets. Automated records are maintained in random access mode in controlled access areas. Primary records on magnetic disk are stored with the computer in a secure vault separated from the primary computer. Data are processed in batch mode and are subjected to standard executive and system control programs plus the audit/edit and data base management system designed by the US Army Patient Administration Systems and Biostatistics Activity.

RETENTION AND DISPOSAL:

Primary: Records are destroyed 1 year after termination of the patient's treatment, unless the Army Medical Department Activity/Facility commander authorizes retention for an additional 6 months.

Secondary: Manual records are retained up to 18 months or until information taken therefrom and entered into computer records is transferred to the "history" file, whichever is sooner. Disposal of manual records is by burning or shredding. Computer records are retained permently for historical and/or research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

The Deputy Chief of Staff for Personnel, Headquarters, Department of the Army (DAPE–HRA), The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact either the commander of the medical center/medical department activity where treatment for alcohol/drug abuse was obtained, or The Surgeon General, Headquarters, Department of the Army (DASG–PSC), The Pentagon, Washington, DC 20310. Individuals should furnish their full name, date of birth, social security number, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to their records should contact the appropriate official as specified in the "Notification" procedures' section, furnishing the information required by that section.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial deteminations are contained in Army Regulation 340–21 (32 CFR Part 505). Denial to amend records in this system of records can only be made by The Deputy Chief of Staff for Personnel, in coordination with The Surgeon General.

RECORD SOURCES CATEGORIES:

From the individual by interviews and history statements; abstracts or copies of pertinent medical records; abstracts from personnel records; results of tests; physicians' note;, observations of client's behavior; related notes, papers, and forms from counselor, clinical director, and/or commander.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82–27594 Filed 10–6–82; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Privacy Act of 1974; Amendment to a System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Amendment of one system of records notice.

SUMMARY: The Department of the Navy proposes to amend one system of records to its inventory of systems of records subject to the Privacy Act of 1974.

DATES: The proposed action will be effective without further notice on November 8, 1982 unless comments are received which would result in a contrary determination.

ADDRESS: Any comments, to include written data, views or arguments concerning the action proposed should be addressed to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP–09B1P), Department of the Navy, The Pentagon, Washington, D.C. 20250. Telephone 202/694–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy inventory of systems of records notices as prescribed by the Privacy Act have been published in the **Federal Register** at:

FR Doc. 81–674 (47 FR 2574) January 18, 1982
FR Doc. 81–9204 (47 FR 14944) April 7, 1982
FR Doc. 82–9844 (47 FR 15636) April 12, 1982
FR Doc. 82–12593 (47 FR 20018) May 10, 1982
FR Doc. 82–15596 (47 FR 25041) June 9, 1982
FR Doc. 82–23533 (47 FR 37948) August 27, 1982

The amendments do not require an altered system report as prescribed by 5 U.S.C. 552a(o).

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

October 4, 1982.

NO1850–2

System name:

Physical Disability Evaluation Proceedings (47 FR 2663) January 18, 1982

Changes:

System name:

After the word: "Evaluation" add the word: "System."

System location:

In lines 1 and 2, delete the phrase: "* * * Naval Council of Personnel Boards * * *" and substitute with the following: "* * * Disability Evaluation System, Ballston Tower 2, * * *"

Categories of records in the system:

In line 7, after the word "* * * actions * * *" add the following phrase: "* * * appellate actions/review * * *" In lines 11 and 14, delete the word: "* * * party * * *" and substitute with the word "* * * member * * *"

Authority for maintenance of the system:

Delete the phrase: "* * * and 10 U.S.C. 5148."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

At the end of the first paragraph, add the phrase: "* * * and to respond to official inquiries concerning the disability evaluation proceedings of particular service personnel."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

After the last word in the entry, add the phrase: "* * * and in some files, plastic recording discs and cassettes."

Retrievability:

Delete the last sentence in its entirety.

Safeguards:

In line 4, place a period after the word "* * * hours * * *", delete the rest of the entry and substitute with the following: "Access during working hours is controlled by Board personnel and the office space in which the file cabinets and storage devices are located is locked after official working hours. The building in which the office is located employs security guards."

Retention and disposal:

In line 5, delete the phrase: "* * * Federal Records Center * * *", and substitute with: "* * * Washington National Records Center, 4205 Suitland Road * * *"

System manager(s) and address:

In line 2, after the word: "* * * Boards * * *" add the phrase: "* * * Ballston Tower 2 * * *"

Notification procedure:

In line 3 of the first paragraph after the word: "* * * Boards * * *", add the phrase: "Ballston Tower 2 * * *" In line 4 of the second paragraph, delete the word: "* * * birth * * *" and substitute with the phrase: "* * * Disability Evaluation System action."

Records access procedures:

In line 3, delete the word "The * * *" and substitute with the word: "Director * * *". In line 4, before the number "801," add the phrase: "* * * Ballston Tower 2 * * *"

Record source categories:

In line 8, delete the phrase: "Fiduciary Affairs Section * * *" and substitute with the phrase: "* * * Judge Adocate General,* * *"

NO1850–2

SYSTEM NAME:

Physical Disability Evaluation System Proceedings.

SYSTEM LOCATION:

Director, Disability Evaluation System, Ballston Tower 2, 801 North Randolph Street, Arlington, Virginia 22203.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains medical board reports; statements of findings of physical evaluation boards; medical reports from Veterans Administration and civilian medical facilities; copies of military health records; copies of JAG Manual investigations; copies of prior actions/appellate actions/review taken in the case; transcripts of physical evaluation board hearings; rebuttals submitted by the member; intra and interagency correspondence concerning the case; correspondence from and to the member; members of Congress, attorneys, and other interested members; and documents concerning the appointment of trustees for mentally incompetent service members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1216.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of the Navy—Used by personnel in the performance of their official duties to determine fitness for duty or eligibility for separation or retirement due to physical disability of Navy and Marine Corps personnel, by establishing the existence of disability, the degree of disability, and the circumstances under which the disability was incurred, and to respond to official inquiries concerning the disability evaluation proceedings of particular service personnel.

Veterans Administration—To verify information of service connected disabilities in order to evaluate applications for veterans' benefits.

Office of the Judge Advocate General—Used by personnel in the

performance of their official duties relating to legal review of disability evaluation proceedings; response to official inquiries concerning the disability evaluation proceedings of particular service personnel; to obtain information in order to initiate claims against third parties for recovery of medical expenses under the Medical Care Recovery Act (42 U.S.C. 2651–53); and to obtain information on personnel determined to be mentally incompetent to handle their own financial affairs, in order to appoint trustees to receive their retired pay. In addition, the information may be furnished to other components of the Department of Defense.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and microfiche, and in some files, plastic recording discs and cassettes.

RETRIEVABILITY:

Filed by year of initial disability proceeding, and alphabetically by name within that year.

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours. Access during working hours is controlled by Board personnel and the office space in which the file cabinets and storage devices are located is locked after official working hours. The building in which the office is located employs security guards.

RETENTION AND DISPOSAL:

Records are permanent. They are retained by the Naval Council of Personnel Boards for six years. After that time, they are sent to the Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20409.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Ballston Tower 2, 801 North Randolph Street, Arlington, Viginia 22203.

NOTIFICATION PROCEDURE:

Information may be obtained from the Naval Council of Personnel Boards, Ballston Tower 2, 801 North Randolph Street, Arlington, Viriginia 22203.

Written requests for information should contain the full name of the individual, military grade or rate, and date of Disability Evaluation System action. Written requests must be signed by the requesting individual.

For personal visits, the individual should be able to provide some acceptable identification, such as a military ID (active duty or retired) or a driver's license.

RECORDS ACCESS PROCEDURES:

Requests from individuals should be addressed to the Director, Naval Council of Personnel Boards, Ballston Tower 2, 801 North Randolph Street, Arlington, Virginia 22203.

* * * * *

RECORD SOURCE CATEGORIES:

Military medical boards and medical facilities; Veterans Administration and civilian medical facilities; physical evaluation boards and other activities of the disability evaluation system, Naval Council of Personnel Boards, the Bureau of Medicine and Surgery; the Judge Advocate General; Navy and Marine Corps local command activities; other activities of the DOD; and correspondence from private counsel and other interested persons.

* * * * *

[FR Doc. 82-27692 Filed 10-6-82; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Privacy Act of 1974; Addition of System Notices

AGENCY: Uniformed Services University of the Health Services (USUHS), DOD.

ACTION: Addition of system notices.

SUMMARY: The Uniformed Services University of the Health Services (USUHS) proposes to add three systems of records to its inventory of systems of records subject to the Privacy Act of 1974. The system notices for these systems are set forth below.

DATES: These systems will become effective November 8, 1982.

ADDRESSES: Send any comments to the system manager identified in the system notices set forth below.

FOR FURTHER INFORMATION CONTACT: Norma Cook, Privacy Act Officer, ODASD(A), Room 5C–315, The Pentagon, Washington, D.C. 20301. Telephone: 202/695–0970.

SUPPLEMENTARY INFORMATION: The USUHS system notices for systems of records subject to the Privacy Act of 1974, Title 5 United States Code 552a (Pub. L. 93–579; 88 Stat. 1896, *et seq.*) have been published in the **Federal Register** at:

FR Doc. 82–874 (47 FR 2544), January 18, 1982
FR Doc. 82–23958 (47 FR 38574), September 1, 1982

New system reports as required by 5 U.S.C. 552a(o) were submitted for these three systems on September 2, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

October 4, 1982.

WUSUO5

SYSTEM NAME:

USUHS Graduate and Continuing Medical Student Records.

SYSTEM LOCATION:

Office of the Assistant Dean for Graduate and Continuing Education, Uniformed Services University of the Health Services (USUHS), 4301 Jones Bridge Road, Bethesda, Maryland 20814. Supplementary files, consisting of student evaluation forms, grades, and course examinations pertaining to their department, are maintained in each USUHS department by departmental chairpersons.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on all students who apply for or matriculate in the Graduate Education and Continuing Medical Education programs at the University.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grade reports and instructor evaluations of performance/achievement; educational records listed by course title, grade, and credit hours; records of awards, honors, or distinctions earned by students; and data carried forward from the application, which includes records containing personal data, e.g., name, rank, social security number (SSN), undergraduate school, academic degree, current addresses, course grades, and grade point average from undergraduate work; letters of recommendation; and other information as furnshed by non-government agencies such as the Educational Testing Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10, United States Code, 21114.

PURPOSE(S):

The system is used to: Record types of assignment, program participation and other student performance data and participation in continuing education programs; provide academic data to each student upon request (such as, individual course grades and grade point averages); provide academic data within the USUHS for official purposes; and provide data to the respective

Department of Defense component Surgeon Generals when a specific and authorized need exists.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Academic data may be provided to other educational institutions upon the written request of a student. Also see blanket routine uses at the beginning of the USUHS listing of system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders are stored at Uniformed Services University of the Health Services (USUHS). These are supported by automated copies of subsets of each student's folder, which are maintained on magnetic tapes and disks at the Office of Computer Operations, USUHS, Bethesda, Maryland 20814.

RETRIEVABILITY:

The system is indexed by name and social security number (SSN). Also, any combination of data in the file can be used to select individual records. Only personnel in the Office of the Assistant Dean for Graduate and Continuing Education, USUHS, with an official need for the data are provided with the password that allows access.

SAFEGUARDS:

The files are maintained in secured file cabinets located in a limited access area of the University. The computer hardward, disks, tapes and other materials are secured in locked cabinets in a controlled and guarded area. Computer access is via controlled dial-in and is password controlled. Passwords are changed semiannually, or upon the departure of any person knowing the password.

The automated system is operated by Office of Computer Operations, USUHS, and only personnel with an official need to know are given the password and user identification information needed to access the computer sytem. While the file is primarily indexed by social security number (SSN) and name, any combination of fields and data can be used to select individual records.

RETENTION AND DISPOSAL:

Records on disenrolled and nonselected individuals are maintained for three years. Records on matriculated students are maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Dean for Graduate and Continuing Education, USUHS, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

NOTIFICATION PROCEDURE:

Information may be obtained from: Assistant Dean for Graduate and Continuing Education, USUHS, 4301 Jones Bridge Road, Bethesda, Maryland 20814. Telephone: 202/295-3106.

RECORD ACCESS PROCEDURES:

Requests to review individual students' records should be made in writing to the Office of the Assistant Dean for Graduate and Continuing Education, USUHS, 4301 Jones Bridge Road, Bethesda, Maryland 20814. Written requests must include name, social security number and dates of attendance or application.

CONTESTING RECORD PROCEDURES:

The rules for access to records and for contesting contents and appealing initial determination by the individual concerned are contained in 32 CFR Part 286b (See also OSD Administrative Instruction Number 81).

RECORD SOURCE CATEGORIES:

Information is furnished by the individual concerned; instructor personnel; the Graduate Records Examination; the application for admission and registration material for continuing medical education courses; the applicable department; the USUHS Graduate Committee; and the Office of the Assistant Dean for Graduate and Continuing Education, USUHS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

WUSU06

SYSTEM NAME:

USUHS Family Practice Medical Records.

SYSTEM LOCATION:

Student Health Clinic, Uniformed Services University of the Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, Maryland 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will be maintained on medical students, military retirees, military active duty personnel and their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical charts, results of laboratory tests, physical examinations, patients' medical histories.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10, United States Code 133, 1071 through 1087, 2114, 5031, and 8102 and Executive Order 9397.

PURPOSE(S):

Physicians and nurses use the medical charts in the diagnosis and treatment of patients. Medical charts contain results of laboratory tests, medical examinations, and patients' medical histories. Medical Clerks file, retrieve and keep the records up to date by adding new material, when appropriate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

Files are retained until departure of patient; the record is then given to the patient.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Medical records are stored in folders.

RETRIEVABILITY:

Medical records are filed by Social Security Number.

SAFEGUARDS:

Records are maintained in metal file cabinets which are kept locked when not in use. The cabinets are stored in a controlled area.

RETENTION AND DISPOSAL:

Files are retained until departure of patient; and then are given to the patient.

SYSTEM MANAGER(S) AND ADDRESS:

Chairman, Department of Family Practice, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

NOTIFICATION PROCEDURES:

Records are maintained only on individuals who seek treatment. Contact system manager for notification procedures.

RECORD ACCESS PROCEDURES:

Information as to exact access procedures may be obtained from the System Manager. The rules for record access are in accordance with Air Force Regulation 168-4, "Administration of Medical Activities, Patient Administration," Chapter 12, "Outpatient Records."

CONTESTING RECORD PROCEDURES:

The rules for contesting may be obtained from the System Manager.

These rules are in accordance with Air Force Regulation 168–4, Chapter 12.

RECORD SOURCE CATEGORIES:

Patients, doctors, other medical professionals and test results.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

WUSUO7

SYSTEM NAME:

USUHS Grievance Records.

SYSTEM LOCATION:

Civilian Personnel/Manpower Directorate, Uniformed Services University of the Health Sciences (USUHS), Department of Defense, Bethesda, Maryland 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances in accordance with Title 5, United States Code 2302 and 7121.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by USUHS employees under 5 U.S.C. 2302 and 5 U.S.C. 7121. These case files contain all documents related to the alleged grievance, including statements of witnesses, reports of interviews and hearings, examiners findings and recommendations, a copy of the original and final decisions, and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code 2302 and 7121.

PURPOSE(S):

This information is used by the USUHS in the creation and maintenance of records of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained and for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements is such that individuals could be identified by reference.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records are used:

a. To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when there are indications of a violation or potential violation of civil law, criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the Agency's decision on the matter.

d. To provide information to a Congressional office from the record of an individual in response to a Congressional inquiry made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of Title 44 United States Code Section 2906.

g. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority; and the Equal Employment Opportunity Commission, when requested in conjunction with their official activities.

h. To disclose in response to a discovery motion or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties, exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING AND RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders.

RETRIEVABILITY:

Records are retrieved by the names of the individual about whom the records are maintained.

SAFEGUARDS:

Records are maintained in locked file cabinets, with access restricted to authorized USUHS employees who have demonstrated need-to-know.

RETENTION AND DISPOSAL:

Records are disposed of three years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Civilian Personnel/Manpower, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone: 202/295–3195.

NOTIFICATION PROCEDURES:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURE:

Information to access procedures may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determination by the indvidual concerned are contained in 32 CFR Part 286b (See also OSD Aministrative Instruction No. 81).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual about whom the record is maintained.

b. Testimony of witnesses.

c. Agency officials, and

d. Related correspondence from organizations or persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82–27593 Filed 10–6–82; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education

AGENCY: Education Department.

ACTION: Application notice for Mina Shaughnessy Scholars Program.

Applications are invited for new awards to be made in fiscal year 1983 under the Mina Shaughnessy Scholars Program of the Fund for the

Improvement of Postsecondary Education.

Authority for this program is contained in Title X of the Higher Education Act, as amended. Under this program, the Secretary makes awards to institutions of postsecondary education and other public and private educational institutions and agencies. The purpose of the awards is to improve postsecondary education.

Closing date for transmittal of Applications: Applications for awards must be mailed (postmarked) or hand-delivered by November 9, 1982.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.116E, Washington, D.C. 20202.

To establish proof of mailing, and applicant must show one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping lable, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either a private metered postmark, or a mail receipt that is not dated by the U.S. Postal Service as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Attention: 84.116E, 7th and D Streets, SW., Room 5673, Regional Office Building 3, Washington, D.C.

The Secretary will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand-delivered will not be accepted after 4:30 p.m. on November 9, 1982.

Program information:

Type of Competition: In this competition, the Secretary supports efforts by postsecondary educational practitioners to contribute to knowledge about postsecondary education or to the improvement of postsecondary education by producing a document or other product or by engaging in an activity designed to share the practitioner's knowledge with others.

Program Priorities: The Secretary is not establishing priorities for this competition. Applicants have the opportunity and responsibility to identify the areas of practice that they seek to address.

Selection Criteria: The Secretary evaluates an application on the basis of the following selection criteria:

(a) *Significance for Postsecondary Education:* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would:

(1) Achieve the purposes of the Mina Shaughnessy Scholars Program.

(2) Address an important problem or need.

(3) Involve learner-centered improvements; achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which:

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by the quality of the project design, including objectives and approaches, and the adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(3) The applicant is capable of carrying out the proposed project, as evidenced by the qualifications of the prospective Scholar(s) and the relevance of each prospective Scholar's prior experience;

(4) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by their contribution of resources.

(c) *Appropriateness of the Fund's Support.* The Secretary reviews each application to determine whether support of the proposed project by the Fund is appropriate in terms of the availability of other funding sources for the proposed activities.

The selection criteria (a)(1), (a)(2), (a)(3), (b)(1), (b)(2), (b)(3), (b)(4), and (c) are of equal importance. The Secretary's final judgment of an application is based on an overall assessment of the extent to which the application satisfactorily addresses the selection criteria.

Other Information or Materials that may be requested from Applicants: The Secretary will request each finalist in this competition to submit the names of at least three references and any suppporting material relevant to the application such as samples of prior written work. In addition, phone interviews may be conducted with finalists.

Available funds: Approximately $350,000 is estimated to be available for new awards in Fiscal Year 1983. It is estimated that these funds could support approximately 20 new awards.

The estimated maximum amount for new awards will be $20,000 for a 15–month project period.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless the amount is otherwise specified by statute or regulations.

Application forms: The application form included in the program information package may be obtained from the Fund for the Improvement of Postsecondary Education, Attention: 84.116E, 7th and D Streets, S.W., (Room 3100), Washington, D.C. 20202. the program information package is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under statute and regulations governing the competition.

Applicable regulations: The regulations governing awards made by the Fund for the Improvement of Postsecondary Education are contained in:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, with the exceptions noted in 34 CFR 630.4(b);

(2) Awards under this program will be subject to the regulations published in 34 CFR Part 630 (47 FR 15552 (April 9, 1982)).

Further information: For further information contact the Fund for the Improvement of Postsecondary Education, regarding 84.116E, the Mina Shaughnessy Scholars Program, telephone (202) 245–8091.

(20 U.S.C. 1135)

Dated: October 1, 1982.

T. H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.116E, Fund for the Improvement of Postsecondary Education)

[FR Doc. 82-27627 Filed 10-6-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Application for Electricity Export Authorization and Presidential Permit; Docket PP-78 Minnesota Power & Light Company

AGENCY: Energy Department (DOE).

ACTION: Notice of application by Minnesota Power & Light Company (MPL) for authorization to export electric energy and for Presidential permit for an international interconnection.

SUMMARY: MPL has filed an application for an Export Authorization and for a Presidential Permit, Docket PP-78, to operate and maintain a 115-120 kilovolt overhead transmission line at the U.S.-Canada International Border. On July 29, 1982, MPL purchased the transmission line from Boise Cascade Corporation, the former owner and licensee of the facility (PP-52). Because the export authorization and Presidential Permit may not be transferred from Boise Cascade to MPL (10 CFR 205.305 and 205.323), MPL must apply for a new export authorization and a new Presidential Permit.

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Office of Energy Emergency Operations, EP-42, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-1714

Lise Courtney Howe, Office of General Counsel, GC-11, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-2900

SUPPLEMENTARY INFORMATION: On January 27, 1982, MPL filed an application with the DOE to export electric energy pursuant to section 202(e) of the Federal Power Act and to operate and maintain existing electric facilities at the borders of the United States and the Province of Ontario, Canada. Specifically, MPL sought authority to export electric energy to Ontario Hydro pursuant to a draft agreement with Ontario Hydro and to operate and maintain the United States portion of an existing overhead transmission line between Fort Francis, Ontario, Canada and International Falls, Minnesota, U.S.A. MPL purchased this facility from the Boise Cascade Corporation on July 29, 1982.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Office of Energy Emergency Operations, EP-42, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with §§ 1.8 or 1.10 of the Rules of Practice and Procedure (18 CFR 1.8, 1.10).

Any such petitions and protests should be filed within 30 days of the publication of this notice. Protests will be considered by DOE 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 application are on file with DOE and will, upon request, be made available for public inspection and copying at the Office of Energy Emergency Operations, Room GH-034-G, 1000 Independence Avenue, SW., Washington, D.C.

Issued in Washington, D.C., September 30, 1982.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration, Department of Energy.

[FR Doc. 82-27596 Filed 10-6-82; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Presidential Permit PP-75 To Comision Federal de Electricidad and Record of Decision for 7.2 kV International Distribution Line, Comstock, Texas to Piedras Negras, Coahuila, Mexico

AGENCY: Energy Department.

ACTION: Notice of issuance of Presidential Permit PP-75 to the Comision Federal de Electricidad and record of decision for a 7.2 kilovolt international distribution line.

SUMMARY: The Department of Energy has issued Presidential Permit PP-75 to the Comision Federal de Electricidad, authorizing the construction, connection and operation of a 7.2 kilovolt international distribution line from Comstock, Texas to Piedras Negras, Coahuila, Mexico. The record of decision appears below.

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Office of Energy Emergency Operations (EP-42), Department of Energy, Forrestal Building, Mail Stop GB-270, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-1714

Lise Courtney M. Howe, Office of General Counsel (GC-11), Department of Energy, Forrestal Building, Mail Stop 6F-094, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-2900

SUPPLEMENTARY INFORMATION:

Record of Decision 7.2 kV International Transmission Line, Comstock, Texas to Piedras Negras, Coahuila, Mexico

Pursuant to Regulations of the Council on Environmental Quality (40 CFR Part 1505) and Implementing Procedures of the U.S. Department of Energy (45 FR 20694):

Decision

The U.S. Department of Energy (DOE) has decided to issue a Presidential Permit to the Commision Federal de Electricidad (CFE), Departmento de Operacion, Zona Piedras Negras, Coahuila, Republic of Mexico, to construct, connect, operate and maintain electric transmission facilities at the international border between the United States and Mexico. This permit is being issued pursuant to the authority of Executive Order 10485, as amended by Executive Order 12038.

Project Description

CFE proposes to construct and operate a 7.2 kV overhead electric distribution circuit from the Rio Grande Electric Cooperative near Comstock, Texas to the United States/Mexican border. From the international border the line will extend to the ranch of Manuel Diego Ainslie in Piedras Negras, Coahuila, Mexico. According to Mr. Diego's August 25, 1980, application, which was superseded by the CFE application of June 5, 1981, for the same facilities, there is no other viable source from which he can purchase or acquire electric energy for his ranch.

Further details concerning this project can be found in the applications filed by CFE and Mr. Diego and also in the negative determination of environmental impacts issued by DOE on January 2, 1981.

Description of Alternatives

DOE has determined that there are no viable alternatives available to CFE or Mr. Diego which would provide electric energy to the Diego ranch.

Basis for Decision

Executive Order 10485, as amended by Executive Order 12038, provides for DOE's granting a Presidential Permit to construct, connect, operate and maintain

a transmission line crossing an international border. Prior to issuing such a permit, DOE must determine that it is in the public interest to do so.

Considerations in Implementation of the Decision

All practicable means to minimize environmental harm from the selected alternative have been adopted and made a part of the Presidential Permit. CFE shall be required to place and maintain suitable structures to reduce to a reasonable degree the possibility of contact or inductive interference between the line and any other facilities. Precautions will be taken to minimize radio and television interference with CFE being responsible for taking appropriate corrective action where warranted. Construction methods will be restricted to those least damaging to the environment with appropriate restorative actions being required after the project is completed. CFE also shall assure that the proposed transmission line shall have a minimum clearance height of forty feet above the maximum lake height at the mid-span crossing of the United States Park Service's Amistad Reservoir. Appropriate markers shall be placed on facilities crossing the United States Park Service's Amistad Reservoir Area in order to prevent their posing a hazard to aircraft and sailboat operators. DOE will monitor the mitigation activities to assure conformance with the Presidential Permit.

A copy of the Presidential Permit is available for public inspection and copying at the DOE Freedom of Information Library, Room 1E-090, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Dated: August 13, 1982.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

August 10, 1982.

Concur:

Ronald L. Winkler,

Deputy Assistant Secretary for Energy Emergencies, Environmental Protection, Safety, and Emergency Preparedness.

[FR Doc. 82-27597 Filed 10-6-82; 8:45 am]

BILLING CODE 6450-01-M

Order Granting Temporary Export Authorization and Presidential Permit for Use of International Electric Facilities in Docket PP-78: Minnesota Power & Light Company

AGENCY: Energy Department (DOE).

ACTION: DOE gives notice of the issuance of an order granting a temporary export authorization and Presidential Permit in Docket PP-78 to Minnesota Power and Light Company (MPL).

SUMMARY: On July 29, 1982, MPL purchased from the Boise Cascade Corporation certain electric transmission facilities which cross the U.S.-Canadian international border. MPL has applied to DOE for export authority under section 202(e) of the Federal Power Act and for a Presidential Permit under Executive Order 10485, as amended, because the authority granted to Boise Cascade to operate this facility and to export electric energy is not transferable. According to MPL's application, this facility is intended for emergency support and reliability. Therefore, DOE has granted MPL a temporary export authorization and Presidential Permit, pending DOE review and processing of MPL's applications in Dockets No. PP-78 and 78-EA.

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Office of Engergy Emergency Operations, EP-42, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-1714

Lise Courtney Howe, Office of General Counsel, GC-11, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-2900

SUPPLEMENTARY INFORMATION: .

Department of Energy Order Granting Temporary Export Authorization and Presidential Permit for Use of International Electric Facilities to Minnesota Power & Light Company

On January 27, 1982, MPL filed an application with DOE to export electric energy pursuant to section 202(e) of the Federal Power Act and to operate and maintain existing facilities which it proposed to purchase from Boise Cascade Corporation, at the borders of the United States and the Province of Ontario, Canada, pursuant to executive Order No. 10485, as amended. Information concerning the purchase was required by DOE pursuant to 10 CFR 205.305(b) and 205.323(b) before the application was considered complete. That information was furnished by MPL on August 16, 1982, after MPL had purchased the facility on July 29, 1982. According to their application, MPL seeks authority: (1) To export electric energy to Ontario Hydro pursuant to a draft agreement with Ontario Hydro; and (2) to operate and maintain the United States portion of an existing overhead transmission line between Fort Francis, Ontario, Canada, and International Falls, Minnesota, U.S.A. Because the export authorization and Presidential Permit granted to Boise Cascade are not transferable (10 CFR 205.305 and and 205.323), MPL must apply for a new export authorization and Presidential Permit.

In a letter accompanying the application, MPL asked for the issuance of an early approval in these proceedings because the subject interconnection is required for back-up power to MPL's International Falls service area. Alternatively, MPL requested preliminary approval, subject to the final approval by DOE.

Because this interconnection already has been constructed and the applicant has represented that the transmission line only will be energized intermittently to export emergency back-up power, DOE has decided to issue a temporary authorization, pending its final action in this proceeding. DOE finds that:

The issuance of a temporary authorization to MPL for the export of electric energy and the operation and maintenance of the existing international transmission facilities, previously authorized in PP-52, is consistent with the public interest because the line rarely will be energized, and only for emergency exports of electric energy.

DOE Orders that:

(A) Minnesota Power & Light Company may export electric energy pursuant to section 202(e) of the Federal Power Act to Ontario Hydro on an emergency basis only and at a capacity level not to exceed 100 megawatts, until such time as the Department of Energy approves or disapproves the export application filed in Docket No. PP-78-EA.

(B) Minnesota Power & Light Company may operate and maintain the existing international interconnection authorized pursuant to Executive Order 10485, as amended, in PP-52, until such time that the Department of Energy grants or denies the application in PP-78. This line shall be energized only on an emergency basis.

(C) Minnesota Power & Light Co. shall notify the Department of Energy, Office of Energy Emergency Operations, within 48 hours after the export of electric energy via these facilities.

(D) The temporary authorizations contained in paragraphs (A) and (B) above shall not be construed as a determination by the Department of Energy that the issuance of permanent

export authority or of a Presidental Permit to Minnesota Power & Light Co. is consistent with the public interest.

Issued in Washinton, D.C., September 30, 1982.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration, Department of Energy.

[FR Doc. 82-27599 Filed 10-6-82; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Department of Energy (DOE) notices of proposed collections under review will be published in the **Federal Register** on the Thursday of the week following their submission to the Office of Management and Budget (OMB). Following this notice is a list of DOE proposals sent to OMB for approval since September 9, 1982.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number, (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory; voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the forms; and (9) A brief abstract describing the proposed collection.

DATE: Last notice published Thursday, September 9, 1982.

FOR FURTHER INFORMATION CONTACT:

Mr. John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H023, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-2308

Mr. Vartkes Broussalian, Federal Energy Regulatory Commission Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503; (202) 395-3087

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer; comments should also be provided Mr. Gross. If you anticipate commenting on a form, but find that time to prepare your response will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C. October 1, 1982.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE Forms Under Review by OMB

Form No. (1)	Form title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated number of respondents (7)	Annual respondent burden (8)	Abstract (9)
FERC-555	Records retention requirements.	Revision	Recordkeeping requirements.	Mandatory	Electric utilities and licensees, interstate natural gas pipeline companies, oil pipeline (carriers by pipeline) companies.	500	1,872,000	Record retention periods, necessary guidance and requirements for microfilming and other types of record retention are found at 18 CFR Parts 125, 225, and 356. This requirement relates to the burden associated with recordkeeping requirements for the 500 public utilities, licensees natural gas companies and oil pipeline companies subject to regulation by the Federal Energy Regulatory Commission.

[FR Doc. 82-27535 Filed 10-6-82; 8:45 am]

BILLING CODE 6450-01-M

American Statistical Association Committee on Energy Statistics

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the American Statistical Association's Committee on Energy Statistics will meet with representatives of the Energy Information Administration (EIA) on Thursday, October 21, 1982, at the International Hotel, 10 Thomas Circle, Northwest, Washington, D.C., from 1:30 p.m. to approximately 5:00 p.m. The meeting will continue on Friday, October 22, 1982, in the International Hotel, from 9:00 a.m. until approximately 3:30 p.m.

The purpose of the meeting is to enable the EIA to utilize the American Statistical Association's Committee on Energy Statistics to obtain advice on EIA programs and to benefit from the Committee's expertise concerning other energy statistical matters.

The tentative agenda is as follows:

A. Opening Remarks
B. Major Topics:
1. Data Quality Activities in the Petroleum Supply Division;
2. a. Progress Report on Nonresidential Building Survey Update;
b. Methodological Problems Affecting Measurement of Energy Consumption in Nonresidential Buildings;
3. Data Revision Procedures;
4. Coal Supply and Transportation Module of the Revised National Coal Model;
5. Evaluation of Economic Forecasting Models;
6. Monthly Petroleum Products Sales Survey Progress Report;
7. Methods of Measuring Wood Energy Consumption;
8. Issues in Making Estimates of Oil and Gas Resources.
C. Public Comments
D. Topics for Future Meetings

The meeting is open to the public. Any member of the public may file a written statement with the EIA for forwarding to the Committee, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should inform Ms. Kathleen Repass, EIA Committee Liaison, (202) 252-6463, or Dr. Fred C. Leone, Executive Director of the American Statistical Association, (202) 393-3253, at least five days prior to the meeting and reasonable provisions will be made to include their presentations on the agenda. Subsequent to approval by the Committee, minutes of an executive summary of the meeting will be available for public review and copying at the Office of Planning and Resources, EI-32, EIA, 1000 Independence Avenue, SW., Room 2H-055, Washington, D.C. 20585, (202) 252-

6460, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Issued at Washington, D.C. on October 1, 1982.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 82-27536 Filed 10-6-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. G-6202-000, et al.]

Gulf Oil Corp., et al. Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

September 30, 1982.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments 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 October 19, 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 385.211, .214). 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 Natural 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 or the authorization for the proposed abandonment 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 unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [3]	Pressure base
G-6202-000, Sept. 20, 1982	Gulf Oil Co., P.O. Box 2100, Houston, Tex. 77252	United Gas Pipe Line Co., Carthage Field, Panola County, Tex.	([1])	14.65
G-11024-000, D, Sept. 16, 1982.	Conoco Inc., P.O. Box 2197, Houston, Tex. 77252	Tennessee Gas Transmission Co., east Cameron, West Cameron and Vermillion Areas, Offshore Louisiana.	([2])	
G-16139-009, Sept. 20, 1982.	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77252	Transwestern Pipeline Co., Panhandle Area of Texas, various counties, Texas.	([1])	14.65
G-19108-000, Sept. 16, 1982.	....do	El Paso Natural Gas Co., Bisti Field, San Juan County, N. Mex.	([3])	15.025
CI64-686-001, D, Sept. 16, 1982.	Tenneco Oil Co., operator and agent for Tema Oil Co., P.O. Box 2511, Houston, Tex. 77001.	Arkansas Louisiana Gas Co., Erick Field, Beckham County, Okla.	([4])	
CI68-1101-000, F, Sept. 20, 1982.	The Superior Oil Co. (partial successor in interest to Sun Oil Co.), P.O. Box 1521, Houston, Tex. 77001.	Michigan Wisconsin Pipe Line Co., Creole Field, Cameron Parish, La.	([5])	15.025
CI69-782-001, Aug. 6, 1982 [2].	Texas Gas Exploration Corp., 110 Louisiana, Suite 3300, Houston, Tex. 77002.	Texas Gas Transmission Corp., Eugene Island Area Blocks 272, 292, offshore Louisiana.	([1])	15.025
CI72-525-000, D, Aug. 9, 1982.	Arco Oil and Gas Co., division of Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Natural Gas Pipeline Co. of America, Joiner City Field, Carter County, Okla.	([6])	
CI73-249-000, D, Sept. 15, 1982.	Energy Reserves Group, Inc., P.O. Box 1201, 217 North Water Street, Wichita, Kans. 67201.	Tarina Oil Co., Cooke Field, LaSalle County, Tex.	([7])	
CI78-415-001, C, Sept. 13, 1982.	Amoco Production Co., P.O. Box 50879, New Orleans, La. 70150	Texas Eastern Transmission Corp., East Cameron Block 222 Field, Offshore La.	([8])	15.025
CI78-849-001, D, Sept. 17, 1982.	Amoco Production Co., 1670 Broadway, Denver Colo. 80202	Cities Service Gas Co., Klabzuba 1-23 Amoco Chaplin Well, Ten Mile Draw Field, Sweetwater County, Wyo.	([9])	
CI78-1042-002, July 26, 1982.	Chevron U.S.A. Inc., P.O. Box 7643, San Francisco, Calif. 94120	Natural Gas Pipeline Co. of America, East Cameron Block 34, offshore Louisiana.	([10])	15.025
CI82-415-000, A, Sept. 7, 1982.	Koch Industries, Inc., P.O. Box 2256, Wichita, Kans. 67021	Tennessee Gas Pipeline Co., Eugene Island Block 24 (OCS-G-2893), offshore Louisiana.	([11])	15.025
CI82-416-000, A, Sept. 7, 1982.	Cabot Petroleum Corp., 921 Main, Suite 900, Houston, Tex. 77002.	Tennessee Gas Pipeline Co., OCS-G-2893, Eugene Island Block 24, Offshore Louisiana.	([12])	15.025
CI82-417-000, B, Sept. 7, 1982.	L. W. Roche (Mutual Oil and Gas Inc.), P.O. Box 311 Spencer, W. Va. 25276.	Columbia Gas Transmission Corp., Rocky Fork Field, Kanawha County, W. Va.	([13])	
CI82-419-000 (CI62-1506), B, Sept. 9, 1982.	Conoco Inc., P.O. Box 2197, Houston Tex. 77001	Arkansas Louisiana Gas Co., East Haynesville Field, Claiborne Parish, La.	([14])	
CI82-420-000 A, Sept. 10, 1982.	Pinto Inc., 999 The Main Building, Houston, Tex. 77002	United Gas Pipe Line Co., Block A-570, High Island Area, South Addition, offshore Texas.	([15])	14.73
CI82-422-000, A, Sept. 10, 1982.	Ecee Inc., 999 The Main Building, Houston, Tex. 77002	United Gas Pipe Line Co., Block A-570, High Island Area, South Addition, offshore Texas.	([15])	14.73
CI82-422-000, A, Sept. 10, 1982.	The Louisiana Land and Exploration Co., P.O. Box 60350 New Orleans, La. 70160.	Texas Eastern Transmission Corp., Block 336, East Cameron Area, offshore Louisiana.	([16])	15.025
CI82-423-000, A, Sept. 13, 1982.	Chevron U.S.A. Inc., P.O. Box 7643, San Francisco, Calif. 94120	Tennessee Gas Pipeline Co., Eugene Island Block 24, offshore Louisiana.	([15])	15.025
CI82-424-000, A, Sept. 9, 1982.	HNG Fossil Fuels Co., P.O. Box 1188, Houston, Tex. 77001	National Fuel Gas Supply Corp., Blocks A-563, A-564, A-582, Block A-563 Field, South High Island Area, offshore Texas, Gulf of Mexico.	([15])	14.73
CI82-425-000 A, Sept. 13, 1982.	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001	Texas Eastern Transmission Corp., High Island Blocks 289 and 290, offshore Texas.	([11])	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.³	Pressure base
CI82-426-000, E, Sept. 13, 1982.	Getty Oil Co. (successor in interest to Getty Reserve Oil, Inc.), P.O. Box 1404, Houston, Tex. 77001.	Colorado Interstate Gas Co., N.E. Baxter Prospect, Airport Area Field, Sweetwater County, Wyo.	([20])	15.025
CI82-427-000, B, Sept. 16, 1982.	Horizon Oil & Gas Co. of Texas, P.O. Box 1020, Dallas, Tex. 75221.	Northern Natural Gas Co., Boles Lease; Lansing Kansas City, Seward County, Kans.	([21])	
CI82-429-000, A, Sept. 16, 1982.	Getty Oil Co., P.O. Box 1404, Houston Tex. 77001	Tennessee Gas Pipeline Co., South Marsh Island 106 N/2 Field, offshore Louisiana.	([22])	15.025
CI82-430-000, B, Sept. 20, 1982.	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77252	Phillips Petroleum Co., Perryton West Morrow Field, Ocheltree County, Tex.	([23])	
CI82-431-000 (CI78-216), B, Sept. 16, 1982.	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77252	Montana Datoka Utilities Co., Pavillion Field, Fremont County, Wyo.	([24])	
CI82-432-000, A, Sept. 20, 1982.	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001	Panhandle Eastern Pipeline Co., Elk City Field, Beckham and Washita Counties, Okla.	([25])	14.73
CI82-433-000 (G-20182), B, Sept. 17, 1982.	Arco Oil and Gas Co., division of Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Transcontinental Gas Pipe Line Corp., North Duson Field, Lafayette County, La.	([26])	

NOTE.—Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[1] Applicant is filing to add delivery points.
[2] Part of the leases subject to RS 154 expired or were assigned.
[3] Applicant is filing to change delivery point.
[4] Deletion of producing acreage under Rate Schedule No. 388 is the result of the sale of such acreage to Natural Gas Pipeline Company of America.
[5] Sun Oil Company transferred, conveyed and assigned portion of its right, title and interest in and to the State of Louisiana Lease No. 2760, to The Superior Oil Company by Assignment of Interest on August 16,1976, to be effective March 1, 1976, that further amends the assigned sales agreement dated November 9, 1967.
[6] Leases reverted to landowner March 31, 1964 and ARCO no longer holds an interest in the properties.
[7] Energy Reserves Group, Inc. assigned its interest in the C. N. Cooke "C" lease to Tarina Oil Company by assignment dated August 11, 1981 but effective April 19, 1982.
[8] Applicant is filing under Gas Contract dated January 17, 1978 amended by amendment contract dated July 15, 1982.
[9] Cities never connected the 1-23 Well; the share of production attributable to Amoco's 50% non-operator working interest in that well was sold to an intrastate purchaser; the Well's reserves appear to have been depleted.
[10] Applicant is filing to redesignate the delivery point.
[11] Applicant is filing under Gas Purchase and Sales Agreement dated August 6, 1982.
[12] Applicant is filing under Gas Purchase Contract dated August 13, 1982.
[13] No longer economical.
[14] Conoco's leasehold interest subject to RS 223 pertains solely to non-productive zones below the Cotton Valley Taylor Sand Formation.
[15] Applicant is willing to accept a permanent certificate conditioned to the applicable price(s) provided for in the NGPA.
[16] Applicant is filing under Gas Purchase Contract dated August 24, 1982.
[17] Applicant requests to continue the sale of gas to Colorado Interstate Gas Company under a contract dated February 28, 1977.
[18] Not Used.
[19] Not Used.
[20] Effective August 1, 1980, Getty Reserve Oil, Inc. assigned all of its oil, gas and mineral properties, assets and rights to Getty Oil Company.
[21] Depleted—Lease reverted.
[22] Applicant is filing under Gas Purchase Contract dated September 10, 1982.
[23] The Helen Rogers 1-5 Well was the last well covered by the contract between Gulf and Phillips Petroleum Company dated October 21, 1966, as amended, which was limited to the Lower Morrow Gas Zone. This well was plugged in the Lower Morrow Zone on February 6, 1970. The well is producing from the Marmaton formation and the gas is being sold to Phillips under another contract.
[24] The lease covered by the basic contract, was surrendered on May 28, 1982. The well completed on the lease was plugged and abandoned on October 14, 1980.
[25] Applicant is filing under Gas Purchase and Sales Agreement dated July 30, 1982.
[26] All acreage pretaining to this sale was released in March, 1974 and September, 1977.
[27] Applicant is filing under Gas Purchase Contract dated February 14, 1969, amended by amendment dated June 11, 1982.

[FR Doc. 82-27456 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: October 1, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
OHIO DEPARTMENT OF NATURAL RESOURCES									
-ALTEX INC				RECEIVED:	09/07/82	JA: OH			
8254187		3412725624	103			C BIBLER #2	READING TOWNSHIP	6.0	NATIONAL GAS & OI
-ALTHEIRS OIL INC				RECEIVED:	09/07/82	JA: OH			
8254186		3405320452	103	107-TF		MABEL HAYES #6	ADDISON TOWNSHIP	6.0	COLUMBIA GAS TRAN
-AMTEX OIL AND GAS INC				RECEIVED:	09/07/82	JA: OH			
8254189		3415122806	108			FAHRNI #1		3.0	COLUMBIA GAS TRAN
8254188		3415122805	108			WOODS #1		4.5	COLUMBIA GAS TRAN
-APPALACHIAN EXPLORATION INC				RECEIVED:	09/07/82	JA: OH			
8254190		3410323042	103	107-TF		KARLAK #1	WESTFIELD	18.3	COLUMBIA GAS TRAN
-B & B OIL CO				RECEIVED:	09/07/82	JA: OH			
8254191		3416923326	107-TF			ARTHUR MAIBACH #1	MILTON	186.0	COLUMBIA GAS TRAN
-BARTLO OIL AND GAS COMPANY				RECEIVED:	09/07/82	JA: OH			
8254192		3410323085	103	107-TF		C BAXTER #1	WEST RICHFIELD	20.0	
-BERMAN J SHAFER				RECEIVED:	09/07/82	JA: OH			
8254391		3415321008	107-TF			KIEHL UNIT #1	BATH	0.0	COLUMBIA GAS TRAN
8254390		3410323017	107-TF			WILLIAM LEOHR #1	WESTFIELD	7.5	COLUMBIA GAS TRAN
-BLAUSER WELL SERVICE INC				RECEIVED:	09/07/82	JA: OH			
8254193		3416724426	108			HAROLD DUNFEE #1		6.4	COLUMBIA GAS TRAN
8254194		3416725177	108			HAROLD DUNFEE #2		6.4	COLUMBIA GAS TRAN
-CAMERON BROS				RECEIVED:	09/07/82	JA: OH			
8254200		3411923718	108			MYRON MCCALL #1		2.0	COLUMBIA GAS TRAN
8254199		3411923716	108			WILLIAM LONGSHORE #1		5.0	NATIONAL GAS & OI
-CHARLES E HALL				RECEIVED:	09/07/82	JA: OH			
8254265		3411120200	108			STELLA SMITH #1		3.0	COLUMBIA GAS TRAN
-CLARENCE K TUSSEL JR				RECEIVED:	09/07/82	JA: OH			
8254403		3400721924	103	107-TF		JOHN OLEKSHUK #1	PIERPONT	30.0	
8254405		3400722002	103	107-TF		M & H CUSICK #1	PIERPONT	30.0	
8254404		3400721999	103	107-TF		R SMAUS #1	CHERRY VALLEY	30.0	
-CLARENCE SHERMAN				RECEIVED:	09/07/82	JA: OH			
8254394		3407523807	103	107-TF		M & M MILLER #1	BALTIC	10.9	EAST OHIO GAS CO
8254395		3415722230	103	107-RT		SWIHART #2	AUBURN	9.1	EAST OHIO GAS CO
8254393		3407523795	103	107-TF		W & M TROYER #1	BALTIC	21.9	EAST OHIO GAS CO
-CLINTON OIL CO				RECEIVED:	09/07/82	JA: OH			
8254202		3413322818	103	107-TF		COWAN FARMS #2-696	STREETSBORO	10.0	
8254203		3415123733	103	107-TF		MAHLON MILLER #1-704	LAKE	10.0	
-DIAMOND SHAMROCK CORPORATION				RECEIVED:	09/07/82	JA: OH			
8254206		3408520322	103	107-TF		DIAMOND SHAMROCK #C-10	PAINESVILLE	30.0	EAST OHIO GAS CO
8254205		3408520313	103	107-TF		DIAMOND SHAMROCK #C-8	PAINESVILLE	30.0	EAST OHIO GAS CO
-EAST OHIO GAS CO				RECEIVED:	09/07/82	JA: OH			
8254234		3415120989	108			A & J CROWE COMM #1		8.2	EAST OHIO GAS CO
8254213		3413320099	108			A R VAN CAMP COMM #1		18.6	EAST OHIO GAS CO

VOLUME 744 PAGE 002

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8254227		3415100155		108		AVALON LEASING CO INC #1		3.9	EAST OHIO GAS CO
8254223		3413320484		108		B & J WALLBROWN #1		7.1	EAST OHIO GAS CO
8254225		3415100118		108		C & J KNICKERBOCKER COMM #1		9.8	EAST OHIO GAS CO
8254226		3415100142		108		C & R DAHLER #1		2.0	EAST OHIO GAS CO
8254219		3413320395		108		CARTER-JONES LUMBER CO #1		7.6	EAST OHIO GAS CO
8254232		3415100374		108		D & L NATALE #1		13.7	EAST OHIO GAS CO
8254231		3415100373		108		DONNENWIRTH & PUFNBRGR #1		4.0	EAST OHIO GAS CO
8254224		3415100098		108		E & K BRUEGGER #1		1.5	EAST OHIO GAS CO
8254230		3415100280		108		E R MEISER #1		11.0	EAST OHIO GAS CO
8254238		3415320329		108		G & E KUSNYIR #1		9.1	EAST OHIO GAS CO
8254222		3413320463		108		H W WISE #1		4.2	EAST OHIO GAS CO
8254210		3403500019		108		HARSHAW CHEMICAL CO #1		6.0	EAST OHIO GAS CO
8254235		3415320311		108		J & A KIMINECZ #1		4.2	EAST OHIO GAS CO
8254237		3415320319		108		J & A KIMINECZ #2		8.8	EAST OHIO GAS CO
8254216		3413320160		108		J & H SIBERT COMM #1		5.9	EAST OHIO GAS CO
8254218		3413320371		108		J & M WEBB COMM #1		8.6	EAST OHIO GAS CO
8254220		3413320396		108		J L WINKLER #1		3.7	EAST OHIO GAS CO
8254228		3415100253		108		L FRANK #1		14.9	EAST OHIO GAS CO
8254207		3403500016		108		L N BEYER #4		5.3	EAST OHIO GAS CO
8254211		3413320060		108		L SHAW #1		3.6	EAST OHIO GAS CO
8254229		3415100274		108		LEY BROS #1		2.8	EAST OHIO GAS CO
8254209		3403500018		108		P & M NEWELL #1		8.4	EAST OHIO GAS CO
8254236		3415320314		108		PODNAR #1		5.7	EAST OHIO GAS CO
8254214		3413320125		108		SHILLIDAY COMM #1		3.0	EAST OHIO GAS CO
8254233		3415120449		108		T R SLIKER #2		350.0	THE EAST OHIO GAS
8254221		3413320423		108		W & M SOBER #1		2.7	EAST OHIO GAS CO
8254208		3403500017		108		W O HANDY #1		4.9	EAST OHIO GAS CO
8254212		3413320079		108		WEARLY COMM #1		2.2	EAST OHIO GAS CO
8254215		3413320155		108		WHITTAKER-TURCK #1		8.3	EAST OHIO GAS CO
8254217		3413320171		108		WHITTAKER-TURCK #2		2.4	EAST OHIO GAS CO
-ENNEY OILFIELD RENTAL CO				RECEIVED:	09/07/82	JA: OH			
8254256		3415121958		108		BACHTEL #1		0.3	EAST OHIO GAS CO
8254255		3415121957		108		BACHTEL #2		0.3	EAST OHIO GAS CO
8254243		3411922405		108		BALES #1		10.0	COLUMBIA GAS TRAN
8254250		3411922498		107-RT		BEISSER #1	WAYNE	4.5	NATIONAL GAS & OI
8254244		3411922418		108		BLACKFORD #1		2.6	NATIONAL GAS & OI
8254241		3411922190		108		C MYERS #1		3.0	NATIONAL GAS & OI
8254242		3411922296		108		C MYERS #2		1.2	NATIONAL GAS & OI
8254245		3411922421		107-RT		FRICK #2	WAYNE	8.6	NATIONAL GAS & OI
8254246		3411922426		108		G WINTERS #1		1.3	NATIONAL GAS & OI
8254248		3411922436		108		H STARRETT #3		6.5	NATIONAL GAS & OI
8254240		3411922117		108		J CALDWELL #1		3.9	EAST OHIO GAS CO
8254249		3411922443		108		MYERS #4		0.5	NATIONAL GAS & OI
8254254		3415121907		108		O MILLER #3		0.3	EAST OHIO GAS CO
8254239		3411922099		108		PERKINS #1		1.5	NATIONAL GAS & OI
8254251		3411922729		108		R BISHOP #2		2.0	COLUMBIA GAS TRAN
8254252		3411922735		108		R BISHOP #4		2.0	COLUMBIA GAS TRAN
8254253		3415121900		108		SHOEMAKER #1		0.4	EAST OHIO GAS CO
8254247		3411922435		108		STARRETT #2		11.0	NATIONAL GAS & OI
-ENTERPRISE ENERGY CORP				RECEIVED:	09/07/82	JA: OH			
8254258		3416320738		103	107-TF	BENEDICT #7	SWAN	36.5	COLUMBIA GAS TRAN
8254257		3415123675		103		DUTTON #9	BETHLEHEM	36.5	EAST OHIO GAS CO
-FRANK A CSAPO JR				RECEIVED:	09/07/82	JA: OH			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8254204		3416923302		103	107-TF	GLENN & RICHARD MILLER #1	MILTON	18.0	COLUMBIA GAS TRAN
-GASEARCH INC				RECEIVED: 09/07/82 JA: OH					
8254261		3407322321	D	107-TF		ATHENS PRESBYTERY #2	STARR	20.0	COLUMBIA GAS TRAN
8254260		3400721920		103	107-TF	HAYWARD-WHILE #1	GAGEVILLE	20.0	YANKEE RESOURCES
8254262		3415522108		103	107-TF	NATIONAL NORTHERN INC #2	LIBERTY	20.0	YANKEE RESOURCES
8254259		3400721859		103	107-TF	SCHOMMER #5	CHERRY VALLEY	20.0	YANKEE RESOURCES
-GEO ENERGY INC				RECEIVED: 09/07/82 JA: OH					
8254264		3412724911		107-TF		LOGAN SAND & GRAVEL #11-1	MONROE	8.0	
8254263		3409321164		107-TF		PLATA & RUBESNE #70-1	COLUMBIA	15.0	COLUMBIA GAS TRAN
-GEORGE W SHARP				RECEIVED: 09/07/82 JA: OH					
8254392		3412725352	D	107-TF		C C BEACHAM #3	FULTONHAM	10.0	NATIONAL GAS-OIL
-H I SMITH OIL & GAS INC				RECEIVED: 09/07/82 JA: OH					
8254396		3408323141		103		HIPP #5	GREER	14.0	EAST OHIO GAS CO
-HICKORY-NATIONAL CO				RECEIVED: 09/07/82 JA: OH					
8254267		3413322590		107-TF		AUDINO-CROUSE #1 - 34-133-2-2590-14	SHEETSBORO	30.0	
-HOPCO RESOURCES INC				RECEIVED: 09/07/82 JA: OH					
8254268A		3411925924		103		EDWARDS #2	DRESDEN	12.0	COLUMBIA GAS TRAN
8254268B		3411925924		107-TF		EDWARDS #2	DRESDEN	12.0	COLUMBIA GAS TRAN
-INLAND DRILLING CO INC				RECEIVED: 09/07/82 JA: OH					
8254269		3413322714		103	107-TF	DREGER-HAUCK #3	RAVENNA	0.3	
8254270		3413322715		103	107-TF	DREGER-HAUCK #4	RAVENNA	0.3	
-INTEGRATED PETROLEUM COMPANY INC				RECEIVED: 09/07/82 JA: OH					
8254271		3415522164		103	107-TF	ZAMBLAUSKAS #1	PARKMAN	0.0	
-IRVIN PRODUCING COMPANY				RECEIVED: 09/07/82 JA: OH					
8254272		3411924430		108		DON DAVIS #1		2.0	NATIONAL GAS & OI
8254273		3411924381		108		FRED DIETZ #1		11.0	NATIONAL GAS & OI
-JADOIL INC				RECEIVED: 09/07/82 JA: OH					
8254275		3403123394	D	107-RT		ARCHIE & LOUISE WILLIAMSON #1	CLARK	5.0	COLUMBIA GAS TRAN
8254274		3403123389	D	107-RT		ARCHIE & LOUISE WILLIAMSON #2	CLARK	7.0	COLUMBIA GAS TRAN
-JANCO WELL OPERATIONS LTD 81-8				RECEIVED: 09/07/82 JA: OH					
8254276		3410322905		107-TF		DELTA LAND INVESTMENT CO #1	MONTVILLE	500.0	COLUMBIA GAS TRAN
-JANCO WELL OPERATIONS LTD 82-1				RECEIVED: 09/07/82 JA: OH					
8254277		3410323014		107-TF		STAUB-BAIRD-RANSOM UNIT #1	GRANGER	0.0	COLUMBIA GAS TRAN
8254278		3410323015		107-TF		STAUB-BAIRD-RANSOM UNIT #2	GRANGER	0.0	COLUMBIA GAS TRAN
-JERRY OIL CO				RECEIVED: 09/07/82 JA: OH					
8254279		3411926231		103		BODINE #1	FRAZEYSBURG	10.0	NATIONAL GAS & OI
-JOHN C MASON				RECEIVED: 09/07/82 JA: OH					
8254318		3407523748		107-TF		DAVID HOCHSTETLER #2	PAINT	40.0	COLUMBIA GAS TRAN
-K S T OIL & GAS CO INC				RECEIVED: 09/07/82 JA: OH					
8254281		3415320680		103	107-TF	F & L REALTY #2	STOW	0.0	
8254283		3415321142		103	107-TF	FLETCHER #1	TWINBURG	0.0	
8254284		3415321143		103	107-TF	FLETCHER #2	HUDSON	0.0	
8254280		3400921361		103	107-TF	HEINEMAN #2	MAHONING	0.0	
8254282		3415321049		103	107-TF	VAL-HALLA SOMMER #1	HUDSON	0.0	
-KRAMER EXPLORATION CO				RECEIVED: 09/07/82 JA: OH					
8254285		3405320762		103	107-TF	OHIO POWER COMPANY #1	ADDISON	12.0	COLUMBIA GAS TRAN
8254286		3410522282		103	107-TF	PARSONS #1	RUTLAND	12.0	COLUMBIA GAS TRAN
8254287		3410522283		103	107-TF	RUSSELL #2	POMEROY	12.0	COLUMBIA GAS TRAN
-L & M PETROLEUM INC				RECEIVED: 09/07/82 JA: OH					
8254288		3412725656		107-TF		CLAYCRAFT #20	NEW STRAITSVILLE	10.0	COLUMBIA GAS TRAN
-LAKE REGION OIL INC				RECEIVED: 09/07/82 JA: OH					
8254289		3415123276		103	107-TF	JUNIOR E LEHMAN #1	DALTON	25.0	COLUMBIA GAS TRAN
-LEADER EQUITIES INC				RECEIVED: 09/07/82 JA: OH					

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8254291		3411926157		103	107-TF	CULLINS #4	CASS	14.0	
8254290		3411926121		103	107-TF	DINGESS #2	CASS	14.0	
8254292		3411923683		108		E ROSS #3		7.0	
8254293		3412122746		103	107-TF	WITT #2	BUFFALO	14.0	
-M B OPERATING CO INC				RECEIVED: 09/07/82 JA: OH					
8254307		3415122638		108		A & E FASNACHT #1		18.6	REPUBLIC STEEL CO
8254311		3415720902		108		E BROWN #1		3.0	REPUBLIC STEEL CO
8254299		3401920678		108		E KENNEDY U #1		9.1	REPUBLIC STEEL CO
8254308		3415122698		108		FLINTKOTE #3		15.0	REPUBLIC STEEL CO
8254300		3401921185		108		G & M BOWLING U #1		0.0	REPUBLIC STEEL CO
8254305		3415122530		108		GARAUX-ARMSTRONG #1		3.8	REPUBLIC STEEL CO
8254302		3413321589		108		J & J BIXLER #1		3.8	REPUBLIC STEEL CO
8254312		3415722703		108		J & M DOWNING #1		6.5	REPUBLIC STEEL CO
8254315		3415723004		108		J & M DOWNING #2		6.3	REPUBLIC STEEL CO
8254316		3415723205		108		J & M DOWNING #3		6.5	REPUBLIC STEEL CO
8254294		3401920309		108		JAMES HENDERSON #1		2.0	REPUBLIC STEEL CO
8254301		3401921186		108		JONES U #1		5.5	REPUBLIC STEEL CO
8254297		3401920558		108		L & R HARSHA #1		6.3	REPUBLIC STEEL CO
8254296		3401920557		108		L & R HARSHA #2		6.3	REPUBLIC STEEL CO
8254298		3401920559		108		L & R HARSHA #4		6.3	REPUBLIC STEEL CO
8254295		3401920379		108		LINDENTREE #2		3.8	REPUBLIC STEEL CO
8254306		3415122630		108		N & B HALTER #1		12.8	REPUBLIC STEEL CO
8254310		3415122932		108		R & P FEUCHT #1		8.5	REPUBLIC STEEL CO
8254309		3415122881		108		R BURGER U #1		3.3	REPUBLIC STEEL CO
8254314		3415723003		108		R GRUBBS U #2		6.3	REPUBLIC STEEL CO
8254317		3415723219		108		R GRUBBS U #3		6.3	REPUBLIC STEEL CO
8254313		3415722716		108		R GRUBBS UNIT #1		6.3	REPUBLIC STEEL CO
8254303		3415121904		108		WOLFE #2		3.8	EAST OHIO GAS CO
8254304		3415121948		108		WOLFE #3		3.8	EAST OHIO GAS
-MCCLAIN OIL CO				RECEIVED: 09/07/82 JA: OH					
8254319		3408924497		103		BAUGHMAN #1	HANOVER	0.5	NATIONAL GAS & OI
-NEW FRONTIER EXPLORATION INC				RECEIVED: 09/07/82 JA: OH					
8254321		3403124458		103	107-TF	H THOMAS #1	WASHINGTON	19.0	COLUMBIA GAS TRAN
-NOBLE OIL CORP				RECEIVED: 09/07/82 JA: OH					
8254322		3400720283		108		GOMBAR #1		2.0	EAST OHIO GAS CO
8254323		3411922631		108		HOLBEIN #1		2.0	EAST OHIO GAS CO
8254324		3411922670		108		HOLBEIN-WELKER #1		2.0	EAST OHIO GAS CO
-OXFORD OIL CO				RECEIVED: 09/07/82 JA: OH					
8254331		3407523751		103		DEAN KISER #1	KILLBUCK	11.0	
8254332		3411522779		107-TF		JOHN WING #1	DEERFIELD	10.0	
8254330		3407522942		108		WILBUR MANCHESTER #1		7.0	COLUMBIA GAS TRAN
8254329		3411923504		107-TF		WILLIAM MCFARLIN	LAKE	10.0	
-PAUL J OBERMILLER				RECEIVED: 09/07/82 JA: OH					
8254325		3416922426		103	107-TF	ICIE ROUTSON #1	MILTON	12.0	COLUMBIA GAS OF O
8254326		3416922433		103	107-TF	JOHN & IDA WINKLER #1	MILTON	12.0	COLUMBIA GAS TRAN
8254328		3416922475		103	107-TF	JOSEPH MC ELWEE #3	MILTON	12.0	COLUMBIA GAS OF O
8254327		3416922474		103	107-TF	JOSEPH MCELWEE #2	MILTON	12.0	COLUMBIA GAS OF O
-PEERLESS/TRANSATLANTIC OHIO 82				RECEIVED: 09/07/82 JA: OH					
8254333		3400721987		103	107-TF	ZAKOWSKI #P-1	COLEBROOK	30.0	EAST OHIO GAS CO
-PETRO-LEWIS CORPORATION				RECEIVED: 09/07/82 JA: OH					
8254334		3405921378		108		KACKLEY #1	SPENCER TWP	8.1	EAST OHIO GAS CO
-POI ENERGY INC				RECEIVED: 09/07/82 JA: OH					
8254339		3400722015		103	107-TF	D SIRRINE #T-1	ROME	30.0	EAST OHIO GAS CO

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8254342		3415521027	D	107-RT		FIELDHOUSE #1	BRACEVILLE	30.0	COLUMBIA GAS TRAN
8254337		3400721980		103	107-TF	HRABAL #5	ANDOVER	70.0	
8254338		3400722009		103	107-TF	JANEZIC #T-1	ANDOVER	55.0	
8254336		3400721960		103	107-TF	KETTENUN #T-1	ANDOVER	35.0	
8254341		3415521020	D	107-RT		PITCOVICH #1	BRACEVILLE	30.0	COLUMBIA GAS TRAN
8254335		3400721717		103	107-TF	REVELLE #T-1	WINDSOR	28.0	
8254340		3413322671		103	107-TF	THOMPSON #T-1	FRANKLIN	27.0	
-R A HATFIELD & SON INC				RECEIVED:	09/07/82	JA: OH			
8254266		3410322967		103	107-TF	BARELKA #1	SEVILLE	20.0	
-R GENE BRASEL DBA BRASEL & BRASEL				RECEIVED:	09/07/82	JA: OH			
8254195		3405320392		108		HOBART M DARST #2		1.5	COLUMBIA GAS TRAN
8254196		3405320442		108		HOBART M DARST #3		1.5	COLUMBIA GAS TRAN
8254198		3405320690		108		HOBART M DARST #4		1.5	COLUMBIA GAS TRAN
8254197		3405320514		108		JAMES CLARK #1		0.0	COLUMBIA GAS TRAN
-REPUBLIC ENERGY INVESTMENT CORP 80-				RECEIVED:	09/07/82	JA: OH			
8254343		3410521966		107-TF		CLIFFORD #1	BEDFORD	5.0	COLUMBIA GAS TRAN
8254344		3410521967		107-TF		CLIFFORD #2	BEDFORD	5.0	COLUMBIA GAS TRAN
-RIVERLAND OIL INC				RECEIVED:	09/07/82	JA: OH			
8254346		3415723700		107-TF		RIVERLAND - HUFFMAN #2	NEWCOMERSTOWN	0.0	COLUMBIA GAS TRAN
8254345		3407523258		107-TF		RIVERLAND - MAST #5	HOLMESVILLE	0.0	COLUMBIA GAS TRAN
-ROBERT D CHARLEBOIS				RECEIVED:	09/07/82	JA: OH			
8254201		3415522124		103	107-TF	HUSMAN WELL #1	SOUTHINGTON	15.0	COLUMBIA GAS TRAN
-ROVI RESOURCES CORP				RECEIVED:	09/07/82	JA: OH			
8254347		3411924453		107-RT		OHIO POWER 10	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254356		3411924489		107-RT		OHIO POWER 12	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254348		3411924466		107-RT		OHIO POWER 13	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254355		3411924474		107-RT		OHIO POWER 14	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254354		3411924473		107-RT		OHIO POWER 15	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254353		3411924472		107-RT		OHIO POWER 16	BLUE CREEK	11.0	COLUMBIA GAS TRAN
8254352		3411924470		107-RT		OHIO POWER 18	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254351		3411924469		107-RT		OHIO POWER 19	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254350		3411924468		107-RT		OHIO POWER 20	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254349		3411924467		107-RT		OHIO POWER 21	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254357		3411924491		107-RT		OHIO POWER 22	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254358		3411924492		107-RT		OHIO POWER 23	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254360		3411924494		107-RT		OHIO POWER 24	MEIGS	11.0	RICH HILL PIPELIN
8254359		3411924493		107-RT		OHIO POWER 25	BLUE ROCK	11.0	RICH HILL PIPELIN
8254362		3411924498		107-RT		OHIO POWER 26	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254361		3411924495		107-RT		OHIO POWER 27	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254363		3411924504		107-RT		OHIO POWER 28	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254364		3411924524		107-RT		OHIO POWER 29	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254366		3411924526		107-RT		OHIO POWER 31	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254365		3411924525		107-RT		OHIO POWER 32	BLUE ROCK	4.0	COLUMBIA GAS TRAN
8254367		3411924528		107-RT		OHIO POWER 33	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254368		3411924529		107-RT		OHIO POWER 34	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254369		3411924530		107-RT		OHIO POWER 35	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254371		3411924582		107-RT		OHIO POWER 37	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254370		3411924532		107-RT		OHIO POWER 44	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254372		3411924641		107-RT		OHIO POWER 46	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254373		3411924682		107-RT		OHIO POWER 51	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254374		3411924686		107-RT		OHIO POWER 52	BLUE ROCK	11.0	COLUMBIA GAS TRAN
8254375		3411924687		107-RT		OHIO POWER 53	BLUE ROCK	11.0	COLUMBIA GAS TRAN
-ROYAL LEVERAGE LTD 81-II				RECEIVED:	09/07/82	JA: OH			

VOLUME 744 PAGE 006

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8254386		3410522350		103		DAVIS #1	BEDFORD	5.0	COLUMBIA GAS TRAN
8254387		3410522352		103		DAVIS #3	BEDFORD	5.0	COLUMBIA GAS TRAN
8254388		3410522353		103		DAVIS #4	BEDFORD	5.0	COLUMBIA GAS TRAN
-ROYAL PETROLEUM *81-II				RECEIVED:	09/07/82	JA: OH			
8254381		3410522262		107-TF		DELONG-THOMPSON #3	POMEROY	5.0	COLUMBIA GAS TRAN
8254384		3410522295		103		NAU #1A	POMEROY	5.0	COLUMBIA GAS TRAN
8254382		3410522285		107-TF		R MOORE #1	BEDFORD	2.0	COLUMBIA GAS TRAN
8254383		3410522286		107-TF		R MOORE #2	BEDFORD	2.0	COLUMBIA GAS TRAN
-ROYAL PETROLEUM *81-III				RECEIVED:	09/07/82	JA: OH			
8254389		3410522399		107-TF		HOSKINS #1	BEDFORD	5.0	COLUMBIA GAS TRAN
8254379		3410522244		107-TF		JOHNSON #5	POMEROY	5.0	COLUMBIA GAS TRAN
8254380		3410522245		107-TF		JOHNSON #6	POMEROY	5.0	COLUMBIA GAS TRAN
-ROYAL PETROLEUM 80 - XI				RECEIVED:	09/07/82	JA: OH			
8254376		3410522031		107-TF		GOEGLEIN #1	SALISBURY	5.0	COLUMBIA GAS TRAN
8254377		3410522032		107-TF		GOEGLEIN #2	SALISBURY	5.0	COLUMBIA GAS TRAN
8254378		3410522033		107-TF		GOEGLEIN #3	SALISBURY	5.0	COLUMBIA GAS TRAN
-ROYAL PETROLEUM 81-IV LTD				RECEIVED:	09/07/82	JA: OH			
8254385		3410522312		103		JOHNSON #4	BEDFORD	5.0	COLUMBIA GAS TRAN
-SMITH SHAFER SMITH (A PARTNERSHIP)				RECEIVED:	09/07/82	JA: OH			
8254398		3416922971		107-TF		JOHN & MARIAN WISE #3	CONGRESS	7.5	COLUMBIA GAS TRAN
8254397		3416922727		107-TF		ROBERT W EWING #1-A	CONGRESS	7.5	COLUMBIA GAS TRAN
-THE MUTUAL OIL & GAS COMPANY				RECEIVED:	09/07/82	JA: OH			
8254320		3411122499		103		J MALLETT #4M	FRANKLIN	10.0	COLUMBIA GAS TRAN
-TIGER OIL INC				RECEIVED:	09/07/82	JA: OH			
8254399		3412724447		107-TF		LINDAMOOD #1	CLAYTON	0.0	NATIONAL GAS & OI
-TOWNER PETROLEUM CO				RECEIVED:	09/07/82	JA: OH			
8254402		3405923341		103	107-TF	BLACK #3	MADISON	32.0	TENNESSEE GAS PIP
8254401		3405923315		103	107-TF	H LAKE/C SHARP #1	LONDONDERRY	25.6	TENNESSEE GAS PIP
-UNIVERSAL EXPLORATION				RECEIVED:	09/07/82	JA: OH			
8254406		3415321139		107-TF		GEORGE #1	NORTON	45.0	YANKEE RESOURCES
-WILLIAM N TIPKA				RECEIVED:	09/07/82	JA: OH			
8254400		3410323053		103	107-TF	SHARON ACRES #2	SHARON	0.0	BARTLO OIL & GAS
-WRAY PETROLEUM CORP OF OHIO				RECEIVED:	09/07/82	JA: OH			
8254408		3405922059		108		RAPTIS #1		15.0	LANCASTER COLONY
8254411		3405922064		108		RAPTIS #2		15.0	LANCASTER COLONY
8254410		3405922063		108		RAPTIS #3		15.0	LANCASTER COLONY
8254409		3405922060		108		RAPTIS #4		15.0	LANCASTER COLONY
8254407		3405922058		108		SLASOR #1		15.0	LANCASTER COLONY

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27646 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-C

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: October 1, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION									
-TXO PRODUCTION CORP				RECEIVED:	09/07/82	JA: KS			
8254428	K 82-0727	1507720810		102-4		ANTRIM "A" #2	SULLIVAN	700.0	DELHI GAS PIPELIN
8254427	K 82-0711	1507720809		102-4		BARINGER #1	SULLIVAN	550.0	DELHI GAS PIPELIN
8254426	K 82-0009	1515120987		103		INSLEE "B" #1	HARDING	36.5	CENTRAL STATES GA
LOUISIANA OFFICE OF CONSERVATION									
-SAYE PETROLEUM INC				RECEIVED:	09/07/82	JA: LA			
8254413	82-925	1702120831		102-4		LOUISIANA PACIFIC #1 "C"	SOUTH MCCLELLAN BRANC	63.0	UNITED GAS CORP
MICHIGAN DEPARTMENT OF NATURAL RESOURCES									
-COLLINS BROTHERS OIL COMPANY				RECEIVED:	09/08/82	JA: MI			
8254429		2102500000		102-4		RICHARD LAVOY #1-20	LEE - 20	182.5	BATTLE CREEK GAS
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
-EL PASO NATURAL GAS COMPANY				RECEIVED:	09/07/82	JA: NM			
8254414		3004506771		108		TURNER B COM G #12	BLANCO SOUTH-PICTURED	22.0	EL PASO NATURAL G
-MARTINDALE PETROLEUM CORPORATION				RECEIVED:	09/07/82	JA: NM			
8254417		3002527242		103		PETER "A" STATE #1	BLINEBRY OIL & GAS	8.4	GETTY OIL CO
8254415		3002527048		103		PETER STATE #1	BLINBRY OIL & GAS	8.9	GETTY OIL CO
-TAMARACK PETROLEUM CO INC				RECEIVED:	09/07/82	JA: NM			
8254416		3002500000		103		RALEY "A" #1 (1-P-8-20-38)	WEST NADINE BLINEBRY	8.0	WARREN PETROLEUM
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION									
-COLUMBIA GAS TRANSMISSION CORP				RECEIVED:	09/07/82	JA: NY			
8254418	3263	3101315560		107-TF		EDWDS OPALECKY MCKN REARDON 620642	HARMONY	0.0	COLUMBIA GAS TRAN
-ENVIROGAS INC				RECEIVED:	09/07/82	JA: NY			
8254419	3171	3101316957		107-TF		D BEMIS #1	CLYMER	18.0	COLUMBIA GAS TRAN
8254422	2337	3101316391		102-2		N Y S REFORESTATION AREA 3/ #9	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8254420	2333	3101315782		102-2		NYS REFORESTATION AREA 3/#2	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8254425	2918	3101316454		107-TF		T RININGER #1	WILDCAT	18.0	NATIONAL FUEL GAS
8254421	2335	3101316249		102-2		W SIMMELINK #1	CLYMER	18.0	COLUMBIA GAS TRAN
-TRAHAN PETROLEUM INC				RECEIVED:	09/07/82	JA: NY			
8254423	2472	3101312519		102-2		CARL H MILLER NY #23	LEON	36.0	COLUMBIA GAS TRAN
8254424	2470	3101316318		102-2		G & M FOX #1 31-013-16318	ELLINGTON	36.0	COLUMBIA GAS TRAN
OKLAHOMA CORPORATION COMMISSION									
-ANADARKO PRODUCTION COMPANY				RECEIVED:	09/07/82	JA: OK			

VOLUME 745 PAGE 002

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8254472	17006	3513900000		108		SHRAUNER B-2	CARTHAGE	21.0	PANHANDLE EASTERN
8254459	15921	3508720657		103		WELLS "B" 1-31	IRON CHAPEL	18.0	SUN GAS CO
-ANDOVER OIL COMPANY				RECEIVED:	09/07/82	JA: OK			
8254453	15858	3501121608		103		BOSTON #30-1		0.0	OKLAHOMA GAS PIPE
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	09/07/82	JA: OK			
8254471	17008	3509320328		108		A A SHAFFER #1	E FAIRVIEW	9.0	PHILLIPS PETROLEU
8254468	17011	3509300000		108		A P OTTINGER #1	E CHANEY DELL	13.0	CHAMPLIN PETROLEU
8254470	17009	3507320320		108		I L NORRIS #1	SOONER TREND	6.0	PHILLIPS PETROLEU
8254469	17010	3507300000		108		P S O'HERN #1	DOVER-HENNESSEY	6.0	MUSTANG FUEL CORP
-DAVIS OIL COMPANY				RECEIVED:	09/07/82	JA: OK			
8254451	15829	3507322930		103		WHITTROCK #1	TIPPERARY	0.0	PHILLIPS PETROLEU
-DYNE EXPLORATION CO				RECEIVED:	09/07/82	JA: OK			
8254475	16960	3511100000		108		KLINGER #2	COALTON FIELD	2.0	PHILLIPS PETROLEU
-ECC OIL CO				RECEIVED:	09/07/82	JA: OK			
8254476	16954	3514721570		108		MERCHANT #2 SW/4 NE/4 20-25N-14E	OGLESBY GAS FIELD	13.5	OKAN GAS CO
-EL PASO NATURAL GAS COMPANY				RECEIVED:	09/07/82	JA: OK			
8254467	17004	3500920472		102-4	103	ANNA DAUGHERTY #1	ELK CITY DES MOINES	414.0	EL PASO NATURAL G
-GMC OIL AND GAS CORP				RECEIVED:	09/07/82	JA: OK			
8254448	15671	3511921836		103		JOHNSON #1	WEST YALE	150.0	PHILLIPS PETROLEU
-HARPER OIL COMPANY				RECEIVED:	09/07/82	JA: OK			
8254444	15354	3504722851		103		LANDWEHR #1	WEST WAUKOMIS	36.0	EXXON CORP
-MONSANTO COMPANY				RECEIVED:	09/07/82	JA: OK			
8254450	15822	3504321357		103		FOX #4		200.0	
-NONDORF OIL & GAS INC				RECEIVED:	09/07/82	JA: OK			
8254449	15815	3508321823		103		GIBSON-DAVIS #1	LOWRIE	1.0	EASON OIL CO
-PLAINS PRODUCTION INC				RECEIVED:	09/07/82	JA: OK			
8254462	17876	3505249030		102-4		COLPITT #1	WOODY	100.0	ENICO PIPELINE CO
8254461	17877	3510524905		102-4		COLPITT #2	WOODY	100.0	ENICO PIPELINE CO
8254460	17878	3510523463		102-4		GLASS ESTATE #1	WOODY	100.0	ENICO PIPELINE CO
8254442	17879	3510524902		102-4		GLASS ESTATE #4	WOODY	100.0	ENICO PIPELINE CO
8254443	17880	3510524901		102-4		GLASS ESTATE #5	WOODY	100.0	ENICO PIPELINE CO
8254464	17874	3510525540		102-4		HENDRICKS #1	WOODY	100.0	ENICO PIPELINE CO
8254463	17875	3510525539		102-4		HENDRICKS #2	WOODY	100.0	ENICO PIPELINE CO
8254466	17872	3510524903		102-4		JORDAN #2	WOODY	100.0	ENICO PIPELINE CO
8254465	17873	3510525517		102-4		JORDAN #3	WOODY	100.0	ENICO PIPELINE CO
-PROEX ENERGY CORP				RECEIVED:	09/07/82	JA: OK			
8254445	15393	3504722679		103		SWART #7-2		30.3	CITIES SERVICE GA
-RED EAGLE OIL CO				RECEIVED:	09/07/82	JA: OK			
8254454	15859	3501121666		103		RUTH SPRING #1		365.0	PHILLIPS PETROLEU
-SCHICK ENERGY CORP				RECEIVED:	09/07/82	JA: OK			
*8254455	15870	3509322231		103		HARMS 6-1	RINGWOOD	500.0	PIONEER GAS PRODU
-SCHICK OIL & GAS INC				RECEIVED:	09/07/82	JA: OK			
*8254456	15871	3509322146		103		NASH 15-1	RINGWOOD	18.0	PIONEER GAS PRODU
-SEARCH DRILLING CO				RECEIVED:	09/07/82	JA: OK			
8254452	15855	3504521019		103		WANGER #1-36	S W FT SUPPLY	197.0	DELHI GAS PIPELIN
-SUN OIL COMPANY (DELAWARE)				RECEIVED:	09/07/82	JA: OK			
8254447	15669	3507323264		103		J L WRIGHT #1	WEST HENNESSEY	656.0	CONOCO INC
8254446	15666	3504722538		103		MARIE MEYERS #2	ENID N E	154.0	CHAMPLIN PETROLEU
-TOWNER PETROLEUM CO				RECEIVED:	09/07/82	JA: OK			
8254457	15873	3501722183		103		MELVIN #19-1	CONCHO	0.0	PHILLIPS PETROLEU
8254458	15874	3508121490		103		SCHEUERMANN #5-1	NW GRAND CTR	0.0	SERVICE DRILLING
-UNIVERSAL RESOURCES CORPORATION				RECEIVED:	09/07/82	JA: OK			
8254474	16992	3507321678		108		STURGEON 1-3		0.0	PHILLIPS PETROLEU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-WORLDWIDE ENERGY CORPORATION				RECEIVED:	09/07/82	JA: OK			
8254473	17005	3500730267		108		GUY #1-4	LAVERNE	0.0	PANHANDLE EASTERN
TENNESSEE OIL & GAS BOARD									
-B & W OIL CO				RECEIVED:	09/09/82	JA: TN			
8254509	A-2161	4112921115		102-2		HUGH LEACH #1	GLADES EAST	32.0	EAST TENNESSEE NA
8254574	A-1079	4112921083		102-2		OLMSTEAD-OVERTON #2	GLADES EAST	0.0	EAST TENNESSEE NA
8254575	A-1097	4112921088		102-2		OLMSTEAD-OVERTON #5	GLADES EAST	0.0	EAST TENNESSEE NA
8254510	A-2160	4112921120		102-2		R E ANDREWS #1	GLADES EAST	36.0	EAST TENNESSEE NA
-B-J INC				RECEIVED:	09/09/82	JA: TN			
8254519	A-2088	4104920640		102-2		CARSON HULL CS #1	RUGBY	61.3	INTRASTATE ENERGY
8254552	A-1092	4104920865		102-2		ED TOMPKINS CS #1	HONEY CREEK	192.3	INTRASTATE ENERGY
8254543	A-2084	4104920874		102-2		HULL-ROSENBAUM CA #1	RUGBY	213.1	INTRASTATE ENERGY
8254551	A-1091	4104920855		102-2		HULL-TOMPKINS-ROSENBAUM JDE-1 #1	RUGBY	62.4	INTRASTATE ENERGY
8254511	A-2121	4112921128		102-2		RLC-KLINGAMAN-CRABTREE BJI-1980 #1	UNKNOWN	181.4	INTRASTATE ENERGY
8254554	A-2145	4112921084		102-4		ROBERT ANDERSON MC 1981-02 #1	UNKNOWN	26.2	INTRASTATE ENERGY
-CATOOSA EXPLORATION CORP				RECEIVED:	09/09/82	JA: TN			
8254500	A-2157	4104920105		108		ARNOLD COLDITZ #1	BIG BRANCH DEV	3.0	FENTRESS GAS TRAN
8254591	A-2138	4104920897		102-4		ARNOLD COLDITZ #1A	GRIMSLEY	2.0	FENTRESS GAS TRAN
8254497	A-2158	4104920118		108		ARNOLD COLDITZETAL #2	BIG BRANCH DEV	3.5	FENTRESS GAS TRAN
8254580	A-2120	4104920796		102-4		BRUNO GERNT #1	BIG BRANCH	80.0	FENTRESS GAS TRAN
8254555	A-2146	4104920866		102-2		E H HALL #4	JONES KNOB	1.0	FENTRESS GAS TRAN
8254498	A-2159	4104920218		108		GUY WILLIAMS #5	BIG BRANCH DEV	3.5	FENTRESS GAS TRAN
8254506	A-2150	4104920134		108		TROY CONATSER #1	BIG BRANCH DEV	4.0	FENTRESS GAS TRAN
8254505	A-2151	4104920141		108		TROY CONATSER #2	BIG BRANCH DEV	4.0	FENTRESS GAS TRAN
8254504	A-2152	4104920147		108		TROY CONATSER #3	BIG BRANCH DEV	4.0	FENTRESS GAS TRAN
8254503	A-2153	4104920156		108		TROY CONATSER #4	BIG BRANCH DEV	4.0	FENTRESS GAS TRAN
8254502	A-2154	4104920162		108		TROY CONATSER #5	BIG BRANCH DEV	4.0	FENTRESS GAS TRAN
8254499	A-2155	4104920172		108		TROY CONATSER #7	BIG BRANCH DEV	4.0	FENTRESS GAS TRAN
8254501	A-2156	4104920265		103		TROY CONATSER #8	BIG BRANCH DEV	4.0	FENTRESS GAS TRAN
-CLYDE FULLER-MORGAN-SCOTT DRILLING				RECEIVED:	09/09/82	JA: TN			
8254483	A-2057	4112920602		102-4		BOB ANDERSON #1	RUGBY	50.0	INTRASTATE ENERGY
8254484	A-2058	4112920727		102-4		BOB ANDERSON #2	RUGBY	50.0	INTRASTATE ENERGY
8254485	A-2059	4112920832		102-4		BOB ANDERSON #3	RUGBY	25.0	INTRASTATE ENERGY
8254478	A-2025	4112920649		102-4		BOBBY YORK #CH-1	TWIN BRIDGES	20.0	INTRASTATE ENERGY
8254479	A-2026	4112920774		102-4		BOBBY YORK #CH-2	BURRVILLE	30.0	INTRASTATE ENERGY
8254480	A-2027	4112920725		102-4		BOBBY YORK #CH-3	BURRVILLE	25.0	INTRASTATE ENERGY
8254516	A-2030	4112920751		102-2		BOBBY YORK #PF-3		70.0	INTRASTATE ENERGY
8254548	A-2032	4112920922		102-2		BOBBY YORK #PF-5		50.0	INTRASTATE ENERGY
-COMMERCE OIL CO				RECEIVED:	09/09/82	JA: TN			
8254582	A-2107	4104920204		102-2		FORDHAM #1	JONES KNOB	21.9	FENTRESS GAS TRAN
8254589	A-2108	4104920462		102-2		GARY ROGERS #1	JONES KNOB	21.9	FENTRESS GAS TRAN
8254588	A-2109	4104920464		102-2		GARY ROGERS #2	JONES KNOB	21.9	FENTRESS GAS TRAN
8254587	A-2110	4104920474		102-2		GARY ROGERS #3	JONES KNOB	21.9	FENTRESS GAS TRAN
8254514	A-2114	4112921113		102-2		WILLARD BUMBY #1	UNKNOWN	29.2	GAS LINES OF TENN
-CONTINENTAL ENERGY				RECEIVED:	09/09/82	JA: TN			
8254556	A-2144	4115120657		102-4		ONEIDA WOOD #1	ONEIDA SOUTH	100.0	INTRASTATE ENERGY
8254557	A-2143	4115120778		102-4		ONEIDA WOOD #5	ONEIDA SOUTH	200.0	INTRASTATE ENERGY
8254553	A-2119	4100120658		102-4		ONEIDA WOOD #6		200.0	INTRASTATE ENERGY
-CUMBERLAND OIL PRODUCING CO INC				RECEIVED:	09/09/82	JA: TN			
*8254584	A-2147	4112920559		102-2		BURCHSTED-BOLLING-BARNETT UNIT #1	DOUGLAS BRANCH	28.0	EAST TENNESSEE NA
-DELOY MILLER				RECEIVED:	09/09/82	JA: TN			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8254585	A-2149	4112920607		102-2		DORTCH-BREYSHAW #1	DAN BRANCH	150.0	GASLINE PARTNERSH
8254583	A-2148	4112921108		102-2		STAPLES UNIT #3	DAN BRANCH	500.0	GAS LINES OF TENN
-DIXIE OIL COMPANY				RECEIVED:	09/09/82	JA: TN			
8254603	A-2094	4115120934		102-2		BRIMSTONE CO #26	LOW GAP RUEBEN HOLLOW	4.5	TENNESSEE GAS PIP
8254604	A-2099	4115120948		102-2		BRIMSTONE CO #36	LOW GAP RUEBEN HOLLOW	1.3	TENNESSEE GAS PIP
8254602	A-2095	4115120969		102-2		BRIMSTONE CO #41	LOW GAP-RUEBEN HOLLOW	0.3	TENNESSEE GAS PIP
8254616	A-2106	4104920606		102-2		ESTATE OF BRUNO GERNT #33	STOCKTON SW	1.0	TENNESSEE GAS PIP
8254606	A-2079	4104920852		102-2		ESTATE OF BRUNO GERNT 40	STOCKTON SW	0.4	TENNESSEE GAS PIP
8254609	A-2091	4104920864		102-4		GERALD & ARTHUR JOE GERNT #1	STOCKTON SW	223.0	TENNESSEE GAS PIP
8254614	A-2104	4112920854		102-2		HEDWIG DITZ #2	WILDCAT	1.0	TENNESSEE GAS PIP
8254611	A-2100	4112921009		102-2		HUGH D FAUST III #14	PILOT MOUNTAIN	1.0	TENNESSEE GAS PIP
8254612	A-2101	4112921064		102-2		HUGH D FAUST III #18	PILOT MOUNTAIN	1.0	TENNESSEE GAS PIP
8254610	A-2111	4112920971		102-4		PETERS ET AL #1	WILDCAT	16.0	TENNESSEE GAS PIP
8254608	A-2090	4115120536		102-2		STEPHENS-LAXTON #1	WILDCAT	0.5	TENNESSEE GAS PIP
8254615	A-2105	4104920680		102-2		STOCKTON-CROOKS #1	STOCKTON SW	1.7	TENNESSEE GAS PIP
8254616A	A-2102	4115120853		102-2		TENNESSEE RAILROAD COMPANY #1	WILDCAT	1.0	TENNESSEE GAS PIP
8254613	A-2103	4115120556		102-2		TENNESSEE RAILROAD ET AL #1	WILDCAT	1.0	TENNESSEE GAS PIP
8254605	A-2093	4115120945		102-2		THE BRIMSTONE CO #34	LOW GAP RUEBEN HOLLOW	0.3	TENNESSEE GAS PIP
8254607	A-2089	4115120535		102-2		WEST-DINWIDDIE #1	WILDCAT	1.0	TENNESSEE GAS PIP
-DIXIE-SHAMROCK OIL & GAS INC				RECEIVED:	09/09/82	JA: TN			
8254586	A-2092	4104920880		102-4		GERNT-GERNT #8	STOCKTON SW	17.5	TENNESSEE GAS PIP
-ED SULLIVAN & SONS				RECEIVED:	09/09/82	JA: TN			
8254563	A-1094	4104920849		102-2		OBERT ELLIS #1	HONEY CREEK	21.9	INTRASTATE ENERGY
-EDDIE HOOD				RECEIVED:	09/09/82	JA: TN			
8254558	A-2142	4104920910		102-4		CRAVENS #1	BURRVILLE	8.0	FENTRESS GAS TRAN
8254545	A-2083	4112920686		102-4		EUGENE OLMSTEAD ETAL #2	UNION HILL	27.0	INTRASTATE ENERGY
8254542	A-2085	4104920918		102-2		RAINS ET AL UNIT #1	SHIRLEY (2500FSL 1400	54.0	INTRASTATE ENERGY
8254515	A-2113	4104920928		102-2		RAINS ET AL UNIT #2	SHIRLEY (2680'FNL 170	58.0	INTRASTATE ENERGY
-FRANCIS PETROLEUM CORP				RECEIVED:	09/09/82	JA: TN			
8254559	A-2140	4104920878		102-4		BARNA YOUNG-FRANKLIN #1	BURRVILLE	8.0	FENTRESS GAS TRAN
-HUDSON RESOURCES				RECEIVED:	09/09/82	JA: TN			
8254541	A-2086	4115120698		102-2		CLEOPHIA STORIE #2		50.0	INTRASTATE ENERGY
8254513	A-2115	4112920828		102-2		JOHNNY HOWARD-CLAUDE HOWARD #1	WILDCAT	11.0	B & W OIL CO
-IDEAL DRILLING CO				RECEIVED:	09/09/82	JA: TN			
8254517	A-619	4112920067		108		Y T JOHNSON #2	BURRVILLE	21.9	INTRASTATE ENERGY
8254518	A-620	4112920098		108		Y T JOHNSON #2	BURRVILLE	21.9	INTRASTATE ENERGY
8254562	A-621	4112920121		108		Y T JOHNSON #3	BURRVILLE	175.2	INTRASTATE ENERGY
8254561	A-622	4112920184		108		Y T JOHNSON #4	BURRVILLE	21.9	INTRASTATE ENERGY
-JOHNSON & LINDLEY INC				RECEIVED:	09/09/82	JA: TN			
8254590	A-2112	4104920856		102-2		EDITH LEWALLEN #1C	BURRVILLE	50.0	INTRASTATE ENERGY
8254540	A-2087	4104920058		102-2		LEWALLEN EDITH #1	SHIRLEY	100.0	INTRASTATE ENERGY
-JON E JONES				RECEIVED:	09/09/82	JA: TN			
8254581	A-2117	4104920819		102-4		ART & VIC GERNT #1		80.0	FENTRESS GAS TRAN
-KIMBERLY OIL & GAS INC				RECEIVED:	09/09/82	JA: TN			
8254508	A-2122	4104920886		102-4		RICKY RAINES #2	UNKNOWN	80.0	FENTRESS GAS LINE
8254576	A-2127	4104920913		102-4		RICKY RAINES #3 PERMIT #5237	BURRVILLE	30.0	FENTRESS GAS LINE
8254570	A-2123	4104920853		102-2		SHIRLEY BOW #1	STOCKTON	15.0	FENTRESS GAS LINE
8254571	A-2124	4104920861		102-2		SHIRLEY BOW #2	STOCKTON	60.0	FENTRESS GAS LINE
8254573	A-2126	4104920862		102-2		SHIRLEY BOW #3	STOCKTON	60.0	FENTRESS GAS LINE
8254572	A-2125	4104920867		102-2		SHIRLEY BOW #4	STOCKTON	0.0	FENTRESS GAS LINE
-LELAND PETROLEUM PRODUCTION INC				RECEIVED:	09/09/82	JA: TN			
8254569	A-2006	4112920861		103		ELIZABETH DEAN #1	WILDCAT	61.2	INTRASTATE ENERGY
8254568	A-2005	4112920862		103		JAMES E DEAN #1	WILDCAT	97.2	INTRASTATE ENERGY

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-MCANALLY PETROLEUM LTD				RECEIVED:	09/09/82	JA: TN			
8254550	A-1093	4105120012		102-2		CREASMAN #1	(NOT ASSIGNED)	55.0	EAST TENNESSEE NA
-MID SOUTH OIL CO				RECEIVED:	09/09/82	JA: TN			
8254564	A-1095	4104920646		102-2		CHARLES M WHITEHEAD #1	HONEY CREEK	50.0	INTRASTATE ENERGY
8254565	A-1096	4104920672		102-2		CHARLES M WHITEHEAD #3	HONEY CREEK	50.0	INTRASTATE ENERGY
8254567	A-2007	4115120660		102-2		HAWN HEIRS #1	ROBBINS	40.0	INTRASTATE ENERGY
8254566	A-2008	4115120807		102-2		HAWN HEIRS #2	ROBBINS	40.0	INTRASTATE ENERGY
-PARMA PETROLEUM CORP				RECEIVED:	09/09/82	JA: TN			
8254593	A-2116	4115120744		102-4		ROBBINS PEMBERTON #1	ONEIDA SOUTH	80.0	INTRASTATE ENERGY
-RED FEATHER GAS & OIL INC				RECEIVED:	09/09/82	JA: TN			
8254507	A-2141	4104920909		102-2		BOBBY TAUBERT #1	SHIRLEY FIELD SEC 21	16.0	INTRASTATE ENERGY
-SAINT JOSEPH PETROLEUM INC				RECEIVED:	09/09/82	JA: TN			
8254491	A-2016	4104920650		102-4		BAESE ET AL #1	STOCKTON S W	73.0	B & W OIL CO
8254492	A-2011	4104920650		102-4		BAESE ET AL #1	STOCKTON SW	73.0	B & W OIL CO
8254486	A-2010	4104920724		102-4		MACK COOPER #1	STOCKTON S W	547.5	B & W OIL CO
8254487	A-2015	4104920724		102-4		MACK COOPER #1	STOCKTON S W	547.5	B & W OIL CO
8254488	A-2012	4104920714		102-4		RODGER WALLACE #2	STOCKTON S W	1.8	B & W OIL CO
8254489	A-2019	4104920714		102-4		RODGER WALLACE #2	STOCKTON S W	1.8	B & W OIL CO
8254490	A-2020	4104920798		102-4		RODGER WALLACE #3	STOCKTON S W	1.8	B & W OIL CO
8254496	A-2017	4104920802		102-4		RODGER WALLACE #4	STOCKTON SW	1.8	B & W OIL CO
8254494	A-2021	4104920504		102-4		WALLACE-GERNT #1	STOCKTON SW	182.5	B & W OIL CO
8254495	A-2014	4104920504		102-4		WALLACE-GERNT #1	STOCKTON SW	182.5	B & W OIL CO
8254493	A-2022	4104920626		102-4		WALLACE-GERNT #2	STOCKTON SW	3.7	B & W OIL CO
-SONIC PETROLEUM INC				RECEIVED:	09/09/82	JA: TN			
8254477	A-2060	4112921025		102-4		BOB ANDERSON #S-3	RUGBY	100.0	INTRASTATE ENERGY
8254560	A-2061	4112921094		102-4		BOB ANDERSON #S-6	RUGBY	80.0	INTRASTATE ENERGY
8254481	A-2033	4112921105		102-4		BOB ANDERSON #S-7	RUGBY	80.0	INTRASTATE ENERGY
8254482	A-2034	4112921023		102-4		BOB ANDERSON S-2	RUGBY	100.0	INTRASTATE ENERGY
8254547	A-2028	4112920779		102-2		BOBBY YORK #S-PF-1		50.0	INTERSTATE ENERGY
8254546	A-2029	4112921012		102-2		BOBBY YORK #S-PF-2		20.0	INTERSTATE ENERGY
8254549	A-2031	4112921014		102-2		BOBBY YORK #S-PF-4		25.0	INTRASTATE ENERGY
-SUNBRIGHT OIL & GAS INC				RECEIVED:	09/09/82	JA: TN			
8254512	A-1090	4112920885		102-2		CLYDE FREDS #1		36.5	INTRASTATE ENERGY
-T M GRASSO OIL & GAS DEVELOPMENT IN				RECEIVED:	09/09/82	JA: TN			
8254544	A-2082	4112920529		102-4		OLMSTEAD ETAL #1	UNION HILL	21.9	INTRASTATE ENERGY
-TARTAN OIL COMPANY				RECEIVED:	09/09/82	JA: TN			
8254596	A-2137	4112973022		108		ALVERNE E SEBBY UNIT #1	SUNBRIGHT	2.6	INTRASTATE ENERGY
8254599	A-2130	4112920276		108		CONWAY JOHNSON #1-C (PERMIT #1150)	LITTLE CLEAR CREEK NO	16.9	INTRASTATE ENERGY
8254600	A-2131	4112920286		108		CONWAY JOHNSON #2-C (PERMIT #1219)	LITTLE CLEAR CREEK NO	16.9	INTRASTATE ENERGY
8254601	A-2132	4112920637		108		CONWAY JOHNSON #3-C (PERMIT #3082)	LITTLE CLEAR CREEK NO	9.3	INTRASTATE ENERGY
8254598	A-2134	4112920656		108		GALLOWAY-HENRY UNIT #1 (PERMIT #32*	BURRVILLE SOUTHEAST	13.0	INTRASTATE ENERGY
8254595	A-2136	4112920437		108		H SEXTON ETAL UNIT #1 (PERMIT #214*	BURRVILLE SOUTH	12.7	INTRASTATE ENERGY
8254577	A-2128	4112920330		108		LANGFORD-HARTIN UNIT #1 (PERMIT #1*	SUNBRIGHT	7.5	INTRASTATE ENERGY
8254597	A-2133	4112920712		108		NITZSCHKE-BROYLES HRS UNIT #1	BURRVILLE SOUTH	12.5	INTRASTATE ENERGY
8254578	A-2129	4112920369		108		ROBERT D PARTEN ET AL UNIT #1	SUNBRIGHT	4.0	INTRASTATE ENERGY
8254594	A-2135	4112920399		108		T L HENRY #2 (PERMIT #1928)	BURRVILLE SOUTH	10.6	INTRASTATE ENERGY
-THREE G'S DRILLING CO				RECEIVED:	09/09/82	JA: TN			
8254592	A-2139	4104920884		102-4		GUY BEATY & GUY DALE BEATY #1	GRIMSLEY	4.0	FENTRESS GAS TRAN
-TOWNER PETROLEUM CO				RECEIVED:	09/09/82	JA: TN			
8254529	A-2037	4115120439		102-2		BLAIR-HORDE #10	BENDIX SPUR	204.0	
8254530	A-2038	4115120445		102-2		BLAIR-HORDE #12	BENDIX SPUR	20.0	
8254531	A-2039	4115120380		102-2		BLAIR-HORDE #2	BENDIX SPUR	21.0	
8254527	A-2035	4115120415		102-2		BLAIR-HORDE #8	BENDIX SPUR	38.0	

VOLUME 745 PAGE 006

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8254528	A-2036	4115120426		102-2		BLAIR-HORDE #9	BENDIX SPUR	20.0	
8254539	A-2041	4115120479		102-2		PEMBERTON #12	GUM BRANCH	40.0	
8254537	A-2040	4115120421		102-2		PEMBERTON #15	GUM BRANCH	25.0	
8254525	A-1098	4112920525		102-2		PEMBERTON B-1	UNNAMED	12.0	
8254524	A-1099	4112920546		102-2		PEMBERTON B-2	UNNAMED	51.0	
8254520	A-2000	4112920606		102-2		PEMBERTON B-3	UNNAMED	89.0	
8254521	A-2001	4112920640		102-2		PEMBERTON B-4	UNNAMED	90.0	
8254523	A-2002	4112920651		102-2		PEMBERTON B-6	UNNAMED	27.0	
8254522	A-2003	4112920683		102-2		PEMBERTON B-7	UNNAMED	27.0	
8254535	A-2053	4115120366		102-2		PEMBERTON-HICKS #4	GUM BRANCH	18.0	
8254536	A-2046	4115120483		102-2		RAY #1	GUM BRANCH	17.0	
8254534	A-2047	4115120438		102-2		RAY #2	GUM BRANCH	7.0	
8254533	A-2043	4115120442		102-2		RAY #3	GUM BRANCH	63.0	
8254532	A-2045	4115120455		102-2		RAY #4	GUM BRANCH	20.0	
8254526	A-2004	4104920312		102-2		TOMPKINS-HULL #1	MT HELEN	100.0	
8254538	A-2042	4115120478		102-2		VIOLET-TUDOR #1	GUM BRANCH	10.0	
-WHITEHEAD CHARLES M				RECEIVED:	09/09/82	JA: TN			
8254579	A-2118	4104920062		102-2		BESSTT DAIRY FARMS INC #1	SHIRLY	80.0	INTRASTATE ENERGY
**********									
VIRGINIA DEPARTMENT OF LABOR & INDUSTRY									
**********									
-COLUMBIA GAS TRANSMISSION CORP				RECEIVED:	09/07/82	JA: VA			
8254412		4502720436		103		BUCHANAN ENERGY CORP 820713	VIRGINIA FIELD AREA H	33.0	COLUMBIA GAS TRAN
**********									
WEST VIRGINIA DEPARTMENT OF MINES									
**********									
-AMAX PETROLEUM CORPORATION				RECEIVED:	09/07/82	JA: WV			
8254441		4708300361		103		BLACKBURN #1	ROARING CREEK	180.0	COLUMBIA GAS TRAN
8254430		4708300362		103		BLACKBURN #2	ROARING CREEK	180.0	COLUMBIA GAS TRAN
8254431		4708300452		103		CROWL #1	ROARING CREEK	180.0	COLUMBIA GAS TRAN
8254432		4708300453		103		CROWL #2	ROARING CREEK	180.0	COLUMBIA GAS TRAN
8254433		4708300454		103		CROWL #3	ROARING CREEK	180.0	COLUMBIA GAS TRAN
8254436		4708300463		103		GOVE #1	ROARING CREEK	180.0	COLUMBIA GAS TRAN
8254437		4708300464		103		GOVE #2	ROARING CREEK	180.0	COLUMBIA GAS TRAN
8254438		4708300465		103		GOVE #3	ROARING CREEK	180.0	COLUMBIA GAS TRAN
8254434		4708300455		103		GREER #1	ROARING CREEK	180.0	COLUMBIA GAS TRAN
8254435		4708300456		103		GREER #2	ROARING CREEK	180.0	COLUMBIA GAS TRAN
-DAVIS GAS CO				RECEIVED:	09/07/82	JA: WV			
8254440		4708502724		108		DAVIS #1	UNION DISTRICT	12.0	CONSOLIDATED GAS
-DEVON CORPORATION				RECEIVED:	09/07/82	JA: WV			
8254439		4709901749		107-DV		CONNIE STALEY #981	GRAGSTON CREEK	55.0	TENNESSEE GAS PIP

OTHER PURCHASERS VOLUME NO :745

8254455 RINGWOOD GATHERING CO
8254456 RINGWOOD GATHERING CO
8254584 TENNESSEE GAS PIPELINE CO

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27645 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-C

[Docket No. PL82-2-000]

Compliance With ACRS Transition Provisions of the Economic Recovery Tax Act of 1981; Policy Statement Regarding Income Tax Normalization Under the Economic Recovery Tax Act of 1981

Issued: September 30, 1982.

Background

The Economic Recovery Tax Act of 1981 (ERTA), Pub. L. 97-34, 95 Stat. ——— (August 31, 1981), among other things, established certain business incentive provisions, including the Accelerated Cost Recovery System (ACRS) as a new section 168 of the 1954 Internal Revenue Code, 26 U.S.C. 168. Under the new depreciation system, with respect to public utilities, qualifying "recovery property" is defined as excluding property in instances where the taxpayer does not use a "normalization method of accounting." [1] Thus, a public utility cannot qualify for the substantial ACRS tax benefits, unless it fully normalizes both method and life timing difference transactions [2] associated with property depreciated under ACRS.

The Commission recently addressed the operation and ramifications of the ACRS provisions as follows (footnotes omitted):

> ACRS completely replaces the prior system of depreciation for property placed in service after December 31, 1980. ACRS abandons the concept of useful life in favor of prescribing certain annual depreciation (cost recovery) percentages by asset class. In addition, ACRS prescribes the treatment of asset salvage value. All utilities using ACRS, even those that currently use flow-through, are required under ERTA to normalize timing difference transactions attributable to the use of ACRS for property placed in service after December 31, 1980, in order to receive the tax benefits of ERTA.
>
> If the Commission denied normalization treatment for these timing difference transactions, utilities could not use ACRS and would be required to follow book methods and lives for tax purposes. In that event, there would be no method or life timing differences; depreciation methods and lives would be the same for ratemaking and income tax purposes. With the elimination of method and life timing differences, flow-through of IRC tax benefits to ratepayers would no longer be an option since there would be no tax benefits to flow-through; the utility would lose all tax benefits associated with use of different depreciation methods and lives. For this reason, Commission denial of the use of tax normalization for the timing differences created by the new Act would adversely affect ratepayers and utilities and would frustrate the intent of Congress.
>
> Commission orders issued prior to Order No. 144 which addressed timing difference transactions related to depreciation do not cover the new timing difference transactions created by ACRS. The normalization requirement of Order No. 144, which encompasses all miscellaneous timing transactions not previously covered by Commission orders, therefore, covers those timing difference transactions created under the ACRS.[3]

In addition, ERTA prescribed certain transition provisions applicable to public utilities. *See* 16 U.S.C. 209(d). In general, the transitional rule provides that (1) if, by the terms of the last rate order entered before ERTA, a public utility woud fail to meet the ACRS requirements because (for an accounting period ending after 1980) the utility had not used a normalization method of accounting, (2) the ACRS requirements could nonetheless be satisfied if, by the terms of the "first rate order determining cost of service with respect to (post-1980 ACRS property) which becomes effective after (ERTA) and on or before January 1, 1983, such regulated public utility uses a normalization method of accounting."[4]

Discussion

As noted in the above-quoted excerpt, it is the Commission's belief that a regulated entity's use of ACRS provides advantages both to the utility [5] and to its ratepayers. The rapid depreciation of qualifying property decreases the utility's current income tax liability and lowers the rate base on which ratepayers must pay a return. As a result, the Commission desires and intends to take such action as is necessary to enable all utilities subject to its jurisdiction to qualify for the ACRS benefits established by Congress. Except perhaps in limited circumstances, future compliance with the mandatory normalization requirements of Order No. 144-A, *supra*, should satisfy the prerequisites for use of ACRS.

However, the requirements of the ERTA transitional provisions are not entirely clear and raise a variety of questions as to which utilities require specific Commission action and how the Commission may expeditiously, yet effectively, accomplish its role. ERTA provided the Secretary of the Treasury with authority to prescribe interim regulations for determining compliance with the ACRS requirements of section 168(e)(3)(B) of the Code. *See* 26 U.S.C. 209(d)(4). By Internal Revenue Service News Release IR-82-25, issued in March, 1982, Treasury indicated that such guidelines would be forthcoming. The Commission's staff has submitted comments, questions, and suggestions to representatives of the Internal Revenue Service for consideration in promulgating such regulations, although it now appears that no interim regulations will be forthcoming prior to the critical date by which Commission action may be required (*i.e.*, January 1, 1983), or, at least, far enough in advance of that date to be helpful.

This Commission regulates varying portions of the business of more than 300 utilities. Thus, its obligation to satisfy the ERTA requirements and enable affected utilities to realize the benefits intended by Congress cannot be taken lightly. In the absence of affirmative guidance in the form of Treasury regulations, we have taken action when requested to do so and when possible to indicate compliance with the ACRS normalization prerequisite and we have attempted to not inadvertently prejudice any utility's ability to utilize ACRS by issuance of a "first rate order determining cost of service" which could be construed as precluding normalized accounting. We have not intentionally taken or declined to take action to prevent any jurisdictional utility from meeting the ACRS requirements. We note that while various utilities (or customers) have expressly requested particular Commission action in the hopes of assuring compliance with ERTA, others have remained silent.

Because we are rapidly approaching January 1, 1983, and because no guidelines have been advanced by the

[1] *See* U.S.C. 168(e)(3)(B) for the pertinent definition of "normalization."

[2] An example of a method difference is the difference resulting from accelerated depreciation (under ACRS) and straight-line depreciation (for ratemaking). An example of a life difference is the difference resulting from depreciation over a 15-year period (under ACRS) and depreciation over a 30-year period (for ratemaking).

[3] Commission Order No. 144-A, Docket Nos. RM80-42, R-424, and R-446, 18 FERC ¶ 61,163 (Febraury 22, 1982).

[4] We note that a similar transition rule applies to ERTA compliance for investment tax credits, section 46(f) of the Internal Revenue Code of 1954, with respect to property for an accounting period after December 31, 1980. We view compliance with the transitional rule as a less widespread problem in the case of investment tax credits since very few companies subject to our jurisdiction had utilized the flow-through option for these credits prior to the enactment of ERTA. As a result, we have focused on the ACRS transitional rule for purposes of this policy statement. Nevertheless, our interpretation of the transition provisions should apply as well with respect to the investment tax credits.

[5] ERTA utilizes the term "public utility" which, in this Commission's typical usage, refers specifically to jurisdictional electric utilities. As used in this policy statement, the terms "public utility," "utility," or "regulated entity" are intended to refer to jurisdictional natural gas pipelines as well as electric utilities.

Internal Revenue Service, we believe that it is appropriate to express our current views on the subject. In doing so, we caution affected entities that these observations and conclusions have not been sanctioned by Treasury and that this Commission can provide no assurance that its views ultimately will coincide with those of the IRS. Nonetheless, as an expert body with statutory authority to evaluate and prescribe utility rates, we would assume that some deference would be accorded to our perception of the most effective manner in which to accomplish Congressional intent in the context of the ratemaking process and in light of the pragmatic difficulties posed by ERTA.

The most pressing problems presented by ERTA concern the transitional provisions applicable to ACRS property. Although the transitional rule for normalization requirements is subject to various interpretations, we believe that a fair reading of ERTA, in conjunction with "real life" ratemaking limitations, results in certain practical conclusions. At the outset, it appears reasonable to conclude that the transition provisions exist not as an obstacle to qualification for ACRS benefits, but rather as a mechanism for readily enabling utilities that would not otherwise qualify as a result of prior practices to nonetheless satisfy the Act by conforming their accounting and ratemaking practices and receiving regulatory acknowledgement. Thus, we firmly believe that the transitional rule should be construed liberally and that regulatory bodies should be afforded substantial discretion in fashioning procedures (and construing their actions) to provide for ACRS qualification.[6] Given this predicate, the following conclusions with respect to the transitional rule appear reasonable:

(1) The transitional rule does not necessarily apply to all regulated utilities. Where a utility as of January 1, 1981, was fully normalizing for method and life differences for both accounting and ratemaking purposes, in the manner contemplated by section 168(e)(3)(B), it should satisfy the ERTA requirements without resort to the transitional procedures. There may be instances in which utilities had normalized for virtually all timing difference transactions but had failed to reflect normalization of the difference between tax and book lives. In such cases, it may be possible to correct this situation through relatively minor accounting and cost of service adjustments. Particularly where a utility is able to secure customer agreement, expedited Commission consideration could be expected.

(2) A rate order for purposes of qualifying property as recovery property under the normalization requirements and the transitional rule is an action by a regulatory body that permits a utility to develop rates that provide for normalization of all depreciation life and method differences (including averaging conventions and salvage value) between that used for ratemaking purposes (and financial accounting purposes) and that used for income tax purposes. The rate order can be either a final rate action,[7] an action that permits rates to be collected subject to refund provided normalization is ultimatley reflected in the approved rates, or an order which acknowledges that the utility is not curently permitted to revise its rates [8] but that the cost of service supporting any finally approved rate will reflect a normalization method of accounting. Whether the rates authorized by a specific rate order provide for normalization or not is a factual determination which is evidenced by the language of the rate action documents, the materials supporting the rate filing, the underlying accounting records, the testimony of witnesses in rate hearings, the regulations and practices of the regulatory commission, etc.

(3) A public utility's post-1980 property will qualify as recovery property to the extent it is covered by a qualifying rate order regardless of whether the utility receives a qualifying rate order for all of its regulated services. If a public utility does not receive a qualifying rate order before January 2, 1983, for all its regulated services, identification and allocation of property between that eligible as recovery property and that which is ineligible must be made for income tax and financial accounting purposes in a manner that is consistent with the way that costs are allocated and rates are determined in the rate proceedings.

(4) The transitional rule for normalization requirements apparently presumes that a utility would legally be able to make a rate filing reflecting normalization and receive approval for such treatment from the appropriate regulatory body by January 2, 1983. However, there are many possible situations in which utilities may not revise their rates on file with this Commission prior to January 1, 1983, because of pre-existing contract limitations, rate-filing moratorium provisions, suspension provisions, etc. In stituations of this kind, an order adopting a normalization method of accounting for financial statement purposes as of january 1, 1983, and indicating that the finally approved rates will reflect such normalization should meet the transition requirements. We believe that in these instances, such an approach is the only practicable way to accomplish the Congressional intent.

(5) Regardless of when it becomes effective, a rate order should not qualify as a "first rate order" under the transitional rule unless it utilizes a test year that includes post-1980 property. We believe that the views expressed in Internal Revenue Service News Release IR–82–25 should be revised to the extent that they indicate otherwise. Because of the length of time involved in full blown, contested rate cases, the Commission may find itself confronted with final rate orders determining cost of service for test periods one or more years prior to 1981 and, therefore, containing no post-1980 property. The record in such cases might not be based on a normalization method of accounting. Therefore, to impose the legislative standards enacted in 1981 on rate cases based on, say, a 1978 test year, would seem to be illogical and, arguably, illegal. We therefore believe that the intent of the Congress was to define "first rate orders" for purposes of the transitional rule as orders in rate cases involving at least some post-1980 property.

We further believe that it should be the rate order, not the rate itself, that must become effective prior to January 1, 1983, at least in some cases. The ERTA transitional rate language on its

[6] For example, this Commission disposes of rate filings in a number of ways. Often, following analysis of a filing, the Commission is able to conclude that the statutory requisites of the Federal Power Act or the Natural Gas Act have been met, in which case the submittal is accepted for filing without further proceedings and the rate is simply accepted. Contested rate cases often result in settlements which determine an acceptable revenue level but do not purport to resolve specific issues. Still other cases proceed to hearing, a process which from beginning to end can last for several years. In certain instances, existing contractual provisions preclude the imposition of a new rate until the conclusion of the proceeding. Given the wide variety of potential Commission actions, and the extended duration of some proceedings, it is imperative that the Commission have discretion to craft its orders and construe its decisions in such a way as to satisfy the "first rate order" prerequisite of the transitional rule in a flexible manner. A blind adherence to strict form rather than substance could easily produce results unintended by Congress and, in certain instances, render compliance with the transitional rule impossible.

[7] Including an order approving a dollar settlement where the utility's books of account are kept on a normalized basis and the revenues resulting from the settlement are sufficient to reflect the normalized method of accounting.

[8] *See* discussion of contractual limitatins in item number 4 below.

face supports the construction that it is the "rate order" that must be effective. In addition, as noted above (section 4) there are contractual and other limitations that may prevent the rates themselves from becoming effective prior to January 1, 1983. In these cases, the transitional rules should be read to apply to orders that are effective by that date, regardless of whether such orders have yet been reflected in currently collected rates.

Conclusion

Having set forth our views as to the way the ERTA transitional rules should be interpreted in view of the practical ratemaking, accounting, contractual, and administrative considerations involved, we invite any requests for rate orders or rate filings which may be considered necessary in light of the Act and our discussion of it above. Because of the time constraints imposed by the transitional rule, requests for ERTA relief should be clearly labeled as such and should request waiver of the full notice period if good cause is stated for such waiver. Where the request is for a rate increase as well as for an order or accounting statement indicating ERTA compliance, customer agreement to the waiver of notice and to the proposed increase insofar as it permits ERTA compliance will greatly enhance the Commission's ability to act on the request in a timely fashion. In those cases where a request for Commission action has been made, but the Commission has been unable to act because of lack of information, a renewed request with appropriate cost support would be entertained if possible.

The Commission Orders

The Secretary shall promptly publish this policy statement in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27644 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-481-001 and ER82-481-002]

Arizona Public Service Co.; Order Denying Rehearing

Issued: September 30, 1982.

On July 28, 1982, the Papago Tribal Utility Authority (PTUA) and Arizona Electric Power Cooperative (AEPCO) filed a timely application for rehearing of the Commission's order issued in this proceeding on June 28, 1982.[1] In that order, the Commission accepted rates proposed by Arizona Public Service Company (APS) for filing, denied motions by several parties to reject the filing, suspended the rates for one day as to those customers whose contracts permit unilateral rate changes, ordered a hearing on the rates for all affected customers, and granted intervention.

On rehearing, PTUA and AEPCO allege that the Commission erred in failing to reject APS' filing for the following reasons: (1) APS has used a method of retroactive normalization not authorized by Order Nos. 144 and 144–A; (2) the rulemaking procedure followed in Docket Nos. RM80–42, R–424 and R–446 did not meet the requirements of section 3(b) of the Administrative Procedure Act ("APA"), 5 U.S.C. 553(b)(3); (3) the Commission has engaged in retroactive ratemaking; and (4) the procedures invoked by the Commission with respect to accumulated deferred tax reserve balances after its most recent policy determination on tax normalization are inconsistent with procedures invoked following previous changes in policy concerning normalization.

On July 28, 1982, Plains Electric Generation and Transmission Cooperative, Inc. (Plains) also filed a timely petition for rehearing. Plains requests that the Commission order a full five month suspension of APS' proposed rates as they apply to Plains. In support of its petition, Plains states that a "substantial question" exists as to whether the rates are more than ten percent excessive under the test enunciated by the Commission in *West Texas Utilities Company*, 18 FERC ¶ 61,198 (1982). Plains also complains that as a customer subject to unilateral rate changes, it should not be required to subsidize those customers of APS whose rates cannot be increased pending hearing and Commission decision. Plains contends that this would be unduly discriminatory and preferential.

On August 11, 1982, the Commission's Trial Staff in Docket No. ER82–481–000 filed a motion to strike portions of Plains' petition to the extent that Plains' arguments for rehearing are based on the use of information derived from the staff's top sheets.[2] In support of its motion, the Staff states that the top sheets have been defined as "summary cost of service schedules prepared by Staff or intervenors on the basis of a detailed cost of service analysis for ratemaking purposes",[3] which are "privileged and shall not be admissible in evidence against any person claiming such privilege",[4] and which are different from "the preliminary analysis of a rate filing (which) is a rough first-cut review performed within a limited statutory period on the basis of then-available information." [5]

Discussion

We shall deny PTUA's and AEPCO's application for rehearing inasmuch as we fail to find grounds set forth which are sufficient for rejecting APS' filing under the tests set forth in *Municipal Light Boards.*[6] First, PTUA states that APS has used a method of retroactive normalization not authorized by Order Nos. 144 and 144–A. The Commission does not agree with PTUA's characterization that subject matter referred to in APS' filing constitutes retroactive normalization. PTUA disagrees with the method used by APS to normalize $137,727,000 representing plant in service. However, this method is expressly provided for in Order No. 144, pp. 4–6 (mimeo ed.) and in Order No. 144–A, p. 6 (mimeo ed). In addition, in Order No. 144 at pp. 119–20 we stated that, with respect to make-up entries, *all* timing differences are to be considered. If PTUA takes the position that APS' computations are incorrect, this is a matter to be raised at trial. As to the argument regarding the propriety of the *South Georgia* [7] method, we specifically stated in Order No. 144 (mimeo at pp. 120–21) that we would require resolution of the problem on a case-by-case basis. Therefore, PTUA is free to raise this issue at the hearing, but it is not a basis for rejection of the filing.

Next, PTUA and AEPCO claim that the rulemaking procedure followed in Docket Nos. RM80–42, *et al.* did not meet the requirements of section 3(b) of the APA, 5 U.S.C. 553(b)(3); that in accepting APS' filing the Commission is engaging in retroactive rulemaking; and that the procedures invoked by the Commission with respect to the

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[1] *Arizona Public Service Company*, 19 FERC ¶ 61,332 (1982).

[2] In ordering paragraph (G) of the suspension order issued June 28, 1982, we directed the Staff to serve top sheets within ten days of the issuance of our order. 19 FERC ¶ 61,332 at p. 61,637.

[3] *See*, Administrative Order No. 157, 41 FR 15090 (1976).

[4] *See*, 18 CFR 1.18(e)(1)(v).

[5] *West Texas Utilities Company*, 18 FERC 61,189 at p. 61,374 (1982).

[6] *Municipal Light Boards* v. *FPC*, 450 F.2d 1341 (D.C. Cir. 1971), *Cert. denied*, 405 U.S. 989 (1972).

[7] *South Georgia Natural Gas Co.*, Docket No. RP77–32, Letter Order Accepting Proposed Stipulation Agreement issued May 5, 1982.

accumulated deferred tax reserve balance after its most recent change in policy on rate normalization are inconsistent with procedures invoked following previous policy changes. We note that all of these complaints are actually directed toward the rulemaking in Docket No. RM80–42, *et al.* We will not permit collateral attacks on the rulemaking in this proceeding, and these challenges are accordingly dismissed, except to the extent they encompass questions which are proper subjects for the hearing in this proceeding, as discussed in the preceding paragraph.

We shall also deny Plains' petition for rehearing. With respect to the issue of length of suspension for which Plains bases its arguments on comparison of APS' filling with the top sheet issued by the Staff, we agree completely with the Staff and grant its motion to strike in its entirety. We have stated on several occasions previously [8] that top sheets are privileged, and that position has been upheld in the courts.[9] We hereby put parties on notice that in the future we will summarily strike portions of pleadings which refer to material in top sheets and other privileged settlement materials.

Plains also states that the Commission may have based its one day suspension decision on the fact that APS has a large number of customers from which it cannot collect revenues until a final Commission determination is made in this proceeding. Plains' statement is without merit. The Commission's preliminary review in Docket No. ER82–481–000 found that no more than ten percent of APS' proposed rates appeared to be excessive when compared to the revenue requirements needed to serve the section 205 class of customers.

The Commission Orders

(A) The application for rehearing by PTUA and AEPCO in Docket No., ER82–481–001 and the petition for rehearing by Plains in Docket No. ER82–481–002 are hereby denied.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27648 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[8] *Delmarva Power & Light Company*, 16 FERC ¶ 61,177 at p. 61,396 (1981); *West Texas Utilities Company*, 18 FERC ¶ 61,189 at pp. 61,373–74 (1982).

[9] *New Orleans Public Service Company* v. *FERC*, 659 F.2d 509 (5th Cir 1981).

[Docket No. QF82–211–000]

Atlantic Bancorporation; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 4, 1982.

On September 16, 1982, Atlantic Bancorporation, 200 West Forsyth Street, General Mail Center, Jacksonville, Florida 32231, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to §292.207 of the Commission's rules.

The topping cycle cogeneration facility will be located in Jacksonville, Florida. The facility will be comprised of three reciprocating internal combustion ebullient cooled engine/generator sets. The electric power production capacity of the facility will be 1.5 megawatts. Recovered thermal energy will be used in cooling and heating applications. The primary energy source to the facility will be natural gas. Installation of the facility will begin in October 1982. 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 rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice 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. 82–27635 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5618–001]

James O. Boyd; Surrender of Preliminary Permit

October 1, 1982.

Take notice that James O. Boyd, Permittee for the proposed Lassen Power Project No. 5618, has requested that its preliminary permit be terminated. The permit was issued on May 19, 1982, and would have expired on October 31, 1983. The project would have been located on the Parsnip Creek in Lassen County, California.

The Permittee filed its request on September 14, 1982, and the surrender of the preliminary permit for Project No. 5618 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27663 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–837–000]

Central Power & Light Co.; Filing

October 4, 1982.

Take notice that Central Power & Light Company (CP&L) on September 23, 1982, tendered for filing a rate adjustment application to the Transmission Services Agreement ("Agreement") between Company and Houston Lighting and Power (HL&P). Accompanying the application is the Rate Schedule change and a cost of of service study. The Company has requested that the change be made effective as of July 29, 1982.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 18, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27636 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP82–54–003]

Colorado Interstate Gas Co.; Revised Changes in Rates

October 1, 1982.

Take notice that Colorado Interstate Gas Company (CIG) on September 22, 1982, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1 and 2.

The purpose of this filing is to comply with the directive stated in ordering Paragraph (C) of the Commission's Order of April 28, 1982, requiring CIG (1) to eliminate from Docket No. RP82–54 all costs associated with facilities which have not been placed in service by September 30, 1982, and (2) to reflect the actual balances of advance payments as of September 30, 1982. The proposed effective dates of the replacement tariff sheets are September 29, 1982, and October 1, 1982.

Copies of this filing have been served upon the Company's jurisdictional customers and upon interested bodies as well as all parties to this docket.

Any person desiring to be heard or to protest said filing should file a petition to intervene and protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before October 12, 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. 82–27664 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA83–1–21–000 (PGA83–1)]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 1, 1982.

Take notice that on September 22, 1982 Columbia Gas Transmission Corporation (Columbia) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1.

Original Volume No. 1

Eighty-fourth Revised Sheet No. 16
Twenty-sixth Revised Sheet No. 64

The subject tariff sheets bear an issue date of September 22, 1982, and an effective date of October 1, 1982.

Columbia states that the rates contained in Eighty-fourth Revised Sheet No. 16 reflect a Purchased Gas Cost Adjustment which provides for the recovery of $24,811,194 in additional gas purchase costs for the five-month period ending February 28, 1983.

Columbia proposes in the instant filing to track the October 1, 1982 rates of certain of its pipeline suppliers. Columbia believes that the reflection of such rates, while not provided for by the Commission's PGA regulations or the PGA provisions of Columbia's tariff, is necessary and appropriate, for the reasons set forth in Columbia's Response in Docket Nos. TA82–2–21, *et al.*, filed September 7, 1982, pp. 20–22. In this regard, the financing of such large amounts of pipeline purchase deferred costs, in addition to the deferred costs in producer purchases which come on line after the effective date of each PGA filing, causes significant cash flow problems for Columbia. Moreover, such large unrecovered purchased gas cost account balances result in increased carrying charges being incurred by Columbia's wholesale customers. Accordingly, Columbia submits that good cause exists for the Commission to grant a waiver of the applicable PGA regulations, as well as the PGA provisions of its tariff, so as to permit the instant filing to become effective as proposed, thereby mitigating the magnitude of Columbia's unrecovered purchased gas cost account balance for the subject PGA period.

Specifically, Columbia requests that the Commission grant waiver of Sections 154.22 and 154.38(d)(4) of the Commission's Rules and Regulations, and any other such waivers of its Regulations as it deems necessary to permit the revised tariff sheets to become effective as proposed.

Copies of the filing were served by Columbia upon its jurisdictional customers and interested state commissions.

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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure all such petitions or protests should be filed on or before October 12, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to meet protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27665 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP82–111–001]

Commercial Pipeline Co., Inc.; Proposed Change in FERC Tariff

October 1, 1982.

Take notice that Commercial Pipeline Co., Inc. ("Commercial"), on September 21, 1982, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. Specifically, Commercial tendered for filing the following:

Substitute Thirty-Ninth Revised Sheet No. 3A
Superseding Substitute Thirty-Eighth Revised Sheet No. 3A
Substitute Sixth Revised Sheet No. 7A
Superseding Fifth Revised Sheet No. 7A
Substitute First Revised Sheet No. 7B
Superseding Original Sheet No. 7B
Substitute Original Sheet No. 7C

The proposed changes have been filed in place of tariff sheets which were filed by Commercial on June 22, 1982, and which became effective subject to refund on June 23, 1982, pursuant to the Commission's order of July 22, 1982. That same order directed that a technical conference should be thereafter convened with Commercial to discuss those previously filed tariff sheets. As a result of that conference, Commercial has now filed proposed tariff sheets in place of those which previously became effective on June 23, 1982. Because the proposed tariff sheets are submitted in substitution for the sheets filed by Commercial on June 22, 1982, and allowed by the Commission to become effective subject to refund on June 23, 1982, it is proposed that these tariff sheets also became effective on June 23, 1982.

Copies of the filing were served on Commercial's FERC jurisdictional customers, the Kansas Corporation Commission and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C.; 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 12, 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 motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27666 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-44-000]

Commercial Pipeline Co., Inc.; PGA Filing

October 1, 1982.

Take notice that on September 21, 1982, Commercial Pipeline Co., Inc. ("Commercial") tendered for filing its 40th Revised Sheet No. 3A, Superseding Substitute 39th Revised Sheet No. 3A to its FERC Gas Tariff, First Revised Volume No. 1, reflecting Purchased Gas Adjustments and effective dates as set forth below:

Sheet No.	Current adjustment	Cumulative adjustment	Surcharge adjustment	Effective date
40th revised sheet No. 3A.	[1] 1.3284 [2] 1.3486	2.8154 2.8356	.0026 .0026	October 23, 1982.

[1] Base.
[2] Excess.

Commercial states that this filing is made pursuant to the purchased gas adjustment provisions being filed concurrently in Docket No. RP82-111, and is proposed to be effective October 23, 1982, which is the effective date of the PGA filed by Commercial's sole supplier, Cities Service Gas Company. Commercial further states that as a result of this filing, the previous suspension proceedings involving Commercial PGA filings in Docket Nos. TA82-2-44-000, TA82-1-44-000 and -001, and TA81-2-44-000 through -006 can be terminated.

Copies of the filings were served on Commercial's FERC jurisdictional customers, the Kansas Corporation Commission and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 12, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27667 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. E-7578-000]

Commonwealth Edison Co.; Refund Report

October 1, 1982.

Take notice that on July 23, 1982, Commonwealth Edison Company filed a refund report pursuant to the Commission's letter order of June 18, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before October 15, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27649 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4068-001]

Connecticut Municipal Electric Energy Cooperative; Surrender of Preliminary Permit

October 1, 1982.

Take notice that the Connecticut Municipal Electric Energy Cooperative (CMEEC), Permittee for the proposed Collins Upper and Collins Lower Project No. 4068, has requested that its preliminary permit be terminated. The preliminary permit was issued on April 2, 1982, and would have expired on September 30, 1983. The project would have been located on the Farmington River in Hartford County, Connecticut. CMEEC states that the project is not economically feasible.

CMEEC filed its request on September 20, 1982, and the surrender of its permit for Project No. 4068 is deemed effective as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27668 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP72-157-059, et al.]

Consolidated Gas Supply Corporation, et al.; Filing of Pipeline Refund Reports and Refund Plans

October 1, 1982.

Take notice that the pipeline listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 826 North Capitol Street, NE., Washington, D.C. 20426, on or before October 15, 1982. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb.

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
7/12/82	Consolidated Gas Supply Corp	RP72-157-059	Report.
8/12/82	Texas Sea Rim Co	CP79-413-001	Do.
8/20/82	Mountain Fuel Supply Co	ST80-156	Do.
8/30/82	El Paso Natural Gas Co	RP79-12-005	Plan.
9/1/82	The Nueces Co	CP82-357	Report.
9/13/82	Panhandle Eastern Pipe Line Co	RP81-119-007	LFUT report.
9/13/82	Southern Natural Gas Co	RM81-37-001	Do.
9/15/82	Granite State Gas Transmission Inc	RP82-18-0049	Do.

[FR Doc. 82-27669 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4378-001]

Consolidated Hydroelectric, Inc.; Surrender of Preliminary Permit

October 1, 1982.

Take notice that Consolidated Hydroelectric, Inc., Permittee for the proposed Hostler Creek Project No. 4378, has requested that its preliminary permit be terminated. The preliminary permit was issued September 21, 1981, and would have expired February 28, 1983. The project would have been

located on Hostler Creek in Humboldt County, California.

The Permittee filed its request on September 2, 1982, and the surrender of the preliminary permit for Project No. 4378 is deemed effective as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27670 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-223-000]

Cornell Heavy Oil Process, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 4, 1982.

On September 13, 1982, Cornell Heavy Oil Process, Inc., Suite 128, 5440 Harvest Hill Road, Dallas, Texas 75230, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping cycle cogeneration facility will be located near Bakersfield, in Kern County, California. The facility will consist of three complexes, each composed of 4 steam generators and a dry steam turbine/electric generator set. Total net electric power production capacity of the facility will be 11,469 kilowatts. Steam from the turbines will be injected underground for enhanced recovery of oil from shallow reserves. The primary energy source to the facility will be crude oil. Installation of the facility will begin in January 1984. 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 rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice 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. 82-27637 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-513-000]

Gasdel Pipeline System Inc.; Application

October 1, 1982.

Take notice that on August 26, 1982, Gasdel Pipeline System Incorporated (Applicant), P.O. Box 570, Newark, New Jersey 07101, filed in Docket No. CP82-513-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition of an interest in certain pipeline and appurtenant facilities owned by Transcontinental Gas Pipe Line Corporation (Transco), offshore Texas, and the transportation of natural gas for Public Service Electric and Gas Company (PSE&G), Applicant's affiliate, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that its affiliate, PSE&G, has the right to purchase gas to be produced or being produced by another affiliate, Energy Development Corporation (EDC) from reserves in Block A-42, North Padre Island Area and East Addition thereto, offshore Texas. Applicant herein requests authorization to acquire by purchase a 25 percent interest in approximately 18.90 miles of 20-inch pipeline and a 7.91 percent interest in approximately 66.35 miles of 24-inch pipeline including appurtenant facilities and other appurtenant metering, regulating, dehydration, separation and connection facilities known as the Padre Island Pipeline System (PIPS), which are owned by Transco and which connect natural gas production from gas supply in Block A-42, North Padre Island Area and East Addition thereto, offshore Texas, to Transco's mainline in Jim Wells County, Texas. It is estimated that the total cost of the facilities sought to be acquired is $8,300,000, which cost would be financed initially by funds advanced by Applicant's parent, EDC, from short-term loans, or funds on hand. It is anticipated that permanent long-term debt financing of approximately 75 percent of the cost of the facilities would be undertaken as part of Applicant's overall financing programs at later dates. Applicant states that the subject facilities to be acquired are based in part on the equivalent percentage of interest ownership by EDC in Block A-42 and in part on the equivalent percentage of production from Block A-42 as it relates to the total capacity of PIPS.

Applicant further proposes to transport for PSE&G the natural gas produced from EDC-owned production on Block A-42 to an existing point of interconnection of PIPS with Transco's mainline in Jim Wells County, Texas. Transco would then provide transportation from that point to PSE&G's system. Applicant proposes to provide that transportation service for PSE&G pursuant to Rate Schedule T-1 of its tariff to be filed with the Commission.

It is stated that PSE&G, through its subsidiary, EDC, has engaged in extensive self-help efforts to alleviate the effects of pipeline curtailment on its distribution system supply. Transco and EDC agreed that EDC or its affiliate would participate either through direct ownership or grants in aid of construction in the construction of facilities necessary to tie-in production to an existing Transco offshore pipeline or to that of another pipeline. It is stated that Applicant is an extension of this self-help effort in order to enable PSE&G to obtain transportation service for the volumes of natural gas produced by EDC.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 22, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this

application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under 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. 82-27638 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-102-000; Opinion No. 149]

Gas Research Institute; Opinion and Order Amending and Approving Gas Research Institute's 1983 Research and Development Program and Related Five-Year Plan for 1983-1987

Issued: September 30, 1982.

Appearances

Christopher T. Boland, James M. Broadstone, Peter C. Lesch, and *Thomas C. O'Laughlin* for the Gas Research Institute.

Janice E. Kerr, J. Calvin Simpson, and *Lawrence Q. Garcia* for the People of the State of California and the Public Utilities Commission of the State of California.

Perry Swisher, President, *Michael S. Gilmore, David Leroy,* and *Jack McMahon* for the Idaho Public Utilities Commission.

David E. Blabey and *Richard A. Solomon* for the Public Service Commission of the State of New York.

Jeffrey M. Petrash for Michigan Consolidated Gas Company.

Bernard A. Foster, III, for Getty Synthetic Fuels, Inc.

Thomas E. Mitchell, Keith R. McCrea, and *James L. Trump* for the Glass Packaging Institute.

Ruth E. Sigler for the Staff of the Federal Energy Regulatory Commission.

SUPPLEMENTARY INFORMATION:

Introduction

Before us is the application of the Gas Research Institute (GRI) for advance approval[1] of its 1983 Research and Development Program and related five-year plan for 1983-1987. For each year since 1978, we have approved—with modifications—GRI's annual research and development program and related five-year plan.[2]

Proposed Budget and Funding for 1983

GRI is asking that we approve a funding requirement of $124,366,000 which would be raised through a funding unit of 9.7 mills per Mcf to be collected by its members[3] during 1983 as a surcharge on the sale and transportation by these members of funding services of 12,797.5 Bcf of natural gas.[4] The remaining $15,850,000 of GRI's 1983 operating budget of $140,216,000 is derived from patent licenses, settlements of contracts, sales of research equipment, and interest income (all of which total an estimated $7,855,000) and unexpended and uncommitted funds ($7,995,000) that were collected under earlier approved programs.

GRI's proposed 1983 budget of $140,216,000 represents an increase of 40.4 percent over last year's approved budget of $99,835,000. This year's budget provides for contract research at a total cost of $116,735,000 divided as follows among GRI's objectives:

Supply Options	$39,875,000
Efficient Utilization	63,300,000
Enhanced Service	7,700,000
Fundamental Research	[5]5,860,000

[5]GRI has also submited the following estimates of anticipated coordinated funding during 1983 by the federal government and industry. These estimates of coordinated funding include both "cofunding," where project costs are shared to varying degrees, and "cooperative funding," where complementary activities are undertaken by different organizations, but GRI has not broken these figures down to indicate the extent of each.

Contract support totals $23,481,000 broken down as follows:

Technical Project Development	$7,439,000
Planning	1,168,000
Technical Communications	1,363,000
General Operating Expenses	13,511,000

COORDINATED FUNDING

[000 omitted]

GRI Objective	Government and industry
Supply Options	$19,595
Efficient Utilization	21,850
Enhanced Service	2,505
Fundamental Research	1,711
Total	45,661

Anticipated coordinated funding for 1983 is comprised of approximately $11.5 million from government and $34.1 million from industry. The following table shows the history of GRI's coordinated funding:

COORDINATED FUNDING

[000 omitted]

Program year	GRI R&D budget	Government coordinated funding	Industry coordinated funding
1978	$27,838	$48,133	$2,083
1979	35,858	52,823	8,750
1980	49,315	66,744	15,374
1981	68,500	72,850	24,354
191982 [1]	83,725	35,740	28,465
191983 [1]	116,735	11,528	34,133

[1] Estimated.

The table reveals steadily increasing amounts of industry coordinated funding. On the other hand, government coordinated funding has plummeted, reflecting current government policy to fund only long-term, high-risk energy R&D.

GRI's application for 1983 reflects adjustments in the direction of its activities and in its budget strategy—adjustments it says are necessitated by changing federal policy with respect to energy R&D.[6] Previously, GRI had placed primary emphasis upon a strategy designed to maximize its limited funds through securing coordinated funding of projects which were of common interest to the Department of Energy (DOE), the gas industry, and ratepayers. This strategy was designed to achieve greater R&D benefits per ratepayer dollar by seeking DOE funding. With its 1983 program, however, GRI now sees itself as the entity primarily responsible for assuring that gas R&D continues at adequate funding levels. GRI is therefore

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[1] Pursuant to 18 CFR 154.38(d)(5).

[2] See Opinion No. 131, Docket No. RP81-72-000, 16 FERC ¶ 61,246 (September 28, 1981); Opinion No. 96, Docket No. RP80-108, 12 FERC ¶ 61,320 (September 30, 1980); Opinion No. 64, Docket No. RP79-75, 9 FERC ¶ ——— (October 2, 1979), *aff'd sub nom. Public Utilities Commission of the State of Colorado* v. *FERC,* 660 F.2d 821 (D.C. Cir. 1981), *cert. denied,* 102 S. Ct. 2009 (1982); Opinion No. 30, Docket No. RP78-76, 4 FERC ¶ 61,333 (September 21, 1978); Opinion No. 11, Docket No. RM77-14, 2 FERC ¶ 61,259 (March 22, 1978). In these opinions we discussed in considerable detail GRI's structure, operations, purposes, and the statutory and regulatory authority under which it operates.

[3] Exhibit 2, GRI's 1981 Annual Report, of GRI's application shows GRI had 202 members at the end of 1981—29 interstate pipeline companies, 138 distribution companies, 28 municipal utilities, and 7 associate (foreign) members.

[4] GRI's proposed funding services for 1983 are composed of:

(a) 10,745,725.1 MMcf in four categories of gas (sales for resale, sales to other pipelines, transportation deliveries, and miscellaneous) expected to be sold and transported by member interstate pipelines in 1983, which is 100 percent of all four categories;

(b) 591,100.4 MMcf of anticipated 1983 mainline industrial sales made by GRI's member interstate pipeline companies, exclusive of sales for electric generation, which is 90 percent of the total of such sales; and

(c) 1,488,369 MMcf of expected intrastate gas volumes, which is 50 percent of the total intrastate volumes reported by GRI members having such volumes subject to the funding formula.

See Schedules 1 through 4 of Exhibit 3 of GRI's Application and the Staff's Report, at 65-69, for details of how these volumes were calculated.

[6] See GRI's Application, at 4-5.

concentrating for 1983 and beyond on near-term R&D and deferring some longer-term research. Consequently, although GRI's total 1983 budget is roughly equivalent, when adjusted for inflation, to the projection it made last year for 1983, funding at some of the program and subprogram levels has been adjusted either up or down from earlier projections.

Analysis of this Year's Application

The Commission staff filed a detailed report on GRI's 1983 program and related five-year plan. The staff concluded that GRI's 1983 application substantially complies with the requirements of the Commission's R&D regulations,[7] the 18-point Stipulation and Agreement set forth in Opinion No. 11, and the appropriate ordering paragraphs of Opinion Nos. 30, 64, 96, and 131. But the staff does make several recommendations for revisions to GRI's program.[8] In addition, certain state commissions and interveners have raised the same and other issues. In several instances, the staff requested that GRI respond in its reply comments to certain of staff's findings and recommendations. We are satisfied that GRI has complied with staff's request and, except where specifically discussed hereinafter, we are satisfied with GRI's explanations and its willingness, as stated in its reply comments, to adopt certain of the staff's recommendations. As in past GRI opinions, we will discuss and resolve the several matters remaining in issues separately.

Our discussion of and findings on these issues are consistent with the function we have previously defined as proper for us with respect to GRI's annual applications. In Opinion No. 131, we described our function as that of a reviewing body, not an active participant in the formulation of GRI's programs. And we further stated that we would not, "absent compelling reason," involve ourselves in GRI's internal management decisions.[9] There, however, we also reiterated what we had previously stated in Opinion No. 64 [10] to be an integral part of that function—our obligation to see that GRI shows prudence and austerity in managaing the ratepayer funds entrusted to it and that GRI demonstrates due regard for the gas consumer who is bearing the costs of GRI's programs. This obligation is an essential element of our mandate under Section 4 of the Natural Gas Act to insure adequate service to ratepayers at the lowest practicable costs.[11] Such a mandate is particularly difficult to meet in a reasoned, prudent manner in these times of unfortunate but essential increases in gas prices and the consequent conflicting, but legitimate, concerns of various sectors of the natural gas industry. But where we find that our intrusion into GRI's formulation of its program is necessary to insure that GRI is using the ratepayer funds entrusted to it in the most prudent manner, we do so for the "compelling reason" that the interests of the nation's ratepayers are paramount.

I. *Calculation of Funding Requirement, Funding Services, and Funding Unit.* Staff recommends that GRI's 1983 proposed funding requirement be reduced by $445,000 to $123,921,000. This reduction reflects membership fees GRI receives annually ($15,000), increased estimated royalty payments in 1983 ($130,000), and GRI's decision not to fund the proposed Standard Coal Reference Sample Bank in 1983 ($300,000).[12] We accept staff's recommendation that these reductions are proper and that GRI's 1983 proposed funding requirement should be reduced accordingly.

Staff has also recommended slight revisions in the calculation of GRI's 1983 funding services. These revisions raise the 1983 funding services from GRI's original 12,797.5 Bcf to 12,825 Bcf. We accept staff's revisions

These revisions to funding services and the funding requirement are not large enough, however, to alter the ultimate calculation of GRI's requested 1983 funding unit. It remains 9.7 mills per Mcf.[13]

II. *GRI's Cash Balance; Its Collection-Disbursement Methodology.* Staff says that the fact that GRI is on an accrual, rather than cash, basis accounting system, together with the nature of GRI's collection and disbursement procedures results in the accumulation by GRI of large cash balances that GRI cannot support on the basis of its current needs. Presently, GRI collects its full annual funding requirement over a twelve month period (approximately March to the following March). After the Commission approves GRI's annual budget around the end of September, GRI makes contractual commitments throughout the program year (January to December) and through March of the second following year. Once these contractual commitments are made, work commences, and the period of performance (length of the contract) often continues into subsequent calendar years. GRI then disburses cash from the previously collected funding requirement to meet these contractual obligations as they become payable over the period of performance of the contract. The time lag inherent in this process between the collection of the funding requirement and the actual cash payment of that funding requirement to contractors has provided GRI with a significant balance of cash on hand which has increased consistently over the years and now equals $58 million. Simply stated, says the staff, as GRI's overall budget increases, GRI is able to collect money from ratepayers at a much faster rate than GRI can disburse it. Staff says GRI should convert from an accrual to a cash basis system to eliminate this problem and, further, that all or a portion of this cash accumulation should be used to reduce GRI's 1983 funding requirement, or that (in the alternative) the Commission should set for hearing the entire question of GRI's revenue collection methodology. The Glass Packaging Institute, an intervener, and the New York and California commissions support the staff on this issue.

GRI's position is that these funds are fully committed to R&D projects approved by the Commission soon after GRI receives them and, as such, they do not represent a "cash balance." They are really committed but non-disbursed funds which are necessary to insure continuity in GRI's projects because GRI's revenue collections are not fully predictable (due to variations in gas usage) and it has no other cash cushion and no assets to borrow on. GRI also points out that these funds should level off as GRI (pursuant to the staff's recommendation last year) increases its technical project management staff so as to expedite the processing of contracts and the disbursement of funds. GRI says that, in any event, the minimum cash balance it needs to operate efficiently is one-third of its annual budget.

The staff report demonstrates that so long as GRI's current collection-disbursement methodology remains in effect, the cash balance which GRI has on hand at any time will continue to constitute a significant portion of its annual budget. This is so because it is inherent in the existing methodology that, for any particular contract, GRI is collecting all of the funds up front in

[7] 18 CFR 154.38(d)(5).

[8] Staff Report, filed July 30, 1982, at 103–107

[9] 16 FERC ¶61,246, at p. 61,527.

[10] Slip op. at 34.

[11] See *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 798 (1968); *Southern Louisiana Area Rate Cases* v. *F.P.C.*, 428 F.2d 407, 435 (5th Cir. 1970), *cert. denied*, 400 U.S. 950 (1970).

[12] We see no need for GRI to expend this sum anyway merely to augment the Sample Bank which the DOE is establishing.

[13] This is what GRI requested. For what we will approve, see Part II, *infra*.

year *one* that it will disburse over years *one, two,* and, possibly, *three* and beyond. GRI may, as it has said, be able to limit the growth of this cash balance as its program matures and it further increases its technical project management staff. But its contract R&D projects normally take more than one year to complete.[14] So long, therefore, as the present methodology continues in effect, ratepayers will be prematurely funding GRI's gas R&D projects.

GRI has been asked to support its current level of cash balances and to explain why it needs the entire $58 million to operate its R&D program in 1983. GRI has declined to provide its estimate of cash-on-hand needs for 1983, or to provide specific cash-flow information which could be used by the Commission to develop an appropriate level of cash balances for 1983. By refusing to justify the need for a cash balance of $58 million, GRI has failed to sustain fully its burden of proof. Therefore, we will use the best information available to deal with the issue of cash balances.

It is not contested in the record that GRI's accumulation of cash-on-hand has been growing continuously throughout the past four years. Available information indicates that this trend will continue. The data also show that, throughout GRI's history, the end of month balance of cash-on-hand has not dropped below the balance at the beginning of that calendar year. All of the information available at this time points to the conclusion that GRI's cash balance will exceed $58 million on January 1, 1983 (when GRI's requested surcharge increase would go into effect), and will continue to grow throughout the following year. We again emphasize that GRI has not provided information which shows that the current cash balance will be reduced during 1983. During the same calendar period that GRI's cash balances will equal or exceed $58 million, GRI has made a filing with the Commission to increase its annual surcharge to gas consumers in the approximate amount of $32 million, raising its current level of 7.2 mills per Mcf to 9.7 mills per Mcf.

From these facts it is clear that if the past trends continue, the currently authorized GRI surcharge of 7.2 mills per Mcf would provide sufficient revenues to meet GRI's 1983 expenditures with at least a $26 million surplus at the end of 1983. Historical data provide strong evidence that this $26 million cushion will be sufficient to avoid impairment of GRI's operations in 1983.

[14] In 1983, for example, 61 percent (129 of 213) of GRI's projects were begun in previous years.

The collection of funds from ratepayers far in advance of disbursement of those funds is not in the public interest. Therefore we will authorize the GRI surcharge for 1983 at the existing 1982 level of 7.2 mills per Mcf. This will reduce GRI's cash balance to a level more consistent with its operational requirements.

In addition, we direct GRI to implement the staff's recommendation that it change to a cash based budgeting system effective January 1, 1984, and to explain in detail in its application for 1984 how it is accomplishing the changeover. In its 1984 application GRI should also justify, on the basis of its operational experience up to that time, for our determination as part of next year's proceeding, how much of a cash balance it will need to carry over into 1984 to insure its efficient operations and the continued progress of its mission.[15] GRI should also confer with our staff over the next year to insure the full and efficient implementation of the changeover next year.

III. *Contractors' waivers of fees; Manufacturer cofunding.* We agree with GRI that there is no need to implement staff's recommendation that GRI report as manufacturer cofunding only actual, cost-sharing contributions (cash and in-kind), and specifically exclude from manufacturer cofunding avoided cost items such as waiver of fees. The staff has been able to ascertain the extent of inclusion of such avoided costs in GRI's estimates of manufacturer cofunding from GRI's submissions.[16] Presently avoided costs constitute only a small portion thereof.

But we do wish to call GRI's attention to the importance we attach to the level of manufacturer cofunding in general in evaluating GRI's annual applications. GRI is obligated by Stipulation 1, which we approved in Opinion No. 11, to use its best efforts continually, to achieve manufacturer cofunding where feasible.[17] Stipulation 2 provides that GRI's achievement of significant levels of feasible manufacturer may be considered by the Commission in deciding GRI applications.[18] Staff is concerned about the level of manufacturer cofunding and believes that it is a reasonable standard by which to evaluate GRI's program.[19] We think that the level of such funding is not presently inadequate.[20] But we will require GRI to continue to report on cofunding and to comply with Stipulation 1. To aid our future analysis, GRI should in future applications break down its projections of manufacturer cofunding into separate categories of cash, in-kind, and avoided costs.

IV. *Inclusion of short-term non-recurring sales and transportation volumes in funding services.* We agree with GRI[21] that the non-recurring nature and unpredictable incidence of these transactions do not warrant their inclusion in funding services. But we do agree with the staff's recommendation, to which GRI on behalf of its members has agreed, that any future individual authorizations we issue to GRI member pipelines to make off-system sales to non-member interstate pipelines, to all distribution companies and to all direct consumers be conditioned upon payment to GRI of its funding unit for volumes actually so sold. The staff will implement this directive.

V. *Inclusion of direct sales for electric generation in funding services.* Staff recommends that GRI be made to include direct sales for electric generation in calculating the minimum guaranteed percentages of direct sales included in funding services. It says this change should be made now because of reasons of equity and the recent removal[22] of the restrictions previously placed upon the use of natural gas to generate electricity by the Energy Supply and Environmental Coordination Act of 1974[23] and the Powerplant and Industrial Fuel Use Act of 1978.[24] GRI says that the removal of these restrictions has not altered the situation with respect to whether its members are able to negotiate the inclusion of the GRI surcharge in contracts with electric utilities.

We do not agree with staff's recommendation. Two years ago in Opinion No. 96,[25] we found that success in including such volumes in GRI's funding services is a matter of relative negotiating power rather than diligent effort. That fact remains true regardless of last year's legislation. In these circumstances, the existing best efforts basis for including such volumes remains the most reasonable one.

VI. *Intrastate volumes.* GRI says that the "50 percent" mechanism for

[15] GRI also should consider what it can do during 1983 (e.g., temporarily reduce collections) to eliminate before the end of 1983 any portion of its cash balance which exceeds its needs.

[16] See Staff Report, 60–61.

[17] 2 FERC ¶ 61,259, at p. 61,625.

[18] *Id.*

[19] See Staff Report, at 54 *et seq.*

[20] See n. 5, *supra.*

[21] Reply Comments, at 43–44.

[22] See Act of August 13, 1981, Pub. L. No. 97–35, section 1021(a), 95 Stat. 614.

[23] 88 Stat. 246 (1974).

[24] 92 Stat. 3289 (1978).

[25] 12 FERC ¶ 61,320, at p. 61,749.

including members' intrastate volumes in funding services, which requires GRI to include in its funding services 50% of the reported intrastate volumes of its members, has become an unreasonable and arbitrary goal in light of its continuing difficulties in getting the various state commissions to allow a GRI funding unit to be annexed to intrastate volumes.[26] GRI says it will continue to use its best efforts in this regard but, in light of events, will in future applications report on its progress without regard to the 50 percent or any other arbitrary goal.

Over the years, GRI has demonstrated reasonable efforts to increase intrastate volumes included in funding services. There is little more it can do except keep trying and report to the Commission each year on its progress. In its present application for 1983 GRI has reported intrastate funding services using the "50 percent mechanism." It is premature and unnecessary for the Commission to evaluate now GRI's intention for 1984 and beyond to report these intrastate funding services on a best efforts basis. That issue will be ripe in next year's application.

In this connection, however, we wish to advise GRI that it cannot continue to augment its budget at a rate that assumes a level of intrastate participation that is not, in fact, forthcoming, because such augmentation can only be done at the increased expense of interstate ratepayers. Therefore, future applications should explain how GRI is taking account of the reality of this situation in planning future budgets.[27]

VII. *The General Growth of GRI's Programs.* The New York, Idaho, and California commissions and the Glass Packaging Institute, and intervener, have all raised general questions regarding the expansion of GRI's budget in the face of both the recessionary economy and the DOE cutback in energy research.

Last year, we expressed our view that GRI's continued operation and progress are essential to the regulated natural gas industry and to the ratepaying public.[28] Within the context of what we have said elsewhere in this opinion, we adhere to our conclusion of last year. And next year any growth in GRI's budget will be similarly scrutinized.

VIII. *Other matters.* California has raised an issue we resolved two years ago in Opinion No. 96. We found there that the price incentives afforded by Section 107 of the Natural Gas Policy Act were intended to apply to commercial development of unconventional gas, rather than to R&D activites.[29] California's arguments here do not persuade us to alter our conclusion.

The Commission orders:

(A) GRI's application for advance approval of its 1983 R&D program and related 1983–87 five-year R&D plan is hereby granted subject to the terms and conditions of this opinion and order.

(B) A 1983 funding requirement of $92,340,000 is just and reasonable and, effective January 1, 1983, until December 31, 1983, without reqard to purchased gas adjustment clause effective dates, jurisdictional members of GRI may collect an R&D funding unit of 7.2 mills per Mcf, such funding unit to be applied to the jursidictional portions of estimated 1983 funding services of 12,825 Bcf.

(C) A jurisdictional member of GRI may collect the GRI funding unit only if it files, if it has not already done so, an RD&D cost adjustment provision which complies with § 154.38(d)(5)(v) of the Commission's regulations and which contains a provision clearly indicating that the cost adjustment clause is applicable only to payments to GRI, that collections of the GRI funding unit by means of it shall be remitted to GRI within 30 days of receipt, and that such collections shall be made only from persons receiving program funding services. Such an RD&D cost adjustment provision may be placed into effect upon not less than 30 days notice and it will be allowed to take effect without suspension, reduction, or refund.

(LD) In its next annual application, GRI shall implement a cash basis accounting system for 1984, as previously described in this opinion.

(E) In its next application GRI shall continue to comply with Ordering Paragraphs (E) and (M) of Opinion No. 30, Ordering Paragraphs (E)(2) and (F)(2), (3), and (4) of Opinion No. 64, and Ordering Paragraphs (E)(1) and (E)(3) of Opinion No. 131.

(F) All parties listed in the service list submitted as part of GRI's application, as well as the Glass Packaging Institute, Getty Synthetic Fuels, Inc., and Michigan Consolidated Gas Company are permitted to intervene subject to the rules and regulations of the Commission; provided, however, that the participation of the said parties shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions for leave to intervene, if such were submitted, and provided further, that the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

(G) The Secretary shall cause prompt publication of this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27671 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-43-002]

Great Lakes Gas Transmission Co.; Petition To Amend

October 1, 1982.

Take notice that on August 20, 1982,[1] Great Lakes Gas Transmission Company (Petitioner), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP80-43-002 a petition to amend the order issued October 8, 1980, in Docket Nos. CP80-43, as amended, pursuant to Section 7(c) of the Natural Gas Act so as to authorize Petitioner to transport overrun volumes of gas on an interruptible basis for Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 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 the order issued October 8, 1980, authorized Petitioner to transport up to 140,000 Mcf of natural gas per day for the account of Northern. The 140,000 Mcf of natural gas per day consisted of up to 93,000 Mcf of back-off gas by TransCanada PipeLines Limited (TransCanada) from Petitioner's systems and 47,000 Mcf of spare capacity on Petitioner's system. Petitioner states that Northern has informed it effective September 1, 1982, that 100,000 Mcf of gas per day of the 140,000 Mcf per day would be diverted from Emerson, Manitoba, for importation at Monchy, Saskatchewan through the Northern Border Pipeline, and that concurrently therewith, TransCanada's firm obligation to back-off 93,000 Mcf per day would terminate. Petitioner states that because Northern has reduced its takes of Canadian gas during the 1982 summer months, Northern has requested Petitioner to transport, on an interruptible basis, additional volumes of natural gas from

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[26] In its application, at 24–27, and its reply comments, at 48–49, GRI has described its recent efforts in this area and their lack of success.

[27] *E.g.*, pursuant to staff's recommendations 11 (c) and (d). Staff Report, at 107.

[28] See Opinion No. 131, 16 FERC ¶ 61,246, at p. 61,529.

[29] 12 FERC ¶ 61,320, at P. 61,749.

[1] The amendment was initially tendered for filing on August 20, 1982; however, the fee required by § 159.2(c) was not paid until September 24, 1982; thus, filing was not completed until the latter date.

an interconnection with the facilities of TransCanada on the United States-Canada boundary near Emerson, Manitoba, to various delivery points on Petitioner's pipeline system.

It is stated that the additional volumes of natural gas would be provided to the extent TransCanada is able to back-off volumes from Petitioner's pipeline system under Petitioner's T–4 Rate Schedule, of its FERC Gas Tariff, Original Volume No. 2. No additional facilities would be required by Petitioner to perform the proposed transportation service.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 22, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27672 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5884–001]

Homestake Consulting and Investments, Inc.; Surrender of Preliminary Permit

October 1, 1982.

Take notice that Homestake Consulting and Investments, Inc. (HCI), Permittee for the proposed Rocky Run Creek Water Power Project No. 5884, has requested that its preliminary permit be terminated. The permit was issued on August 5, 1982, and would have expired on February 1, 1984. The project would have been located on Rocky Run Creek in Kittitas County, Washington.

The HCI filed its request on August 23, 1982, and the surrender of the preliminary permit for Project No. 5884 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27650 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5094–001]

Homestake Consulting and Investments, Inc.; Surrender of Preliminary Permit

October 1, 1982.

Take notice that Homestake Consulting and Investments, Inc., Permittee for the proposed Barnum Creek Hydroelectric Project No. 5094, has requested that its preliminary permit be terminated. The permit was issued on March 22, 1982, and would have expired August 31, 1983. The project would have been located on the Barnum Creek in Lincoln County, Montana.

The Permittee filed its request on August 23, 1982, and the surrender of the preliminary permit for Project No. 5094 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27651 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5478–000]

Homestake Consulting and Investments, Inc.; Surrender of Preliminary Permit

October 1, 1982.

Take notice that Homestake Consulting and Investments, Inc., Permittee for the proposed Boulder Creek Hydroelectric Project No. 5478, has requested that its preliminary permit be terminated. The permit was issued on June 14, 1982, and would have expired November 30, 1983. The project would have been located on the Boulder Creek in Lincoln County, Montana.

The Permittee filed its request on August 23, 1982, and the surrender of the preliminary permit for Project No. 5478 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27673 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5880–001]

Homestake Consulting and Investments, Inc.; Surrender of Preliminary Permit

October 1, 1982.

Take notice that Homestake Consulting and Investments, Inc. (HCI), Permittee for the proposed Lower Berry Creek Water Power Project No. 5880, has requested that its preliminary permit be terminated. The permit was issued on August 5, 1982, and would have expired on February 1, 1984. The project would have been located on Berry Creek in Bonner County, Idaho.

The HCI filed its request on August 23, 1982, and the surrender of the preliminary permit for Project No. 5880 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27674 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5882–001]

Homestake Consulting and Investments, Inc.; Surrender of Preliminary Permit

October 1, 1982.

Take notice that Homestake Consulting and Investments, Inc. (HCI), Permittee for the proposed Roaring Creek Water Power Project No. 5882, has requested that its preliminary permit be terminated. The permit was issued on August 5, 1982, and would have expired on February 1, 1984. The project would have been located on Roaring Creek in Chelan County, Washington.

The HCI filed its request on August 23, 1982, and the surrender of the preliminary permit for Project No. 5882 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27675 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5879–001]

Homestake Consulting and Investments, Inc.; Surrender of Preliminary Permit

October 1, 1982.

Take notice that Homestake Consulting and Investments, Inc. (HCI), Permittee for the proposed Upper Berry

Creek Water Power Project No. 5879, has requested that its preliminary permit be terminated. The permit was issued on August 5, 1982, and would have expired on February 1, 1984. The project would have been located on Berry Creek in Bonner County, Idaho.

The HCI filed its request on August 23, 1982, and the surrender of the preliminary permit for Project No. 5879 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27676 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5883-001]

Homestake Consulting and Investments, Inc.; Surrender of Preliminary Permit

October 1, 1982.

Take notice that Homestake Consulting and Investments, Inc. (HCI), Permittee for the proposed Resort Creek Water Power Project No. 5883, has requested that its preliminary permit be terminated. The permit was issued on August 5, 1982, and would have expired on February 1, 1984. The project would have been located on Resort Creek in Kittitas County, Washington.

The HCI filed its request on August 23, 1982, and the surrender of the preliminary permit for Project No. 5883 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27677 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-707-000]

Interstate Power Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, and Establishing Procedures

Issued: September 30, 1982.

On August 2, 1982, Interstate Power Company (Interstate) tendered for filing revised Rate Schedule No. 499 applicable to Interstate's twenty full requirements municipal wholesale customers.[1] The proposed rates would produce increased revenues of approximately $1,602,300 (26.6%) based on a calendar year 1982 test period. Interstate requests an effective date of October 1, 1982, for the proposed rates.

Notice of Interstate's filing was published in the **Federal Register** with comments due on or before August 30, 1982. On August 27, 1982, the Iowa State Commerce Commission filed a timely notice of intervention.

On August 30, 1982, a group of fourteen cities and villages located in Minnesota, Illinois, and Iowa (Municipalities) [2] submitted a motion to intervene in the proceeding. The Municipalities raise a number of cost of service issues,[3] seek a five month suspension of Interstate's proposed rates, and request price squeeze procedures following the determination of just and reasonable wholesale rates.

Interstate filed an answer to the Municipalities' pleading on September 13, 1982. In its answer, Interstate addresses the cost of service issues raised by the Municipalities and contends that a five month suspension of the proposed rates would be inappropriate.

Discussion

Under Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214), the Iowa Commission's timely notice of intervention and the Municipalities' unopposed motion to intervene serve to make them parties to this proceeding.

Our preliminary review of Interstate's filing and the Municipalities' pleading indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend their operation as ordered below.

The Commission explained its suspension policy in *West Texas Utilities Company*, Docket No. ER82-23-000 (February 26, 1982). In that order, we stated that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive as defined in *West Texas*, we would ordinarily suspend the rates for one day. Because our preliminary review indicates that Interstate's proposed rates may not produce substantially excessive revenues, we shall suspend the proposed rates for one day to become effective, subject to refund, on October 3, 1982.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, Docket No. ER79-339 (August 6, 1979), we shall phase the price squeeze issue raised by the Municipalities.

The Commission Orders

(A) Interstate's proposed rates are hereby accepted for filing and suspended for one day from sixty days after filing, to become effective, subject to refund, on October 3, 1982.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Interstate's rates.

(C) The Commission staff shall serve top sheets in this proceeding on or before October 11, 1982.

(D) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The price squeeze portion of this case shall be governed by the procedures set forth in section 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

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[1] *See* attachment A for customers and rate schedule designations.

[2] St. Charles, Blue Earth, and Rushford, Minnesota; Albany and Hanover, Illinois; and Bellevue, Fairbank, Fredericksburg, Guttenberg, Independence, Lawler, Readlyn, Sabula, and Strawberry Point, Iowa.

[3] These issues include: (1) Rate of return; (2) levels of fuel stocks, working capital, intangible plant investment, O&M expenses, and loss factor; (3) amortization of a property loss; (4) allocation of payroll taxes and distribution O&M expenses; (5) treatment of CWIP-related property taxes; and (6) calculation of a wage and salary allocator.

By the Commission.

Kenneth F. Plumb,

Secretary.

ATTACHMENT A

Interstate Power Company Rate Schedule Designations; Docket No. ER82-707-000

Designation and Tariff Customers

Fourth Revised Sheet No. 1 to FPC Electric Tariff Original Volume No. 1 (Supersedes Third Revised Sheet No. 1)
City of Fairbanks, Iowa
City of Readlyn, Iowa
City of Grafton, Iowa
City of Guttenberg, Iowa
City of Lawler, Iowa
City of Dundee, Minnesota
City of Alta Vista, Iowa
Village of Hanover, Illinois
City of Rushford, Minnesota
City of Frederickburg, Iowa
City of St. Charles, Minnesota
Village of Albany, Illinois
City of Sabula, Iowa

Designation and Other Party

Supplement No. 5 to Rate Schedule FPC No. 120 (Supersedes Supplement No. 4)
City of Bellevue, Iowa
Supplement No. 4 to Rate Schedule FPC No. 116 (Supersedes Supplement No. 2 to Supplement No. 3)
City of Blue Earth, Minnesota
Supplement No. 3 to Rate Schedule FPC No. 110 (Supersedes Supplement No. 3 to Supplement No. 2)
City of Independence, Iowa
Supplement No. 4 to Rate Schedule FPC No. 104 (Supersedes Supplement No. 2 to Supplement No. 3)
City of McGregor, Iowa
Supplement No. 5 to Rate Schedule FPC No. 115 (Supersedes Supplement No. 4)
City of Strawberry Point, Iowa
Supplement No. 3 to Rate Schedule FPC No. 107 (Supersedes Supplement No. 1 to Supplement No. 2)
Village of Truman, Minnesota
Supplement No. 5 to Rate Schedule FERC No. 123 (Supersedes Supplement No. 4)
City of Windom, Minnesota

[FR Doc. 82-27652 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER 82-843-000]

Iowa Power and Light Co.; Filing

October 4, 1982.

The filing Company submits the following:

Take notice that Iowa Power and Light Company (Iowa) on September 27, 1982, tendered for filing a Transmission Service Agreement with City of Pella, Iowa (Pella) dated June 1, 1982.

Iowa states that the Agreement relates to the proposed utilization by Pella of 8 MW of capacity in Iowa's existing 69 KV transmission system from the Pella Substation to the 69 KV interconnection located two miles south and east of Pella, Iowa. The Agreement facilitates transmission of power generated by the Pella Municipal Power Plant.

Iowa further states that the purpose of the proposed rates and changes is to recover reflected costs of the facilities to be provided as the scheduling path, for associated operation and maintenance, and for transmission losses for which compensation in kind is provided.

Iowa requests an effective date of June 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 19, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27639 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-128-000]

Mississippi Power & Light Co.; Order Granting Motion To Collect Interim Rates

Issued: September 30, 1982.

By motion filed September 1, 1982, Mississippi Power & Light Company (MP&L) requests the Commission to allow it to continue the collection of interim rates for some of its wholesale customers. With respect to its remaining wholesale customers, MP&L now seeks Commission authorization to impose reduced interim rates subject to refund, as of July 3, 1982, in lieu of the rates it originally filed for them in this docket. The July 3, 1982 date is the date the originally filed rates would otherwise become effective. For the reasons stated below, we shall grant the motion.

These proceedings began on December 4, 1981, when MP&L tendered its originally proposed rate for filing for three categories of wholesale service. These categories are (1) full requirements service to five municipals, (2) transmission service to three self-generating municipals, and (3) transmission service to Southern Mississippi Electric Power Association (SMEPA). The Municipal Energy Agency of Mississippi (MEAM) represents both the full requirements and transmission service municipals.

By order issued February 2, 1982, the Commission, *inter alia*, accepted the proposed rates for filing, suspended their effectiveness until July 3, 1982, and ordered a hearing to be convened. On July 8, 1982, MP&L filed a motion to collect interim rates pending the filing of settlement documents to reflect a complete settlement in principle between MP&L and SMEPA and a partial settlement in principle between MP&L and MEAM. This partial settlement relates only to the rates for full requirements service to the five municipals. In addition, MP&L's motion requested that if a settlement was not filed by September 2, 1982, or if such settlement was subsequently disapproved or modified without consent of the parties, MP&L could (1) immediately commence billing service under the filed rates and (2) collect through surcharges over the succeeding six month period the difference (the "uncollected revenues") between the amounts that were collected under the interim rates and the amounts that would have been collected under the originally filed rates. On July 28, 1982, the Commission granted MP&L's motion.

The instant motion of MP&L requests Commission authorization to continue to collect interim rates after September 2, 1982. As grounds for its request, MP&L states that MP&L and MEAM now have a complete settlement which includes the rates for transmission service to MEAM's three self-generating municipals. Accordingly, the proposed authorization of interim rates is in anticipation of filing settlement documents which will resolve all issues in this proceeding. As a related matter, MP&L requests authorization to collect interim rates for MEAM's three self-generating customers which reflect their recent settlement in principle.

Both requests are premised on the condition that if settlement documents are not filed by October 15, 1982, or if the filed settlement(s) is disapproved or modified without the consent of the

parties, MP&L may then collect the filed rates as well as the surcharge, described above, which would allow it recover the previously uncollected revenues. In this regard MP&L states that it is authorized to represent that MEAM and SMEPA do not object to the motion and specifically do not object to the proposed surcharge.

Under the circumstances noted above, we believe that the public interest will be served by granting MP&L's motion. Pursuant to §§ 35.1(e), 35.11, and 35.17(b) of the Commission's regulations, we find that good cause exists to permit the continued collection of the revised interim rates, subject to refund, of the rates pertaining to SMEPA and MEAM's full requirements customers and to permit the collection of revised interim rates, subject to refund, as of July 3, 1982 for transmission service to MEAM's three self-generating municipals. All these interim rates shall be effective until such time as the Commission acts upon the settlement agreement(s) to be filed by MP&L, or until October 15 1982, if the respective settlement agreements have not been filed by that date. This order shall be without prejudice to our subsequent determination on the merits of any proposed settlement which is filed.

The Commission Orders

(A) The September 1, 1982, motion filed by MP&L requesting permission to continue to collect reduced interim rates and to initiate collection of reduced interim rates is hereby granted as discussed above.

(B) Good cause having been shown, MP&L is hereby authorized, pursuant to §§ 35.1(e), 35.11, and 35.17(b) of the Commission's regulations, to collect, subject to refund, the revised rates reflected in its motion until final Commission action on the settlement(s) or until October 15, 1982, if a settlement agreement(s) has not been filed by that date. In the event that a settlement agreement(s) has not been filed by October 15, 1982 or the settlement(s) is not approved, the provisions of MP&L's motion shall apply as to rates for the interim period.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27653 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-841-000]

Mississippi Power Co.; Filing

October 4, 1982.

Take notice that on September 27, 1982, Mississippi Power Company (Mississippi) tendered for filing Supplement Agreement with Singing River Electric Power Association (SREPA) under its FERC Electric Tariff Original Volume No. 1. This agreement provides for the establishment of a new delivery point of SREPA in Jackson County, Mississippi. To establish service at this new point, Mississippi and SREPA have entered into a supplemental agreement under the Company's FERC Electric Tariff Original Volume No. 1 (Second Revised Sheet No. 14).

Mississippi agrees to deliver up to a maximum of 5,000 kilowatts at 115,000 volts at the connections of the customer's 115 KV tap line located in the SW¼ of NW¼, Section 19, Township 5 South, Range 5 West, Jackson County, Mississippi.

Mississippi states that this supplement will become effective on or about May 1, 1983, when the required additional facilities will be energized.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 19, 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 a file motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27640 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. G-6043-000, et al.]

Monsanto Oil Co. (Formerly Monsanto Company); Corporate Name Change

October 1, 1982.

Take notice that on August 25, 1982, Monsanto Oil Company (Applicant), 1300 Post Oak Tower, 5051 Westheimer, Houston, Texas 77056, filed an application in Docket Nos. G-6043-000, *et al.*, to amend the certificates currently held by Monsanto Company so as to substitute Applicant as certificate holder and to redesignate the rate schedules in the name of the Applicant.

By General Instrument of Conveyance, Transfer and Assignment, effective July 1, 1982, Monsanto Company changed its name to Monsanto Oil Company.

The various dockets and rate schedules are listed in the attached appendix.

Notice is hereby given that all certificates, rate schedules and pending applications and proceedings as listed in the attached Appendix are redesignated to reflect the corporate name change from Monsanto Company to Monsanto Oil Company, effective July 1, 1982.

Kenneth F. Plumb,

Secretary.

MONSANTO OIL COMPANY

[Formerly: Monsanto Co. Name change effective July 1, 1982]

Rate schedule No.	Certificate docket No.	Purchaser
1	G-6043-000	Texas Eastern Transmission Corp.
2	G-6040	Do.
3	G-6041	Mississippi River Transmission Corp.
5	G-6036	El Paso Natural Gas Co.
9	G-10287	Arkansas Louisiana Gas Co.
11	G-10509	Do.
12	G-10679	El Paso Natural Gas Co.
13	G-10797	Panhandle Eastern Pipeline Co.
14	G-10774	Southern Natural Gas Co.
15	G-10721	United Gas Pipeline Co.
16	G-11230	Do.
17	G-11393	Arkansas Louisiana Gas Co.
18	G-11600	Colorado Interstate Gas Co.
22	G-12330	Arkansas Louisiana Gas Co.
23	G-12639	Northern Natural Gas Co.
24	G-13348	Arkansas Louisiana Gas Co.
25	G-13801	Mountain Fuel Supply Co.
26	G-14717	El Paso Natural Gas Co.
27	G-14799	Northern Natural Gas Co.
28	G-14874	United Gas Pipeline Co.
29	G-15290	Northern Natural Gas Co.
30	G-17260	Michigan Wisconsin Pipeline Co.
31	G-17519	United Gas Pipeline Co.
32	G-17969	El Paso Natural Gas Co.
34	G-18374	Do.
35	G-18666	Southern Union Gathering Co. (now Gas Co. of New Mexico).
37	G-19965	Northern Natural Gas Co.
39	G-15318	Transwestern Pipeline Co.
40	CI61-27	Texas Gas Transmission Co.
41	CI61-94	Transwestern Pipeline Co.
42	CI61-604	Texas Gas Transmission Co.
43	CI61-713	Transwestern Pipeline Co.
44	CI61-676	Tennessee Gas Transmission Co.
45	CI61-990	Do.
46	CI61-1077	United Gas Pipeline Co.
48	CI61-1778	Northern Natural Gas Co.
49	CI61-1777	Do.
50	CI62-131	El Paso Natural Gas Co.
51	CI62-347	Do.
54	CI63-249	Southern Natural Gas Co.
55	CI63-25	Northern Natural Gas Co.
59	CI63-1373	Texas Eastern Transmission Corp.
60	CI63-1577	Do.
61	G-9349	Texas Gas Pipeline Corp.
62	G-9355	Tennessee Gas Transmission Corp.
64	G-9357	Natural Gas Pipeline Co. of America
65	G-9358	Do.
66	G-9356	Transcontinental Gas Pipeline Co.

MONSANTO OIL COMPANY—Continued

[Formerly: Monsanto Co. Name change effective July 1, 1982]

Rate schedule No.	Certificate docket No.	Purchaser
68	G-9353	Tennessee Gas Transmission Co.
69	G-9360	Tennessee Gas Transmission Co.
70	G-9354	Do.
71	G-9361	United Gas Pipeline Co.
72	G-15114	Transcontinental Gas Pipeline Co.
73	G-17499	Tennessee Gas Transmission Co.
75	CI60-258	Southern Natural Gas Co.
76	CI64-767	Northern Natural Gas Co.
78	CI64-1392	Lone Star Gas Co.
79	CI65-94	Texas Eastern Transmission Co.
81	CI65-531	Natural Gas Pipeline Co. of America
82	CI65-525	Do.
83	CI66-491	Texas Gas Transmission Co.
84	CI67-123	El Paso Natural Gas Co.
85	CI67-286	Arkansas Louisiana Gas Co.
86	CI67-367	Panhandle Eastern Pipeline Co.
87	CI67-535	Arkansas Louisiana Gas Co.
88	CI67-1079	Transwestern Pipeline Co.
89	CI67-1160	Do.
91	CI68-516	Arkansas Louisiana Gas Co.
92	CI68-893	Transwestern Pipeline Co.
93	CI69-187	Do.
94	CI69-606	Do.
95	CI69-851	Natural Gas Pipeline Co. of America
96	CI69-889	Arkansas Louisiana Gas Co.
97	CI69-1001	Arkansas Oklahoma Gas Corp.
98	CI70-932	Michigan Wisconsin Pipeline Co.
100	CI72-159	Northern Natural Gas Co.
101	CI72-341	Cities Service Gas Co.
102	CI72-351	Transwestern Pipeline Co.
103	CI72-844	Trunkline Gas Co.
104	CI73-305	Transwestern Pipeline Co.
107	C173-919	Cities Service Gas Co.
110	CI75-96	Transwestern Pipeline Co.
111	CI75-167	United Gas Pipeline Co.
112	CI75-358	Do.
113	CI75-495	Colorado Interstate Gas Co.
114	CI75-552	Transwestern Pipeline Co.
115	CI75-543	Kansas Nebraska Natural Gas Co.
116	CI75-632	Transwestern Pipeline Co.
117	CI75-613	Do.
118	CI75-639	Do.
119	CI75-597	Colorado Interstate Gas Co.
120	CI76-4	Transwestern Pipeline Co.
121	CI76-7	El Paso Natural Gas Co.
122	CI76-251	Texas Eastern Transmission Co.
123	CI76-339	Transwestern Pipeline Co.
124	CI76-580	Do.
125	CI77-93	Northern Natural Gas Co.
126	CI77-218	Transwestern Pipeline Co.
127	CI77-146	Kansas Nebraska Natural Gas Co.
128	CI77-309	Transwestern Pipeline Co.
129	CI77-524	El Paso Natural Gas Co.
130	CI77-574	Transwestern Pipeline Co.
131	CI77-596	Do.
132	CI77-623	El Paso Natural Gas Co.
133	CI77-801	Transwestern Pipeline Co.
134	CI78-153	Michigan Wisconsin Pipeline Co.
135	CI78-154	Texas Eastern Transmission Co.
136	CI78-338	Northern Natural Gas Co.
137	CI78-589	Do.
138	CI78-798	Natural Gas Pipeline Co. of America.
139	CI79-507	Columbia Gas Transmission Co.
140	CI79-547	Do.
141	CI79-658	Do.
142	CI78-757	El Paso Natural Gas Co.
143	CI81-387	Cities Service Gas Co.
144	CI81-487	Colorado Interstate Gas Co.

[FR Doc. 82-27654 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-135-000]

Northern Natural Gas Co.; Request for Declaratory Order

October 1, 1982.

Take notice that on September 13, 1982, Northern Natural Gas Company (Northern Natural) tendered for filing a Petition for Declaratory Order requesting clarification over the uncertainty surrounding the proper method of calculating natural gas under the Natural Gas Policy Act of 1978 as specified in Commission Order Nos. 93 and 93-A in Docket No. RM80-33, issued July 16, 1980 and April 24, 1981, respectively.

More specifically, Northern Natural requests that the Commission determine: (a) The extent, if any, to which the Commission intends to abrogate "saturated" measurement clauses and require the Company to make added payments under Order Nos. 93 and 93-A; (b) that any such added payments may properly be included in Northern Natural's PGA filing next following the making of any such added payments; and (c) that Northern Natural's recoupment of such added payments from its producers (if the added payments be later determined to be unjustified) be reflected in refunds to Northern Natural's customers by a PGA credit equal to those amounts, including any interest, recouped after exercise of reasonable efforts by Northern Natural.

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, N. E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 13, 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. 82-27656 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-651-000]

Northern States Power Co. (Minnesota); Declaratory Order on Show Cause Response

Issued: September 30, 1982.

By order issued on December 31, 1981, in Docket No. ER81-653-000,[1] the Commission determined that Northern States Power Company, Wisconsin (NSP-W) had included in its wholesale cost of service purchased power costs reflecting amounts associated with construction work in progress (CWIP) which were charged to NSP-W under its joint Coordinating Agreement with Northern States Power Company, Minnesota (NSP-M). Absent compliance with section 2.16 of the regulations, the Commission found this practice to be impermissible and therefore ordered NSP-W to cease billing its wholesale customers or its affiliate, NSP-M, for CWIP-related amounts

In an order issued concurrently in Docket No. ER81-651-000,[2] the Commission directed NSP-M to show cause why it should not be directed to identify the amount and nature of any CWIP amounts being charged to NPS-W under the parties' Coordinating Agreement and to cease billing all CWIP-related charges to NSP-W which are not allowed by the Coordinating Agreement or the Commission's regulations. The Commission issued this show case order separately because NSP-M was not a party to the proceeding in Docket No. ER81-653-000.

On February 1, 1982, NSP-M filed a response to the Commission's December 31 show cause order. In its response, NSP-M contends that its cost of service treatment of CWIP and related Allowance for Funds Used During Constructon (AFUDC) accruals is functionally equivalent to the "standard FERC treatment" of CWIP and is therefore an acceptable substitute. NSP-M requests that the Commission find that its method is acceptable and terminate the show cause proceeding. In support of this request, NSP-M has attempted to illustrate mathematically the equivalence of its CWIP/AFUDC cost of service methodology (inclusion of CWIP in rate base but offset by revenues associated with the net-of-tax AFUDC accruals) and the standard FERC treatment of CWIP (exclusion of CWIP from rate base and accrual of

[1] *Northern States Power Company (Wisconsin)*, Order on Rehearing and Request for Summary Disposition, Docket No. ER81-653-000, 17 FERC ¶ 61,291 (December 31, 1981).

[2] *Northern States Power Company (Minnesota)*, Order to Show Cause, Docket No. ER81-651-000, 17 FERC ¶ 61,292 (December 31, 1981).

AFUDC funds on a gross-of-tax basis to be added to the capitalized construction costs). As further support for its position, NSP–M contends that the Commission has previously approved its accounting treatment of CWIP and related AFUDC accruals. NSP–M also contends that the difference in revenue requirements for any particular test year under its method would be slight and offsetting over time and that the ultimate owners of the NSP system would realize no gain from the use of the company's methodology as opposed to that required by the Commission's regulations. NSP–M further contends that its methodology is preferable inasmuch as it is self correcting if the AFUDC rate departs from the rate of return. As a furher reason to justify its methodology, NSP–M claims that maintaining separate books to track its method of treating CWIP for retail purposes and for wholesale charges under the Coordinating Agreement would be unnecessarily troublesome and expensive.

Discussion

NSP–M's position is predicated on an interpretation of Commission Order No. 561, 57 FPC 608 (1977), which established the existing AFUDC procedures. NSP–M apparently perceives the objective of Order No. 561 to have been an attempt to assure equivalence between AFUDC rates and a company's rate of return. We do not, however, concur in the company's narrow interpretation. Order No. 561 was designed to make utilities whole, to the extent practicable, with respect to their overall capital costs.[3] Nonetheless, the achievement of continuous equivalence between the AFUDC rate and rate of return was neither contemplated nor guaranteed. Examination of NSP–M's method indicates that it would be equivalent to current Commission CWIP and AFUDC methodologies only when NSP–M's AFUDC rate and rate of return are equal. In practice, the AFUDC rate and the rate of return will rarely precisely equalize due to: (1) The inclusion of short-term debt in the capital structure for purposes of deriving the AFUDC rate; (2) the use of different time periods in determining the AFUDC rate (historical period) and the rate of return (generally a future test period); and (3) the fact that the return on common equity utilized for AFUDC purposes is the rate authorized by the ratemaking body having primary jurisdiction, *i.e.*, the State commission. Given these facts, NSP–M's methodology reflects incorrect treatment of CWIP.

With respect to NSP–M's claim that the Commission has previously approved its procedures, the company relies on a March 6, 1978 letter issued by the Office of Chief Accountant (OCA) regarding NSP–M's AFUDC procedures. That letter acknowledged that the Minnesota Public Service Commission permitted rate base inclusion of CWIP with a reduction in allowed revenues for AFUDC computed on a net-of-tax basis. The Chief Accountant advised the company that it appeared appropriate under these circumstances to record AFUDC on borrowed funds net of income taxes. Contrary to NSP–M's contentions, however, the letter did not address the propriety, for wholesale rate purposes, of including CWIP in rate base with an offset to revenues for AFUDC accruals. Furthermore, reference to NSP–M's underlying request for an accounting opinion (dated January 27, 1978) demonstrates clearly that NSP–M was not soliciting such a rate-making interpretation.

We also note that the company infers that the Commission requires use of gross-of-tax AFUDC accruals and a debiting of Account 282, Deferred Income Taxes, for that portion of the interest component of the AFUDC accruals. Either a gross or net-of-tax method is acceptable. Because NSP–M uses a net-of-tax AFUDC accrual with no corresponding debit to Account 282, there does not appear to be any problem with the company's AFUDC procedures.

In light of our conclusion that the company's CWIP procedures are in contravention of current Commission requirements NSP–M will be required to exclude CWIP from rate base in determining future charges to NSP–W under the Coordinating Agreement. We note that since the initiation of these proceedings, settlements have been filed and approved as to NSP–M will be required to exclude CWIP from rate base in determining future harges to NSP–W under the Coordinating Agreement. We note that since the initiation of these proceedings, settlements have been filed and approved as to both NSP–M's and NSP–W's rate increases.[5] Those settlements were based on total revenue levels and were not issue-specific. As a result, there is no basis for unraveling the settlements to accommodate our decision on the CWIP issue. Nonetheless in all future rate filings under the Coordination Agreement, NSP–M will be required to reflect the appropriate treatment of CWIP as discussed in this order.

The Commission orders:

(A) In all future filings under the NSP–M/NSP–W Coordinating Agreement, NSP–M shall treat CWIP-related amounts in the manner prescribed by this Commission's regulations.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27657 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[3] "The stated objective of the proposed rule was to establish a method which would give recognition to the interrelationship between capital utilized for rate case purposes and the capital components of AFUDC in a manner that would permit a utility to achieve a rate of return on its total utility operations, including its construction program, at approximately the rate which would be allowed in a rate case." 57 FPC at 608. The final rule (Order No. 561) did not deviate from this proposed objective.

[5] *See* orders issued on April 29, 1982, and September 20, 1982, in Docket Nos. ER81–651–000 and ER81–653–000, respectively.

[Docket No. ER82–271–000]

Pacific Gas and Electric Co.; Order Granting Motion for Imposition of Interim Rates Pending Commission Action on Settlement Proposal

Issued: September 30, 1982.

On August 31, 1982, Pacific Gas and Electric Company (PG&E) filed a motion seeking Commission authorization to continue to collect Phase I rates now in effect on an interim basis pending Commission consideration of a settlement agreement which the parties expect to file shortly. The company also requests that provision be made for a surcharge in the event that the Commission ultimately rejects the settlement. The motion further states that the other parties to the proceeding concur in the request. For the reasons stated below, we shall grant the motion.

On February 1, 1982, PG&E submitted for filing a proposed two-step increase in wholesale rates. By order dated March 30, 1982 (18 FERC Sec. 61,286), the Commission suspended PG&E's proposed Phase I and Phase II increases to become effective, subject to refund on April 3, 1982 and September 5, 1982, respectively. PG&E subsequently submitted an amended filing reflecting a substantial reduction in its Phase II rate increase. These amended Phase II rates were accepted for filing and suspended to become effective on September 5, 1982, by Commission order dated July 2, 1982. PG&E, the City and County of San Francisco, Norris-Ni Industries, Modesto Irrigation District, and Turlock Irrigation District and its customers have agreed

to a settlement of all issues in this docket. The parties state that they expect to execute a settlement agreement and to file with the Commission an offer of settlement on or before September 15, 1982.

In light of the facts surrounding PG&E's request and the lack of any opposition, we shall grant the motion. Rather than collect the higher rates which would otherwise become effective, subject to refund, PG&E shall be granted permission to collect the Phase I rates now in effect on an interim basis. We shall also grant PG&E's request that it be authorized, in the event of Commission rejection of the settlement, to collect as a surcharge, subject to refund, retroactive to September 5, 1982, the difference between the Phase I rates and the Phase II rates, with interest on the surcharge amounts at the rates provided for in § 35.19a of the Commission's regulations.

Pursuant to §§ 35.1(e) and 35.11 of our regulations, we find that good cause exists to permit PG&E to continue to collect the Phase I rates in effect until such time as we may act on the settlement to be filed by the parties. This order shall be without prejudice to our subsequent determination on the merits of the proposed settlement.

The Commission Orders

(A) The motion filed by PG&E on August 31, 1982, requesting permission to continue to collect Phase I rates in lieu of Phase II rates, as subsequently amended, is hereby granted.

(B) Good cause having been shown, PG&E is hereby authorized, pursuant to §§ 35.1(e) and 35.11 of the Commission's regulations, to continue to collect, subject to refund, the revised rates reflected in its motion, until final Commission action on the settlement. In the event the settlement is not approved, the provisions of PG&E's motion shall apply as to rates for the interim period.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27858 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-840-000]

Pacific Power & Light Co.

October 4, 1982.

The filing Company submits the following:

Take notice that on September 27, 1982, Pacific Power & Light Company (Pacific) tendered for filing, Revised Appendix 1 for the state of Oregon. The Revised Appendix 1 calculates an average system cost for the state of Oregon applicable to the exchange of power between Bonneville Power Administration (Bonneville) and Pacific.

Pacific requests an effective date of May 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Bonneville, the Oregon Public Utility Commissioner and Bonneville's Direct Service Industrial Customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 19, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27641 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-593-001]

Pennsylvania Electric Co.; Order Denying Rehearing and Denying Request for Acceptance of Substitute Rates

Issued: September 30, 1982.

By order issued on August 5, 1982,[1] the Commission, *inter alia*, suspended for five months Pennsylvania Electric Company's (Penelec) proposed full and partial requirements rates to become effective, subject to refund, on January 10, 1983. On September 2, 1982, Penelec filed a request for rehearing which requests a shorter suspension period or, in the alternative, an opportunity to submit reduced interim rates.

In its pleading, Penelec states that the Commission did not adequately explain its reasons for imposing a five month suspension period. Penelec argues that, while the Commission has technically articulated a reason for the suspension, it has not presented any information which would (1) enable Penelec to determine the validity of the Commission's rationale for the five month suspension period, or (2) provide guidance to Penelec in the preparation of future rate cases. Penelec requests that the Commission on rehearing clarify its order by identifying which cost of service elements caused the proposed rates to exceed the 10% standard enunciated in *West Texas*.[2] Penelec speculates that the reason for the five month suspension was Penelec's use of a 4 CP (rather than a 12 CP) demand allocation method.

Penelec contends that, despite its use of the 4 CP demand allocation method, the Commission should have suspended the proposed rates for a shorter period since (1) the Commission has previously held that no single method of demand allocation is appropriate for all systems, (2) the Pennsylvania Public Utilities Commission (PPUC) has approved the 4 CP demand allocation method for Penelec's retail rates,[3] and (3) Penelec is a subsidiary of the "financially strapped" General Public Utilities Corporation Holding Company.[4]

Penelec states that if its assumption (that the major reason for the suspension determination was Penelec's use of the 4 CP demand allocation method) is correct, the company seeks an opportunity to offer two alternatives in lieu of the Commission's five month suspension. Under the first alternative, Penelec would request waiver of the notice requirements and permission to place into effect a revised two-phased rate increase. The first phase rates[5] would become effective, after a one day suspension, on August 10, 1982. The second phase rates (the originally filed rates) would become effective, as previously ordered, on January 10, 1983, after a five month suspension. If the Commission has concluded that the 4 CP demand allocation method is totally unacceptable and contrary to established policy, Penelec suggests as a second alternative that the Commission summarily reject Penelec's 4 CP demand allocation method and permit the

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[1] *Pennsylvania Electric Company*, Docket No. ER82-593-000, 20 FERC ¶ 61,155 (August 5, 1982).

[2] *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (February 26, 1982).

[3] Penelec's retail sales comprise 92% of Penelec's total system sales. Penelec estimates that it will lose approximately $2 million because of the different demand allocation methods approved by the PPUC and FERC.

[4] Penelec states that it cannot afford to lose either the estimated $2 million differential in revenues due to its use of different demand allocation methods at the state and federal levels, or the loss in revenues associated with a maximum suspension.

[5] The first phase (or interim) rates would reflect the use of the 12 CP demand allocation method.

reduced interim rates to become effective for the remainder of the proceeding, after a one day suspension.

Discussion

Penelec has not raised any facts or arguments which would warrant (1) rehearing of our August 5, 1982 suspension order, or (2) approval of its alternative proposals. We find no merit in Penelec's argument that the August 5, 1982 suspension order did not articulate adequate reasons for a five month suspension. The Commission incorporated by reference the policy analysis enunciated in *West Texas* and concluded on the basis of preliminary review that the proposed rates may produce excess revenues greater than the 10% threshold enunciated in *West Texas*. The Court of Appeals for the District of Columbia Circuit has sustained such a rationale as an adequate explanation of the Commission's suspension determination.[6]

Furthermore, the Commission will not endeavor to identify each factor underlying our initial evaluation of Penelec's filing. We have previously explained that to do so not only would encumber the administrative process by subjecting our preliminary findings to fruitless debate but also could inject an unwarranted appearance of prejudgment into the hearing process. In *Southern California Edison Company*, Docket No. ER82–427–001 (August 2, 1982), the Commission stated:

> *In clarifying our suspension policy, we expressed no intention to open up the Commission's preliminary analysis to debate.* As recognized by the courts, the Commission's preliminary analysis of a rate filing is a rough first cut review performed within a limited statutory period on the basis of then available information. This analysis takes into account factors deemed relevant by the Commission in determining whether to proceed to hearing and for how long to suspend. These issues involve numerous questions of judgment regarding which experts may reasonably differ. Moreover, an extended discussion of this analysis would involve an inappropriate prejudgment of the merits of these issues at this stage of the proceeding. *We therefore shall not, now or in the future, debate the merits of alternative cost-of-service adjustments to the preliminary analysis.* In this case, the Commission has considered all of the arguments raised by Cities and has reached a different conclusion. (Italics added)

We perceive Penelec's stated concern regarding guidance for future filings as somewhat disingenuous. In the first place, every rate filing presents individual questions and each submittal must be evaluated independently. The growing body of both case-specific and generic Commission precedent should, however, establish certain general parameters. In order to evaluate the implications of such precedent, the Commission's regulations provide for pre-filing informational conferences at which time, presumably, substantial guidance is available from the Commission's advisory staff. Ultimately, however, the filing utility controls the composition of its submittal and the Commission must exercise its judgment concerning the appropriateness of each aspect of the filing. If the Commission was able to specify in advance precisely that rate which it would ultimately approve as just and reasonable, hearings would seldom be necessary.

Having determined that rehearing or clarification of our earlier order is not warranted, we further decline to adopt Penelec's alternative proposals. The "second bite of the apple" which Penelec effectively seeks is precisely the type of proposal which we criticized in *West Texas, supra*. In that order, we explained that neither the Commission nor the utility's customers should be required to "confront and evaluate a 'moving target' of rate levels designed to avoid the consequences of a maximum suspension period. * * * We emphasize * * * that in the future * * * we will look with disfavor on non-settlement interim rates of the type filed here." Penelec could have chosen to file a phased rate increase initially as have a number of other utilities,[7] including its affiliate Jersey Central Power & Light Company.[8] Penelec elected not to do so, apparently in light of perceived opposition from the intervenors. Having made its decision, Penelec must bear the consequences of its action. Furthermore, Penelec's alternative proposals assume that elimination of the demand allocation differential would justify a nominal suspension. Without addressing the specific items which the commission initially considered, we note that a five month suspension would have been imposed regardless of this issue.

The Commission Orders

(A) Penelec's application for rehearing, filed on September 2, 1982, is hereby denied.

(B) Penelec's alternative proposals for substitute rates and a shorter suspension period are denied.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc 82–27659 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–1–000]

Public Service Company of New Mexico; Refund Report

October 1, 1982.

Take notice that on September 20, 1982, Public Service Company of New Mexico filed a refund report pursuant to the Commission's order of July 20, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before October 15, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27660 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC82–62–000]

Tennessee Natural Gas Lines, Inc.; Tariff Sheet Filings

October 1, 1982.

Take notice that on September 27, 1982, Tennessee Natural Gas Lines, Inc. (Tennessee), 2000 Parkway Towers, Nashville, Tennessee 37219, filed in Docket No. TC82–62–000 revised tariff sheets to become effective November 1, 1982, pursuant to Section 281.204(b)(2) of the Commission's Regulations, which section requires interstate pipelines to update their index of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users). The subject filings are Fourth Revised Sheet Nos. 32 through 34, to Tennessee's FERC Gas Tariff, First Revised Volume No. 1.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 18, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance

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[6] *Cf., Southern California Edison* v. *FERC*, Docket No. 81–1599, ——F.2d—— (D.C. Cir., August 31, 1982) and *Kentucky Utilities Company* v. *FERC*, Docket No. 81–2027, ——F.2d—— (D.C. Cir., September 7, 1982).

[7] *See, e.g., Sierra Pacific Power Company*, Docket No. ER–82–105–000, (February 5, 1982); *Pacific Gas & Electric Company*, Docket No. ER81–679–000, 17 FERC ¶ 61,069 (October 23, 1981).

[8] Docket No. ER82–426–000, order issued May 28, 1982.

with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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 a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27661 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-838-000]

Vermont Electric Power Co., Inc.; Filing

October 4, 1982.

Take notice that on September 24, 1982, Vermont Electric Power Company (Vermont) tendered for filing "Agreement RE Charges for Transmission of Firm Power, as Amended," dated June 19, 1961, as amended September 12, 1961, October 16, 1964 and as of December 1, 1980.

Vermont states that this Agreement supersedes FERC Rate Schedule No. 32 and supplements thereto.

Vermont further states that the primary reasons for amending the Agreement were to include Vermont Marble Company as a party on the same terms and conditions as the other four parties of the Agreement, which provides for the use of the facilities of Vermont for the transmission of firm power and to reflect additional power being transmitted for the State of Vermont.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 18, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27642 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-839-000]

Washington Water Power Co.; Filing

October 4, 1982.

The filing Company submits the following:

Take notice that on September 24, 1982, the Washington Water Power Company (Washington) tendered for filing an Amendment to an exchange agreement with Puget Sound Power & Light Company (Puget) which provides for the exchange of steam-electric generation which, because of plant locations and load area locations, results in substantial saving in both transmission service costs and in transfer losses.

Washington is a 15 percent owner of the Centralia steam-electric plant in western Washington near Puget's system load area. Previously, Washington's Centralia generation was wheeled over Bonneville Power Administration transmission facilities to its system load area in eastern Washington. Puget is a 50 percent owner of Colstrip steam-electric Units #1 and #2 in eastern Montana. Puget's Colstrip generation formerly was wheeled over transmission facilities of other utilities, including Bonneville's, to its system load area in western Washington. The subject agreement provides for the exchange of Washington's Centralia capacity and energy, which, because of the shortening of the transfer distances involved results in substantial saving in both transmission service costs and transfer losses are shared equally by Washington and Puget under the terms of the agreement.

Washington requests an effective date of January 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 19, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27643 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-347-000]

Wisconsin Electric Power Co.; Order Granting Motion To Collect Interim Settlement Rates

Issued: September 30, 1982.

On August 20, 1982, Wisconsin Electric Power Company (WEPCO) filed a motion for authorization to collect reduced interim rates, subject to refund, pending Commission action on an executed settlement agreement filed concurrently in this docket. The motion seeks permission to collect the settlement rates as of September 28, 1982.

WEPCO's original filing in this docket was tendered on February 26, 1982. As a result of certain summary dispositions, the company was directed to refile its cost of service and rates. Subsequently, the Commission deferred action on WEPCO's compliance filing pending receipt and consideration of the parties' settlement agreement. In the event that the settlement agreement is disapproved, WEPCO's August 20 motion asks for authorization thereafter to collect its compliance rates, subject to refund. WEPCO states that the intervening customers have agreed to this provision but that the customers reserve the right to raise any objections to these compliance rates by motion or at hearing.

Pursuant to §§ 35.1(e), 35.11, and 35.17(b) of the Commission's regulations, we find that good cause exists to permit the collection of the settlement rates, subject to refund, as of September 28, 1982, until such time as the Commission acts on the settlement agreement filed in this docket on August 20, 1982. This order shall be without prejudice to our subsequent determination on the merits of the settlement agreement. In the event that the settlement agreement is not approved or is approved in such a fashion that the settlement agreement is withdrawn, WEPCO's compliance rates shall apply, subject to refund, prospectively from the date of such disapproval.

The Commission Orders

(A) The motion filed by WEPCO on August 20, 1982, requesting permission to collect settlement rates in lieu of the rates that would otherwise go into effect

on September 28, 1982, is hereby granted.

(B) Good cause having been shown, WEPCO is hereby authorized, pursuant to §§ 35.1(e), 35.11, and 35.17(b) of the Commission's regulations, to collect subject to refund, the settlement rates which it has filed, effective September 28, 1982, until final Commission action on the settlement. In the event that the settlement agreement is not approved or is approved in such a fashion that the settlement agreement is withdrawn, the compliance rates filed by WEPCO pursuant to the Commission's order of April 13, 1982, shall become effective prospectively and subject to refund from the date of the final Commission order disapproving the settlement.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27662 Filed 10-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-702-000 and ER82-703-000]

New England Power Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Waiving Filing Requirements, Consolidating Dockets, and Establishing Hearing Procedures

Issued: September 30, 1982.

On July 30, 1982, New England Power Company (NEP) tendered for filing increased rates for service to its primary wholesale customers.[1] The revised W-5 rates would increase jurisdictional revenues by approximately $30,300,000 (3.5%) based on a calendar year 1983 test period. NEP requests that the Commission suspend the W-5 rates for three months from October 1, 1982, to become effective, subject to refund, on January 1, 1983. In the alternative, NEP has also filed a lower Rate W-5(I) which would increase jurisdictional revenues by approximately $9,400,000 (1.08%). In the event that the Commission suspends the W-5 rates beyond January 1, 1983, NEP requests that Rate W-5(I) be accepted for filing and suspended for three months to become effective on an interim basis between January 1, 1983, and the effective date for the W-5 rates.

NEP concurrently tendered for filing a proposed change in its integrated facilities agreement with its affiliate, Narragansett Electric Company (Narragansett). The proposed change would increase the credits allowed to Narragansett for NEP's use of Narragansett's generation and transmission (G&T) facilities on its purchased power billing by about $2.6 million (5%), including about $879,000 in fixed credits. As in the case of NEP's primary rates, NEP requests that the revised Narragansett credit become effective, following a three month suspension, on January 1, 1983. NEP has also filed an interim G&T credit, which would increase the credits to Narragansett by approximately $1.7 million (3.26%) annually including approximately $129,000 in fixed credits. If the full credit revision is suspended for five months, NEP asks that the interim revision be made effective from January 1, 1983, until March 1, 1983. NEP further requests that certain provisions of section 35.13 of the Commission's filing requirements be waived to the extent that they may otherwise be considered applicable. In addition, NEP asks that Docket Nos. ER82-702-000 and ER82-703-000 be consolidated for purposes of hearing.

Notice of NEP's filings was published in the **Federal Register,** with comments due on or before August 27, 1982. On August 27, 1982, the Attorney General of Rhode Island and the Rhode Island Division of Public Utilities and Carriers (Rhode Island intervenors) filed a notice of intervention and a motion for an extension of time in which to respond to the filing until September 7, 1982. The Rhode Island intervenors raised no substantive issues at that time.[2]

The period for filing protests or interventions was extended to September 7, 1982, by notice issued September 3, 1982. On August 30, 1982, the Department of Public Utilities, Commonwealth of Massachusetts (Massachusetts DPU) filed a notice of intervention and a protest in which it opposed NEP's cost of service inclusion of certain expenses associated with the cancelled Pilgrim II nuclear plant and requested a three week extension of time in which to file an additional protest. On September 7, 1982, the New Hampshire Public Utilities Commission (New Hampshire Commission) filed a notice of intervention in which it did not raise any substantive issues.

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely notices of intervention serve to make the Rhode Island intervenors, the Massachusetts DPU, and the New Hampshire Commission parties to this proceeding.

Our preliminary examination of NEP's proposed primary rates and revised G&T credits indicates that the proposed rates and credits have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates and credit modifications for filing and suspend them as ordered below.

We recently addressed the Commission's suspension policy in *West Texas Utilities Company,* Docket No. ER82-23-000 (February 26, 1982). As explained there, where our preliminary examination indicates that revised rates may be unjust and unreasonable, but may not be substantially excessive as described in *West Texas,* we will ordinarily suspend the rates for one day. In the case of NEP's W-5 rates, and the full G&T credits, however, preliminary review suggests that the proposed rates may produce substantially excessive revenues as defined in *West Texas.* Therefore, we shall suspend the proposed W-5 rates and the full G&T credit revision for five months, to become effective on March 1, 1983, subject to refund.

Our preliminary review, on the other hand, suggests that the W-5(I) rates and the proposed interim G&T credits may not yield excessive revenues. As noted, NEP has requested a suspension of three months from October 1, 1982, so that the revised rates will coincide with the commencement of the 1983 test period. Accordingly, we shall accommodate that request and suspend the proposed W-5(I) rates and the proposed interim modification to the G&T credits for three months to become effective, subject to refund, on January 1, 1983, and to continue in effect until March 1, 1983.

Given the nature of NEP's G&T filings and the relationship of those credits to NEP's wholesale cost of service, we find that good cause exists to waive the outstanding filing requirements in Docket No. ER82-702-000. Inasmuch as common questions of law and fact may be presented in Docket Nos. ER82-702-000 and ER82-703-000, we shall

[1] *See* Attachment A for rate schedule designations

[2] No further pleading was submitted by the Rhode Island intervenors until September 15, 1982, at which time they filed a motion for permission to file supplemental pleadings and a request for a five month suspension and summary judgment. The motion contains only generalized statements that the press of other business precluded a timely filing within the extended deadline. No explanation is offered for the failure to so advise the Commission by September 7. Given the press of the Commission's own business and the need to maintain deadlines for public input in order to maintain administrative control over our own agenda, we decline to accept the late filing.

consolidate those dockets for purposes of hearing and decision.

The Commission orders:

(A) NEP's proposed rates W–5(I) are hereby accepted for filing and suspended for three months to become effective, subject to refund, on January 1, 1983. NEP's proposed W–5 rates are hereby accepted for filing and suspended for five months to become effective, subject to refund on March 1, 1983.

(B) NEP's proposed interim modification to its service agreement with Narragansett is hereby accepted for filing and suspended for three months to become effective, subject to refund, on January 1, 1983. NEP's proposed full G&T credit modification is hereby accepted for filing and suspended for five months to become effective, subject to refund, on March 1, 1983. Waiver of section 35.13 of the Commission's filing requirements is hereby granted to the extent necessary to permit acceptance of these filings.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of NEP's rates and G&T credits.

(D) Docket No. ER82–702–000 is hereby consolidated with Docket No. ER82–703–000 for purposes of hearing and decision.

(E) The Commission staff shall serve top sheets in this proceeding on or before October 11, 1982.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

ATTACHMENT A

New England Power Company, Docket Nos. ER82–703–000 and ER82–702–000, Rate Schedule Designations (Interim Rates)

Designation and Description

(1) 25th Revised Sheet No. 1 and 26th Revised Sheet No. 2 of Schedule II–A under FPC Electric Tariff, Original Volume No. 1 (Supersedes 24th Revised Sheet No. 1 and 25th Revised Sheet No. 2)—Rate W–5(I) Primary Customers

(2) Supplement to Service, Agreement under FPC Electric Tariff, Original Volume No. 1 (Supersedes Supplement to Service Agreement dated July 17, 1981)—Amendment with Narragansett

(3) 13th Revised Sheet No. 4 under (2) above (Supersedes 12th Revised Sheet No. 4)—Generation and Transmission Credits for Narragansett

Narragansett Electric Company

(4) Supplement No. 14 to Rate Schedule FPC No. 38 (Supersedes Supplement No. 13) (Concurs in (2) and (3) above)—Certificate of Concurrence

New England Power Company, Docket Nos. ER82–702–000 and ER82–703–000, Rate Schedule Designations (Full Rates)

Designation and Description

(1) 26th Revised Sheet No. 1 and 27th Revised Sheet No. 2 of Schedule II–A under FPC Electric Tariff, Original Volume No. 1 (Supersedes 25th 26th Revised Sheet No. 2)—Rate W–5 Primary Customers

(2) Supplement to Service Agreement under FPC Electric Tariff, Original Volume No. 1 (Supersedes Supplement to Service Agreement dated July 21, 1982)—Amendment with Narragansett

(3) 14th Revised Sheet No. 4 under (2) above (Supersedes 13th Revised Sheet No. 4)—Generation and Transmission Credits for Narragansett

Naragansett Electric Company

(4) Supplement No. 15 to Rate Shedule FPC No. 38 (supersedes Supplement No. 14) (Concurs in (2) and (3) above)—Certificate of Concurrence

[FR Doc 82–27655 Filed 10–6–82; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals Cases Filed; Week of September 10 Through September 17, 1982

During the week of September 10 through September 17, 1982, the appeals and applications for exception or other relief listed in the Appendix of this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: October 1, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 10 through Sept. 17, 1982]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 25, 1982	Crown Central Petroleum, Baltimore, Md.	HRZ–0092	Interlocutory order. If granted: The Statement of Objections submitted by Romaco, Inc. in response to a Proposed Remedial Order issued to Crown Central Petroleum, Corporation (Case No. HRO–0072) would be struck from the record.
Aug. 26, 1982	Gulf Oil Corp., Houston, Tex	HEX–0046	Supplemental order. If granted: The May 21, 1982 Decision and Order (Case No. HEX–0021) issued to the 341 Tract Unit of the Citronelle Field would be modified to change the manner of accounting for the Unit's teritary production.
Sept. 10, 1982	Mid-Continent, Inc., Little Rock, Ark.	HCX–0045	Supplemental order. If granted: The July 24, 1979 Decision and Order (Case No. DRA–0179) issued to Mid-Continent, Inc. by the Office of Hearings and Appeals would be modified in connection with the August 24, 1982 Order issued by the U.S. District Court for the Eastern District of Arkansas.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Sept. 10 through Sept. 17, 1982]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 14, 1982	ERA/Crown Central Petroleum Corp., Washington, D.C.	HRR-0041	Request for modification/rescission, if granted: The September 2, 1982 Decision and Order (Case No. HRZ-0077) issued to Crown Central Petroleum by the Office of Hearings and Appeals would be modified to correct two allegedly erroneous findings.

REFUND APPLICATIONS RECEIVED

[Week of Sept. 10 to Sept. 17, 1982]

Date	Name of refund proceeding/name of refund applicant	Case No.
9-14-82	Vickers/Howard's Service	RF1-372

[FR Doc. 82-27600 Filed 10-6-82; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Central Valley Project; Proposed Power Rate Adjustment

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Selection of Proposed Firm Power Rate—Central Valley Project, California.

SUMMARY: The Western Area Power Administration (Western) proposed three alternatives regarding a rate increase for firm power sold by the Central Valley Project (CVP) in 47 FR 27602 (June 25, 1982). The notice also contained a proposed rate for transmission of non-CVP power over the CVP transmission system. A notice published at 47 FR 39717 (September 9, 1982) amended the proposed rate for transmission and extended the consultation and comment period. This notice announces the selection of the "Uniform Rate With Periodic Energy Stair Steps" alternative as the rate structure for sales of firm CVP power and also announces the proposed rates.

DATES: As specified at 47 FR 39717 (September 9, 1982), the alternative that has been selected will be one of the subjects of a combined public information and public comment forum which will be held October 26, 1982, at the Red Lion Motor Inn, 2001 Point West Way, Sacramento, California, beginning at 9:30 a.m. Written comments may be submitted during the comment portion of the combined forum or may be submitted to the address below throughout the consultation and comment period, but should be received at that address on or before the end of the consultation and comment period. The consultation and comment period ends November 15, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 2800 Cottage Way, Sacramento, CA 95825, (916) 484-4251.

SUPPLEMENTARY INFORMATION: The proposed rate is to become effective on or before May 25, 1983. The proposed rate (Uniform Rate With Periodic Energy Stair Steps) is as follows:

Capacity Charge: $3.75/kW of monthly billing demand

Energy Charge:

May 25, 1983–September 30, 1983—8.53 mills/kWh

October 1, 1983–September 30, 1984—13.74 mills/kWh

October 1, 1984–October 31, 1985—18.95 mills/kWh

November 1, 1985–September 30, 1986—27.97 mills/kWh

October 1, 1986, and thereafter—31.44 mills/kWh

Composite Yield:

May 25, 1983–September 30, 1983—16.89 mills/kWh

October 1, 1983–September 30, 1984—21.98 mills/kWh

October 1, 1984–October 31, 1985—27.18 mills/kWh

November 1, 1985–September 30, 1986—36.16 mills/kWh

October 1, 1986, and thereafter—39.63 mills/kWh

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) 484-4261.

Issued at Golden, Colorado, September 29, 1982.

Don W. Shinkle,

Assistant Administrator for Management Services.

[FR Doc. 82-27598 Filed 10-6-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140022; TSH-FRL-2222-1]

Engineering and Economics Research, Inc.; Transfer of Data to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has contracted with Engineering and Economics Research, Inc. (EER), of Vienna, Virginia, to help the Agency develop statistical methodologies and computer software support for aggregating certain data gathered or generated under the Toxic Substances Control Act for release to the public. EER will require access on EPA premises to materials including confidential business information (CBI).

DATE: Access to confidential business information will occur no sooner than 10 days after publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-509, 401 M St., SW., Washington, D.C. 20460, Toll-free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION: EPA has contracted with Engineering and Economics Research, Inc. (EER), of Vienna, Virginia, to help the Agency develop statistical methodologies and computer software support for aggregating information located in certain Office of Toxic Substances data bases for release to the public (Contract No. 68-01-6681). EPA is developing aggregation methodologies which can be used to produce public information from Toxic Substances Control Act (TSCA) data bases containing confidential information and which will protect the confidentiality of individual claims.

Pursuant to 40 CFR 2.306(j), EPA has determined that access to confidential business information by EER is necessary for the satisfactory completion of this contract. However, at no time will EER be allowed to remove any CBI from EPA premises. Contractor

employees will have access to CBI only while working on site at EPA.

In accordance with the EPA security manual, "Contractor Requirements for the Control and Security of TSCA CBI," EER is legally required to safeguard CBI from any unauthorized disclosure. EER employees will sign nondisclosure agreements and will be briefed on appropriate security procedures which must be followed before they will be allowed access to any CBI.

Dated: September 27, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 82-27564 Filed 10-6-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS 140016; TSH-FRL 2221-8]

Viar and Company; Transfer of Data To Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will provide to VIAR and Company, a sub-contractor to Systems Development Corporation (SDC), access on EPA premises to information submitted by manufacturers, processors, and importers of chemical substances under sections 5 and 8 (a), (b), and (d) of the Toxic Substances Control Act (TSCA). Some of this information may be claimed confidential. Under EPA guidance, VIAR will develop conversion and optimization software and implement ADP systems which will process this information.

DATE: Access to information submitted to EPA and claimed confidential will take place no sooner than 10 working days after publication of this notice of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, D.C. 20460, Toll-free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: Under section 5(a) of TSCA, 15 U.S.C. 2604(a), manufacturers and importers of chemical substances are required to submit premanufacture notices (PMNs) for new chemical substances that they intend to manufacture or import and which are not included in EPA's Inventory of Chemical Substances. Under section 8(a), 15 U.S.C. 2607(a), manufacturers, importers, and processors are required to submit basic information on use, release, and exposure to enable EPA to set priorities for testing chemicals and for assessing chemical risk. In accordance with section 8(b), 15 U.S.C. 2607(b), and the TSCA Inventory Reporting Regulations in 40 CFR Part 710, manufacturers, importers, and processors of chemical substances reported information concerning those substances to the TSCA Inventory of Chemical Substances. Under section 8(d), 15 U.S.C. 2607(d), manufacturers, processors, and distributors of chemicals will be required to submit lists of health and safety studies. Some of the information submitted under these sections of TSCA is claimed confidential.

Under its contact with EPA (No. 68-02-2832), Systems Development Corporation, with guidance from EPA, will convey to VIAR and Company tasks which will convert, optimize, and develop software for processing of confidential TSCA data at the secure computer data center at EPA's regional office in Research Triangle Park, North Carolina. VIAR and Company will require access to information submitted under sections 5 and 8 (a), (b), and (d) of TSCA.

In accordance with 40 CFR 2.306(j), it has been determined that access by VIAR and Company to TSCA confidential business information through SDC will be necessary for the satisfactory performance of work under this contract.

VIAR and Company is legally required under the terms of its contract to safeguard from any unauthorized disclosure the confidential business information to which it receives access from EPA or which it generates during the performance of its work. VIAR and Company will not remove any confidential business information from EPA premises.

VIAR and Company personnel will be required to sign a nondisclosure agreement before they are permitted access to such information. VIAR and Company is required to treat all confidential business information in accordance with the requirements of the TSCA Confidential Business Information Security Manual and the Contractor Requirements for the Control and Security of TSCA Confidential Business Information Manual.

Dated: September 29, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 82-27563 Filed 10-6-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within *20* days after the date of the **Federal Register** in which this notice appears. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. 9648A-18.

Filing Party: Wade S Hooker, Jr., Burlingham Underwood & Lord, One Battery Park Plaza, New York, N.Y. 10004.

Summary: Agreement No. 9648A-18 modifies the basic agreement of the Inter-American Freight Conference by adding new Articales 14(M) and (N), which establishes procedures for the submission of tonnage reports and the payment of amounts due under the self-policing provisions. Existing Article 14(M) is renumbered 14(O).

Agreements Nos. 10107-14 and 10108-9.

Filing party: Charles F. Warren, Esq., Warren & Associates, P.C., 1100 Connecticut Avenue, NW., Washington, D.C. 20036.

Summary: Agreement No. 10107–14, the Trans-Pacific Freight Conference (Hong Kong)/Independent Lines Rate Agreement; and Agreement No. 10108–9, the New York Freight Bureau/ Independent Lines Rates Agreement amend the basic agreements to provide that in addition to the authority reposed in the neutral body, the parties hereto are authorized to establish a misrating program for the purpose of detecting any misratings of cargo and levying assessments therefor as may be appropriate. The amendments also provide administrative details for implementing the misrating program and for any changes therein.

By Order of the Federal Maritime Commission.

Dated: September 30, 1982.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 82–27534 Filed 10–6–82; 8:45am]

BILLING CODE 6730–01–M

American President Lines, Ltd. Section 15 Agreements; Cancellation

Filing party: Elizabeth Welch, Pricing Manager, American President Lines, Ltd., 1950 Franklin Street, Oakland, California 94612.

Summary: On September 24, 1982, the Commission received notice from American President Lines, Ltd. to cancel a number of two party agreements to which it is a party. The agreement numbers together with the identity of the other participants are listed below:

Agreement No.	Participating Carrier
8974	(AML)/Everett Orient Line.
9780	Nam Sung.
9781	Nam Sung.
9782	Heung Hae.
9783	Heung Hae
9825	Everett.
9839	Everett.
9840	Everett.

Accordingly, the above listed agreements are cancelled effective September 24, 1982, the date the notice of cancellation was received by the Commission.

By Order of the Federal Maritime Commission.

Dated; September 30, 1982.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 82–27533 Filed 10–6–82; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 1777–R]

Bosco Services Freight Forwarding Co. (Terco, Inc. d.b.a.); Revocation

Section 44(c) Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be revoked without a hearing or other proceeding for failure of a licensee to maintain a valid bond on file.

In Docket No. 77–53, *Licensing of Independent Ocean Freight Forwarders*, (Federal Register, Vol. 43, No. 146, P. 32776, July 28, 1978), the Federal Maritime Commission amended its General Order 4 (46 CFR 510) to require all licensed independent ocean freight forwarders to file a $30,000 surety bond.

The Commission published a Notice of Revocation in the **Federal Register** on January 3, 1979 (Vol. 44, No. 2, Pp. 953–955), identifying those licensees who had failed to file the $30,000 surety bond and whose licenses were therefore revoked effective December 2, 1978. Through administrative error, Bosco Services Freight Forwarding Co. (Terco, Inc. dba) was not included in that Notice.

All correspondence sent by certified mail to Bosco Services Freight Forwarding Co. (Terco, Inc. dba) have been returned by the U.S. Postal Service as unclaimed. Further, the Office of the Secretary of the State of Oklahoma has advised that the corporation is no longer active.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1777–R was revoked effective December 2, 1978.

It is ordered, that a copy of this Notice be published in the **Federal Register.**

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82–27532 Filed 10–6–82; 8:45 am]

BILLING CODE 6730–01–M

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement and the justification offered therefor at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10427; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, Chicago, Illinois, and San Juan, Puerto Rico. Interested parties may submit comments on the agreement, including request for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 10 days after the date of the **Federal Register** in which this notice appears. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreement and the statement should indicate that this has been done.

Agreement No. T–3813–6.

Filing Party: Ryokichi Higashionna, Ph. D., Director of Transportation, State of Hawaii, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813.

Summary: Agreement No. T–3813–6 between the State of Hawaii and Matson Terminals, Inc. (Matson) modifies approved Agreement No. T–3813, as amended, which provides for the lease of land and facilities by Matson at the Container Complex located at Sand Island, Honolulu, Hawaii. The amendment provides for the issuance of additional revenue bonds for the extension of the special facilities described in Agreement No. T–3813. Agreement No. T–3813–6 will become effective upon Commission approval.

By Order of the Federal Maritime Commission.

Dated: October 4, 1982.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 82–27601 Filed 10–6–82; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by a Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Security Bancshares Inc.*, Albany, Missouri; to acquire an additional 19.96 percent of the voting shares or assets of Albany State Bank, Albany, Missouri. Comments on this application must be received not later than November 1, 1982.

Board of Governors of the Federal Reserve System, October 1, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-27530 Filed 10-6-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Huntley Bancshares, Inc.*, Huntley, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Huntley, Huntley, Illinois. Comments on this application must be received not later than November 1, 1982.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *San Clemente Bancorp*, San Clemente, California; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of San Clemente, San Clemente, California. Comments on this application must be received not later than November 1, 1982.

Board of Governors of the Federal Reserve System, October 1, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-27529 Filed 10-6-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or grains in efficiency, that outweigh possible adverse effects, such a undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated for each application.

A. **Federal Reserve Bank of New York**, (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC* and its subsidiary, Barclays Bank International Limited, each a bank holding company whose principal office is in London, England (consumer finance; Liverpool, New York): To engage through their subsidiaries, BarclaysAmerican/Financial, Inc. and BarclaysAmerican/Retail Services, Inc., in making direct consumer loans, including loans secured by real estate, and purchasing sales finance contracts representing extensions of credit such as would be made or acquired by a consumer finance company, and wholesale financing (floor planning) and acting as agent for the sale of related credit life, credit accident and health and credit property insurance. Credit life and credit accident and health insurance sold as agent may be underwritten or reinsured by BAC's insurance underwriting subsidiaries. This activity would be conducted from an office of BAC located in Liverpool, New York, serving customers in Liverpool and surrounding areas in New York. This notification is for the relocation of an existing office located in Syracuse, New York. Comments on this application must be received not later than November 1, 1982.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BankAmerica Corporation*, San Franciso, California (trust company activities; United States): To expand the nature of the activities it conducts through its subsidiary BankAmerica Securities Services Company of New York (A Limited Purpose Trust Company), whose name will be changed to BankAmerica Trust Company of New York, to include all functions or activities that may be performed or carried on by a trust company pursuant to § 225.4(a)(4) of the Board's Regulation Y. These activities would be conducted from an office in New York, New York serving the entire United States.

Comments on this application must be received not later than November 1, 1982.

Board of Governors of the Federal Reserve System, October 1, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-27528 Filed 10-6-82; 8:45 am]

BILLING CODE 6210-01-M

PNC Financial Corp.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. 82-26954) published at page 43186 of the issue for Thursday, September 30, 1982. PNC Financial Corporation, Pittsburgh, Pennsylvania also proposes to acquire Pittsburgh National Commercial Corporation, Pittsburgh, Pennsylvania, a company that engages in commercial lending.

Board of Governers of the Federal Reserve System, October 1, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-27531 Filed 10-6-82; 8:45 am]

BILLING CODE 6210-01-M

Petition Regarding Sweep Arrangements; Notice of Informal Hearing

The Securities Industry Association has petitioned the Board to prohibit the operation of sweep accounts by member banks. Such sweep accounts typically involve an agreement between a depository institution and one or more investment companies registered with the Securities and Exchange Commission under the Investment Company Act of 1940. Generally under these arrangements, funds deposited with the depository institution in a demand deposit or NOW account in excess of a pre-determined balance would be swept into the investment company by the purchase of shares or securities of the investment company. The balances maintained by the customer with the investment company may then be subject to an agreement that provides for the automatic or preauthorized transfer back to the customer's checking account of the depository institution or to some other account of the depository institution.

The Securities Industry Association has asserted that such sweep arrangements involve underwriting the public distribution of securities by the participating depository institution in violation of the Glass-Steagall Act. A copy of the Securities Industry Association's petition may be obtained from the Board's Freedom of Information Office (202/452-3684).

To solicit further factual information concerning the operation of sweep arrangements and to give interested parties an opportunity to express their views, the Board has scheduled an informal public hearing before the Board's staff to be held at the Federal Reserve Board, Washington, D.C., on November 3 and 4, 1982, commencing at 9:30 a.m. In addressing this issue, interested parties may comment on sweep arrangements in connection with the Glass-Steagall Act and the issues raised by the Securities Industry Association in its petition.

The presiding officer at the hearing shall be authorized to administer oaths and to establish time limits for persons wishing to be heard. A person wishing to present evidence at this informal hearing should file with the Secretary of the Board a request to appear at the hearing. All requests should refer to Docket number R-0422. The request to present evidence should be received at the Secretary's office in Washington, D.C. 20551, no later than October 25, 1982, and should specify the names of the persons who desire to present evidence, the interest of those persons in the proceeding, and the matters concerning which those persons desire to present evidence.

Interested parties who do not wish to participate in the informal hearing may submit written comments to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later then November 4, 1982. All such submissions should refer to Docket number R-0422. For further information regarding this matter, contact Robert G. Ballen, Attorney, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-3265).

Board of Governors of the Federal Reserve System, October 1, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-27608 Filed 10-6-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated for each application.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Hospital Trust Corporation,* Providence, Rhode Island (underwriting credit life and disability insurance; United States): To engage, through its subsidiary, RIHT Life Insurance Company, in the activity of underwriting, as reinsurer, credit life and credit disability insurance which is directly related to extensions of credit by the credit extending affiliates of Hospital Trust Corporation. This activity would be conducted at offices in Phoenix, Arizona, serving the United States. Comments on this application must be received not later than October 27, 1982.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation,* New York, New York (mortgage banking and related lending and insurance activities; Texas): To make or acquire, for its own account or for the account of others, loans and other extensions of credit secured by real estate, including but not limited to, first and second mortgage loans secured by mortgages on one-to-four family residential properties,

to service loans and other extensions of credit for any person, to sell mortgage loans in the secondary market, and to offer mortgage term life insurance, accident and health insurance and disability insurance indirectly related to such lending and servicing activities. These activities will be conducted from an office located in Houston, Texas, serving the greater Houston area including Harris, Galveston, Brazoria, Fort Bend, Chambers, Montgomery and Matagorda counties. Comments on this application must be received not later than October 27, 1982.

2. *Citicorp*, New York, New York (consumer finance and credit related insurance activities; California): To expand the activities and service areas of two existing offices of its subsidiary, Citicorp Person-to-Person Financial Center, Inc. and to establish two *de novo* offices of Citicorp Homeowners, Inc. at the same locations. The activities in which the *de novo* offices of Citicorp Homeowners, Inc. proposes to engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of credit related property and casualty insurance protecting real and personal property subject to a security agreement with Citicorp Homeowners, Inc., and to the extent permissible under applicable state insurance laws and regulations; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of each of the *de novo* offices of Citicorp Homeowners, Inc. shall be comprised of the entire state of California for all the aforementioned proposed activities. The previously approved activities in which the offices of Citicorp Person-to-Person Financial Center, Inc. engage are as follows: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of credit related property and casualty insurance protecting real and personal property subject to a security agreement with Citicorp Person-to-Person Financial Center, Inc., and to the extent permissible under applicable state insurance laws and regulations; and the servicing, for any person, of loans and other extensions of credit. The new activities in which the offices of Citicorp Person-to-Person Financial Center, Inc. propose to engage *de novo* are: the sale of consumer oriented financial management courses; the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for each Citicorp Person-to-Person office for all previously approved and proposed activities shall be comprised of the entire state of California. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners Inc. The aforementioned activities will be conducted from offices in the following two locations: San Jose, California; and Walnut Creek, California. Comments on this application must be received not later than October 27, 1982.

3. *Citicorp*, New York, New York (cconsumer finance and credit related insurance activities; California): To expand the activities and service areas of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center, Inc., located in Stockton, California, and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Stockton, California location. The activities in which the *de novo* office of Citicorp Homeowners, Inc. proposes to engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of credit related property and casualty insurance protecting real and personal property subject to a security agreement with Citicorp Homeowners, Inc., and to the extent permissible under applicable state insurance laws and regulations; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of each of the *de novo* offices of Citicorp Homeowners, Inc. shall be comprised of the entire state of California for all the aforementioned proposed activities. The previously approved activities in which the offices of Citicorp Person-to-Person Financial Center, Inc. engage are as follows: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of credit related property and casualty insurance protecting real and personal property subject to a security agreement with Citicorp Person-to-Person Financial Center, Inc., and to the extent permissible under applicable state insurance laws and regulations; and the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The new activities in which the office of Citicorp Person-to-Person Financial Center, Inc. proposes to engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for each Citicorp Person-to-Person office for all previously approved and proposed activities shall be comprised of the entire state of California. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners Inc. Comments on this

application must be received not later than October 27, 1982.

4. *Citicorp*, New York, New York (consumer finance and credit related insurance activities; California): To expand the activities and service area of an existing office of Citicorp Person-to-Person Financial Center, Inc., located in Sacramento, California, and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Sacramento, California location. The activities in which the *de novo* offices of Citicorp Homeowners, Inc. proposes to engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of credit related property and casualty insurance protecting real and personal property subject to a security agreement with Citicorp Homeowners, Inc., and to the extent permissible under applicable state insurance laws and regulations; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of each of the *de novo* offices of Citicorp Homeowners, Inc. shall be comprised of the entire state of California for all the aforementioned proposed activities. The previously approved activities in which the offices of Citicorp Person-to-Person Financial Center, Inc. engage are as follows: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of credit related property and casualty insurance protecting real and personal property subject to a security agreement with Citicorp Person-to-Person Financial Center, Inc., and to the extent permissible under applicable state insurance laws and regulations; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The new activities in which the offices of Citicorp Person-to-Person Financial Center, Inc. propose to engage *de novo* are: the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for each Citicorp Person-to-Person office for all previously approved and proposed activities shall be comprised of the entire state of California. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc. Comments on this application must be received not later than October 27, 1982.

5. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; South Carolina): To expand the activities and service area of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center, Inc. located in Columbia, South Carolina, and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Columbia, South Carolina location. The activities in which the *de novo* office of Citicorp Homeowners, Inc. proposes to engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the *de novo* office of Citicorp Homeowners, Inc. shall be comprised of the entire state of South Carolina for all the aforementioned proposed activities. The new activities in which the office of Citicorp Person-to-Person Financial Center, Inc. proposes to engage *de novo* are: the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area shall be the entire State of South Carolina for the aforementioned proposed activities and for the following activities which have been previously approved for Citicorp Person-to-Person Financial Center, Inc.: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc. Comments on this application must be received not later than October 27, 1982.

6. *Citicorp*, New York, New York (consumer finance activities; Virginia): To expand the activities of an existing office of Citicorp Financial, Inc., located in Springfield, Virginia, to include the proposed *de novo* activity of: the making of consumer loans secured by second mortgage or second trust liens. The activities contemplated by the application include the taking of applications, the preparation and execution of loan documents, the disbursement of funds, account servicing and other activities incidental to its lending activities. The proposed service area for the aforementioned activity shall be the entire State of Virginia. Comments on this application must be received not later than October 27, 1982.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Southwest Florida Banks, Inc.*, Fort Myers, Florida (insurance activities; Florida): To engage through its subsidiary, Southwest Financial Services, Inc., in acting as agent in the sale of credit life insurance in connection with extensions of credit at its affiliate, the Peoples Bank of Pasco

County, Elfers, Florida. These activities will be conducted from an office in Elfers, Florida, serving the surrounding Pasco County area. Comments on this application must be received not later than October 26, 1982.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 400 Sansome Street, San Francisco, California 94120:

1. *BankAmerica Corporation,* San Francisco, California (underwriting insurance activities; expansion of geographic scope; Alabama, California, Louisiana, Mississippi, and South Carolina): To continue to engage, through its indirect subsidiary, BA Insurance Company, Inc., a California corporation, in the activity of underwriter, initially as reinsured, to the extent permitted by relevant state law, for credit-related life insurance and credit-related accident and health insurance which is directly related to extensions of credit by BankAmerica Corporation and its nonbank subsidiaries. The activities of BA Insurance Company, Inc. will be conducted from an existing office located at San Francisco, California serving the states of Alabama, California, Louisiana, Mississippi, and South Carolina. Comments on this application must be received not later than October 27, 1982.

Board of Governors of the Federal Reserve System, September 27, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-27610 Filed 10-6-82; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General Antitrust advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Divisions of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
Weatherford International Incorporated's proposed acquisition of certain assets of Pengo Industries, Incorporated	9-13-82
United Foods Incorporated's proposed acquisition of certain assets of Stokley-Van Camp Incorporated	9-15-82
Campbell Soup Company's proposed acquisition of all voting securities of Juice Bowl Products Incorporated	9-16-82
Amalgamated Distilled Products, PLC's proposed acquisition of all the assets of Barton Brands Limited	9-13-82
Selim K. Zilkha's proposed acquisition of all voting securities of The Amalgamated Sugar Company	9-16-82

FOR FURTHER INFORMATION CONTACT: Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-27611 Filed 10-6-82; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Privacy Act of 1974; Notification of a New System of Records

AGENCY: Public health Service, HHS.

ACTION: Notification of a new system of records: 09-30-0043, "Shipment Records of Drugs of Abuse to Authorized Researchers," HHS/ADAMHA/NIDA.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of new system of records entitled, "Shipment Records of Drugs of Abuse to Authorized Researchers," maintained by the National Institute on Drug Abuse (NIDA); Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA).

Four routine uses are proposed for the system. PHS invites interested persons to submit comments on the proposed routine uses on or before November 8, 1982.

DATES: PHS has sent a Report of a New System to the Congress and to the Office of Management and Budget (OMB) on September 24, 1982. PHS has requested that OMB grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and the Congress. If this waiver is granted, PHS will publish a notice to that effect in the **Federal Register.**

ADDRESS: Please address any comments to: Privacy Act Officer, Office of Extramural Policy and Project Review, National Institute on Drug Abuse, Parklawn Building, Room 10-42, 5600 Fishers Lane, Rockville, Maryland 20857.

Comments received will be available for inspection in Room 10-41 at the address above from 8:00 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION: Richard L. Hawks, Ph.D., Project Officer, Drug Supply Program, Research Technology Branch, Division of Research, National Institute on Drug Abuse, Parklawn Building, Room 9-42, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-5280.

SUPPLEMENTARY INFORMATION: The Drug Supply Program (DSP) is a research support service of NIDA that is coordinated with the Federal Government's overall program to conduct research and regulate substances of abuse. The Controlled Substance Act (CSA) of 1970 requires all persons manufacturing, importing, exporting, prescribing, dispensing, or using any controlled substance to be registered with Drug Enforcement Administration (DEA). Therefore, NIDA verifies and documents that only DEA-registered researchers obtain controlled substances. Similarly, the Atomic Energy Act, as amended, and the Energy Reorganization Act of 1979 require those wishing to use radioactive material in research to be licensed by the Nuclear Regulatory Commission (NRC). There are approximately 1,200 duly authorized researchers participating in NIDA's DSP.

This system of records supports NIDA's DSP through which the United States Government supplies to the national and international scientific community for research purposes, most Schedule I and many Schedule II-V controlled and noncontrolled substances as specified in CSA (21 U.S.C. 801 et seq.). Controlled substances are chemicals and other substances, and their immediate precursors, that the Attorney General has determined to have such potential for abuse as to warrant regulation under CSA. Some of these substances are radiolabeled

materials. Radiolabeled materials are substances to which a small amount of radioactivity is added for use in various studies such as drug metabolism and mechanisms of drug actions.

Through the use of this system, NIDA is able to verify that requests for drugs of abuse are from authorized individuals/organizations for a research purpose; to verify that the amounts of controlled substances requested by researchers for animal, *in vivo*, and *in vitro* research are justified and available; to supply controlled substances in the amounts approved by the Food and Drug Administration (FDA) to researchers conducting research with human subjects; to send radiolabeled controlled substances only to those duly licensed by the NRC; to ship these materials securely in accordance with the CSA; and to maintain records of these transactions.

NIDA has established safeguards, described in the system notice, to protect the records. Only authorized NIDA and contractor personnel have access to the records.

Four routine uses are proposed. The first routine use provides for disclosure to a congressional office at the request of the subject individual, which is in compliance with the Privacy Act. The second routine use provides for disclosure to DEA, to enable that agency to carry out its duties set forth in CSA, one of the legal bases and purposes of this system. The third and fourth routine uses provide for contractor use of the records to support the shipment processing and software modification tasks necessary to accomplish the purposes of the system.

Except pursuant to the routine uses, few, if any, disclosures of the types permitted by Section 3(b) of the Act are anticipated. Any disclosure from these records other than those pursuant to Section 3(b) would be only at the written request of a researcher. Therefore, we anticipate minimal, if any, adverse effects to any individual caused by record disclosure.

Dated: September 29, 1982.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-30-0043

SYSTEM NAME:

Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/ADAMHA/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Research Technology Branch, Division of Research, National Institute on Drug Abuse, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Research Triangle Institute, Research Triangle Park, North Carolina 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual researchers and organizations who are registered with the Drug Enforcement Administration (DEA), Department of Justice (DOJ), some since 1966, and who have voluntarily submitted documentation to the National Institute on Drug Abuse (NIDA) in order to obtain, through the NIDA Drug Supply Program (DSP), drugs of abuse for use in a research project.

CATEGORIES OF RECORDS IN THE SYSTEM:

While the records in the system are research project-related, they support the eligibility of individual researchers to receive drugs of abuse. Types of information contained in the records are: researcher's name, curriculum vitae, research protocol, DEA and (if applicable) Nuclear Regulatory Commission registration numbers (when a radiolabeled compound is requested and shipped), business address (location of research project) and telephone number, summary of research project(s), requests for substance(s), name and amount of each compound requested and shipped, dates material is shipped and received, shipment numbers, and order form numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM.

Drug Abuse Prevention, Treatment, and Rehabilitation Act, Section 503 (21 U.S.C. 1193); Public Health Service Act, Section 301(a) (42 U.S.C. 241(a)); Controlled Substances Act of 1970 (21 U.S.C. 801 et seq.); Atomic Energy Act of 1954, as amended, Section 81 (42 U.S.C. 2111); and Energy Reorganizaton Act of 1974, Section 201 (42 U.S.C. 5841).

PURPOSES:

To facilitate opeation of DSP which is a centralized research support service through which the United States Government supplies to the national and international scientific community for research purposes, most Schedule I and many Schedule II–V controlled and noncontrolled substances as specified in the Controlled Substances Act (CSA).

This system of records was established to facilitate DSP by enabling NIDA:

1. To verify that requests for drugs of abuse, some of which are radiolabeled, are from authorized individuals/organizations for use in a research project;

2. To verify that the amounts of the materials requested by researchers for animal, *in vivo*, and *in vitro* research are justified and available;

3. To supply controlled substances in amounts approved by the Food and Drug Administration (FDA) to researchers conducting research with human subjects;

4. To ship these materials securely in accordance with CSA and the Atomic Energy Act; and

5. To maintain records of these transactions.

FDA also may use the records in routine inspections in accordance with FDA's responsibilities to develop standards on the composition, safety, and efficacy of drugs administered to humans, and to monitor experimental usage of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. We may dislose the record of an individual to a congressional office in response to a verified inquiry from the congressional office made at the written request of the individual.

2. We may disclose information to DEA, DOJ, to enable DEA to carry out its responsibilities as described in the Controlled Substances Act of 1970.

3. An ADAMHA contractor routinely uses the records in this system to ship controlled substances to authorized recipients. Such contractor is required to maintain Privacy Act safeguards with respect to these records.

4. An ADAMHA contractor may have access to the records in this system in the performance of its software modification/correction tasks specified in its contract. Such contractor is required to maintain Privacy Act safeguards with respect to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

NIDA maintains "hard copy" records in file folders and automated records on computer disk.

RETRIEVABILITY:

Authorized NIDA and contractor personnel index and retrieve the computerized records by a researcher code number assigned by a computer program at the time a new record is established. Authorized NIDA personnel index and retrieve "hard copy" records by researcher's name. NIDA maintains a

computerized, alphabetical cross-reference list that matches names and numbers.

SAFEGUARDS:

The "hard copy" records and main computer are physically located at the Parklawn Building, Rockville, Maryland. The computerized records are kept in a room with limited admittance. The room is locked after working hours. The "hard copy" records are stored in locked file cabinets in a room with very limited admittance. This room is also locked after working hours. The Parklawn Building has a 24-hour guard patrol service.

The Chief, Research Technology Branch and his or her support staff, program assistant and clerk-typist, and the contracts' Project Directors and their support staffs have access to the records. The contract personnel, have access, by remote terminal, only to the automated shipment processing portion of the DSP records. These records do not contain any personal information except researchers' name and business addresses. The terminals are housed in a secured work area with limited admittance. Contract personnel use a password identification system to obtain access; NIDA changes the passwords periodically.

The safeguards described in the preceding paragraphs are in accordance with DHHS Chapter 45–13 and Supplementary Chapter PHS.hf: 45–13, in the General Administration Manual, and Part G, "ADP Systems Security," in the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

NIDA maintains an individual's record for five years after the researcher's last request for, or shipment of, a drug of abuse. We consider the record inactive after that, and erase it from the computer disk by a delete routine. The delete routine automatically deletes the computerized cross-reference as well. We destroy the "hard copy" record by shredding. The system is checked once a year for inactive records.

SYSTEM MANAGER(S) AND ADDRESS:

Project Director, Dug Supply Program, Research Technology Branch, Division of Research, Parklawn Building, Room 9–42, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, writer to the Sytem Manager at the address above. An individual may learn if a record exists about himself or herself upon written request. The request should include the researchers's name and business address at the time of last shipment. The request must be signed in ink by the individual researcher. Verifiable proof of identify is required.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Initial source is the individual researcher. Some of the DEA registration information provided by a researcher is verified through a DEA computer check. FDA provides information concerning type and amount of controlled substance(s) to be shipped to an individual researcher for research projects involving human subjects.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR-Doc. 82-2759-2 Filed 10-6-82; 8:45 am]
BILLING CODE 4160-20-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial Nos. A 17000–E (Partial); A 17000–F (Partial)]

Arizona; Classification of Public Lands for State Indemnity Selection

1. The Arizona State Land Department has filed applications to acquire the lands described in Paragraph 5 below, under the provisions of the Act of June 20, 1910 (36 Stat. 557), as amended, in lieu of certain school lands that were encumbered by other rights of reservations before the State's title could attach. These applications have been assigned the serial numbers: A 17000–E; A 17000–F.

2. The Bureau of Land Management will examine these lands for evidence of prior valid rights or other statutory constraints that would bar transfer. Those lands found suitable for transfer will be held to be classified 60 days from date of publication of this notice in the **Federal Register.** Classification is pursuant to Title 43 Code of Federal Regulations, Subpart 2400 and Section 7 of the Act of June 28, 1934.

3. Information concerning these lands and the proposed transfer to the State of Arizona may be obtained from the District Manager, Phoenix District Office, Bureau of Land Management, 2929 West Clarendon Avenue, Phoenix, Arizona 85017 (602) 241–2930.

4. For a period of 60 days from the date of publication of this notice in the **Federal Register,** all persons who wish to submit comments on the above classification may present their views in writing for consideration to the Phoenix District Manager, Bureau of Land Management, 2929 West Clarendon Avenue, Phoenix, Arizona 85017. Any adverse comments will be evaluated by the Authorized Officer who will issue a notice of determination to proceed with, modify, or cancel the action. In the absence of any action by the Authorized Officer, this classification action will become the final determination of the Department of the Interior. As provided by Title 43 Code of Federal Regulations, Subpart 2462.1, a public hearing will be scheduled by the District Manager if he determines that sufficient public interest exists to warrant the time and expense of a hearing.

5. The lands included in this classification are located in Cochise, Maricopa, Pinal, and Pima Counties, Arizona and are described as follows (footnotes correspond to numbered authorized users or applicants listed in Paragraph 6):

Gila & Salt River Meridian, Arizona

A 17000–E (Partial)

T. 1 N., R. 4 W.,
Sec. 12: NW¼SW1¼.[1 2 22]
T. 2 N., R. 5 W.,
Sec. 1: SW¼, W½SE¼; [9, 23]
Sec. 11: SE¼SE¼; [9, 24]
Sec. 12: NW¼, W½SW¼, W½E½SW¼; [9, 24]
Sec. 13: W½SW¼; [9, 24]
Sec. 14: E½E½; [9, 24]
Sec. 23: E½E½.[1, 9, 24]
Total: 1,000 acres ±.

A 17000–F (partial)

T. 6 S., R. 5 E.,
Sec. 1: S½.[3, 4, 10, 25]
T. 12 S., R. 11 E.,
Sec. 27: W½E½, W½; [3, 11, 17, 26]
Sec. 28: NE¼, E½NW¼, SW¼NW¼, S½; [5, 6, 11, 18, 26]
Sec. 29: S½.[11, 18, 26]
T. 13 S., R. 11 E.,
Sec. 5: Lots 1–4 incl., W½SE¼NW¼, SW¼NW¼, SW¼, S½NE¼NE¼SE¼, W½NE¼SE¼, SE¼NE¼SE¼, W½SE¼, W½SE¼SE¼, W½E½SE¼SE¼; [5, 6, 12]
Sec. 8: SW¼SE¼; [26]
Sec. 17: All; [5, 6, 7, 13, 19]
Sec. 20: W½; [5, 6, 13, 26]
Sec. 29: N½, SW¼; [5, 6, 13, 20, 26]
Sec. 30: Lots 1, 2, NE¼, E½NW¼.[3, 13, 20, 26]
T. 14 S., R. 12 E.,
Sec. 29: Lots 1–32 incl., NE¼; [27]

Sec. 30: Lots 9–72 incl.[3, 27]
T. 16 S., R. 10 E.,
Sec. 4: Lot 9, SW¼, W½E½SE¼, NW¼SE¼;[4, 5, 6, 8, 14]
Sec. 8: NE¼;[6, 8, 14, 21, 28]
Sec. 9: Lots 2, 4, 5, N½N½, SE¼NW¼.[4, 5, 6, 8, 14, 21]
T. 22 S., R. 22 E.,
Sec. 3: Lots 57, 59, 81.[4, 15, 16, 29]
Total: 5, 273.73 acres ±.
Total acreage in this classification is 6,273.73±acres.

6. The following listed corporations, agencies, and individuals are holders of leases, permits, and/or rights-of-way on the public lands described in Paragraph 5 above:

Rights-of-Way

[1]Arizona Public Service, Box 21666, Sta. 3172, Phoenix, AZ 85036; AR 08551.
[2]American Telephone & Telegraph, Box 3288, R/W Dept., San Francisco, CA 94119; PHX 083322.
[3]El Paso Gas Co., Box 1492, El Paso, TX 79978; PHX 083253, PHX 086067, AR 05190, A 1912.
[4]Arizona Department of Transportation, 205 South 17th Ave., Phoenix, AZ 85007; AR 010882, A 6041, A 8217.
[5]Mountain States Telephone, 3033 North 3rd Street, R/W Dept., Room 806A, Phoenix, AZ 85012; AR 019499, AR 030406, A 118, A 6605, A 9231.
[6]Trico Electric Coop., Inc., Box 35970, Tucson, AZ 85740; PHX 084351, AR 0612, AR 07056, A 6512, A 7665, A 8686.
[7]Aura Water Coop., Inc., Route 9, Box 586–C, Tucson, AZ 85704; A 11033.
[8]City of Tucson, Water and Sewer Dept., Box 27210, Tucson, AZ 85726; AR 02072, AR 034566.

Grazing Lessees

[9]Ted Hazen, Box 54, Star Route, Buckeye, AZ 85321.
[10]Lorenzo Scott, % Richard Clemans, P.O. Box 962, Casa Grande, AZ 85222.
[11]Charles W. Reeves, Star Route; Box 33, Marana, AZ 85238.
[12]Armando Garcia, Route 9, Box 588, Tucson, AZ 85704.
[13]Frank L. Garcia, Jr., Route 9, Box 596–N; Tucson, AZ 85704.
[14]Duval Corporation, 4715 East Ft. Lowell Rd., Tucson, AZ 85712.
[15]Albert D. Thomas, Route 1, Box 200, Highway 80, Bisbee, AZ 85603.
[16]Alan & Stephanie Gray, 1148 Cardinal Ave., Sierra Vista, AZ 85635.

Range Improvements

[17]#0577; Fence; Charles W. Reeves.
[18]#1327; Fence; Charles W. Reeves.
[19]#4280; Reservoir; Frank Garcia, Jr.
[20]#1546; Fence; Frank Garcia, Jr.
[21]#0841; Spreader Dike; Duval Corp.

Oil and Gas Leases

[22]Emerald Oil Co., 1570 C.S.B. Tower, 50 South Main St., Salt Lake City, UT 84101; A 14231.
[23]AMEREX, Inc., Box 1678, Oklahoma City, OK 73101; A 14094.
[24]First Mississippi Corp., P.O. Box 1249, Jackson, MS 39205; A 14237, A 14238.
[25]Columbia Gas Development Corp., P.O. Box 1350, Houston, TX 77001; A 12902.
[26]MTS Limited Partnership, P.O. Box 2009, Amarillo, TX 79189; A 13751, A 15883.
[27]RACHALK Production, Inc., 16800 Dallas No. Parkway, Suite 220, Dallas, TX 75248; A 17392.
[28]Donald C. Dalbosco, 403 Hollow, Houston, TX 77024; A 17750.
[29]Juniper Petroleum Co., 1660 Lincoln St., Suite 2410, Denver, CO 80264; A 10563.

7. Rights-of-way granted by BLM will transfer with the land. Oil and gas leases will remain in effect under the terms and conditions of the lease. State Law and Land Department procedures (R 12–5–154D Administrative Rules and Regulations, Arizona State Land Department) provide for the offering to holders of BLM grazing permits the first right to lease lands that are transferred to the State. This constitutes official notice to grazing lessees that their Bureau of Land Management leases will be terminated in part upon transfer of the land to the State of Arizona.

Dated: September 30, 1982.

William K. Barker,

District Manager.

[FR Doc. 82-27556 Filed 10-6-82; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. A 17000–F (Partial)]

Arizona; Classification of Public Lands for State Indemnity Selection

1. Pursuant to the act of June 20, 1910 (the Enabling Act, as amended), the provisions of Section 7 of the Taylor Grazing Act, and the regulations in 43 CFR 2400, the public lands described below are hereby classified for State Indemnity Selection. The State of Arizona has filed applications to acquire the described lands in lieu of certain schools lands that were encumbered by other rights or reservations before the State's title could attack. This application has been serialized as A 17000–F.

2. The lands involved in this classification notice were previously published as proposed classification A 7015; **Federal Register,** Vol. 46, No. 19, January 29, 1981, 9788 and proposed classification A 15990; **Federal Register,** Vol. 46, No. 44, March 6, 1981, 15580. The proposed transfer was widely publicized. Nearly all comments received supported the proposed classification, and the land is being classified as proposed.

3. The lands lie in Pima and Pinal Counties, Arizona. The lands are described as follows:

(A 7015)

Gila and Salt River Meridian

T. 15 S., R. 12 E.,
Sec. 1: Lots 24–31 incl;
Sec. 3: Lots 5–28 incl:
Sec. 4: Lots 1, SE¼NE¼;
Sec. 8: Lots 1–9 incl, 24–44 incl, 60–67 incl.
The area described contains 427.76 ± acres.

(A 15990)

Gila and Salt River Meridian

T. 5 S., R. 6 E.,
Sec. 17: W½;
Sec. 18: Lots 4, 5, E½SW¼, SE¼.
The area described contains 640.11 ± acres.

4. This classification decision is based on the following disposal criteria set forth in Title 43, Code of Federal Regulations, Part 2400. Transfer of the lands to the state will help fulfill the Federal Government's common school land grant to the state and constitutes a public purpose use of the land. Lands found to be valuable for a public purpose use will be considered chiefly valuable for public purposes (43 CFR 2430.2b).

5. The subject lands in T. 5 S., R. 6 E. are under a Section 15 grazing lease to Scott and Simmons, P.O. Box 515, Casa Grande, Arizona 85222. A reservoir and a fence are recorded as range improvements. In the event these lands are clearlisted, this grazing use will be terminated at the time title to the land is transfered to the state.

Threatened and Endangered Species and Cultural Resource Evaluations have been performed and approved for subject classification. Any cultural resources on the above described parcels will be managed by the State of Arizona under the terms of the Memorandum of Agreement Regarding Cultural Resource Protection.

A study has been made of the area which indicates little potential for mineral exploration. There are mining claims recorded with BLM for these lands. Some evidence of mining activity was found on the ground. Rights-of-way will transfer with the land to the state.

6. The public lands classified by this notice are shown on maps on file and available for inspection in the Phoenix District Office, Bureau of Land Management, 2929 West Clarendon, Phoenix, Arizona 85017.

7. For a period of 30 days from the date of publication in the **Federal Register,** this classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior as provided for in 43 CFR 2461.3 and 2462.3. Interested

parties may submit comments to the Secretary of the Interior, LLM 320, Washington, D.C. 20240.

Dated: September 30, 1982.

William K. Barker,

District Manager.

[FR Doc. 82-27558 Filed 10-6-82; 8:45 am]

BILLING CODE 4310-84-M

Arizona; Phoenix District Phoenix/ Lower Gila Resource Areas Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Phoenix/Lower Gila Resource Areas (Phoenix District) Grazing Advisory Board will be held on Wednesday, November 10, 1982.

The meeting will begin at 9:00 a.m. in the conference room of the Bureau of Land Management Office, 2929 West Clarendon Avenue, Phoenix, Arizona 85017.

The agenda for the meeting will include:

1. Reveiw of the Lower Gila North Final Grazing Environmental Impact Statement.
2. Lower Gila North Rangeland Program Summary and Decision Process.
3. Status of Range Improvement—FY 82.
4. Proposed Range Improvements—FY 83.
5. Status of Grazing Fee Study.
6. Arrangements for future meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2929 West Clarendon Avenue, Phoenix, Arizona 85017 at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: September 30, 1982.

William K. Barker,

District Manager.

[FR Doc. 82-27559 Filed 10-6-82; 8:45 am]

BILLING CODE 4310-84-M

Arizona; Phoenix District, Kingman Resource Area, Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Kingman Resource Area (Phonenix District) Grazing Advisory Board will be held on November 9, 1982.

The meeting will begin at 9:00 a.m. in the converence room of the Bureau of Land Management Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

The agenda for the meeting will include:

1. Review of Allotment Management Plan Program.
2. Report on Grazing Advisory Board Funds—Status and projected use.
3. Status of Range Improvements—F.Y. 82.
4. Proposed Range Improvements—F.Y. 83.
5. Review of Grazing Regulations.
6. Status of Grazing Fee Study.
7. Arrangments for Future Meeting.

The meeting is open to the public. Anyone wising to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2929 West Clarendon Avenue, Phoenix, Arizona 85017, at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

William K. Barker,

District Manager.

[FR Doc. 82-27560 Filed 10-6-82; 8:45 am]

BILLING CODE 4310-84-M

California; Order Providing for Opening of Land

September 30, 1982.

By virtue of the authority contained in Section 24 of the Act of June 10, 1920, 41 Stat. 1075, as amended, 16 U.S.C. 818 (1970), and in accordance with the authority delegated to me by the State Director, California State Office, Bureau of Land Management, dated January 12, 1972 (37 F.R. 491) as amended, and pursuant to the determination of the Federal Energy Regulatory Commission in DA-1130, it is ordered as follows:

1. By order dated February 8, 1979, the Federal Energy Regulatory Commission vacated the land withdrawals in their entirety for Power Projects No'd. 291 and 619 affecting the following described lands lying within the boundaries of the Plumas National Forest.

Plumas National Forest—Mount Diablo Meridian

Power Project 291

T. 24 N., R. 6 E.,
Sec. 29, Lots 22, 23;
Sec. 32, N½NE¼, SW¼NE¼, E½NW¼;
Sec. 33, Lot 2.

The area aggregates approximately 233.68 acres.

Mount Diablo Meridian

Power Project 619

T. 24 N., R. 6 E.,
Sec. 32, that part of the N½NE¼ Lying within the boundary of Power Project No. 619 as shown on map Exhibit K-10-Sheet 2 (FPC No. 619-91).

2. Of the land described in Paragraph 1, that portion of the following described land lying within the boundaries of Power Project 291 shall at 10:00 a.m. on November 9, 1982 become available for consummation of a pending Forest Service exchange application CA-4282.

Plumas National Forest—Mount Diablo Meridian

Power Project 291

T. 24 N., R. 6 E.,
Sec. 32, E½NW¼.

The area aggregates 80 acres.

3. The remainder of the land described in paragraph 1 remains reserved and withdrawn by virtue of Powersite Classifications No'd. 136 and 326. These lands have been and continue to be open to application and offers under the mineral leasing laws and to location under the United States mining laws, subject to the provisions of the Act of August 11, 1955, (69 Stat. 682; 30 U.S.C. 621).

Inquires concerning these lands should be addressed to the Bureau of Land Management, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Walter F. Holmes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-27552 Filed 10-6-82; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF INTERIOR

[F-14888-A]

Alaska Native Claims Selections; Correction

In FR Doc. 82-26772 appearing on page 42825 in the issue of September 29, 1982, please make the following changes.

On page 42826, column 3, sections 3 and 4 under *T. 15., R. 60 W* should read as follows:

Section 3, excluding Native allotments F-029275 Parcel D.

Section 4, excluding Native allotments F-16534 Parcel B, F-16854 and F-17003 Parcel B.

Beaumont C. McClure,

Chief, Alaska Programs Staff.

[FR Doc. 82-27613 Filed 10-6-82; 8:45 am]

BILLING CODE 4310-84-M

[F-14879-A, F-14879-A2]

Alaska Native Claims Selection

The purpose of this decision is to modify the decision to issue conveyance of lands to Kotlik Yupik Corporation, dated March 31, 1982, as published in the **Federal Register,** Vol. 47, No. 63, on pages 13899 thru 13901, April 1, 1982, corrected in Vol. 47, No. 79, on page 17681, April 23, 1982. This supersedes the modified decision published in the **Federal Register,** Vol. 47, No. 182, on page 41431, September 20, 1982.

In the decision to issue conveyance, the lands in Sec. 30, T. 27 S., R. 25 W., Kateel River Meridian, were incorrectly described as partially within Public Land Order (PLO) 4584. Since T. 27 S., R. 25 W., Kateel River Meridian was not withdrawn by PLO 4584, Sec. 30 will be conveyed as entirely outside the National Wildlife Refuge System. Section 24, T. 27 S., R. 26 W., Kateel River Meridian, was incorrectly described as partially outside PLO 4584. This section will be conveyed as entirely within the National Wildlife Refuge System.

The following will modify and correct pages 13899 and 13900 of the March 31, 1982 decision and page 17681 of the April 23, 1982 correction:

Page 13899—Second Column, Second Paragraph

The sentence which reads: This decision approves approximately 39,869 acres of National Wildlife Refuge System lands for conveyance to Kotlik Yupik Corporation.

Is hereby modified and corrected to read: This decision approves approximately 39,884 acres of National Wildlife Refuge System lands for conveyance to Kotlik Yupik Corporation.

Page 13899—Middle Column

T. 27 R., E. 25 W., that portion described as within the refuge is hereby deleted.

Page 13899—Middle and Third Column

T. 27 S., R. 26 W., within the refuge. The description and acreage for land now reads:

Sec. 24 (fractional), that portion within PLO 4584; * * *.

Containing approximately 9,858 acres.

This description and acreage are hereby modified and corrected to read:

Sec. 24 (fractional); * * *.

Containing approximately 9,878 acres.

Page 13899—Third Column

Aggregated acreage of lands within the refuge now reads:

Aggregating approximately 39,869 acres.

Is hereby modified and corrected to read:

Aggregating approximately 39,884 acres.

Page 13900—First Column

T. 27 S., R. 25 W., outside the refuge. The description and acreage for lands now reads:

Sec. 30 (fractional), that portion outside PLO 4584, excluding Native allotment F-18757 Parcel A; * * *.

Containing approximately 380 acres.

This description and acreage are hearby modified and corrected to read:

Sec. 30 (fractional), excluding Native allotment F-18757 Parcel A; * * *.

Containing approximately 385 acres.

Page 13900—Middle Column, as Corrected on Page 17681—Middle Column

T. 27 S., R. 26 W., outside the refuge.

The description for lands in Sec. 24 is hereby deleted.

Acreage for this township now reads:

Containing approximately 285 acres.

This acreage is hereby modified and corrected to read:

Containing approximately 265 acres.

Page 13900—Third Column

Aggregated acreage of lands outside the refuge now reads:

Aggregating approximately 61,968 acres.

Is hereby modified and corrected to read:

Aggregating approximately 61,953 acres.

These corrections do not affect the total conveyance acreage of 101,837 acres to Katlik Yupik Corporation.

Except as amended by this decision, the decision of March 31, 1982 stands as written.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in THE TUNDRA DRUMS.

Any party claiming a property interest in lands affected by this decision an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations. (CFR), Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96-487, this decision constitutes the final administrative determination of the Bureau of Land management concerning navigability of water bodies.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701, C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until November 8, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were advesely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Kotlik Yupik Corporation, Kotlik, Alaska 99620

Calista Corporation, 516 Denali Street, Anchorage, Alaska 99501

Barbara A. Lange,

Acting Chief, Branch of ANCSA Adjudication.

[FR Doc. 82-27612 Filed 10-6-82; 8:45 am]

BILLING CODE 4310-84-M

Bakersfield District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Grazing Advisory Board Meeting.

SUMMARY: The Bureau of Land Management (BLM) announces a meeting of the Bakersfield District Grazing Advisory Board.

DATE: The meeting will be on Thursday, October 14, 1982, from 8:00 a.m. to 4:00 p.m.

ADDRESS: The meeting will take place in the conference room at the Ramada Inn,

2620 Pierce Road, (off Freeway 99 at Rosedale Exit—24th Street), Bakersfield, California.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92–463 and 94–579.

The meeting agenda will include: (1) Funding allocations, (2) grazing fee study, and (3) project implementation priorities. The meeting is open to the public and anyone may make oral statements to the Board or file written statements for the Board's consideration.

Summary minutes of the Board meeting will be maintained in the Bakersfield District office and will be available for public inspection within thirty (30) days following the meeting.

John W. Key,

Acting District Manager.

[FR Doc. 82–27621 Filed 10–6–82; 8:45 am]

BILLING CODE 4310–84–M

California Desert District Multiple Use Advisory Council Meeting Advance Schedule—1983 and 1984

Notice is hereby given in accordance with Pub. L. 92–463 and 94–579 that the California Desert District Multiple Use Advisory Council to the Bureau of Land Management, U.S. Department of the Interior will meet as follows:

1983

February 4 and 5: Los Angeles, CA (no field trip)
May 19 through 21: Palm Springs, CA
August 25 through 28: Lone Pine, CA
November 4 and 5: San Diego, CA (no field trip)

The 1983 dates are subject to fluctuation depending on budget and subject matter availability. Specific agendas, field trips, etc. will be determined later and specific meeting notices will be filed. The Council has discussed and recommended the above dates and places.

The intent of the Los Angeles and San Diego meetings is to provide specific opportunity for the urban residing public to attend meetings and present views on public land management issues.

For planning purposes, the following 1984 schedule is proposed:

1984

February: El Centro, CA
May: Barstow, CA
August: Bishop, CA
November: Lancaster, CA

Contact the California Desert District Public Affairs Office (714) 351–6383 for current information regarding meetings.

Dated: September 29, 1982.

Gerald E. Hillier,

District Manager.

[FR Doc. 82–27554 Filed 10–6–82; 8:45 am]

BILLING CODE 4310–84–M

Cerbat-Black Mountain and Phoenix Resource Area Planning Amendments

AGENCY Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent to Prepare Management Framework Plan Amendments for the Phoenix Resource Area and the Cerbat and Black Mountain Planning Units in the Kingman Resource Area, Phoenix District, Arizona. These areas are in Mohave, Yavapai, Maricopa, Pinal, Gila and Pima Counties, Arizona.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act of 1976 (FLPMA) requires the Secretary of the Interior to revise and maintain the land use plans for public lands on a continuing basis. The management framework plans for these areas will be revised to include new data for the wilderness management program. The amendments will include the recommendations for management changes and alternatives to the recommendations.

For information concerning the management framework plan amendments, contact Tim Sanders, Division of Planning and Environmental Assistance, Bureau of Land Management, Phoenix District Office, 2929 West Clarendon Avenue, Phoenix, Arizona 85017, Telephone (602) 241–2501.

Dated: September 30, 1982.

William K. Barker,

District Manager.

[FR Doc. 82–27553 Filed 10–6–82; 8:45 am]

BILLING CODE 4310–84–M.

Closure of Public Access and Determination of Special Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of public access and determination of special area.

DECISION: Notice is hereby given relating to the closure of public access to three caves located on lands under administration of the Rowell District Office, Bureau of Land Management. Public access and use of these caves will be limited to specifically authorized travel. This restriction has been made in the interest of public health and safety or for the preservation and protection of public lands and resources. This closure is made under authority contained in 43 U.S.C. 1201 and regulations contained in 43 CFR 8364.1–1.

The areas affected by this closure consist of the surface entrances and sub-surface passages at the following named caves: Burnet Cave, Crocketts's Cave, Oso Cave. These caves have been identified with signs that contain the cave name, specify that entrance is allowed by permit only, and give the address of the administering Bureau of Land Management Office. Access to Burnet Cave and Oso Cave will be limited to allow for research uses only because of the scientific values, hazardous conditions and delicate mineral formation found in these areas.

Notice is also given that resource values in Crockett's Cave are of such a nature that recreational activities conducted in accordance with special management and control measures can be allowed. This cave has been determined to be a "special area", in accordance with provisions contained in 43 CFR 8372.1–2. Special recreation permits are required for the use of this cave. The issuance of special recreation permits is authorized by the Land and Water Conservation Fund Act of 1965, as amended.

This notice and land closure become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the Roswell District Manager. Violations of this closure order are punishable upon conviction by a fine not to exceed $1000 or imprisonment of not more than 12 months, or both.

FOR FURTHER INFORMATION CONTACT: Michael C. Bunker, Outdoor Recreation Planner by telephone at 505–622–7670 or write to: Roswell District Office, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201.

John L. Gregg,

District Manager.

[FR Doc. 82–27561 Filed 10–6–82; 8:45 am]

BILLING CODE 4310–84–M

[Serial No. I–12752]

Idaho; Termination of Proposed Withdrawal and Reservation of Lands

September 30, 1982.

Notice of an application, serial number I–12752, for withdrawal and reservation of lands was published as Federal Register Document No. 77–22498 on page 39725 of the issue for August 5, 1977, the applicant agency has cancelled its application insofar as it involved the lands described below. Therefore,

pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will be at 9:00 a.m. On November 2, 1982, relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

Boise Meridian, Idaho

Saylor Creek Wildlife Leave Areas

T. 6 S., R. 9 E.,
Sec. 23, W½SW¼;
Sec. 26, NW¼NW¼, W½SE¼;
Sec. 27, NE¼NE¼;
Sec. 34, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 35, E½SW¼, N½SE¼.
T. 6 S., R. 10 E.,
Sec. 32, E½NW¼, W½SE¼, SE¼SE¼.
T. 6 S., R. 12 E.,
Sec. 20, W½NE¼, N½SE¼;
Sec. 22, W½NW¼, E½NE¼;
Sec. 27, SW¼NW¼, NW¼SW¼;
Sec. 28, NE¼, NW¼SW¼, N½SE¼, SW¼SE¼.
T. 7 S., R. 9 E.,
Sec. 1, SW¼SW¼.
T. 7 S., R. 10 E.,
Sec. 3, SW¼SW¼;
Sec. 4, lots 1, 2;
Sec. 6, lot 2, W½SE¼;
Sec. 8, E½SE¼;
Sec. 9, S½SW¼;
Sec. 10, E½NW¼, W½SE¼;
Sec. 14, NW¼SW¼, SE¼SW¼;
Sec. 15, E½NE¼;
Sec. 17, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 21, NE¼NW¼, SW¼NW¼, S½SE¼;
Sec. 22, NE¼NW¼, SW¼SE¼;
Sec. 23, W½NE¼, NE¼SE¼;
Sec. 26, S½NW¼;
Sec. 27, W½NW¼, NW¼SW¼;
Sec. 28, NE¼NE¼.
T. 7 S., R. 12 E.,
Sec. 1, lots 3, 4, E½SW¼;
Sec. 2, lot 4, S½SE¼;
Sec. 3, lots 1, 2;
Sec. 11, N½NE¼, SW¼NE¼, E½W½, W½SE¼;
Sec. 12, E½NW¼;
Sec. 14, SW¼NE¼, E½NW¼, N½SE¼, SE¼SE¼.
T. 7 S., R. 12 E.,
Sec. 23, SE¼NW¼, E½SW¼, E½NE¼;
Sec. 24, W½NW½, NE¼SW¼;
Sec. 25, SW¼NW¼;
Sec. 26, NE¼SE¼, E½SW¼, NE¼NW¼;
Sec. 27, S½SW¼SW¼;
Sec. 34, N½NW¼NW¼.
T. 7 S., R. 13 E.,
Sec. 6, lots 8, 9, E½E½E½SE¼;
Sec. 7, E½E½E½E½;
Sec. 18, E½E½E½E½;
Sec. 19, E½E½E½E½;
Sec. 30, E½E½E½NE¼, E½E½NE¼SE¼.
T. 8 S., R 12 E.,
Sec. 1, lots 1, 2, SE¼NE¼, NE¼SE¼.

The area described contains 4,984.33 acres.

William E. Ireland,

Chief, Lands Section.

[FR Doc. 82-27557 Filed 10-6-82; 8:45 am]

BILLING CODE 4310-84-M

Divide and Medicine Bow Resource Areas, Rawlins District, Wyo.; Intent To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Development of a Management Framework Plan and preparation of an Environmental Impact Statement (EIS) on the Proposed Grazing Management in the Divide and Medicine Bow Resource Areas, Rawlins District, Wyoming.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act, the BLM Rawlins District Office will prepare an EIS for portions of the Divide and Medicine Bow Resource Areas located in south-central Wyoming, based on rangeland management planning recommendations.

The purpose of the range management recommendations is to maintain or improve public land resource values, which include soil, water, vegetation, wildlife, and wild horses. The EIS will analyze effects of managing grazing allotments, based on selective management categories.

Alternatives to be considered include continuation of present livestock management as well as alternatives depicting different levels and intensities of management for livestock and other resources.

Three public scoping meetings are scheduled for November 9, 1982, at 7 p.m. in the Rawlins District Office, Rawlins, Wyoming; Saratoga High School, School Cafeteria, Saratoga, Wyoming; and Morrow High School, Music Room, Baggs, Wyoming. The purpose of the scoping meeting is: (1) To present rangeland management multiple-use planning recommendations to the public, (2) to inform the public of the proposed action and tentative alternatives that BLM proposes to analyze in the EIS, (3) to gather resource information from the public, and (4) to identify concerns and issues important to the public for possible inclusion in the EIS or in planning system decisions. Comments received at this scoping meeting will be used in developing the EIS and the planning decisions that result.

FOR FURTHER INFORMATION CONTACT: All inquiries and comments should be directed to either Bud Holbrook, Divide Area Manager, or Bob Tigner, Divide Team Leader, P.O. Box 670, Rawlins, Wyoming 82301, telephone (307) 324-7171.

Written comments on the planning system recommendations must be received no later than close of business December 9, 1982.

Elbert Spencer,

Acting District Manager.

[FR Doc. 82-27548 Filed 10-6-82; 8:45 am]

BILLING CODE 4310-84-M

[M 55146]

Montana; Realty Action—Exchange

September 27, 1982.

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Realty Action M 55146, Exchange of Public and Private Lands in Custer and Rosebud Counties.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridan

T. 12 N., R. 45 E.,
Sec. 14, W½NW¼, SW¼, S½SE¼;
Sec. 22, W½W½;
Sec. 24, N½;
Sec. 26, W½.
T. 12 N., R. 46 E.,
Sec. 30, Lots 1–4, E½, E½NW¼, SE¼SW¼.
T. 8 N., R. 52 E.,
Sec. 30, Lots 1–4, E½, E½W½.

Aggregating 2,339.08 acres of public land.

In exchange for the lands, the United States will acquire the surface estate in the following described private land:

Principal Meridian

T. 12 N., R. 45 E.,
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½, E½W½;
Sec. 8, NE¼SW¼, N½SE¼;
Sec. 18, NE¼, N½SE¼, SE¼SE¼.
T. 12 N., R. 44 E.,
Sec. 12, All.

Aggregating 2,136.19 acres of private land.

DATES: Until November 22, 1982, interested parties may submit comments to the District Manager, BLM, P.O. Box 940, Miles City, Montana 59301. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department.

FOR FURTHER INFORMATION: Information concerning this exchange, including the environmental assessment and land report, is available for review at the Miles City District Office, West of Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the

public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The purpose of the exchange is to adjust the land pattern between BLM and the exchange proponent to enhance public use activities and private land management. If the exchange is completed, the public will have use of 3,016 consolidated acres of public land for livestock grazing, wildlife habitat, excellent hunting opportunities, and general recreation use. At the present time, the only consistent use is livestock grazing since a lack of access and the scattered parcel ownership have not made the public land accessible to the general public. The public lands to be transferred into private ownership will eventually be used for agricultural purposes, probably wheat farming and livestock grazing.

Only the surface estates will be exchanged and the subsurface estate shall remain with the present owners. The exchange is based on equal appraised values of both the public and the deeded land. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making the exchange.

The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945. This reservation applies to the lands being transferred out of Federal ownership.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership.

3. All valid existing rights (e.g., rights-of-way, easements, and leases of record).

4. The exchange must meet the requirements in 43 CFR 4110.4–2(b).

Kannon Richards,

Acting State Director.

[FR Doc. 82–27549 Filed 10–6–82; 8:45 am]

BILLING CODE 4310–84–M

[M 55033]

Montana; Conveyance of Public Lands Powder River County

September 29, 1982.

Notice is hereby given that, pursuant to the Act of October 21, 1976 (90 Stat. 2750; U.S.C. 1713], the following described lands have been sold utilizing modified competitive bidding procedures to William C. Stevens of Ashland, Montana:

Principal Meridian, Montana

T. 6 S., R. 48 E.,
Sec. 5, Lot 1;
Sec. 8, SW¼NW¼SW¼NW¼.
Containing 42 acres.

The purpose of this notice is to inform the public and interested state and local governmental officials of the issuance of the patent to Mr. Stevens.

Edgar D. Stark,

Chief, Lands Adjudication Section.

[FR Doc. 82–27551 Filed 10–6–82; 8:45 am]

BILLING CODE 4310–84–M

[M–37743]

Public Lands in Lewis and Clark County, Montana; Realty Action—Non-Competitive Sale

The following described lands have been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713):

T10N, R4W, Principal Meridian Montana
Section 36: Lot 35, containing 0.49 acres.

The above described lands are being offered as a direct sale to George C. Watters, Jr., at the appraised fair market value. The sale of the lands to George Watters will not be held until 60 days after the date of this notice.

The sale is consistent with Bureau of Land Management planning for the land involved and has been discussed with City of Helena and Montana State government officials. The lot is located near Helena's Historic District which is listed on the National Register of Historic Places. The improvements on the land are presently owned by Mr. Watters and include a log house built about 1869 which, because it reflects the common type and method of construction utilized during Helena's early boom years and has retained much of its structural integrity, has been determined to be eligible for listing on the National Register. It is appropriate to make a direct sale to the owner of the improvements to reunite ownership of surface and structures. The alternative of public auction could result in a successful high bidder other than the buildings' owner and possibly moving the house to another location which would adversely affect the historical structure.

Terms and conditions applicable to the sale are:

1. The patent will include a reservation of a right-of-way for ditches and canals constructed by authority of the United States in accordance with 43 U.S.C. 945.

2. The patent will include a right-of-way reservation for West Main Street.

3. The patent will be subject to all other existing rights.

4. All minerals will be reserved to the United States.

Detailed information concerning the sale, including the Land Report and Environmental Assessment, is available for review at the Butte District office, 106 N. Parkmont, P.O. Box 3388, Butte, Montana 59702.

On or before November 17, 1982, interested parties may submit comments to the State Director (943), Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

Dated: October 4, 1982.

Polly S. Elliott,

Acting District Manager.

[FR Doc. 82–27555 Filed 10–6–82; 8:45 am]

BILLING CODE 4310–84–M

National Petroleum Reserve in Alaska; Availability of the Draft Environmental Impact Statement on the Proposed Oil and Gas Leasing and Development in the National Petroleum Reserve in Alaska (NPR–A).

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of the Draft Environmental Impact Statement on the Proposed Oil and Gas Leasing and Development in the National Petroleum Reserve in Alaska (NPR–A).

SUMMARY: Pursuant to Pub. L. 96–514, the 1981 Department of the Interior Appropriations Act, an oil and gas leasing program for the NPR–A was mandated. The Act waived the requirements of the National Environmental Policy Act of 1969 (NEPA) for two NPR–A oil and gas lease sales as long as not more than two million acres were sold. Sales 821 and 822 were held in January and May 1982 respectively, and a total of 905,585 acres of NPR–A were leased. The remainder of the 37,000 square-mile area of NPR–A is being considered for further leasing. As required by NEPA Section 102(2), BLM has determined that further leasing would be a major Federal action

requiring an Environmental Impact Statement. During November 1982, the NPR–A staff will conduct public meetings at North Slope, Alaska villages to gather comments on the preferred alternative and management solutions suggested in the Draft Environmental Impact Statement. BLM will address all comments and suggestions in the Final Environmental Impact Statement to be issued February 1, 1983.

DATE: Comments on the Draft Environmental Impact Statement should be received by December 10, 1982.

ADDRESS: Comments should be mailed to U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, NPR–A Program, 701 C Street, Box 13, Anchorage, AK 99513 or telephone (907)–271–3632.

FOR FURTHER INFORMATION: Copies of the Draft Environmental Impact Statement can be obtained from the U.S. Department of the Interior, Bureau of Land Management, Office of Public Affairs (130), Washington, D.C. 20240 and from the Bureau of Land Management, Alaska State Office, Public Room, 701 C Street, Box 13, Anchorage, Alaska 99513. Copies of the Draft Environmental Impact Statement will also be available for inspection at the following locations: Bureau of Land Management, Fairbanks District Office Public Room, North Post, Fort Wainwright, Box 1150, Fairbanks, Alaska 99707; Bureau of Land Management, NPR–A Program Office, Old Federal Building, Room 249, 605 West 4th Avenue, Anchorage, AK; Alaska Federation of Natives, 1577 O Street, Suite 304, Anchorage, AK 99501; Department of the Interior Resources Library, 701 "C" Street, Box 36, Anchorage, AK 99513; North Slope Borough, Department of Planning, P.O. Box 69, Barrow, AK 99723; North Star Borough Library, Fairbanks, AK 99701; University of Alaska, Institute of Social and Economic Research Library, Fairbanks, AK 99801; Z. J. Loussac Public Library, 427 F Street, Anchorage, AK 99801; Juneau Memorial Library, 114 W. 4th Street, Juneau, AK 99824; Alaska State Library, Documents Librarian, Pouch G, Juneau, AK 99811; Department of Defense, Army Corps of Engineers Library, P.O. Box 7002, Anchorage, AK 99501; Kodiak Public Library, P.O. Box 985, Kodiak, AK 99615; University of Alaska Juneau Library, P.O. Box 1447, Juneau, AK 99447; University of Alaska Anchorage Library, 3211 Providence Drive, Anchorage, AK 99504; University of Alaska Elmer E. Rasumsson Library, Fairbanks, AK 99701. Copies are also available through village coordinators, in Anaktuvuk Pass, AK 99721; Nuiqsut, AK 99723; Point Hope, AK 99766; Point Lay, AK 99790; Wainwright, AK 99782; and Atqasuk, AK 99790.

Fred Wolf,

Acting BLM State Director for Alaska.

October 1, 1982.

[FR Doc. 82–27550 Filed 10–6–82; 8:45 am]

BILLING CODE 4310–84–M

National Park Service

Revision of Mining Plan of Operations at Death Valley National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 29, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Cyprus Mines Corporation has filed a revision of a plan of operations in support of continuation of open pit mining on lands embracing its Panamint Mining Claim Group within the Death Valley National Monument. This plan is available for public inspection during normal business hours at the Death Valley National Monument Headquarters, Death Valley, California.

Dated: September 24, 1982.

Edwin L. Rothfuss,

Superintendent, Death Valley National Monument.

[FR Doc. 82–27605 Filed 10–6–82; 8:45 am]

BILLING CODE 4310–70–M

Women's Rights National Historical Park Advisory Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of Women's Rights Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: Thursday, October 28, 1982, 10:00 a.m.–4:00 p.m.

ADDRESS: Women's Rights National Historical Park, 116 Falls Street, P.O. Box 70, Seneca Falls, New York 13148.

FOR FURTHER INFORMATION CONTACT: Judy Hart, Superintendent, Women's Rights National Historical Park, 116 Falls Street, P.O. Box 70, Seneca Falls, New York 13148, (315) 568–2991.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by Pub. L. 96–607 to meet, consult and advise the Secretary with respect to matters relating to the administration of the Park. The agenda for this meeting will include (1) introduce the Commission members to the various sites within the Historical Park; (2) organize the Commission into its program functions; (3) establish Board rules by which the Commission will hold future meetings; (4) acquaint the Commission members with the preservation district, the New York State Urban Cultural Park, the Village of Seneca Falls draft zoning code and preservation guidelines, the community efforts and support, the academic support and the Stanton Foundation; (5) Park operations including: interpretation Program, Rehabilitation of the Stanton Home and Research.

The meeting will be open to the public. Facilities and space to accommodate members of the public are limited and persons will be accommodated on a first-come, first-serve basis. Any member of the public may file with the Commission a written statement concerning agenda items to be discussed. The statement should be addressed to the Commission, c/o Women's Rights National Historical Park, P.O. Box 70, Seneca Falls, New York 13148. Minutes of the meeting will be available for inspection four weeks after the meeting at the same address above. The facility at which the meeting will be held is considered physically accessible. If interpretive services are requested by deaf or hearing impaired individuals they will be provided if notification is received within five working days before the meeting.

Dated: Septerber 30, 1982.

Steven H. Lewis

Acting Regional Director, North Atlantic Region.

[FR Doc. 82–27604 Filed 10–6–82; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Boundary Adjustments of the Coronado National Memorial and the Coronado National Forest

By virtue of Section 301(4) and Section 302 of the Act of November 10, 1978, Pub. L. 95–625, 92 Stat. 3467, and with approval of the Secretary of Agriculture and the Secretary of the Interior, the lands hereinafter generally described are hereby transferred from the Coronado National Forest to the Coronado National Memorial, and further, those additional lands generally described are hereby transferred from Coronado National Memorial to Coronado National Forest, effective on the date of this publication; and the

boundaries of the National Park System and National Forest System lands are hereby adjusted accordingly. These transferred lands are more particularly described and shown on Map No. FPS–1.[1] Copies of which may be examined at the Office of the Coronado National Forest, Sierra Vista Ranger District, Highway 90 Bypass, Milepost 321, Sierra Vista, Arizona, or at the Coronado National Memorial, 22 miles south of Sierra Vista, Arizona.

The area transferred from the Coronado National Forest to the Coronado National Memorial, Gila and Salt River Base and Meridian, Cochise County, Arizona, is described as:

That portion of Section 2, 11, 12, 13, and 14, T.24S., R.20E. and Section 5, 6, 7, 8, 17, 18, and 20, T.24S., R.21E., Gila and Salt River Base and Meridian, in less, including approximately 560 acres of private land, and as shown on map numbered FPS–1.

The area transferred from the Coronado National Memorial to the Coronado National Forest, Gila and Salt River Base and Meridian, Cochise County, Arizona, is described as:

That portion of the Sections 10, 11, 14, 15, 22, and 23, R.24S., R.20E., Gila and Salt River Base and Meridian, in Cochise County, Arizona, containing 1,200 acres, more or less, and as shown on the map numbered FPS–1.

For further information contact: Willis Kriz; Chief, Land Acquisition Division, National Park Service, Washington, DC (202–523–5252).

Dated this 1st day of February, 1982.

James G. Watt,

Secretary of the Interior.

Accepted by:

John R. Block,

Secretary of Agriculture.

[FR Doc. 82–27606 Filed 10–6–82; 8:45 am]

BILLING CODE 4310–70–M

[1] Map filed as part of original document.

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 387]

Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Provisional Exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice rquirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

DATE: Protests are due November 1, 1982.

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Douglas Galloway (202) 275–7278

or

Tom Smerdon (202) 275–7277

SUPPLEMENTARY INFORMATION:

The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions: These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) not that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

Sub-No.	Name of railroad, contract number, and specifics	Review bd.*	Decided date
291	Southern Railroad Co., ICC-SOU-C-0113 (Chlorinated solvents)	1	10–1–82
292	Consolidated Rail Corp., ICC-CR-C-0174 (Scrap iron and steel)	2	10–1–82
293	Manufacturers' Junction Railway Co., ICC-MJ-C-0001 (Boxcars for storage of copper rods)	3	10–1–82
294	Louisville and Nashville Railroad Co., ICC-LN-C-0040 (Corn)	1	10–1–82
295	Union Pacific Railroad Co., ICC-UP-C-0005, Supplement 5 (Assembled motor vehicles)	2	10–1–82

* Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Chandler not participating.)
Review Board No. 2, Members Carleton, Williams, and Ewing.
Review Board Number 3, Members Krock, Joyce, and Dowell.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 10505

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–27581 Filed 10–6–82; 8:45 am]

BILLING CODE 7035–01–M

Rerouting of Traffic

[Amdt. 2 to 6th Rev. ICC Order No. 80 Under S.O. No. 1344]

To: St. Louis Southwestern Railway Company; Cadillac & Lake City Railway Company; Chicago and North Western Transportation Company; Iowa Railroad Company; North Central Texas Railway Company; Enid Central Railway Company; South Central Arkansas Railway Company; Okarche Central Railway Company; and North Central Oklahoma Railway, Inc.

Upon further consideration of Sixth Revised ICC Order No. 80 and good cause appearing therefor:

It is ordered,

ICC Order No. 80 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* The order shall expire at 11:59 p.m., January 31, 1983, unless otherwise modified, amended or vacated.

Effective date. This order shall become effective at 11:59 p.m., September 30, 1982.

This amendment 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 amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., September 22, 1982.

Interstate Commerce Commission.

J. Warren McFarland,

Agent.

[FR Doc. 82–27587 Filed 10–6–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 388]

State Intrastate Rail Rate Authority—Pub. Law 96–448; Docketing Changes

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Docketing Changes.

SUMMARY: For purposes of administrative convenience, the Commission is assigning a separate sub-number to each State that has sought certification pursuant to 49 U.S.C. 11501(b). The sub-numbers are as follows:

State	Sub-No.
Alabama	1
Arkansas	2
Colorado	3
Florida	4
Georgia	5
Idaho	6
Illinois	7
Indiana	8

State	Sub-No.
Iowa	9
Kansas	10
Kentucky	11
Louisiana	12
Maryland	13
Michigan	14
Minnesota	15
Mississippi	16
Missouri	17
Montana	18
Nebraska	19
New Hampshire	20
New Jersey	21
New Mexico	22
New York	23
North Dakota	24
Ohio	25
Oklahoma	26
Oregon	27
Pennsylvania	28
South Carolina	29
Tennessee	30
Texas	31
Utah	32
Virginia	33
Washington	34
West Virginia	35
Wisconsin	36
Wyoming	37

A submission from Alabama, for example, should now be styled as Ex Parte No. 388 (Sub-1), *State Intrastate Rail Rate Authority—Pub. Law 96-448* (Alabama).

FOR FURTHER INFORMATION CONTACT:
Tom Smerdon (202) 275-7277
or
Douglas Galloway (202) 275-7278

Decided: September 30, 1982.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27582 Filed 10-6-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Finance Applications; Decision-Notice

The following applications filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR §1100.240). See Ex Parte 55 (Sub-44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 ICC 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: October 1, 1982.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

Republication

MC-F-14944, BROOKS INTERNATIONAL, INC., dba. HARPER'S/AERO DISTRIBUTION SERVICE, and KEYSTONE DELIVERY SERVICE, INC., seeks authority under 49 U.S.C. §§ 11343 and 11344 for approval of the merger of KEYSTONE DELIVERY SERVICE, INC., into BROOKS INTERNATIONAL, INC. with BROOKS INTERNATIONAL, INC., the surviving corporation. Harry Brooks, who controls Brooks International, seeks authority to control the merged operating rights through the transaction. Brooks International holds nationwide authority (excluding AK and HI) (permits) to transport various commodities for five contractual shippers and one contractual shipper in the Southern United States. It also holds nationwide small package authority and general commodities authority between GA and eight southern states. Keystone holds nationwide contract authority for one shipper and nationwide small package authority. No temporary authority is sought. Representative: Richard B. Austin, Esq., 320 Rochester Bldg., 8390 N.W. 53rd St., Miami, FL 33166.

MC-F-14957, filed September 15, 1982. WAYNE DANIEL TRUCK, INC. (Daniel) (P.O. Box 303, MT. Vernon, MO 65712)—Purchase (Portion)—ECKLEY TRUCKING, INC. (Eckley) P.O. Box 156, Mead, NE 68041). Representative: A. J. Swanson, P.O. Box 1103, Sioux Falls, SD 57101-1103. Daniel seeks authority to purchase a portion of the operating right of Eckley. Charles A. Daniel, Wessley W. Daniel, Dan Daniel, and Doris Daniel, who control Daniel through ownership of stock, also seek authority to acquire control of such rights through this transaction. The authority to be purchases are Certificates MC 5227 (Sub-59F), authorizing transportation of *athletic goods parts and accessories for athletic goods, adhesive, rubber articles, and hardware, and materials, equipment and supplies* used in the manufacture and distribution thereof, (a) between Santa Ana, CA, on the one hand, and, on the other, those points in the U.S.—Mexico international boundary located in TX to Chicago and Elk Grove Village, IL and Maywood, NJ, and (Sub-83) authorizing transportation of *building materials* between points in De Witt County, IL; Cobb and Fayette Counties, GA; and Caddo and Bossier Parishes, LA, on the one hand, and, on

the other, points in the United States. Daniel is authorized to operate as a motor common carrier under MC 133591. TA Lease is not sought.

MC–F–14951, filed September 3, 1982. Applicant: U.S. TRUCK LINES, INC., of DELAWARE (785 Union Commerce Building, Cleveland, OH 44115)—Continuance in Control—KANAWHA CARTAGE COMPANY and OHIO DELIVERY, INC. (both of 85 East Gay Street, Columbus, OH 43215). Representative: John C. Bradley, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209. U.S. Truck Lines, Inc., of Delaware seeks authority to continue in control of Kanawha Cartage and Ohio Delivery. Kanawha holds contract authority for transportation of alcoholic beverages in WVA in MC–150148 and has applied for contract authority to transport general commodities for shipper between points in IN, NY, MI, OH, PA and WV. Ohio Delivery holds authority as a contract carrier for a shipper for transportation generally of petroleum products (except in bulk) from Cincinnati, OH to points in WVA in MC–142758. U.S. Truck Lines, Inc., of Delaware is a publicly held corporation which controls Kanawha and Ohio Delivery as well as Be-Mac Transport Company, Inc. (MC–10872), Brown Express, Inc. (MC–46054), Central Truck Lines, Inc. (MC–36473), The Cleveland, Columbus and Cincinnati Highway, Inc. (MC–3419 and MC–3420), Mercury Freight Lines, Inc. (MC–113528), Motor Express Inc., of Indiana (MC–28813), Motor Express, Inc. (NJ) (MC–1778), and National Tank Truck Delivery, Inc. (MC–116132). U.S. Truck has been designated as a motor carrier subject to the reporting, securities, and accounting provisions of the Interstate Commerce Act but does not hold operating authority or conduct carrier operations in its name.

MC–F–14953, filed September 8, 1982. NASS TRUCK LINES, INC. (NASS) (P.O. Box H, Wenona, IL 61377)—Purchase—L.E. BOLING, INC. (BOLING) (718 Commercial Street, Kewanee, IL 61443). Nass seeks to purchase all of the authority of Boling. Walter E. Nass, who controls Nass, seeks authority to control the operating authority through the transaction. The operating authority is contained in (a) Certificate No. MC–119583 and Sub-Nos. 4, 5, 6, and 9, and (b) Permit No. MC–119583 (Sub-No. 8) authorizing transportation described as follows: Certificate MC–119583: *Cereal beverages, used hops and grain bags,* From Milwaukee, WI to Peoria, IL; *empty cereal beverage containers* from Peoria, IL to Milwaukee, WI; *malt beverages* from Milwaukee, WI to Rockford, Rochelle and LaSalle, IL; from St. Louis, MO to Kewanee, IL; from LaCross and Milwaukee, WI to Kewanee, IL; from St. Paul, MN and Milwaukee and Waukesha, WI to Freeport, IL, and *empty malt beverage containers* in the reverse direction; *compressed gas* in cylinders and *welding equipment* from Peoria, IL to Clinton, Des Moines, Lee, Linn, Muscatine and Scott counties, IA and *empty gas cylinders* in the reverse direction; *carbide,* in containers, from Keokuk, IA to Peoria, IL; *fresh and canned vegetables, canning equipment and machinery,* between Princeville, IL and St. Francisville, LA; *canned vegetables,* from Princeville, IL to Omaha, NE, Kansas City, KS, Detroit, MI, points in IN, OH, KY, IA, MO, MI, TN, LA (except Francisville) and points in WI on and south of U.S. Highway 18; *roofing* and *building materials,* from Joliet, IL to Rock and Walworth Counties, WI; returned shipment of *roofing* and *building materials* from Joliet, IL to Rock and Walworth Counties, WI, *low-bed trailers,* in initial movements, in truckaway service, from Kewanee, IL to points in the U.S.; axles and brakes from Montgomery, AL to Kewanee, IL; MC–119583 (Sub-4): *newsprint, circulars,* from Kewanee, IL to Milwaukee, WI, Benton Harbor, MI and Mishawaka, IN; MC–119583 (Sub-5): *Malt beverages* and *advertising materials,* from St. Louis, MO to Rock Island, IL and Davenport, IA and *empty malt beverage containers* in the reverse direction; MC–119583 (Sub-6): *carbonated mineral water* in bottles, from Milwaukee, WI to Kewanee, IL; MC–119583 (Sub-8): *machinery,* between points in the U.S., under contract with Kewanee Boiler Corp.; MC–119583 (Sub-9) *machinery,* between points in Henry County, IL on the one hand, and, on the other, points in the U.S. Nass is authorized to operate as a common carrier pursuant to certificates issued in No. MC–129788.

Note.—An application for temporary authority has been filed.

MC–F–14958, filed September 14, 1982. LSH CARRIERS, INC., (LSH) (1500 Walnut Street, Philadelphia, PA 19102)—Purchase (Portion)—LIGON SPECIALIZED HAULER, INC., (Ligon) (P.O. Drawer L, Madisonville, KY 42431). Representatives: Betty Jo Christian, 1250 Connecticut Ave., N.W., Washington, DC 20036, and H. Beatty Chadwick, 1500 Walnut Street, Philadelphia, PA 19102. LSH seeks authority to purchase a portion of the interstate operating rights of Ligon. IU International Corporation, the sole stockholder of LSH, seeks authority to acquire control of said rights through the transaction. LSH is purchasing the interstate operating rights held by Ligon in Certificate No. MC–119777 and in all sub-numbered Certificates except Certificates Nos. MC–119777 (Sub-No. 515, 516, 517, 528, and 526X). The rights contained in the latter sub-numbered Certificates have been proposed for transfer to Ligon Transport, Inc., which is not a party here, in Finance Docket No. MC–FC–79803. The Certificates, which LSH seeks to acquire collectively authorize the transportation of general commodities, with the usual exceptions, between points in the conterminous United States. LSH holds not authority from the Commission. However, its parent, IU Transportation Services, Inc., which in turn controls Ryder Truck Lines, Inc. (MC–2900), and Pacific Intermountain Express Co. (MC–730). IU International Corporation also controls Special Carriers, Inc., which controls Gemini Trucking, Inc., (MC–150939), Pioneer Trucking, Inc. (MC–151707), and Customized Transportation, Inc. (MC–152620). Ligon is owned by Ligon Corporation, an non-carrier holding company which also owns Ligon Transportation Company of Kentucky (MC–117109). Ligon Transportation Company of Kentucky owns LITCO Transportation Company (MC–127834), which, in turn owns Ligon Transportation Company of Georgia (MC–35045). The parent, Ligon Corporation, is owned by Herbert A. Ligon, Jr., who also owns Ligon Transport, Inc. (MC–109462). The interstate operating rights held by the four carriers affiliated with Ligon duplicate to various degrees the rights sought to be purchased by LSH. Condition: IU International Corporation, a non-carrier holding company, shall be considered a carrier within the meaning of 49 U.S.C. 11348 and is subjected to the requirements of 49 U.S.C. 11302 for those issuances of securities and assumptions of obligations which may be related to, or affect, the activities of its carrier subsidiaries. With respect to the reporting requirements of 49 U.S.C. 11145, IU International Corporation need only file such special reports as the commission may from time to time require. IU International Corporation is not made subject to the accounting requirements of 49 U.S.C. 11142.

Note.—An application for TA has been filed. Although duplications exist on the one hand between the operating rights sought to be transferred and, on the other, those held by Ligon Transportation Company of Kentucky, LITCO Transportation Company, Ligon Transportation Company of Georgia, and Ligon Transport, Inc., applicants have

submitted acceptable and cogent reasons justifying such duplication.

[FR Doc. 82-27586 Filed 10-6-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier; Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC-FC-80036 by decision of September 24, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132. Review Board Number 3 approved the transfer to California Washington Express, Inc. of Certificate No. MC-146067 (Sub-No. 2), issued September 22, 1981 to Charles Ennis, dba California Washington Express and Permit No. MC-146067 (Sub-No. 3) issued April 8, 1982 to California Washington Express authorizing transportation as a motor *common* carrier of red cedar stokes, shingles and trim from ports inWashington to points in California and Nevada and the transportation as a contract carrier of plastic products, doors and door sedins, carved good, dairy equipment, potting soil, wood clips, fertilizers and such commodities, dealt in grocery and department store chains, between points in the United States. Representative: Brian C. Davis, 802 14th Street, Suite A, Modesto, CA 95354.

MC-FC-80058 by decision of September 22, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132. Review Board Number 3 approved the transfer to Milbank Freightways, Inc. of Minneapolis, MN of a portion of Certificate No. MC-10095 (Sub-No. 5) issued August 11, 1982, to Reva Bracht d/b/a Bracht Transportation Company of Milbank, SD, authorizing transportation as a motor *common* carrier over regular routes transsnporting *general commodities* (with exceptions) from St. Paul, MN to Milbank, SD, (1) from St. Paul over U.S. Hwy 12 to Milbank, (2) from St. Paul over U.S. Hwy 212 to junction U.S. Hwy 75 to Ortonville, MN, then over U.S. Hwy 12 to Milbank, serving the intermediate and off-route points of Minneapolis, MN, and those in South Dakota another 10 miles of Milbank without restriction, and South St. Paul, restricted to the delivery of livestock. Representative: Richard L. Gill, 1805 American Nat'l Bank Bldg., St. Paul, MN 55101.

MC-FC-80066. By decision of September 24, 1982 is under 49 U.S.C. 10924 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Ruth Clawson Shields Tours, Inc., d/b/a RCS Tours, of Salt Lake City, UT, of License No. MC-12708 issued to Blue Ribbon Tours & Travel, Inc., of Salt Lake City, UT, authorizing: Passengers and their baggage, in special and charter operations, beginning and ending at points in UT, and extending to points in the U.S. The above brokerage operations authorized at Salt Lake City, UT. Representative: Ruth Clawson Shields, 1428 E. 9th South, Salt Lake City, UT 84105. Transferee is not a carrier.

MC-FC-80073. By decision of September 27, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board No. 3, approved the transfer to Keith Kinnett, of Montrose, CO, of Certificate No. MC-114644 (Sub-No. 5), issued to Orville Dunlap and Harold Ross Dunlap, a partnership, doing business as Orville Dunlap & Son, of Montrose, CO, authorizing the transportation of *general commodities,* with exceptions, over regular routes between points in Colorado. Representative: Harold Dunlap, 60078 Jay Jay Road, Montrose, CO 81401.

MC-FC-80081. By decision of September 24, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 3 approved the transfer of J.E.P., Inc., doing business as B-Line of Certificate No. MC-150899F issued February 9, 1981 to Fred L. Lowe doing business as F. L. Lowe Trucking Co., authorizing the transportation of petroleum product, in bulk, in tank vehicles, between points in MA, NH and RI. Representative is: Frank J. Weiner, Esq., 15 Court Square, Boston, Ma 02108.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27585 Filed 10-6-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decision; Decision-Notice

[Volume No. OP1-171]

Decided: September 29, 1982.

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be

construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 C.F.R. 1100.241. A copy of an application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 C.F.R. 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number #1 Fortier, Chandler, and Parker. Member Chandler not participating.

Agatha L. Mergenovich,

Secretary.

MC–F–14955, filed September 10, 1982. RICHARD A. SEDER and NORMAN D. SIRK (Seder and Sirk), (3 Waring Circle, Worcester, MA (01609)—CONTINUANCE IN CONTROL—SONS TRANSPORTATION CO., INC. (SonS), (3 Waring Circle, Worcester, MA 01609). Representative: James C. Hardman, 33 N. LaSalle Street, Chicago, IL 60602 Seder and Sirk seek authority to continue in control of SonS through stock ownership, upon the institution by SonS of operations, in interstate or foreign commerce, as a motor common carrier. Seder and Sirk are affiliated with Kenmore Transportation Co., Inc., a motor common carrier pursuant to certificates issued in MC–59720 and subs thereunder.

Note.—SonS has filed as a directly related application its initial common carrier application. This application, docketed No. MC–163791 is published in this same **Federal Register** issue.

[FR Doc. 82-27583 Filed 10-6-82 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP1–172]

Motor Carriers; Permanent Authority Decision; Decision-Notice

Decided: September 29, 1982.

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically 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 protests in the form of verified statements as to the finance application or to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

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.

By the Commission, Review Board #1 Fortier, Chandler, and Parker. Member Chandler, not participating.

Agatha L. Mergenovich,

Secretary.

MC 163791, filed September 10, 1982. Applicant: SONS TRANSPORTATION CO., INC., 3 Waring Circle, Worcester, MA 01609. Representative: James C. Hardman, 33 N. LaSalle Street, Chicago, IL 60602 (312) 236–5944. Transporting *general commodities,* between Dover, South Weymouth, Abington, Whitman, Kingston and North Plymouth, MA, on the one hand, and, in the other, points in the U.S. NOTE: The purpose of this

application is to substitute motor carrier for abandoned rail carrier service. This application is directly related to MC–F–14955, published in this same **Federal Register** issue. Condition: The certificate to be issued to the extent it authorizes the transportation of explosives, will be conditioned to expire 5 years from its date of issuance, subject to extension upon appropriate petition.

[FR Doc. 82-27584 Filed 10-6-82; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL CAPITAL PLANNING COMMISSION

Bonus Awards Schedule for Senior Executive Service (SES)

AGENCY: National Capital Planning Commission.

ACTION: Notice of SES Bonus Awards Schedule.

Pursuant to the Civil Service Reform Act, 5 U.S.C. 5384, permitting the awarding of bonuses to Senior Executive Service Personnel, the National Capital Planning Commission hereby announces its intention to make such a bonus payment on or about October 12, 1982. For further information contact: Mr. Malcolm L. Trevor, Special Assistant to the Executive Director, National Capital Planning Commission, Washington, D.C. 20576. Telephone 724–0187.

Lawrence E. Christmas,

Acting Secretary, Senior Executive Service, Performance Review Board.

[FR Doc. 82-27607 Filed 10-6-82; 8:45 am]

BILLING CODE 7520-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel, Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, NW., Washington, D.C. 20506:

1. Date: November 1, 1982
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 1134
   Program: This meeting will review applications submitted for Research Resources: Literature, Libraries and Bibliography, Division of Research Programs, for projects beginning after April 1, 1983.
2. Date: November 1–2, 1982
   Time: 9:00 a.m. to 4:30 p.m.
   Room: 911
   Program: This meeting will review applications submitted by institutions of higher education for Challenge Grants, Office of Challenge Grants, for projects beginning after March 1, 1983.
3. Date: November 8, 1982
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 807
   Program: This meeting will review applications submitted for Research Programs Resources: American Studies Panel I, Division of Research Programs, for projects beginning after April 1, 1983.
4. Date: November 15, 1982
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 1134
   Program: This meeting will review applications submitted for Research Resources: American Studies Panel II, Division of Research Programs, beginning after April 1, 1983.
5. Date: November 8, 1982
   Time: 9:00 a.m. to 5:00 p.m.
   Room: 1134
   Program: This meeting will review applications submitted for Research Material: Translations Program Panel A (Germanic/Slavic), Division of Research Programs, for projects beginning after April 1, 1983.
6. Date: November 8–9, 1982
   Time: 9:00 a.m. to 4:30 p.m.
   Room: 911
   Program: This meeting will review applications submitted by museums and historical societies for Challenges, Grants, Office of Challenge Grants, for projects beginning March 1, 1983.
7. Date: November 15–16, 1982
   Time: 9:00 a.m. to 4:30 p.m.
   Room: 911
   Program: This meeting will review applications submitted by institutions of higher education for Challenge Grants, Office of Challenge Grants, for projects beginning after March 1, 1983.
8. Date: November 10, 1982
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 1134
   Program: This meeting will review applications submitted for Research Resources: Conservation and Preservation, Division of Research Programs, for projects beginning after April 1, 1983.
9. Date: November 15, 1982
   Time: 9:00 a.m. to 5:00 p.m.
   Room: 1023
   Program: This meeting will review applications submitted for Research Materials: Translations Program Panel B (Classics/Near Eastern), Division of Research Programs, for projects beginning after April 1, 1983.
10. Date: November 18–19, 1982
    Time: 9:00 a.m. to 4:30 p.m.
    Room: 911
    Program: This meeting will review applications submitted by public libraries for Challenge Grants, Office of Challenge Grants, for projects beginning after March 1, 1983.
11. Date: November 19, 1982
    Time: 9:00 a.m. to 5:00 p.m.
    Room: 1134
    Program: This meeting will review applications submitted for Research Materials: Translations Program Panel C (Asian/Indic), Division of Research Programs, for projects beginning after April 1, 1983.
12. Date: November 22, 1982
    Time: 9:00 a.m. to 5:00 p.m.
    Room: 1134
    Program: This meeting will review applications submitted for Research Materials: Translations Program Panel D (Romance), Division of Research Programs, for projects beginning after April 1, 1983.
13. Date: November 22, 1982
    Time: 8:30 a.m. to 5:00 p.m.
    Room: 807
    Program: This meeting will review applications submitted for Research Resources: History and Criticism of the Arts, Division of Research Programs, for projects beginning after April 1, 1983.
14. Date: November 29, 1982
    Time: 8:30 a.m. to 5:00 p.m.
    Room: 1134
    Program: This meeting will review applications submitted for Research Resources: World Studies Panel, Division of Research Programs, for projects beginning after April 1, 1983.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the

Humanities, Washington, D.C. 20506, or call (202) 724–0367.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 82-27578 Filed 10-6-82; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Commercial and Industrial Firms; Request for Comments

AGENCY: National Science Foundation.

ACTION: Request for comments.

SUMMARY: The National Science Foundation has undertaken a thorough review of its policy toward involvement of commercial and industrial firms with research facilities and equipment that the NSF supports. Last year an internal NSF task force published two interim committee reports relating to that policy for public comment. **Federal Register,** June 10, 1981 (46 FR 30739).

After reviewing comments received, NSF prepared a proposed statement of principles as NSF policy. That statement was published for public comment in the **Federal Register,** June 4, 1982, and a public meeting was held on June 29, 1982 to hear comments from interested parties.

Based on the written comments received and the opinions expressed at the public meeting, NSF has revised the statement of principles and is now proposing to establish the following statement as NSF policy. Members of the public are invited to submit comments on the statement to the address below.

ADDRESS: National Science Foundation, Room 501, 1800 G Street NW., Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Charles H. Herz, General Counsel, Room 501, 1800 G Street NW., Washington, D.C. 20550, (202/357–9435(6)).

COMMENTS: Address should be to the addressee listed above and should be received no later than October 26, 1982.

Charles H. Herz,

General Counsel, National Science Foundation.

Principles Related to National Science Foundation Supported Research Instrumentation and Facilities

Introduction

The purposes of the National Science Foundation are stated in the National Science Foundation Act of 1950, as amended. The Act specifies as a major NSF mission, "to strengthen the scientific research potential" of the Nation. This is carried out primarily through the support of fundamental scientific and engineering research and education in the colleges and universities of the United States. The Foundation has always viewed its programs in light of their ultimate contribution to national capabilities in science and enginering, and their potential benefit to the Nation's citizens.

The support that NSF programs provide through grants for scientific and engineering research, and for the purchase of research instrumentation and facilities, has centered on academic institutions. It is NSF's purpose to support and stimulate the creation of new knowledge, generally fundamental in nature, and concurrently the education and training of scientific and engineering personnel. To this end, the Foundation encourages publication and distribution of results of research performed under its grants and expects the results to be publicly available.

Although most NSF programs are focused on fundamental research at academic institutions, some are directed to science and engineering in the industrial sector, and others support collaborative activities of industry and academia. Further, some NSF programs for academia have direct implications for science and engineering interests in the industrial sector. NSF support for research instrumentation and facilities sometimes results in academic institutions having capabilities which could be used to provide research services for the commercial sector. It is contrary to NSF's intent for academic institutions to use NSF-supported research instrumentation or facilities to perform research or services for commercial organizations in direct competition with private companies that provide equivalent research services. This position and related considerations are discussed more fully below.

The following statement represents an attempt to strike a balance among the differing interests and needs of several groups within the scientific and engineering research community.

Background

This statement of principles for the use and operation of National Science Foundation (NSF)-supported research instrumentation and facilities responds to issues raised by several groups:

- University scientists and engineers, asking whether research instrumentation provided to them with NSF support may be used by or for the benefit of commerical firms, and—if such use is approved—under what terms and financial arrangements;
- Industrial scientists and engineers, with interest in using such instrumentation, particularly at major facilities, and in supporting or cooperating with university scientists and engineers doing research that uses the instrumentation;
- Commerical research and service laboratories, concerned that NSF-supported research instrumentation has been used on occasion by university personnel to provide services that compete with commercial firms at rates that undercut the markets of these firms;
- Commercial research and service laboratories, with interest in being considered by the NSF as providers of instrumentation or services for NSF-supported research or as managers for NSF-supported user facilities.

Access to modern research instrumentation is essential to the health of the Nation's science and engineering enterprise. NSF policies are intended to promote this access. Modern research instrumentation can be provided by a variety of mechanisms, including dedicated equipment at a research institution, common or shared in-house reseaarch facilities, or facilities provided by a second party on a lease or service basis. NSF and its grantees and contractors should be open to all these mechanisms and choose the one likely to be most effective in each case.

At the same time, the high cost of modern research instrumentation and facilities demands that they be as fully utilized as is practical, consistent with the primary mission for which they are provided. Therefore, NSF policies should also encourage sharing of instrumentation within the academic sector and, under appropriate conditions, among the academic, industrial, and public sectors.

Principles Related to Research Instrumentation & Facilities

The principles set forth here are to guide NSF grantees and contractors in matters related to instrumentation and facilities obtained with NSF support. These principles are directed to academic and other institutions that receive NSF support, in their relationships with or affecting the for-profit sector of the scientific and engineering community. The principles are not intended to affect relationships between or among academic institutions, Government-owned facilities or centers, Government-sponsored projects, or among Federal, state, or local governmental organizations.

1. NSF places major emphasis on support of research in the academic sector because such research serves the dual NSF mission of supporting

fundamental research and providing educational opportunities for future scientists and engineers. This means, in many cases, that there are distinct advantages in supporting research instrumentation and facilities sited on the campuses and in encouraging sharing of such instrumentation and facilities among various academic research groups on the campus and with other academic institutions.

2. At the same time, there may be cases where the research and educational values of having such instrumentation and facilities in the academic environment are outweighed by cost savings or operating efficiencies that can be achieved by having similar instrumentation or facilities provided or operated by non-academic organizations. This may be particularly true where specialized management and maintenance personnel are required, or where there is standardized testing or measurement that adds little to the educational value of the research experience. Under these circumstances, NSF grantees and contractors are encouraged to use services provided by non-academic organizations.

3. Proposals to establish and operate NSF-supported research facilities for fundamental research and educational purposes usually will be considered from all sources; academic institutions, not-for-profit, and for-profit organizations. In considering such proposals, NSF will give due weight to the relative advantages of the management capabilities of each sector and to the potential differences in student access and availability for educational purposes that each sector can provide.

4. NSF-supported instrumentation or facilities may be used by or for the for-profit sector only when such use does not constitute provision of services equivalent to services commercially available in the United States. [Appendix Note 1]

5. If no equivalent services are commercially available in the United States, then such services may be made available to for-profit users at the option of the holder of NSF-supported instrumentation or facility at a price to be negotiated between the holder and the proposed user. This price may reflect the extent to which the research supported by the services will contribute to the fundamental knowledge base and/or to research training, consistent with the mission of NSF. If the research is of a proprietary nature, users should pay at least a reasonable estimate of the full cost of providing the services. Any such proposed research should be subject to the customary reviews for suitability and significance that most institutions require before use of institutional research resources is permitted. Careful attention should be given to assuring that there is no compromise of the NSF's or the institution's research purposes stated when the instrumentation or facility was acquired. [Appendix Note 2]

6. A determination that no equivalent services are commercially available in the United States would normally rest upon a finding that the capabilities of the instrumentation or facility to be used in performing them are unique, *e.g.*, that no commercial firm willing to provide the services possesses either identical instruments or others with essentially equal capabilities. (This means equal capability to produce information having the degree of precision, resolution, or discrimination needed for the research. Two machines or instruments with different performance limits could be considered equivalent in a particular case if the precision sought in the specific research task could be attained on either one.) However, a unique combination, use or adaptation of off-the-shelf equipment, or a unique expertise or technique not available commercially, may establish that the services are without commercial equivalent. Such uniqueness might also be established by proximity in the case of perishable specimens, or other comparably limiting circumstances. NSF expects that holders of NSF-supported research instrumentation or facilities who permit access by for-profit organizations will provide a procedure for addressing questions or challenges concerning uniqueness. Such procedures should involve disinterested outside experts in advising so as to prevent or help resolve disputes about the uniqueness of services. [Appendix Note 3]

The provisions for equivalency determinations are not required of institutions if the NSF-supported instrumentation or facilities will not be used by or on behalf of researchers in the commercial sector.

7. Funds generated by charges for use of unique NSF-supported instrumentation or facilities by for-profit organizations must be applied by the institution holding the instrumentation or facilities to further research or education in the sciences or engineering.

8. NSF strongly encourages collaborative research efforts between academic and industrial scientists and engineers. Such research is regarded as though it were solely academic for purposes of the present user policies. However, research is regarded as genuinely collaborative only if both the academic and industrial researchers have real and substantial personal intellectual involvement in joint planning and conduct of experiments, observations, or the like. Arrangements in which the academic researcher provides little beyond access to university-based instrumentation or facilities are not collaborative research as intended here, nor is private consulting by an academic researcher.

Appendix

Note 1 (See Principle 4)

NSF expects certain rules of reason to apply in matters subject to the present principles. For example, research requiring the use of a synchrotron light source is not presently likely to entail questions of existing commercial capabilities or commercial competition. On the other hand, a university that offers its instrumentation to perform various types of surface analysis research and services for commercial clients probably competes in existing markets with available commercial services.

Some examples may help clarify what is expected.

A. A small firm in the southeast asks a university within a half-day's drive and holding the needed instrumentation to perform a surface analysis on experimental material. The work will require one hour of instrument time. No repeat is expected. The nearest comparable commercial instrumentation is approximately the same distance away. The university should refuse the request of the small company.

B. The same conditions prevail, except that the nearest comparable commercial instrumentation is in Michigan. Given the air connections, obtaining the one hour of instrument time will consume most of two days in travel time. One hour of instrument time for an analysis that is not expected to be repeated would seem not to threaten commercial suppliers of comparable analyses with serious competition. It makes sense for the university to provide the requested assistance in this case.

The above examples illustrate use of a rule of reason. A long series of examples attempting to establish threshholds will be unlikely to satisfy any of the parties at interest because of the infinite number of cases that can be postulated to fall between the examples. Further, in such circumstances, efforts to state absolute rules can nearly always be reduced to an absurdity by an example to show how the rules prevent a common sense solution.

Assuming that a university's own rules permit a department to make its facilities available, and assuming that "uniqueness" has not been established, the following questions or guidelines should be used to determine if NSF-supported instrumentation or facilities could be made available to commercial users.

a. Would the proposed use interfere with or encroach upon the purposes for which the university requested and NSF granted the support?

b. Is the proposed use available from commercial sources?

c. Would the proposed use have an impact on existing commercial suppliers of equivalent services?

Questions of distance, duration of instrument time requested, and expected frequency or repetitiveness of a request are determining factors, but the overriding question is that of impact on existing commercial markets. This needs to be considered by an institution on a case-by-case basis and also on a cumulative effect basis. A series of individual cases that taken singly would have little of no impact may cumulate to have substantial impact for commercial suppliers of comparable services.

The rule of reason is not intended to provide a rationale for small individual actions that cumulate to invade or preempt the markets of the research community in the commercial sector.

Note 2 (See Principle 5)

If the use of a unique facility or equipment by commercial applicants were to grow to a significant portion (say, a few percent or more) of available equipment time, two questions should be examined:

(a) Are the original purposes being compromised?

(b) Has a commercial firm entered the market with equivalent capabilities?

If either question is answered affirmatively, the academic institution should reduce or eliminate such outside use.

Note 3 (See Principle 6)

In making a determination that no equivalent services are commercially available in the United States, a facility or equipment operator would be faced with the task of conducting a reasonable search for such services. A reasonable search could include contacting other knowledgeable people in the scientific field involved, vendors of similar testing services, or other researchers. The operator may also rely on written statements from the requesting organization that it had contacted known suppliers of similar services and that it was unable to obtain the necessary services for reasons set forth. The operator should assure that the requestor has checked with a sufficient number of sources and has properly documented the unavailability or has adequately described the uniqueness of the facilities to his or her satisfaction in terms of the performance limits, expertise, proximity and perishability, or other legitimate distinguishing features.

NSF does not expect that such determinations be submitted to it for consideration or approval. NSF will not entertain challenges or protests on individual cases. All such disagreements will be handled in accordance with each instrumentation or facility operator's own procedures. Each instrumentation or facility operator will be required to submit to NSF before final award of a grant its operating guidelines and policies for making "equivalency" determinations as well as its procedures for handling disagreements and challenges, if the requested instrument costs $50,000 or more. The procedures of the institution should include administrative mechanisms for properly addressing the policies contained in NSF's Important Notice *xx* with respect to making reasonable judgments on "uniqueness" and "equivalency" and with respect to providing fair and adequate consideration of challenges to such findings. Any reviewing group constituted under such procedures should be an official body of the institution, the names of the group's members should be publicly known, and the group should include professionally qualified parties from outside the institution, who are not at interest in the matter, and preferably including representatives from the commercial sector.

The provisions for equivalency determinations are not required of institutions if the NSF-supported instrumentation or facilities will not be used by or on behalf of researchers in the commercial sector.

[FR Doc. 82-26579 Filed 10-6-82; 8:45 am]
BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Reports, Recommendations, Responses; Abailability

Reports Issued

Marine Accident Reports—Summary Format, Issue Number 3—January through June, 1979 (NTSB-MAB-82-2).

Hazardous Materials Accident Spill Maps—Gasoline Release Following Freight Train Collision with Cargo Tank Semi-trailer, Huntsville, Alabama, September 15, 1981 (NTSB-HZM MAP-812-1).

Recommendations Issued

Federal Aviation Adiministration: Sep. 7: A-82-117: In conjunction with the manfacturer, determine the proper torque setting for the self-locking nut, part number 52NTE048, on the main landing gear alignment assembly and revise the EMB-110 maintenance manual to include this torque setting. *A-82-118:* Amend FAA-approved flight manuals, where applicable, to prescribe minimum airspeeds and appropriate flight precautions during flight in icing conditions. *A-82-119:* Require that accident prevention specialists review with pilots the critical nature that extended operation at high angles of attack in icing conditions can have on the accretion of ice and aircraft performance with special emphasis on the need for strict adherence to prescribed operational procedures and on the proper procedures for use of deicing equipment. *Sep. 16: A-82-112:* Simplify and standardize, to the extend feasible, the terminal area graphic notices, published in the "Graphic Notices and Supplemental Data," and explain all symbols used in a notice in the accompanying legend. *A-82-113:* Add to all terminal area charts, which are published in "Graphic Notices and Supplemental Data," a notation encouraging all pilots intending to operate visual flight rules within the terminal area to contact the controllong air traffic control facility and an advisory notation, when applicable, indicating that radar traffic advisory services are available on request. *A-82-114:* Add to all federal sectional aeronautical charts a prominent advisory notation pertinent to terminal areas at which radar traffic advisory services are avilable on request. *A-82-115:* Advise state aviation authorities that they should include on state aeronautical charts the information contained on federal sectional aeronautical charts pertinent to safe navigation, particularly in regard to radar traffic advisory services in terminal areas where there are multiple airfields.

Federal Highway Administration: Sep. 9: H-82-34: Conduct and publish a comprehensive review of each State's skid accident reduction program to identify problem areas, to develop corrective recommendations where necessary, and to disseminate more widely innovative local practices of proven value and general applicability.

Federal Railroad Administration: Sep. 15: R-82-101: Provide complementary flag protection in signal territory when a train stops, such as affixing a torpedo to the rail and placing a fusee if appropriate. *R-82-102:* In addition to the requirement of current operating rules, require engineers to blow the locomotive whistle periodically and broadcast a one-time unaddressed and undirected radio message when the locomotive of a train has passed a restricted proceed or stop and proceed signal aspect until the cause of the restrictive signal is determined.

National Railroad Passenger Corporation (AMTRAK): Sep. 21: R-82-89: Install highly visible emergency marker lights on the front

of model AEM–7 and similar locomotives that can be operated reliably from the locomotive battery or from an independent power source for an extended period of time . *R–82–90:* Provide the engineer of model AEM–7 locomotives a d.c. current readout at the operating position, other than a light indication, so he can determine whether the locomotive battery is being charged or discharged, and a voltmeter so that the battery voltage can be read in volts. *R–82–91:* Review the control circuitry on the model AEM–7 locomotives to deterine if modifications can be made to either automatically or manually disconnect nonessential battery operated circuits, when catenary power is not available, to extend the battery's capability to provide power for emergency marker lighting and the locomotive radio. *R–82–92:* Preface Form "Q" and similar train orders with the format identifier before the orders are transmitted, and include any speed restrictions within the the limits covered by the order in the body of the train order. *R–82–93:* Post the maximum allowable speed in a conspicuous location adjacent to the operating position when a locomotive has a speed restriction imposed because of operating restrictions. *R–82–94:* Provide guidance for flag protection to the front and rear of passenger trains, including commuter trains, when the train is disabled and unable to proceed without assistance, and until a rescue locomotive or train has arrived and is ready to depart. *R–82–95:* Review Amtrak's current method of conducting operating rules examinations and review classes to determine if it is adequate to permit employees to demonstrate that they not only know the wording of the rules, but that they understand how the rules are to be applied under actual conditions. If these objectives are not being achieved, restructure the operating rules classes to accomplish this goal. *R–82–96:* Establish and implement training procedures to improve traincrew coordination particularly when crews work under unfamiliar and unusual circumstances. *R–82–97:* Review the Northeast Corridor timetable format and contents to determine if its complexity can be reduced to make it easier to ascertain those schedules and special instructions that affect a train's opertion over a given division and make appropriate changes.

State of Georgia: Sep. 22: P–82–40: Through the State's Department of Transportation and the Georgia Public Service Commission encourage and assist the operators of underground facilities in the State of Georgia in their efforts to expand the metropolitan Atlanta area one-call notification system to provide coverage throughout the State of Georgia.

The Family Lines System (Louisville and Nashville Railroad Company): Sep. 15: R–82–98: Establish a complementary protective system to the automatic block signals for trains stopped in automatic block signal territory against a following train. *R–82–99:* Determine if unqualified employees are operating locomotives with or without cars. If so, initiate corrective action so that Louisville and Nashville employees will be in conformance with the company operating rule that requires a qualified locomotive engineer to be present in the operating compartment of the locomotive while the train is in operation. *R–82–100:* Require an engineer to radio the aspects displayed by all the wayside automatic and interlocking home signals affecting movement of the train to the conductor, and have the conductor acknowledge the aspect called.

National Association of State Aviation Officials: Sep. 16: A–82–116: Advise state aviation authorities that they should include on state aeronautical charts the information contained on federal sectional aeronautical charts pertinent to safe navigation, particularly in regard to radar traffic advisory services in terminal areas where there are multiple airfields.

Recommendation Responses Received

Federal Aviation Administration: Aug. 20: A–80–111: The periodic propellar corrosion inspections recommended by Hamilton Standard in Service Bulletins 329 and 329A were subsequently incorporated into the Hamilton Standard Aluminum Blade overhaul Manual referenced in Airworthiness Directives 81–13–06 and 81–13–06R. *A–72–64:* FAA is reviewing comments to a draft notice of Technical Standard Order C–13d governing the design and manufacture of lifevests, published in the **Federal Register** on November 16, 1981. *Aug. 26: A–82–1, –2, –3, –124, –125, –126:* FAA will review comments received on NPRM 14 CFR 39, Docket No. 82–NM–38–AD published in the **Federal Register** on Jul. 6, 1982, which summarized the FAA's findings concerning safety implications involving changes to the DC–10 galley personnel lift circuitry. *Sep. 1: A–72–233:* The General Aviation Manufacturers Association has submitted to the FAA reports on spin testing and stall suppression/prevention and a petition for rulemaking to amend 14 CFR 23.67 and 23.221(a). *A–81–132 and –133:* Computer simulation capabilities at ARTS III/IIIA facilities could be improved by procuring additional hardward and modifying the existing hardware, but such action would not be cost-effective because the hardware is not available and the FAA plans to replace the present systems during the next 10 years. The required biannual evaluation of each controller may be accomplished by using simulation of live traffic and must be equal to moderate traffic for the facility involved. *A–81–134 and –135,* which recommended the redesign of the low altitude/conflict alert at ARTS III facilities so that (1) the audio signal associated with the low altitude alert is readily distinguishable from the conflict alert and (2) the visual alert is unique, easily detected, and adequately contrasted when the data tag is in the handoff status: FAA will consider any new comments germane to these recommendations which may result from the NTSB's investigation of a recent incident involving an Air California Airlines flight. *A–81–136:* FAA Handbooks 7110.65C and 7210.3F provide adequate procedures/guidelines to ensure separation of aircraft. The Facility Standard Operating Procedures Manual describes specific altitudes and mileage, along with other necessary procedures that must be applied at Atlanta. *A–81–137:* Atlanta Tower has controllers at the radar handoff positions who serve as assistants and are situated between the feeder controllers' radar displays; however, Atlanta Tower is studying the feasibility of eliminating those positions and reconfiguring to allow the radar displays to be located closer together. *A–81–138:* Playback capability has been identified as a requirement in the next generation of automated radar and will be incorporated in the display subsystem of the Advanced Computer System.

Federal Highway Administration: Aug 19: H–80–16, –17, –20: Will publish an Advance Notice of Proposed Rulemaking soon concerning requested revisions to Federal Motor Carrier Safety Regulations concerning commercial driver disqualification provisions and information that a motor carrier must request from an applicant driver's former employer(s) when making the investigations and inquiries required by the regulations. *Sep. 8: H–82–8:* FHWA issued in the **Federal Register** on May 20, 1982, a final rule amending 23 CFR Part 630, Subpart J (FHPM 6–4–2–12) on traffic control design requirements for two-lane, two-way traffic on one roadway of a normally divided highway. FHWA is considering whether to extend the applicability of the final rule by including the requirements in the Manual on Uniform Traffic Control Devices. *H–82–9:* The FHWA's research project "Development of a Low-Cost, Low-Maintenance Channelizing Device" is underway with an estimated completion date of September 1983.

Research and Special Programs Administration: Aug. 11: P–81–38 and –39: RSPA is awaiting the results of the Gas Research Institute study of additional locations where effective use can be made of excess flow valves to prevent various types of accidents before deciding if a rulemaking project on excess flow valves should be undertaken.

U.S. Coast Guard: Aug. 13: M–80–64: USCG has implemented a program to certify all deck watch officers on Coast Guard vessels over 100 feet in length through an examination equivalent to the merchant marine licensing examination. *M–80–65 and –66:* USCG is developing refresher courses in ship stability for commanding, executive, and engineering officers being assigned to sea duty after an extensive period of duty ashore. *M–80–67:* USCG has established a volunteer program to provide an underway training period for commanding officers assigned to sea duty after extended duty ashore. *M–80–68 and –69:* A new publication, Unit Training Manual (Afloat), (Commandant Instruction M3502.3) includes a checklist, requiring newly reporting personnel to learn the location of lifejackets, lifeboats, and their emergency stations, that must be completed within 72 hours of reporting aboard. *M–80–70:* Latest water survival techniques, additional "hands-on" training, and increased emphasis on the identification and treatment of hypothermia have been or are being incorporated into the water survival training instruction of USCG personnel. *M–80–71:* The conditions of pilotage waters and cutter characteristics are so variable that a universal requirement that commanding officers of USCG cutters over 100 feet in length employ pilots when the

commanding officer is unfamiliar with pilotage waters would be an impractical attempt to control the commanding officer's judgment in routine operations. *M–80–72:* USCG has directed all ships over 100 feet in length to add to existing checklists for getting underway and entering port the item: communicate with local pilot associations unless detrimental to national security. *M–80–73:* The duties of the navigator, as stated in the Shipboard Organization and Regulations Manual, in amplification of Coast Guard Regulations, direct that the navigator obtain certain information, including contact with pilots and security broadcasts where practicable. *M–80–74:* Moving the forward masthead light as far forward as possible on buoy tenders would require placing the light on a new mast on the stem where it would be directly exposed to heavy seas. A permanent mast at the stem which would replace the flagstaff would weigh about 2,000 pounds, and in heavy seas the approved masthead light shields may not remain intact. *M–80–75,* which requested that ships be prohibited from meeting in bends in Tampa Bay. A study of Tampa Bay's traffic management needs has been completed and is being reviewed. *M–80–77:* USCG concurs with relocating the intersection of the Intercoastal Waterway and the Southwest Channel in Tampa Bay away from buoy 2A, and will address the issue in its study of Tampa Bay's traffic management needs expected to be released in fall 1982. *M–80–78:* USCG concurs with reevaluating the proposed level of Vessel Traffic Service in Tampa Bay, and will address the issue in its study of Tampa Bay's traffic management needs. *M–80–79:* After considering the economic and safety factors, USCG does not concur with recommendation to require all U.S. merchant vessels over 1,600 gross tons to be equipped with at least one motor lifeboat on each side and gravity davits throughout. *M–80–80:* USCG has directed that all Mark–3 liferafts be removed from the fleet and replaced with Coast Guard-approved 15-person liferafts. *M–80–81:* All Navy Mark–5 liferafts have been inspected. *M–80–82:* Liferafts have been relocated to the 01 deck on many cutters, and prototype installations are being made to determine optimal location for ready manual overboard launching. *M–80–83:* All Coast Guard-approved rafts have hydrostatic releases meeting 46 CFR 160.062 (set for 5 to 15 feet). *M–80–84:* All approved Coast Guard liferafts must be enclosed in buoyant containers. *M–80–85:* The Preventive Maintenance System uniform maintenance procedure card requires a weekly checkout and test of battle lanterns. There is no basis to support any theory that emergency lighting on cutters have a high failure rate. *Sep. 5: M–78–76,* which requested that the operator of every radar-equipped vessel carrying more than six passengers for hire and engaged in the offshore oil industry be qualified as a "radar observer": Since radar is not being required as previously discussed in the Coast Guard's response to M–78–74, there is no justification for establishing a mandatory radar observer qualification. To address the concern of personnel being unfamiliar with the proper operation of equipment carried, voluntarily, some changes to 46 CFR Part 10 will be incorporated into rulemaking CGD 81–059, expected to be published soon. The Coast Guard will publish an article in the Proceedings of the Marine Safety Council and seek the cooperation of the Offshore Marine Service Association in encourging the owners of radar-equipped vessels to provide adequate training for operating personnel. *M–78–77:* Coast Guard concurs with part (2) of this recommendation which asked that operators of vessels carrying more than six passengers for hire and engaged in the offshore oil industry, when operating for more than 12 hours, appoint an operator to be in charge to establish responsibility of command and to avoid confusion in an emergency. The conversion of the ocean operator license to a master/mate hierarchy has been included in rulemaking project CGD 81–059, which would move the current regulations concerning operator licenses (46 CFR Part 187) into 46 CFR Part 10, and would integrate small vessel licenses into an overall advancement/progression system.

National Oceanic and Atmospheric Administration: Aug. 30: A–82–45: A revised WSOM Chapter D–21, governing the issuance of Terminal Forecasts, will include a requirement that all Terminal Forecasts be disseminated via long-line circuits and will eliminate the "nonscheduled" Terminal Forecast as a product entity.

Federal Communications Commission: Sep. 24: M–81–53: FCC considers that international participation and mandatory monitoring is essential if an Emergency Position Indicating Radio Beacon (EPIRB) system is to provide safety on a worldwide basis, and will continue to direct efforts to the expeditious development of the International Maritime Organization's future distress system using satellite EPIRB's. A Class "C" EPIRB (156.75 MHz and 156.8 MHz) in addition to a Class "A" EPIRB (121.5 MHz and 243 MHz) could be required for ship operations in U.S. coastal waters. *M–81–54:* FCC plans to release a public notice requesting nongovernment coast stations, other than Class III (VHF–FM) serving local areas, to notify voluntarily owners and operators if a ship cannot be contacted within 2 days.

State of Washington: Sep. 10: H–82–30: Will meet with concerned agency and industry representatives to assess the problem of railroad grade crossing locations and to explore the feasibility of implementing an "Operation Lifesaver" program.

County of Nassau, New York: Sep. 9: H–82–15: Requests information from the Safety Board concerning the use of center islands for added protection at railroad grade crossings.

Aircraft Owners and Pilots Association: Aug. 17: A–82–61: Will reinforce to pilots the importance of accurate position reporting in communications with air traffic control facilities.

Association of American Railroads: Aug. 27: I–80–3: The Railway Progress Institute–AAR cooperative Tank Car Safety Research Program will continue its phase 18 study, in which up to eight tank cars that have been seriously dented or creased in accidents will be examined to establish if the damage sites are susceptible to rupture during repressurization, except that the study will not review the properties of the heat-affected zone adjacent to welds that have been subjected to thermal cycles associated with conventional stress relief practices. AAR believes that the stress relieving practices for tank cars are satisfactory and that production welding practices have been appropriate to the service environment of the tanks. *Sep. 27: R–82–82 and –83:* Has advised its membership to caution employees and emergency response personnel to exercise care when attempting to identify commodities carried in TOFC trailers and COFC containers involved in accidents. An Inter-Industry Task Force on Hazardous Materials Transportation will address the subject of procedures to provide timely and accurate identification of hazardous materials at accident sites. *R–82–88:* Has advised its membership of the Nov. 13, 1981, derailment of a Seaboard Coastline freight train near Montgomery, Alabama, and emphasized the potential consequences of inadequate inspection of freight cars to detect interference between truck bolsters and body center plates when cars are on repair tracks or are inspected in train yards.

The American Short Line Railroad Association: Sep. 15: R–82–84: Every common carrier in the association has been advised to warn employees who may be at the scene of accidents that waybills may not properly identify or describe hazardous materials loaded in TOFC trailers and COFC containers.

National Fire Protection Association: Sep. 9: R–82–85: Will publish in *Fire Service Today* the recommendation to warn firefighters and law enforcement personnel that railroad waybills for piggyback TOFC trailers and COFC containers carrying hazardous materials may not adequately describe their contents, and that the contents of derailed trailers or containers must be checked for possible hazardous materials during rescue or firefighting operations at TOFC or COFC derailments.

International Association of Fire Chiefs: Sep. 8: R–82–85: Will alert emergency responders that railroad waybills for piggyback TOFC trailers and COFC containers carrying hazardous materials may not adequately describe their contents, and that the contents of derailed trailers or containers must be checked for possible hazardous materials during rescue or firefighting operations at TOFC or COFC derailments.

New York City Transit Authority: Aug. 16: R–82–35: Differences between the "Prevalent TA" and "Original IRT" train control signal systems are fully explained to all newly appointed motormen during their classes and field training program and during subsequent refresher courses. *R–82–36,* which recommended providing additional safeguards for "keying-by" automatic signals in an emergency by requiring trains to stop at each signal and receive permission from the command center to proceed: All command center personnel have been reinstructed in the proper "key-by" procedures. Specific procedures for handling A.C. power outages that affect signals have been developed and disseminated. RTTD Bulletin #53–81, dated Jul. 13, 1981, reminds all of its employees that a dark or improperly lit signal must be

treated at its most restrictive aspect. *R–82–37:* Outstanding procedures within RTTD require that any and all occurrences which affect train service are to be immediately reported to the command center desk trainmaster, and personnel in the Power System Operation Section have been reinstructed about the procedures. *R–82–38:* NYCTA considers signal maintainers to be operating personnel, and they have been specifically trained and qualified to flag trains past red signals and through areas affected by signal trouble. Emphasis has been placed on insuring that coordination between signal maintainers and the command center on flagging moves exists and is maintained. *R–82–39:* Annual funding constraints limit the number of signal system modernization projects that can be done each year. NYCTA has ranked the modernization work in priority order, based upon criteria including the age and reliability of each section's signal system as well as the number of riders who use the section. *R–82–40:* New operating procedures were recently initiated for handling power operations in areas where general orders are in effect and for follow-up to power interruptions caused by defective trains. Two organizational changes that result in improved coordination among departments in emergencies have also been made. *R–82–41:* Outstanding emergency procedures are under continual review through the critiquing of personnel performance in handling emergency incidents and situations. When deficiencies in the procedures are noted, revisions are made as soon as possible. Simulations of emergency incidents such as derailments, collisions, vehicle fires, and passenger evacuations are periodically held to provide practice drills for outside agencies and NYCTA departments. *R–82–42:* Has recently reviewed and revised Interagency Standard Operating Procedure #1, "Reponse to NYCTA Emergencies," whose purpose is to: (1) emphasize safety concepts during emergencies; (2) establish an interagency command post at the emergency site: (3) describe the operation of the NYCTA command center and control centers; (4) provide for dependable interagency and intra-agency channels of communication during major emergencies; (5) delineate interagency procedures for specific emergencies; and (6) list NYCTA firefighting equipment for underriver tunnels. *Sep. 13: R–82–49:* A wear test of the motor safety lugs revealed that the mileage to failure would be greater than the 5,000-mile interval for "A" inspections. NYCTA is in the process of identifying different alternative methods of detecting dropped motors before they fall to the tracks. *R–82–50:* The General Superintendent, Car Maintenance Department has created a quality assurance function within the Management Division of this department to ensure that quality assurance standards are established and that maintenance procedures and documentation are in place. *R–82–51:* The heavy reliance upon verbal communication between the barn foreman and yardmaster, to identify hold cars and ensure that they do not return to service until they are inspected and released, is recognizes as a deficiency. NYCTA is testing a telecopy system to transmit and reproduce orders over telephone wires among the car desk, barn, yardmaster's office, and the command center. *R–82–52:* NYCTA's technical support consultant has recommended against removal of the traction motor mount bolts during the "C" inspection because: (1) it would be time consuming and difficult to implement due to the requirement for skilled inspection of the bolts and decisions about reuse "on-the-spot;" (2) anchor bolts should not be reused, and more than 48,000 new bolts would be needed every time the fleet went through an inspection cycle; (3) each removal and replacement of a traction motor anchor bolt causes wear to the mating female threads in the motor; and (4) each time a bolt is installed, there is a risk that the bolt will not be installed properly. *R–82–53:* Beginning in August 1982, the Car Maintenance Department instituted a standing audio test and a running noise test for detecting a dropped motor on a car. *R–82–54:* The rescue train evacuation process requires communications between personnel on-site and at the command center, communications with coordinating departments and outside agencies, overall evaluation of the situation, dispatch of a properly equipped rescue train, and the conduct of the evacuation itself. It is extremely important that each of these activities is carefully and thoughtfully performed. If too much emphasis is placed on minimizing the time it takes to effect the evacuation, then incomplete evaluations and improper evacuations could result.

Mass Transit Administration of Maryland: Aug. 11: R–82–25: MTA studied the end door and passageway design and policies for passenger safety of other systems to determine MTA's specifications for its cars, and will prohibit the use of end doors except in emergencies.

American Congress on Surveying and Mapping: Jul. 23: P–82–20: Will advise members of the circumstances of the pipeline accident on Sep. 27, 1981, near Ackerly, Texas, and urge them to include in the service of staking drilling locations the location of pipelines which may be affected by the drilling location. The ACSM and the American Society of Civil Engineers has recently published a guide for right-of-way surveys which makes specific recommendations for the demarcation and recording of rights of way, be they for pipelines, power transmission lines, or other utilities.

Replies to *H–82–18,* which recommended that 35 States and the District of Columbia raise the minimum legal age for drinking or purchasing all alcoholic beverages to 21 years of age, have been received from the Governors of *Alaska* (Aug. 20), *Colorado* (Aug. 17), *Hawaii* (Aug. 26), *Minnesota* (Sep. 2), *Nebraska* (Jul. 29), *New York* (Aug. 31), *North Carolina* (Jul. 28), *West Virginia* (Aug. 5); from the Lieutenant Governors of *Alabama* (Jul. 29), *Connecticut* (Jul. 29), *Texas* (Sep. 22), and *Virginia* (Aug. 6); from the President of the Senate of *Hawaii* (Jul. 27); and from the Speakers of the House of Representatives in *Ohio* (Jul. 30) and *Tennessee* (Aug. 4).

Replies to *H–82–35,* which recommended that the 50 States and the District of Columbia, excluding Colorado, Maryland, Nebraska, Utah, and Washington implement a citizen awareness and citizen drunk driver reporting program such as the REDDI-type programs now used by Colorado, Maryland, Nebraska, Utah, and Washington, have been received from the Governors of *Iowa* (Sep. 17), *Minnesota* (Sep. 23), and *Wyoming* (Sep. 17); from the Transportation Department of *District of Columbia* (Sep. 23) and *Idaho* (Sep. 15); and from the Department of Transportation Safety of *Virginia* (Sep. 16).

Note.—Reports may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfied, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports call 703–487–4650 and to order subscriptions to reports call 703–487–4630. Single copies of recommendation letters (identified by recommendation number) and response letters are free on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

October 7, 1982.

[FR Doc. 82–27624 Filed 10–6–82; 8:45 am]

BILLING CODE 4910–58–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–170 (Renewal of Facility License No. R–84) ASLB No. 81–451–01 LA, Docket No. 30–6931 (Renewal of Byproducts Material License No. 19–08330) ASLP No. 82–469–01 SP]

Armed Forces Radiobiology Research Institute; (TRIGA-Type Research Reactor) (Cobalt-60 Storage Facility)

Order

1. A prehearing Conference will be held on October 15, 1982 at 10:00 a.m. (EST). The location of this conference will be U.S. Nuclear Regulatory Commission, Maryland National Bank Building, Room 6110, 7735 Old Georgetown Road, Bethesda, Maryland 20814.

2. This conference is convened to hear representations on remaining outstanding issues in TRIGA-Type Reactor, Docket No. 50–170. In addition, the Board directs all parties at the conference to be prepared to present a proposed schedule for this proceeding within the statutory established time frames.

3. In the Cobalt-60 Storage Facility Docket No. 6931 proceeding, the Appeal Board has directed that this proceeding be consolidated with the companion case involving renewal of the 10 CFR 50 license for the TRIGA reactor in Docket No. 50–170. To that end, the Board directs parties to this proceeding to

prepare a schedule to move the Cobalt-60 proceeding into a hearing posture.

It is so ordered.

Dated at Bethesda, Maryland, this 1st day of October, 1982.

For the Atomic Safety and Licensing Board.

Helen F. Hoyt,

Administrative Judge.

[FR Doc. 82-27616 Filed 10-6-82; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commisson (the Commission) has issued Amendments Nos. 113, 113 and 110 to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, issued to Duke Power Company, which revised the Technical Specifications (TSs) for operation of the Oconee Nuclear Station, Units Nos. 1, 2, and 3, located in Oconee County, South Carolina. The amendments are effective as of the date of issuance.

These amendments revise the common TSs to allow full power operation of Oconee Unit 3 during fuel Cycle 7.

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 1, 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 the issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated May 3, 1982 as revised in its entirety on August 11, 1982, and supplemented on August 16, 1982, (2) Amendments Nos. 113, 113, and 110 to Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, and (3) the Commission's related Safety Evaluation. All of 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 Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina. 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 29th day of September 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82-27614 Filed 10-6-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 40 to Facility Operating License No. DPR-54, issued to Sacramento Municipal Utility District (the licensee), which revised the license for operation of the Rancho Seco Nuclear Generating Station (the facility) located in Sacramento County, California. The amendment is effective upon issuance.

This amendment implements IAEA Safeguards at the Rancho Seco facility through a license condition. Under Treaty with the IAEA, the U.S. is committed to permit the IAEA to apply safeguards in the U.S. in the same manner as non-nuclear weapons countries. 10 CFR 75.8 specifies that a Facility Attachment (FA) will be developed and implemented at the nuclear facility via a license condition. This amendment issues the required license condition for the Rancho Seco facility.

The licensee's filing (which is being handled by the Commission as an application) for the amendment 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 amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment 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 preparded in connection with issuance of this amendment.

For further details with respect to this action, see (1) the licensee's filing dated April 3, 1981, (2) Amendment No. 40 to License No. DPR-54, and (3) the Commission's letter to the licensee dated September 29, 1982. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Business and Municipal Department, Sacramento City-County Library, 828 I Street, Sacramento, California. 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 29th day of September 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82-27615 Filed 10-6-82; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.301(c) sets forth the SBA Regulations governing the maximum annual cost of money to small business concerns for Financing by small business investment companies.

Section 107.301(c)(2) requires that SBA publish from time to time in the **Federal Register** the current Federal Financing Bank (FFB) rate for use in computing the maximum annual cost of money pursuant to § 107.301(c)(1). It is anticipated that a rate notice will be published each month.

13 CFR 107.301(c) does not supersede or preempt any applicable law that imposes an interest ceiling lower than the ceiling imposed by that regulation. Attention is directed to new subsection 308(i) of the Small Business Investment Act, added by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State Usury ceilings, and to its forfeiture and penalty provisions.

Effective October 1, 1982, and until further notice, the FFB rate to be used for purposes of computing the maximum cost of money pursuant to 13 CFR 107.301(c) is 12.115% per annum.

Dated: September 30, 1982.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 82-27620 Filed 10-6-82; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 07/07-0087]

United Financial Resources Corp.; Application for License To Operate as a Small Business Investment Company (SBIC)

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1982)), under the name of United Financial Resources Corp., 7312 Jones Street, Omaha, Nebraska 68114, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*) and the Rules and Regulations promulgated thereunder.

The officers, directors and shareholder of the Applicant are as follows:

Name and address	Title and relationship	Percent of ownership
Terrance W. Olsen, 21345 Edgevale Place, Elkhorn, Nebraska 68022.	President, Director	0
Elmer E. Grinstead, 16023 Cedar Circle, Omaha, Nebraska 68130.	Vice President, Director.	0
Harold NMI Cooperman, 6523 Underwood Avenue, Omaha, Nebraska 68104.	Vice President, Director.	0
Raymond E. Becker, 12015 Jefferson Plaza, Omaha, Nebraska 68137.	Secretary, Director	0
William J. Wiedemeyer, 8737 Dupont Street, Omaha, Nebraska 68124.	Treasurer, Director	0
United-A. G. Cooperative, Inc., 7312 Jones Street, Omaha, Nebraska 68114.	Shareholder	100

United-A. G. Cooperative, Inc. (United-A. G), a Nebraska Corporation formed in 1933, is a wholesale grocery cooperative with 224 common stockholders. No one stockholder owns 10% or more of the voting securities of United-A. G.

The Applicant proposes to begin operations with private capital of $500,000 derived from the sale of 500,000 shares of common stock to United-A. G. The Applicant will conduct its operations in the States of Iowa, Kansas, Missouri, Nebraska and South Dakota.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness in accord with the Act and Regulations.

Notice is hereby given that any person may (not later than 15 days from the publication of this Notice) submit written comments on the proposed comany to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Omaha, Nebraska.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated October 4, 1982.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 82-27618 Filed 10-6-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5260]

Sam Woong Investment Co.; Surrender of License

Notice is hereby given that, pursuant to Section 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1982)), Sam Woong Investment Company, Suite 1007, 1625 West Olympic Boulevard, Los Angeles, California 90015, incorporated under the laws of the State of California, has surrendered its License No. 09/09-5260, issued by the SBA on February 5, 1981.

Sam Woong Investment Company, has complied with conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act, of 1958, as amended, and pursuant to above-cited Regulation, the license of Sam Woong Investment Company is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 4, 1982.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc 82-27619 Filed 10-6-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 82-095]

Houston/Galveston Navigation Safety Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of the initial meeting of the Houston/Galveston Navigation Safety Advisory Committee. The Meeting will be held on Tuesday, October 26, 1982 in the Wortham Auditorium at the Rosenberg Library, 2310 Sealy, Galveston, Texas. The meeting is scheduled to begin at 9 a.m. and end at 4 p.m. The agenda for the meeting consists of the following items:

1. Introductory Remarks by Committee Sponsor
2. Organizational and Administrative Business
3. Establishment of Subcommittees
   A. Houston/Galveston Vessel Traffic Service
   B. Aids to Navigation
   C. Waterway Management
4. Presentation of any additional items for consideration to the Committee
5. Adjournment

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Secretary no later than the day before the meeting. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander W. A. Monson, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, telephone number (504) 589-6901.

Dated: September 23, 1982.

James M. Fournier,

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

[FR Doc. 82-27633 Filed 10-6-82; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 147—Traffic Alert & Collision Avoidance Systems; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 147 on Traffic Alert & Collision Avoidance Systems to be held on October 26–28, 1982 in Conference Room 6104, National Aeronautics and Space Administration Building, 400 Maryland Avenue, SW., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Ninth Meeting Held on September 1–2, 1982; (3) Discussion of Federal Aviation Administration TCAS Symposium; (4) Presentation of Working Group Reports; (5) Continue Review of Second Draft Report on Minimum Operational Performance Standards for TCAS; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1717 H Street, NW., Washington, D.C. 20006; (202) 296–0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 28, 1982.

Karl F. Bierach,

Designated Officer.

[FR Doc. 82-27404 Filed 10-6-82; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Pulaski County, Arkansas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Pulaski County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Bruce Turner, Environmental Specialist, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201, Telephone: (501) 378–5355.

SUPPLEMENTARY INFORMATION:

The Federal Highway Administration (FHWA), in cooperation with the Arkansas State Highway and Transportation Department, will prepare an Environmental Impact Statement (EIS) for a proposal to construct a freeway around North Little Rock, Pulaski County, Arkansas. The proposed improvement would involve the construction of a four-lane divided highway from the intersection of Interstates 440 and 40 east of Little Rock around, or through, North Little Rock to the intersection of Interstates 430 and 40. Depending on the alternative chosen, length of the proposed project would be between 11.9 and 18 miles. Forecasts of land use and traffic indicate the need for major transportation improvements in northern Pulaski County.

Alternatives under consideration include (1) taking no action, (2) reconstruction of existing roadways, (3) mass transit, and (4) seven alternatives for placing the proposed facility on new location. The new location alternatives are located in both urban and rural settings.

An initial scoping meeting was held in September, 1982, with Federal, State, and local agencies having jurisdiction over portions of the project. A public involvement trailer will be parked at four locations in the North Little Rock area on four separate days in October, 1982, for purpose of informing the public of the proposed project and soliciting input from them regarding possible environmental impacts. Letters will be mailed to private organizations and individuals asking for their comments regarding the proposed project before the draft EIS is published. In addition, a public hearing will be held and public notice will be given as to the time and the place of the hearing. The draft EIS will be made available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action is addressed and all appropriate issues identified, comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: September 27, 1982.

E. A. Wueste,

Assistant Division Administrator, Little Rock, Arkansas.

[FR Doc. 82-27575 Filed 10-6-82; 8:45 am]

BILLING CODE 4910-22-M

Office of the Secretary

Minority Business Resource Center Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held November 8, 1982, at 9:30 a.m. in Conference Room 108, South Tower, 1720 Peachtree Road, NW., Atlanta, Georgia 30309. The agenda for the meeting is as follows:

—9–month report of the Program Management Centers
—Status report on bonding program
—DOT/Amtrak financial assistance program

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Ms. Betty Chandler, Minority Business Resource Center, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 426–2852. Any member of the public may present a written statement to the Committee at any time

Issued in Washington, D.C., on September 30, 1982.

Melvin Humphrey,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 82-27626 Filed 10-6-82; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

Surface Transportation Users Conference on Navigation

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of conference.

SUMMARY: A Surface Transportation Users Conference on Radionavigation is to be conducted in Washington, D.C. in mid-November. The purpose of the Conference is to present to the users and suppliers of navigation equipment the status and current evaluation of federally provided systems which are to satisfy marine, inland waterway and land requirements for radionavigation services in the post-1995 time period. This information relates to the selection

of a future mix of radionavigation systems as required by the Federal Radionavigation Plan. An opportunity will be provided for users to participate in the meeting and make their comments on the presentations of the Coast Guard, RSPA, Maritime Administration and other government agencies participating in the conference.

DATE AND TIME: November 16, 1982, 9:00 am to 4:00 pm and November 17, 1982, 9:00 am to 12:00 noon.

ADDRESS: FAA 3rd floor Auditorium, 800 Independence Avenue SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David C. Scull, Office of Budget and Programs, Research and Special Programs Administration, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, (202) 426–9520.

SUPPLEMENTARY INFORMATION: The first day's agenda will be devoted to an opening address by Rear Admiral Richard A. Bauman, Chief, Office of Navigation, U.S. Coast Guard. An overview of the Federal radionavigation planning process and the Federal Radionavigation Plan will follow. An economic and technical study of alternative radionavigation system mixes will be presented. A discussion of the current status and evaluations of various civil marine radionavigation systems and NAVSTAR GPS will complete the first day's agenda. The second day will be devoted to a panel discussion on the institutional issues affecting radionavigation planning. The presentation of statements by selected organizations and/or individuals representing the future users of radionavigation systems will follow and conclude the conference.

Issued in Washington, D.C., on September 28, 1982.

Howard Dugoff,

Administrator.

[FR Doc. 82-27547 Filed 10-6-82; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

[Docket No. 81-B]

Elimination of Advanced Design Bus Specifications

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of final action regarding mandatory bus specifications.

SUMMARY: The Department of Transportation announces its decision to rescind the policy making the Urban Mass Transportation Administration's (UMTA) Baseline Advanced Design Transit Coach Specification ("White Book") mandatory for its grantees, with the exception of certain safety-related specifications.

EFFECTIVE DATE: This change will become effective on October 1, 1982. Until that date, any deviations from the specification must continue to be approved by UMTA.

FOR FURTHER INFORMATION CONTACT: Wilbur Hare, Office of Procurement and Third Party Contract Review, UMTA, Room 7101, 400 Seventh Street SW., Washington, D.C. 20590, (202)426–2710.

SUPPLEMENTARY INFORMATION: On October 5, 1981, UMTA published a Notice in the **Federal Register** announcing its intent to rescind the policy of making the White Book mandatory for its grantees. The comment period closed on January 4, 1982. On June 3, 1982, UMTA published a Notice reopening the docket for comment, to ensure that all views were given an opportunity to be presented. The comments received since the proposed policy change was announced on October 5, 1981, favor the decision to make the use of the White Book Specifications nonmandatory.

The majority of comments also indicated that the policy was not likely to have an adverse impact on prices, competition, or bid protests. Many of the comments indicated further that the policy could facilitate innovative procurement techniques, including life-cycle cost principles, and would allow grantees greater flexibility to meet local needs.

Two comments noted the need for retaining those specifications related to safety. UMTA is also concerned with safety of buses purchased with Federal assistance, and will therefore continue to mandate those specifications determined to be safety-related, while exploring the possibility of transferring responsibility in this area to the National Highway Traffic Safety Administration. These specifications, listed below, represent minimum safety standards for advanced design buses, and grantees are free to specify additional or more stringent safety requirements. UMTA's concurrence will not be required in such cases.

Finally, the majority of comments did not address the question of whether the White Book Specifications should be maintained on a voluntary basis, but those that did, indicated that it should be maintained by some entity other than UMTA. UMTA will therefore discontinue maintenance of the majority of the specifications, but will continue to provide those safety specifications which continue to be mandated. Grantees are encourage to use the nonmandatory portion of the White Book Specifications to the maximum extent that it meets their needs, particularly the nontechnical provisions contained in Parts I, III and IV, in whole or in part, on a voluntary basis.

Final Policy

With the exception of the following safety-related features contained in Part II: Technical Specifications, the White Book Specifications will no longer be mandatory for UMTA grantees:

Safety Related Items Contained in the Baseline Advanced Design Transit Coach Specification (Part II: Technical Specification)

1.2—Definitions. Safety words and definitions are explained. Specifically, "Fireproof," "Fire-Resistant," "Head Injury," "Criteria," and "Classes of Failure—Class I: Physical Safety."

1.4—Legal Requirements. Vehicles shall meet all applicable FMVSS and BMCS regulations, many of which relate to safety.

1.5.4.3(1)—Class I: Physical Safety. Specifies 1,000,000 miles mean mileage between failures.

2.1.1.5.—Pedestrian Safety. Limits bus protrusions and extensions, except for mirrors, lights, and reflectors, to minimize hazard to pedestrians and to eliminate toe holds and handholds for use by unauthorized riders.

2.1.2.1—Strength & Fatigue Life. Prohibits Class I failures of the bus structure during the service life of the vehicle.

2.1.2.7—Jacking. Specifies need for safe jacking procedures to minimize the hazard to drivers or maintenance persons performing a tire change, etc.

2.1.2.9—Fire Protection. Requires a reinforced firewall to separate the engine and passenger compartments. The climate control system shall also be fireproofed from the engine area. Other fire prevention considerations are mentioned.

2.1.2.10—Crashworthiness. Requires that the bus be able to sustain a maximum static roof loading of 150% of the vehicle curb weight without appreciable deformation or window failure. Also, the passenger compartment space shall remain safe and intact in spite of a 25 mph impact by a 4,000 lb. automobile.

2.1.4.1—Headroom. Specifies interior clearance and padding to minimize hazard or injury to passengers.

2.1.4.2—Driver Barriers. Specifies barrier between the driver and passengers to eliminate distractions to

the driver during operation of the vehicles.

2.1.4.6—Fastening. Prohibits exposed edges or rough surfaces on interior panels.

2.1.5.2—Strength. The floor deck shall support passenger loads and it shall be able to withstand 2.5 x gross load weight without permanent deformation. Also, the floor fasteners shall be protected from corrosion for the service life of the bus.

2.1.6.1—Steps. Requires use of non-skid material and high visibility color coding and contrast to prevent accidents.

2.1.7.1—Construction. Specifies corrosion and fire resistant material for the wheel housing which will withstand penetration by a two-inch steel ball with 200 ft. lbs. of energy.

2.1.8.2—Dimensions. Prohibits projections on the passenger doors which may pose a hazard.

2.1.8.4—Door Projection. Same as 2.1.8.2.

2.1.9.1—Interior. Requires service compartment and access doors to prevent fumes and water from leaking into the bus interior.

2.1.9.2—Exterior. Requires service compartment and access door designs which will not open accidentally during transit service or washings. Also specifies safety props for the doors, an emergency manual system for power assisted door openers, and safe ventilation and clearance for the battery compartment.

2.2.1.1—Control. Requires an interlock system to pervent bus movement while the rear door control is activated.

2.2.1.2—Closing Force. Specifies a maximum door closing force of 10 lbs. on a one square inch area, and that no more than 35 lbs. of force be required to open the doors after they have closed.

2.2.1.4—Emergency Operation. Specifies operation for emergency door unlocking and opening.

2.2.3.1—Exterior Lighting. Requires visible audible warning signal to alert vehicles and pedestrians that the bus is in reverse operation.

2.2.3.5—Service Controls. Specifies tamper resistant control settings, non-skid pedals, and easy to read and use controls for safe operation.

2.2.3.6—Instruments. Specifies unobstructed view of instruments by the driver, minimization of glare caused by the instruments, and daylight readability.

2.2.3.7—On-Board Diagnostics. Specifies monitoring of critical systems and components to provide the driver with early warning of conditions which may lead to unsafe operation.

2.3.1—General Requirements (Interior Trim). Requires that all plastic and synthetics used inside the coach be fire-resistant (except vinyl coverings) per Federal specifications.

2.3.2.3—Structure and Design (Passenger Seats). Specifies limit of 1,000 PSI compression load by bus transverse objects (seat backs, panels) on the femur of passengers. Seat structural failures shall not result in hazardous deformations.

2.3.2.4(1)—Construction and Materials (Padded Seats). Requires energy absorption qualities to prevent injury to passengers during rapid deceleration.

2.3.2.4(2)—Construction and Materials (Cushioned Seats). Same comment as 2.3.2.4(1).

2.3.3.2—Structure and Materials (Driver's Seat). Specifies seat belt operation.

2.3.4—Floor Covering (Sections 2.3.4.1,2, and 3). Specifies non-skid rubber composition surface.

2.4.1.1—Windshield. Specifies wide visibility, reduced glare, safety glass liminate, and minimized reflections during night or day operations.

2.4.2.2—Materials (Side Windows). Cites safety test standards that apply. Also exempts acrylic and plastic glazing from interior trim flammability requriements of section 2.3.1.

2.5.1.1—Properties (Insulation Materials). Fire resistant qualities required.

2.6.3.1—General Requirements (Passenger Assists). Specifies that a 1-foot intrusion resulting from a crash shall not cause the assist to produce sharp edges, loose rails, or other dangerous configurations within the passenger area.

2.6.3.3—Vestibule. Specifies location of assists around vestibule area to prevent injuries to passengers during rapid deceleration.

2.2.6.2—Loading System (Wheelchair Passengers). Describes the requirement for safe operation of a wheelchair loading system. A throttle and brake interlock is cited, as are the use of non-skid materials and devices for securing the wheelchair from movement during loading.

2.6.6.3—Wheelchair Accommodations. Requires sufficient parking space on the bus and secure tiedown of the passenger.

3.1.2.2—Service (Power Mounting and Accessories). Requires rigidly supported, short, safety located fuel and oil lines to minimize fire hazard. Material preference for hoses is cited.

3.1.2.4—Hydraulic Drive. Requires warning sensors and shielded, short length, carefully located lines. The power steering function is given high priority.

3.1.3.1—Engine. Specifies an emergency stop switch for engineer types susceptible to runaway failure.

3.1.3.2—Cooling System. Specifies a push button type value to safely allow release of pressure or vacuum from the cooling system.

3.2.1—General Requirements (Final Drive). Specifies a drive shaft guard to prevent the shaft from striking the bus floor or ground in the event of failure.

3.3.2—Kneeling. Requires interlock to prevent bus movement during kneeling operation.

3.4.1—Strength (Steering). Specifies that fatigue life shall exceed 1,000,000 miles.

3.4.3.—Turning Effort (Steering). Power steering failure shall not result in loss of steering control. Steering effort shall not exceed 55 pounds at the rim.

3.5.1.1—Actuation (Service Brake). Force required by the driver to actuate maximum emergency braking shall not exceed 70 pounds.

3.5.1.4—Air System. Specifications for materials, installation, support, and prevention of leaks are cited. Pressure relief valves are required as well.

3.6.2.1—Fuel Tank. Fuel tanks (which are removable) shall be securely mounted to prevent movement during maneuvers.

3.6.2.2—Fuel Filler. Cites SAE standard J844—Type 1 (copper tubing) or J844—Type 3B (nylon tubing).

3.6.3.1—Location (Bumper System). Specifies protection for the front and rear of bus, up to 26 inches above ground.

3.6.3.2—Front Bumper. The bumper shall protect the coach to the extent that no damage shall result fron impacts with a 4,000 pound striker.

3.6.3.3—Rear Bumper. Similar to 3.6.3.2.

3.6.4.1—General Requirements (Electrical Requirements). Requires safety considerations in the design of the electrical system, e.g., circuit breakers, redundant grounds, safe wiring locations, and the reduction of high voltage hazards.

3.6.4.3—Wiring and Terminals. Cites SAE recommended practices for materials and construction, and additional installation safeguards.

3.6.4.4—Junction Boxes. Specifies fireproof boxes.

3.6.5.3—Master Battery Switch. Specifies emergency electrical load disconnect and rapid access to it.

3.6.5.4—Fire Detectors. Requires at least two high temperature sensors in the engine area.

Issued on September 29, 1982.

Andrew L. Lewis,

Secretary.

[FR Doc. 82-27628 File 10-6-82: 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Number: 150-98]

Delegation of Authority; Commissioner of Internal Revenue

Subject: Delegation of Authority to the Commissioner of Internal Revenue to Represent the Interests of the Executive Agencies of the Federal Government in Proceedings Before the West Virginia Public Service Commission and the Federal Communications Commission (FCC) Involving Telecommunications Service and Rates.

Pursuant to the authority contained in the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), delegating authority to the Secretary of the Treasury to represent the consumer interest of the Federal executive agencies in proceedings before the West Virginia Public Service Commission and the FCC, it is hereby ordered that:

(1) The Commissioner of Internal Revenue is delegated authority to represent the consumer interests of the Federal executive agencies before the West Virginia Public Service Commission and the FCC by filing complaints against the Chesapeake and Potomac Telephone Company of West Virginia and the American Telephone and Telegraph Company for gross negligence in providing service to the Internal Revenue Service;

(2) This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration;

(3) This authority may be redelegated to any officer or employee under your supervision and control.

Dated: September 14, 1982.

Donald T. Regan,

Secretary of the Treasury.

[FR Doc. 82-27546 Filed 10-6-82; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

During the period September 24 through September 30, 1982, the Department of Treasury submitted the following public information collection requirements to OMB, for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the Treasury Reports Management Officer, Information Resources Management Division, Room 309, 1625 I St. N.W., Washington, D.C. 20220; *and* to the OMB reviewer listed at the end of each entry.

Date Submitted: September 24, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: 1557-0051
Form Number: 990-C
Type of Submission: Revision
Title: Exempt Cooperative Association Income Tax Return
Purpose: Form 990-C is used by farmers cooperatives exempt under Internal Revenue Code section 521 to report the tax imposed by section 1381. IRS uses the information to determine if the tax was properly reported.
OMB Reviewer: Michael Abrahams, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 24, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: 1545-0208
Form Number: 5500-G
Type of Submission: Revision
Title: Annual Return/Report of Employee Benefit Plan
Purpose: Form 5500-G is an annual information return filed by governmental and church deferred compensation plans. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.
OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 24, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: 1545-0566
Form Number: 1120-M
Type of Submission: Revision
Title: U.S. Mutual Insurance Company Income Tax Return
Purpose: A mutual insurance company (other than a half insurance company and other than a fire, flood, or marine insurance company), uses this form to report its income and figure and pay tax. The data is used to verify that the income is properly reported and the correct tax is paid.
OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 24, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: N/A (New submission)
Form Number: 990-T
Type of Submission: New
Title: Exempt Organization Business Income Tax Return
Purpose: Form 990-T is used to compute the section 511 tax on unrelated business income of charitable organizations. IRS uses the information to enforce the tax.
OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 24, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: N/A (New submission)
Form Number: 1363
Type of Submission: New
Title: Export Exemption Certificate
Purpose: The form is needed by the air carrier of property transported by air to justify the transporting of the property tax free. It would be used as proof of tax exempt status of the shipment.
OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 28, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: 1545-0023
Form Number: 720
Type of Submission: Revision
Title: Quarterly Federal Excise Tax Return
Purpose: Form 720 is used to report excise taxes due from retailers and manufacturers on the sale and manufacture of various articles, to report taxes on facilities and services, and taxes on certain products and commodities (gasoline, lubricating oils, etc.). It enables IRS to monitor excise tax liability for various categories on a single form and collect

the tax quarterly in compliance with the law and regulations (IRC section 6011).
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 28, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: 1545–0130
Form Number: 1120, Schedule D and K–1
Type of Submission: Revision
Title: U.S. Small Business Corporation Income Tax Return, Capital Gains and Losses and Shareholder's Share of Undistributed Taxable Income, etc.—1982
Purpose: Form 1120S, Schedules D and K–1 are used by a Subchapter S corporation to figure its taxable income, undistributed taxable income, and other tax-related information. Copy B of Schedule K–1 is given to shareholders of the corporation to assist them in preparing their separate income tax returns. IRS uses the information to determine the correct tax.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 29, 1982
Submitting Bureau: U.S. Customs Service
OMB Number: 1515–0063
Form Number: CF 5129
Type of Submission: Extension
Title: Crew Member's Declaration
Purpose: A document which is used to accept and record informations of merchandise by crew members, enforce agricultural quarantines, the currency reporting laws and enforce revenue collection laws.
OMB Reviewer: Suzann Evinger (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 29, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: 1545–0049
Form Number: 990–BL, Schedule A and K–1
Type of Submission: Revision
Title: Returns for Black Lung Benefit Trusts and Certain Related Persons
Purpose: Form 990–BL is used by IRS to monitor the activities of black lung benefit trusts, and in some cases to collect excise taxes imposed on these trusts and certain related persons for engaging in prescribed activities. The tax is figured on Schedule A (Form 990–BL) and it is attached to Form 990–BL to report and pay the tax. Form 6069 is used mostly by coal mine operators to figure their maximum allowable deduction to black lung trusts. The tax on any excess contributions is figured and paid with it.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 29, 1982
Submitting Bureau: Bureau of Government Financial Operations
OMB Number: N/A (New submission)
Form Number: TFS 1201
Type of Submission: New
Title: Status of Federal Funds Report Form
Purpose: The report form is used for a broad evaluation of the reasonableness of the cash-on-hand balance in relation to the scheduled rate of monthly expenditures of grants funds.
OMB Reviewer: Suzann Evinger (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 29, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: 1545–0622
Form Number: NAR Form 3–180
Type of Submission: Extension
Title: Questionnaire—Closely Held Corporation
Purpose: NAR Form 3–180 is needed in the examination of estate and gift tax returns and used to verify the value of deceased's interest and to pick up any unreported stock transfers.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 30, 1982
Submitting Bureau: Alcohol, Tobacco and Firearms
OMB Number: 1512–0092
Form Number: ATF F 5100.14
Type of Submission: Revision
Title: Application for Certification of Label Approval Under Federal Alcohol Administrative Act
Purpose: The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages, so that the Bureau of ATF can excise control over labeling of alcoholic beverages. ATF requires that industry submit proposed labels with form. Labels are then approved or disapproved by the Bureau.
OMB Reviewer: Suzann Evinger (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 30, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: 1545–0631
Form Number: Letter 3N81
Type of Submission: Extension
Title: Investigation—Banks and Financial Institutions—Request for Financial Information
Purpose: Letter 3N81 is used to obtain information from banks and financial institutions to verify corrections of tax returns being examined.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 30, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: 1545–0124
Form Number: 1120–DISC, Schedule K, N and P
Type of Submission: Revision
Title: Domestic International Sales Corporation Return, and its related Schedules K, N and P
Purpose: U.S. Corporations that have elected to be treated as domestic international sales corporations file Form 1120–DISC to report their income and deductions. DISCs are not taxed; however, shareholders of a DISC are taxed on DISC income. The IRS uses Form 1120–DISC to ascertain if the DISC has correctly computed its income and Schedule K (Form 1120–DISC) to determine if shareholders of a DISC have correctly reported DISC income. Schedule P is used by a DISC that has dealings with a related supplier.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 30, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: 1545–0087

Form Number: 1040–ES, 1040–ES(FOD), 1040–ES(Espanol) and 1040–ES (NMI)
Type of Submission: Extension
Title: Declaration of Estimated Tax (4 forms), (1) for Individuals (2) for non-resident aliens (3) for use in Puerto Rico (4) for use in Northern Mariana Islands
Purpose: Form 1040–ES is used by individuals to make a declaration of their estimated tax for the taxable year if their gross income exceeds the limits of section 6015(a) unless their estimated tax is expected to be less than $300. The data is used to determine whether taxpayers are paying the correct tax during the year.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503
Date Submitted: September 30, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: 1545–0231
Form Number: 6478
Type of Submission: Revision
Title: Credit for Alcohol Used as Fuel
Purpose: The form is used to compute the credit allowed under IRC section 44E for alcohol used as fuel. The information is needed to determine that the amount of credit claimed is correct.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

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Date Submitted: September 30, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: 1545–0070
Form Number: 2350
Type of Submission: Revision
Title: Application for Extension of Time to File U.S. Income Tax Return
Purpose: Form 2350 is used to request an extension of time to meet bona fide residence or physical presence tests required to gain the benefits permitted under section 911. The information furnished is used to determine if the extension should be granted.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joy Tucker,
Departmental Reports, Management Officer.
October 4, 1982
[FR Doc 82-27545 Filed 10-6-82; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 195
Thursday, October 7, 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).

CONTENTS

	Items
Civil Aeronautics Board	1
Commodity Futures Trading Commission	2
Federal Home Loan Bank Board	3, 4
Federal Mine Safety and Health Review Commission	5
International Trade Commission	6
Nuclear Regulatory Commission	7

1

CIVIL AERONAUTICS BOARD

[M-363 (amdt 1), October, 1982]

Short Notice and Closure of Items for the October 7, 1982 Meeting

TIME AND DATE: 10 a.m., October 7, 1982.

PLACE: Room 1027 (open), Room 1012 (closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECTS:

26. Docket 40761, Application of Aeromar, C.por A. for exemption authority to conduct intermodal cargo services in the United States. (Memo 1508, BIA, OGC)
27. Negotiations with the United Kingdom. (BIA)
28 Report on Ireland. (BIA)
29. Report on Scandinavia. (BIA)

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1430-82 Filed 10-5-82; 3:45 pm]

BILLING CODE 6320-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m. Friday October 15, 1982.

PLACE: 2033 K Street, NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1425-82 Filed 10-5-82; 9:39 am]

BILLING CODE 6351-01-M

3

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 47, Page No. (none at this time), Monday, October 4, 1982.

PLACE: Board Room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

CHANGES IN THE MEETING: The following item has been added to the open portion of the Bank Board meeting scheduled Wednesday, October 6, 1982.

Application for Full Trust Powers—Peoples Federal Savings and Loan Association, East Chicago, Illinois

[No. 68, October 5, 1982]

[S-1426-82 Filed 10-5-82; 10:17 am]

BILLING CODE 6720-01-M

4

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 44039, Monday, October 4, 1982.

PLACE: Board Room, sixth floor, 1700 G Street, NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

CHANGES IN THE MEETING: The following items have been withdrawn from the open portion of the bank board meeting scheduled Wednesday, October 6, 1982.

Application for General Trust Powers—First Federal Savings and Loan Association of Dearborn, Dearborn, Michigan
Trust Department Application—First Federal Savings and Loan Association of Kalamazoo, Kalmazoo, Michigan
Application for Full Trust Powers—Peoples Federal Savings and Loan Association, East Chicago, Illinois

[No. 69, October 5, 1982]

[S-1429-82 Filed 10-5-82; 3:35 pm]

BILLING CODE 6720-01-M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 4, 1982.

TIME AND DATE: 10 a.m., Wednesday, October 6, 1982.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. UMWA v. Secretary of Labor, Docket No. CENT 81-223-R. (Issues include whether the judge erred in concluding that a representative of miners lacks statutory authority to contest a citation issued under the Mine Act.)

It was determined by the Commissioners that no earlier announcement of this argument was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5623.

[S-1428-82 Filed 10-5-82; 1:46 pm]

BILLING CODE 6735-01-M

6

INTERNATIONAL TRADE COMMISSION

(Executive Resource Board (ERB))

[USITC ERB-82-2]

TIME AND DATE: 11:00 a.m., Friday, October 22, 1982.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Old Business:*
   a. Review of proposed Individual Development Plans of Senior Executives and Executive Development Program Participants.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1427-82 Filed 10-5-82; 11:22 am]

BILLING CODE 7020-02-M

7

NUCLEAR REGULATORY COMMISSION

DATE: Week of October 4, 1982 (revised).

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and closed. *Wednesday, October 6.*

2:00 p.m.:
Discussion of Susquehanna-1 Investigation (closed—5) (additional item)
3:00 p.m.:
Status of Staff Certification on Licensee Compliance with Restart Requirements in TMI–1 (public meeting) (as announced)

Thursday, October 7:

9:30 a.m.:
Discussion and Possible Vote on Full Power Operating License for Susquehanna-1 (public meeting) (additional item)
10:30 a.m.:
Briefing by Regulatory Reform Task Force (Legislative Proposals) (public meeting) (as announced)
3:30 p.m.:
Affirmation/Discussion and Vote (public meeting) (items revised):
a. Hearing Requests Concerning Extension of Construction Completion Dates for WPPSS 1 and 2
b. Diablo Canyon Security—Purging of Classified Material in ALAB–653
c. FOIA Appeal 82–A–19C Regarding Emergency Preparedness and Low Power Operations
d. Delegation of Authority to Secretary (*postponed* from September 30)

ADDITIONAL INFORMATION:

On September 30, the Commission voted 5–0 to hold on short notice Affirmation of FOIA Appeal 82–A–4 (Fleischaker) Regarding Diablo Canyon Seismic Decision (ALAB–644), held that day.
Discussion of Final Rule—Waste Management Technical Regulations scheduled for October 7, is *cancelled.*

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the date of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

September 30, 1982.

Walter Magee,

Office of the Secretary.

[S–1424–82 Filed 10–4–82; 4:46 pm]

BILLING CODE 7590–01–M

federal register

Thursday
October 7, 1982

Part II

Department of Transportation

Research and Special Programs Administration

Use of United Nations Shipping Descriptions; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 176, and 178

[Docket No. HM-171B; Amdt. Nos. 171-67, 172-75, 176-14, 178-73]

Use of United Nations Shipping Descriptions

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This document amends the Optional Hazardous Materials Table (Optional Table) which appears in 49 CFR 172.102. The amendment has been necessitated by a number of changes to the International Maritime Organization (IMO), International Maritime Dangerous Goods Code (IMDG Code) upon which the Optional Table is based. The changes have been published by IMO as Amendment 19-80 to the IMDG Code. The purpose of this amendment to the Optional Table is to maintain alignment between the Optional Table and the corresponding provisions of the IMDG Code, in order to insure that the import and export of hazardous materials will not be adversely affected by potentially conflicting and duplicative requirements for the description, classification, labeling and marking of hazardous materials. Since the use of the Optional Table is, as the name implies, an option for international shipments, this rule will not impose an undue burden on persons affected by the regulations.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, Office of Hazardous Materials Regulation, Materials Transportation Bureau, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-0656.

SUPPLEMENTARY INFORMATION: The purpose of the Optional Table is to facilitate the international transportation of hazardous materials and to minimize a duplicity of shipping paper descriptions and package marking and labeling requirements that would be required to comply with both domestic and international standards. In order to satisfy this intent, it is essential that the Optional Table be maintained in alignment with the provisions of the applicable international standards as close as practical.

The Optional Table, in its present form, is reflective of the provisions of the IMDG Code including all amendments through Amendment 18-79. Recently, IMO published Amendment 19-80 to the IMDG Code, and established November 1, 1982, as the world-wide implementation date for the amendment. Consequently, MTB is revising the Optional Table to maintain the necessary alignment with the IMDG Code, but is establishing October 1, 1982, as the effective date for revision of the Optional Table in order to insure that the updated version of the Optional Table appears in the October 1, 1982, reprinting of the Code of Federal Regulations. Users are, therefore, cautioned that the amended entries in the Optional Table are not considered effective by IMO until November 1, 1982.

Amendment 19-80 to the IMDG Code includes changes to or deletion of approximately 140 existing hazardous materials entries and the addition of approximately 60 new entries. In addition, this amendment corrects several errors and omissions in the existing Optional Table.

On May 22, 1982, the name of the Inter-Governmental Maritime Consultative Organization (IMCO) was changed to the International Maritime Organization (IMO). Also, since IMO identifies its International Maritime Dangerous Goods Code by the term "IMDG Code," MTB is changing its term for this code from "IMCO Code" to "IMDG Code." Accordingly, where applicable, these changes are being incorporated into the regulations.

This is the third publication of a final rule under Docket Number HM-171. The first rule under this docket was published in the **Federal Register** on May 22, 1980 (45 FR 34560). The second rule under this docket which is designated as HM-171A was published in the **Federal Register** on June 1, 1981 (46 FR 29392). The final rule published herein is designated HM-171B. Succeeding rules published under docket HM-171 will designated in alphabetical sequence.

Since this rule does not impose mandatory additional requirements, notice and procedure thereon are considered unnecessary. Further, given the need to provide the widest possible dissemination of the changes to the Optional Table and October 1, 1982 schedule for republication of the affected title of the Code of Federal Regulations, I find that good cause exists for making this rule effective in fewer than 30 days after its publication in the **Federal Register**. Again, affected persons are reminded that the amended entries are not considered effective by IMO until November 1, 1982.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, References, Terms and acronyms.

49 CFR Part 172

Hazardous materials transportation, Hazardous materials description, Terms and acronyms.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Terms and acronyms.

49 CFR Part 178

Hazardous materials transportation, Terms and acronyms.

In consideration of the foregoing, 49 CFR Parts 171, 172, 176 and 178 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.7 paragraph (d)(17) is revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

d. * * *.

(17) "International Maritime Dangerous Goods Code" (IMDG Code), Volumes I, II, III and IV, 1977 Edition, and Amendments 14-76, 15-77, 16-78, 17-79, 18-79, and 19-80 thereto.

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PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

§ 172.102 [Amended]

2. In § 172.102 the Optional Hazardous Materials Table is amended with the following additions, deletions, and corrections:

Notes and symbols	Dangerous goods description and proper shipping names	IMO class	UN No.	Label(s) required	Packaging group	ST C	OW P	Other requirements
	Additions							
	Acetaldehyde ammonia	9	UN1841	None	III	1,2	1,2	Stow "away from" foodstuffs.

Notes and symbols	Dangerous goods description and proper shipping names	IMO class	UN No.	Label(s) required	Packaging group	ST C	OW P	Other requirements
	Acetic acid, glacial (or) Acetic acid solution, (more than 80% acid, by weight)	8	UN2789	Corrosive, Flammable Liquid	II	1,2	1,2	Segregation same as for flammable liquids. Glass carboys in hampers prohibited under deck.
	Acetic acid solution, (more than 25% but not more than 80% acid, by weight)	8	UN2790	Corrosive	II/III	1,2	1,2	Glass carboys in hampers prohibited under deck.
	Aircraft thrust device (for assisted take-off)	4.1	UN2791	Flammable Solid	II	1,2	5	
	Aluminium borohydride (or) Aluminium borohydride in devices	4.2	UN2870	Spontaneously Combustible, Dangerous When Wet	I	1	5	
	Amyl butyrates	3.3	UN2620	Flammable Liquid	III	1,2	1,2	
	Benzoquinone	6.1	UN2587	Poison	II	1,2	1,2	
	Bromine chloride	2.3	UN2901	Poison Gas, Oxidizer		1	5	Stow "away from" combustible materials.
	Bromotrifluoroethylene	2.1	UN2419	Flammable Gas		1,2	5	
	Butene. (See) Butylene							
	Butyraldoxime	3.3	UN2840	Flammable Liquid	III	1,2	1,2	
	Caesium hydroxide, solid	8	UN2682	Corrosive	II	1,2	1,2	Keep dry.
	Calcium hypochlorate, hydrated (or) Calcium hypochlorite, hydrated mixtures (containing not less than 5.5% and not more than 10% water)	5.1	UN2880	Oxidizer	II	1,2	1,2	Stow "away from" sources of heat where temperatures in excess of 55° C for a period of 24 hours or more will be encountered.
	Carbon dioxide, refrigerated liquid	2.2	UN2187	Nonflammable Gas		1,2	1	
	Castor beans, Castor meal, Castor pomace (or) Castor flake	9	UN2969	None	II	1,2	5	Stow "away from" living quarters, foodstuffs, and oxidizing substances.
	Chlorine pentafluoride	2.3	UN2548	Poison Gas, Oxidizer, Corrosive		1	5	Stow "away from" combustible materials.
	Chlorodifluoroethanes	2.1	UN2517	Flammable Gas		1,2	1	Stow "away from" living quarters.
	Chlorotrifluoromethane and trifluormethane azeotropic mixture (with approximately 60% chlorotrifluoromethane).	2.2	UN2599	Nonflammable Gas		1,2	1,2	
	Cyclobutane	2.1	UN2601	Flammable Gas		1,2	1	
	Dibromodifluoromethane	9	UN1941	None	III	1,2	1,2	Shade from radiant heat, Stow "away from" foodstuffs.
	Dichlorodifluoromethane and difluoroethane, azeotropic mixture, (with approximately 74% dichlorodifluoromethane)	2.2	UN2602	Nonflammable Gas		1,2	1,2	
	Ethyl acetylene	2.1	UN2452	Flammable Gas		1	5	
	Ethyl fluoride	2.1	UN2453	Flammable Gas		1,2	5	
	Fuel, pyrophoric, n.o.s.	4.2	UN1375	Spontaneously Combustible	I	1	5	Prohibited on any ship carrying explosives (except explosives in Division 1.4, Compatibility Group S).
	Gallium, (metal)	8	UN2803	Corrosive	III	1,2	1	Stow "away from" sources of heat and acids.
	Hexachlorocyclopentadiene	6.1	UN2646	Poison	I	1	5	Stow "away from" living quarters.
	Hexafluoroethane	2.2	UN2193	Nonflammable Gas		1,2	1,2	
	1-Hexene. (See) Hex-1-ene							
	Hydrofluoric acid and sulphuric acid mixtures	8	UN1786	Corrosive, Poison	I	1	5	Stow "away from" fluorides.
	Igniter for aircraft thrust device (for assisted take-off	4.1	UN2792	Flammable Solid	II	1,2	5	
	Isocyanates, n.o.s. (or) Isocyanate solutions, n.o.s. (flashpoint not less than −18° C but less than 23° C)	3.2	UN2478	Flammable Liquid, Poison	II	1	5	
	Isosorbide dinitrate mixture (with not less than 60% lactose, mannose, starch, or calcium hydrogen phosphate)	4.1	UN2907	Flammable Solid	II	1.2	5	
	Lithium ferrosilicon	4.3	UN2830	Dangerous When Wet	II	1,2	5	
	Lithium hydride, fused solid	4.3	UN2805	Dangerous When Wet	II	1,2	5	
	Lithium nitride	4.3	UN2806	Dangerous When Wet	I	1,2	5	
	3-Methyl-1-butene	3.2	UN2561	Flammable Liquid	II	1,2	1	
	Methyl fluoride	2.1	UN2454	Flammable Gas		1,2	5	
	Methyl nitrite	2.1	UN2455	Flammable Gas		1	5	
	2-Methylpentan-2-ol	3.3	UN2560	Flammable Liquid	II	1,2	1,2	
	Nitrating acid, mixtures	8	UN1796	Corrosive, Oxidizer (not required if nitric acid content not more than 50%)	I/II	1	5	Stow "away from" fluorides.
	Nitroethane	3.3	UN2842	Flammable Liquid	II	1,2	1,2	
	Nitrous oxide, refrigerated liquid	2.2	UN2201	Nonflammable Gas		1,2	1	
	Octaflorobut-2-ene	2.2	UN2422	Nonflammable Gas		1,2	1,2	
	Octafluoropropane	2.2	UN2424	Nonflammable Gas		1,2	1,2	
	Organic peroxides, n.o.s., trial quantities	5.2	UN2899	Organic Peroxide		1	5	
	Phenol, molten	6.1	UN2312	Poison	II	1	1	
	Propadiene	2.1	UN2200	Flammable Gas		1	5	
	Propylene tetramer	3.3	UN2850	Flammable Liquid	III	1,2	1,2	
	Refrigerating machines (containing non-flammable, non-toxic liquified gases)	2.2	UN2857	Nonflammable Gas		1,2	1,2	
	Resin solution, poisonous	6.1	UN1896	Poison, Flammable Liquid (only if flashpoint between 23 and 61 deg C)	I/II	1,2	1,2	If flashpoint between 23 and 61 deg C, segregation same as for flammable liquids.
			UN1896	St. Andrews Cross, Flammable Liquid (only if flashpoint between 23 and 61 deg C)	III	1,2	1,2	If flashpoint between 23 and 61 deg C, segregation same as for flammable liquids.

Notes and symbols	Dangerous goods description and proper shipping names	IMO class	UN No.	Label(s) required	Packaging group	ST C	OW P	Other requirements
	Sodium aluminum hydride	4.3	UN2835	Dangerous When Wet	II	1,2	5	
	Titanium sponge granules (or) Titanium sponge powders	4.1	UN2878	Flammable Solid	III	1,2	1,2	
	Trisocyanatoisocyanurate of isophoronediisocyanate, solution (70%, by weight)	3.3	UN2906	Flammable Liquid	III	1,2	1,2	
	Trinitrobenzene, wetted (with not less than 30% water, by weight)	4.1	UN1354	Flammable Solid	I	1,2	5	Stow "away from" heavy metals and their compounds.
	Trinitrobenzoic acid, wetted (with not less than 30% water, by weight)	4.1	UN1355	Flammable Solid	I	1,2	5	Stow "away from" heavy metals and their compounds.
	Trinitrotoluene, wetted (with not less than 30% water, by weight)	4.1	UN1356	Flammable Solid	I	1,2	5	Stow "away from" heavy metals and their compounds.
	Urea nitrate, wetted (with not less than 20% water, by weight)	4.1	UN1357	Flammable Solid	I	1,2	1,2	
	Vinyl butyrate, inhibited	3.2	UN2838	Flammable Liquid	II	1,2	1	
	Vinyl chloroacetate	6.1	UN2589	Poison, Flammable Liquid	II	1,2	1,2	Segregation same as for flammable liquids.
	Vinylidene chloride, (inhibited)	3.1	UN1303	Flammable Liquid	I	1,2	5	Keep cool.
	Xenon, refrigerated liquid	2.2	UN2591	Nonflammable Gas		1,2	1	
	Deletions							
	Acetic acid solution (containing not less than 80% of acid)	3.3	UN1842	Flammable Liquid, Corrosive	II	1,2	1,2	Stow "separated from" oxidizers.
	Acid mixtures, (hydrofluoric and sulphuric)	8	UN1786	Corrosive	I	1	5	Stow "away from" fluorides.
	Acid mixtures, (nitrating acid)	8	UN1796	Corrosive	I/II	1	5	Stow "away from" fluorides.
	Adhesives, n.o.s. (See) Cement, adhesive, (containing a flammable liquid)							
	Alkanesulphonic acids	8	UN1899	Corrosive	II	1,2	1	
	Amorces	1.4 S	UN0022	None. Package to be marked "1.4 S"		1,3	1,3	
	Calcium hydrogen sulphite, (solution)	8	UN1901	Corrosive	II	1,2	1,2	
	Caps, percussion	1.4 S	UN0044	None. Package to be marked "1.4 S"		1,3	1,3	
	Caps, toy, (See) Amorces							
	Chlorinated anthracene oil	6.1	UN2230	Poison	II	1,3	1,3	Stow "away from" sources of heat. Segregation same as for flammable liquids.
	2-Chloroethanol	3.3	UN1135	Flammable Liquid	II	1,2	1,2	
	Coal tar light oil	3.2	UN1137	Flammable Liquid		1,2	1	
		3.3	UN1137	Flammable Liquid		1,2	1,2	
	Cyclohexylamine	3.3	UN2357	Flammable Liquid, Corrosive	II	1,2	1,2	
	N,N-Dimethylcyclohexylamine	8	UN2264	Corrosive, Flammable Liquid	II	1,3	1,3	Keep cool. Segregation same as for flammable liquids.
	2-Ethoxyethyl acetate	3.3	UN1172	Flammable Liquid	III	1,2	1,2	
	Ethylene, (liquid)	2.1	UN1038	Flammable Gas		1,2	5	Stow "away from" living quarters.
	Fungicides, [(poisonous)], n.o.s.	6.1	UN1609	Poison	I/II	1,2	1,2	Stow "separated from" foodstuffs.
		6.1	UN1609	St. Andrews Cross	III	1,2	1,2	Stow "separated from" foodstuffs.
		9	UN1609	None	III	1,2	1,2	Stow "away from" foodstuffs.
N	Gaines, with detonator	1.1B	UN0225	Explosive (1.1B)				
N	Gaines, with detonator	1.2B	UN0268	Explosive (1.2B)				
N	Gaines, without detonator	1.1D	UN0042	Explosive (1.1D)				
N	Gaines, without detonator	1.2D	UN0283	Explosive (1.2D)				
	Germicides, (poisonous), n.o.s.	6.1	(UN1601)	Poison	I/II	1,2	1,2	Stow "separated from" foodstuffs.
		6.1	(UN1601)	St. Andrews Cross	III	1,2	1,2	Stow "separated from" foodstuffs.
		9	(UN1601)	None	III	1,2	1,2	Stow "away from" foodstuffs.
	Hydrofluoric and sulphuric acid, (mixtures, See) Acid mixtures, (hydrofluoric and sulphuric)							
	Hydrogen, (liquid)	2.1	UN1966	Flammable Gas		5	5	
	Naphthal distillate	3.2	(UN1268)	Flammable Liquid	II	1,2	1	
	Nitrating acid, (See) Acid mixtures, (nitrating acid)							
	Changes							
	Acetyl bromide	8	UN1716	Corrosive	II	1	1	Keep dry. Glass carboys prohibited on passenger vessels.
	Adhesives, (containing a flammable liquid)	3.1	UN1133	Flammable Liquid	II	1,2	5	Keep cool.
		3.2	UN1133	Flammable Liquid	II	1,2	1	
		3.3	UN1133	Flammable Liquid	II	1,2	1,2	
	Alkaline corrosive liquids, n.o.s. (See) Corrosive liquids, n.o.s.							
	Alkaline earth metal amalgams, n.o.s.	4.3	UN1392	Dangerous When Wet	I	1,2	1,2	
	Aluiminium bromide solution	8	UN2580	Corrosive	III	1,2	1,2	
	Aluiminium chloride solution	8	UN2581	Corrosive	III	1,2	1,2	
	Aluminium resinate	4.1	UN2715	Flammable Solid	III	1,2	1,2	
	Ammonium dinitro-o-cresolate	6.1	UN1843	Poison	II	1,2	1	Stow "away from" heavy metals, "separated from" flammable substances and "separated longitudinally by an intervening complete compartment or hold from" explosives.
	Ammonium nitrate fertilizer, (containing ammonium nitrate), n.o.s.	5.1	UN2072	Oxidizer	II	1,2	1,2	
	Ammunition, tear producing, non-explosive, (with neither burster nor expelling charge, non-fuzed)	6.1	UN2017	Poison, Corrosive	II	1,2	5	Keep dry. Stow "away from" living quarters. Segregation same as for corrosives.
	Argon, refrigerated liquid	2.2	Un1951	Nonflammable Gas		1,3	1	
	Arsenic bromide	6.1	UN1555	Poison	II	1,2	1,2	Keep cool. Stow "away from" living quarters.
	Arsenic compounds, solid, n.o.s.	6.1	UN1557	Poison	I/II	1,2	1,2	

Notes and symbols	Dangerous goods description and proper shipping names	IMO class	UN No.	Label(s) required	Packaging group	ST C	OW P	Other requirements
		6.1	UN1557	St. Andrews Cross	III	1,2	1,2	
	Benzyl chloride	6.1	UN1738	Poison, Corrosive	II	1	5	Keep dry. Segregation same as for corrosives.
	Bisisotridecyl peroxidicarbonate, (technical pure)	5.2	UN2889	Organic Peroxide	II	1	5	Control temperature −10 deg C. Emergency temperature 0 deg C.
	Bleaching powder. (See) Calcium hypochlorite mixtures, dry, (with more than 10% but not more than 39% available chlorine)							
	(Borate and chlorate, mixtures. See) Chlorate and borate (mixtures)							
	Bromochloromethane	6.1	UN1887	St. Andrews Cross	III	1,2	1,2	
	Bromoform	6.1	UN2515	St. Andrews Cross	III	1,3	1,3	Keep cool.
	Butylacrylate, inhibited	3.3	UN2348	Flammable Liquid	II	1,2	1,2	
	n-Butyl chloride. (See) Chlorobutanes							
	Butylphenols, liquid	6.1	UN2228	St. Andrews Cross	III	1,2	1,2	
	Calcium Chlorate, (aqueous) solution	5.1	UN2429	Oxidizer	II	1,2	1	Stow "away from" powdered metals and "separated from" ammonium compounds.
	Calcium cyanide	6.1	UN1575	Poison	I	1,2	1,2	
	Calcium hydrosulphite	4.2	UN1923	Spontaneously Combustible	II	1,2	5	Keep dry.
	Calcium hypochlorite mixtures, dry, (wiht more than 10%, but not more than 39%, available chlorine)	5.1	UN2208	Oxidizer	III	1,2	1,2	
	Carbolic acid. (See) Phenols, Phenol solutions (or) Phenol, molten							
	Celluloid, scrap	4.2	UN2002	Spontaneously Combustible	III	1	5	
	Cement, (liquid). (See) Adhesives, (containing a flammable liquid)							
	(Charcoal, non-activated, of animal or vegetable origin. See) Carbon, (non-activated, of animal or vegetable origin)							
	Chlorate and borate, (mixtures)	5.1	UN1458	Oxidizer	II	1,2	5	Stow "away from" powdered metals and "separated from" ammonium compounds.
	Chloroacetophenone	6.1	UN1697	Poison	II	1	5	Keep cool. Stow "away from" living quarters.
	Chlorobutanes	3.2	UN1127	Flammable Liquid	II	1,2	1	
	Chloroplatinic acid, solid	8	UN2507	Corrosive	III	1,2	1,2	
	Chloroprene, inhibited	3.2	UN1991	Flammable Liquid, Poison	I	1,2	1	
	Coal tar distillate	3.2	UN1136	Flammable Liquid	II	1,2	1	
		3.3	UN1137	Flammable Liquid	III	1,2	1,2	
	Corrosive liquids, n.o.s.	8	UN1760	Corrosive, Flammable Liquid (only if flashpoint between 23 and 61 deg C)	I/II/III	1	5	For a material that meets only the corrosion to skin criteria of 49 CFR 173.240(a)(1), "under deck" stowage is also authorized if the description includes the additional entry specified in Sec. 172.203(i)(3). If flashpoint below 61 deg C, segregation same as for flammable liquids.
	Crotonaldehyde, inhibited	3.2	UN1143	Flammable Liquid	II	1,2	1	
	1,5,9-Cyclododecatriene	8	UN2518	Corrosive	II	1	5	Stow "away from" living quarters.
	Cyclohexylamine	3.2	UN2357	Flammable Liquid, Corrosive	II	1,2	1	
		3.3	UN2357	Flammable Liquid, Corrosive	II	1,2	1,2	
	Diacetone alcohol	3.2	UN1148	Flammable Liquid	II	1,2	1	
		3.3	UN1148	Flammable Liquid	II	1,2	1,2	
	N,N-Di-n-butylaminoethanol	6.1	UN2873	St. Andrews Cross	III	1,2	1,2	
	Dichloroacetyl chloride	8	UN1765	Corrosive	II	1	5	Keep dry.
	p-Dichlorobenzene	6.1	UN1592	St. Andrews Cross	III	1,2	1,2	
	Dichloroethyl ether	6.1	UN1916	Poison, Flammable Liquid	II	1,2	1,2	Segregation same as for flammable liquids. Stow "away from" living quarters and sources of heat.
	N,N-Diethylaniline	6.1	UN2432	St. Andrews Cross	III	1,2	1,2	
	N,N-Diethylene diamine	8	UN2685	Corrosive, Flammable Liquid	II	1,3	1,3	Keep cool. Segregation same as for flammable liquids.
	Difluoromonochloroethane. (See) Chloro-difluoroethanes							
	N,N-Diisopropyl ethanolamine	8	UN2825	Corrosive	III	1,2	1,2	Stow "away from" caustic alkalis.
	Diketene, inhibited	3.3	UN2521	Flammable Liquid	II	1,2	1,2	
	N,N-Dimethylaniline	6.1	UN2253	Poison	II	1,3	1,3	Stow "away from" sources of heat.
	N,N-Dimethylcarbamoyl chloride	8	UN2262	Corrosive	II	1,2	1,2	
	N,N-Dimethylcyclohexylamine	8	UN2264	Corrosive, Flammable Liquid	II	1,3	1,3	Keep cool. Segregation same as for flammable liquids.
	N,N-Dimethylformamide	3.3	UN2265	Flammable Liquid	III	1,2	1,2	
	Dimethyl-p-nitrosoaniline. (See) p-Nitrosodimethylaniline							
	Diphenylmethane diisocyanate (M.D.I.)	6.1	UN2489	St. Andrews Cross	III	1,2	1,2	Stow "away from" sources of heat.
	Epibromohydrin	6.1	UN2558	Poison, Flammable Liquid	I	1	5	Stow "away from" living quarters. Segregation same as for flammable liquids. Shade from radiant heat.
	Ethylbenzene	3.2	UN1175	Flammable Liquid	II	1,2	1,2	
	Ethyl bromide	6.1	UN1891	Poison	II	1,3	1	Stow "away from" sources of heat.

Notes and symbols	Dangerous goods description and proper shipping names	IMO class	UN No.	Label(s) required	Packaging group	ST C	OW P	Other requirements
	Ethyl chloroacetate	6.1	UN1181	Poison, Flammable Liquid	II	1,2	1,2	Segregation same as for flammable liquids. Stow "away from" sources of heat and living quarters.
	Ethylene chlorohydrin	6.1	UN1135	Poison, Flammable Liquid	II	1,2	1,2	Segregation same as for flammable liquids. Stow "away from" living quarters and sources of heat.
	Ethylene glycol monoethyl ether	3.3	UN1171	Flammable Liquid	III	1,2	1,2	
	Ethylene glycol monoethyl ether acetate	3.3	UN1172	Flammable Liquid	III	1,2	1,2	
	Ethylene oxide and carbon dioxide, mixtures (containing not more than 10% carbon dioxide)	2.1	UN1041	Flammable Gas, Poison Gas		1,2	1	Stow "away from" living quarters.
	Ethylene oxide, (containing not more than 0.2% of nitrogen)	2.1	UN1040	Flammable Gas, Poison Gas		1,2	1	Stow "away from" living quarters.
	Ethylene, (refrigerated liquid)	2.1	UN1038	Flammable Gas		1	5	Stow "away from" living quarters.
	Ethyl ether. (See) Diethyl ether							
	Ethyl mercaptan	3.1	UN2363	Flammable Liquid, Poison	II	1,3	5	Keep cool and dry. Stow "separated from" foodstuffs and all odor absorbing cargo.
	Ethyl methacrylate, inhibited	3.2	UN2277	Flammable Liquid	II	1,2	1	
	Ethyl oxalate	6.1	UN2525	St. Andrews Cross	III	1,2	1,2	
	Ferrosilicon, (containing more than 30% but less than 90% silicon)	4.3	UN1408	Dangerous When Wet, Poison	III	1,2	1,2	Stow in a well ventilated compartment.
	Ferrous metal borings, shavings, turnings, (or) cuttings (in a form liable to self heating)	4.2	UN2793	Spontaneously Combustible	III	1,2	1,2	
	(Film from which gelatine has been removed. See) Celluloid, scrap							
	Fishmeal (or) fishscrap, (antioxidant treated, moisture content greater than 6% but not exceeding 12% by weight, fat content not exceeding 18% by weight)	4.2	UN2216	None. Package to be marked "Class 4.1"	III	1,2	1,2	Double strip stowage recommended. Provide good surface and through ventilation.
	Fishmeal (or) fishscrap, (not antioxidant treated, moisture content greater than 6% but not exceeding 12% by weight, fat content not exceeding 15% by weight)	4.2	UN1374	None. Package to be marked "Class 4.1"	III	1,2	1,2	Double strip stowage recommended. Provide good surface and through ventilation.
	Fluoric acid. (See) Hydrofluoric acid, solution							
	Formic acid	8	UN1779	Corrosive	II	1,2	1,2	Glass carboy in hampers prohibited under deck.
	Fuzes, detonating, (with protective features)	1.2D	UN0409	Explosive (1.2D)				
	Fuzes, detonating, (with protective features)	1.4D	UN0410	Explosive (1.4D)				
	Glyceryl trinitrate, solution (up to 1%) in alcohol	3.2	UN1204	Flammable Liquid	II	1,2	1	
	Helium, refrigerated liquid	2.2	UN1963	Nonflammable Gas		1,2	1	
	Hexamethylenediamine, solid	8	UN2280	Corrosive	III	1,3	1,3	Keep cool.
	Hydrazine hydrate (or) Hydrazine aqueous solutions (containing not more than 64%, by weight, hydrazine)	8	UN2030	Corrosive, Poison	II	1,2	5	Under deck permitted only if containing not more than 36%, by weight, hydrazine. Stow "away from" nitric acids and perchloric acids not exceeding 50% acid by weight.
	Hydrofluoric acid, solution	8	UN1790	Corrosive, Poison	I/II	1	5	Keep cool.
	Hydrogen fluoride, anhydrous	2.3	UN1052	Poison Gas, Corrosive		1	5	Stow "away from" living quarters.
	Iron carbonyl. (See) Iron pentacarbonyl							
	Iron pentacarbonyl	6.1	UN1994	Poison, Flammable Liquid	I	1	5	Segregation same as for flammable liquids. Shade from radiant heat.
	Isocyanates, n.o.s. (or) Isocyanate solutions, n.o.s., (boiling point not less than 300 deg C)	6.1	UN2207	St. Andrews Cross	III	1,2	1,2	Stow "away from" sources of heat.
	Isocyanates, n.o.s. (or) Isocyanate solutions, n.o.s., (flashpoint not less than 23 deg C, boiling point less than 300 deg C)	6.1	UN2206	Poison, Flammable Liquid (only if flashpoint is below 61 deg C.)	II	1,3	1	Shade from radiant heat. Segregation same as for flammable liquids if flashpoint below 61 deg C.
	Isocyanates, n.o.s. (or) Isocyanate solutions, n.o.s. (flashpoint less than −18 deg C)	3.1	UN2478	Flammable Liquid, Poison	II	1	5	Stow "away from" sources of heat. Keep cool.
	Isophorone diisocyanate	6.1	UN2290	Poison	II	1,2	1	Stow "away from" living quarters.
	Isopropyl mercaptan	3.1	UN2703	Flammable Liquid	II	1,3	5	Keep cool and dry. Stow "away from" foodstuffs and all odor absorbing cargo.
	Krypton, refrigerated liquid	2.2	UN1970	Nonflammable Gas		1,2	1	
	Lighters (for cigars and cigarettes, etc., containing) fuel	3.2	UN1226	Flammable Liquid	II	1,2	1	
	Matches, safety	4.1	UN1944	Flammable Solid	III	1,2	1,2	
	Mercurous nitrate	6.1	UN1627	Poison	II	1,2	1,2	
	Mercury compounds, liquid, n.o.s.	6.1	UN2024	Poison	I/II	1,2	1	
		6.1	UN2024	St. Andrews Cross	III	1,2	1	
	Mercury compounds, solid, n.o.s.	6.1	UN2025	Poison	I/II	1,2	1,2	
		6.1	UN2025	St. Andrews Cross	III	1,2	1,2	
	Methacrylic acid, inhibited	8	UN2531	Corrosive	III	1	1	Keep cool. Glass carboys prohibited on passenger vessels.
	Methylamine, aqueous solution	3.1	UN1235	Flammable Liquid	II	1,3	5	Keep cool. Stow "away from" mercury and its compounds.
	Methyl isocyanate (or) Methyl isocyanate solutions	3.2	UN2480	Flammable Liquid, Poison	I	1	5	Keep cool. Stow "away from" living quarters and sources of heat.
	Methylmorpholine	3.2	UN2535	Flammable Liquid, Corrosive	II	1,2	1	
		3.3	UN2535	Flammable Liquid, Corrosive	II	1,2	1,2	
	Napthalene, molten	4.1	UN2304	Flammable Solid	III	1	1	
	Neon, refrigerated liquid	2.2	UN1913	Nonflammable Gas		1,2	1	

Notes and symbols	Dangerous goods description and proper shipping names	IMO class	UN No.	Label(s) required	Packaging group	ST C	OW P	Other requirements
	Nickel carbonyl	6.1	UN1259	Poison, Flammable Liquid	I	1	5	Keep cool. Prohibited on any ship carrying explosives except explosives in Division 1.4, Compatibility Group S. Shade from radiant heat. Segregation same as for flammable liquids.
	Nicotine sulphate, solid (or) solution	6.1	UN1658	Poison	II	1,2	1,2	
	Nitrobenzotrifluorides	6.1	UN2306	Poison	II	1,2	1,2	Stow "away from" living quarters.
	3-Nitro-4-chlorobensotrifluoride	6.1	UN2307	Poison	II	1,2	1,2	Stow "away from" living quarters.
	Nitrocresols	6.1	UN2446	St. Andrews Cross	III	1,2	1,2	Stow "away from" living quarters.
	Phenyl mercaptan	6.1	UN2337	Poison, Flammable Liquid	I	1,2	1	Segregation same as for flammable liquids.
	o-Phosphoric acid, (liquid)	8	UN1805	Corrosive	III	1,2	1,2	Glass carboys in hampers prohibited under deck.
	o-Phosphorous acid	8	UN2834	Corrosive	III	1,3	1,3	Stow "away from" sources of heat.
	Phosphorus, white, molten	4.2	UN2447	Spontaneously Combustible, Poison	I	1	5	
	Potassium bifluoride, (solid)	8	UN1811	Corrosive, Poison	II	1,2	1,2	Keep dry.
	Potassium bifluoride, (solution)	8	UN1811	Corrosive, Poison	II	1,2	1,2	
	Pyrophoric fuel, n.o.s. (See) Fuel, pyrophoric, n.o.s.							
	Sodium chlorate, (aqueous) solution	5.1	UN2428	Oxidizer	II	1,2	1	Stow "away from" powdered metals and "separated from" ammonium compounds.
	Sodium fluoride, solution	6.1	UN1690	St. Andrews Cross	III	1,2	1,2	
	Sodium hydrogen sulphite, solution. (See) Bisulphites, inorganic, aqueous solutions, n.o.s.							
	Sodium hydroxide, solid	8	UN1823	Corrosive	II	1,2	1,2	Keep dry.
	Sodium hydroxide, solution	8	UN1824	Corrosive	II	1,2	1,2	
	Sodium methylate, solutions (in alcohol)	3.2	UN1289	Flammable Liquid	II	1,2	1	
		3.3	UN1289	Flammable Liquid	II	1,2	1,2	
	Sodium sulphide, anhydrous (or) Sodium sulphide (containing less than 30% water of crystallization)	4.2	UN1385	Spontaneously Combustible	II	1,2	1,2	Stow "separated from" acids.
	Sodium sulphide, hydrated, (with at least 30% water)	8	UN1849	Corrosive	II	1,2	1,2	Stow "away from" acids.
	Stibine	2.3	UN2676	Poison Gas, Flammable Gas		1	5	Stow "away from" living quarters.
	Styrene monomer, inhibited	3.3	UN2055	Flammable Liquid	II	1,2	1,2	
	Sulphuric acid, fuming	8	UN1831	Corrosive, Poison	I	1,2	1	Stow "away from" fluorides and all other corrosives except nitric acids, sulphur trioxide and other sulphuric acids. On cargo vessels under deck stowage is permitted in metal drums only.
	Sulphuric acid, spent	8	UN1832	Corrosive	II	1,2	1	Stow "away from" fluorides. For concentrations of more than 51% acid, stow "away from" all other corrosives except nitric acids, sulphur trioxide and other sulphuric acids. On cargo vessels under deck stowage is permitted in metal dums only.
	(Sulphuric and hydrofluoric acid, mixtures. See) Hydrofluoric acid and sulphuric acid mixtures							
	Sulphur, molten	4.1	UN2448	Flammable Solid	III	1	1	Stow "separated from" oxidizers, "away from" living quarters.
	Tear gas candles, (non-explosive)	6.1	UN1700	Poison, Flammable Solid	II	1	5	Segregation same as for flammable solids. Stow "away from" living quarters.
	4-Thiapentanal	6.1	UN2785	St. Andrews Cross, Flammable Liquid (only if flashpoint below 61 deg C)	III	1	5	Segregation same as for flammable liquids if flashpoint below 61 deg C. Shade from radiant heat and sunlight. Stow "away from" living quarters, acids and bases.
	Titanium (metal) powder, dry	4.2	UN2546	Spontaneously Combustible	II	1	5	
	Toluene diisocyanate (T.D.I.)	6.1	UN2078	Poison	II	1,2	1	Shade from radiant heat. Stow "away from" living quarters.
	Vinyl trichlorosilane, inhibited	3.2	UN1305	Flammable Liquid, Corrosive	I	1,2	1	

PARTS 171, 172, 176 AND 178 [AMENDED]

§§ 171.7, 171.8, 171.12, 172.102, 172.201, 172.401, 172.407, 172.502, 176.5, 176.11, 176.27, 176.30, 178.0–3 [Amended]

3. In addition to the amendments set forth above, 49 CFR Parts 171, 172, 176, and 178 are amended by removing the words "Inter-Governmental Maritime Consultative Organization, its acronym "IMCO" and the term "IMCO Code" and inserting in their place the words "International Maritime Organization," its acronym "IMO" and the term "IMDG Code," respectively, in the following places, as applicable:

(a) 49 CFR 171.7(c)(23);

(b) 49 CFR 171.8;

(c) 49 CFR 171.12(d);

(d) 49 CFR 172.102(a), (b), (c), (d), (h), (i), (j) and (k);

(e) 49 CFR 172.201(a)(4)(i);

(f) 49 CFR 172.401(c)(2);
(g) 49 CFR 172.407(g) and (h);
(h) 49 CFR 172.502(c);
(i) 49 CFR 176.5(b)(8);
(j) 49 CFR 176.11(a) and (a)(2)(ii);
(k) 49 CFR 176.27(b);
(l) 49 CFR 176.30(a), (a)(3), (a)(5)(ii), and (b); and
(m) 49 CFR 178.0–3(a).

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1)

Note.—The Materials Transportation Bureau has determined that this document will not result in a "major rule" under terms of Executive Order 12291 or a significant regulation under DOT's regulatory policy and procedures (44 FR 11034) or require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321), *et seq.* I certify that this Amendment will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation and environmental assessment are available for review in the docket.

Issued in Washington, D.C. on September 28, 1982.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 82–27290 Filed 9–30–82; 9:34 am]
BILLING CODE 4910–60–M

federal register

Thursday
October 7, 1982

Part III

Department of Health and Human Services

Office of Human Development Services

Revisions to Discretionary Grants Administration Manual

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Revisions to Part I, HDS Discretionary Grants Administration Manual

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice and request for comments.

SUMMARY: The Office of Human Development Services (HDS) announces proposed revisions to Part I of its Discretionary Grants Administration Manual dealing with programs administered by the Administration for Children, Youth and Families (ACYF), Administration on Aging (AoA), Administration for Developmental Disabilities (ADD), Administration for Native Americans (ANA), Office of Policy Development (OPD), and the Office of Policy Coordination and Review (OPCR).

The HDS Discretionary Grants Administration Manual is divided into parts which differentiate between general policies and procedures applicable to all HDS discretionary grants and cooperative agreements (Part I) and unique requirements specific to discretionary grants and cooperative agreements awarded by a particular program office (Part II, et al.). This notice covers only those revisions to Part I of the Manual. Proposed revisions to Part II of the Grants Administration Manual dealing with programs administered by the Administration for Children, Youth and Families were published **Federal Register** on October 18, 1979, 44 FR 60244.

DATE: Comments must be received by December 6, 1982.

ADDRESS: In order to be considered, comments must be addressed to: Department of Health and Human Services, Office of Human Development Services, Division of Grants and Contracts Management, Room 1296, North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Beverly Córdova (202) 472–6709.

SUPPLEMENTARY INFORMATION: Section 644(d) of the Head Start Act (Pub. L. 97–35) requires publication of all guidelines and instructions in the **Federal Register** to allow Head Start grantees the opportunity to comment on the provisions prior to the time they become effiective. The proposed revision to Part I of the HDS Discretionary Grants Administration Manual (GAM) is published here to comply with that requirement of the statute. We also invite comments from all other HDS financial assistance recipients and interested parties.

The Manual was originally published in 1977 and has not been updated since that time. The current policies reflected in this Manual incorporate changes to the Department's Grants Administration Regulations in 45 CFR Part 74, which have previously been published for public comment in the **Federal Register.** We have omitted from this manual those provisions which repeat, state differently, or expand upon Part 74. Instead, Part 74 is referenced as directly applicable to HDS grants and subgrants. Part 74 contains certain options for HDS implementation and our policy, as it relates to these options, is indicated throughout the Manual. To facilitate cross-referencing from the HDS Discretionary Grants Administration Manual to Part 74 and to provide an all-inclusive reference manual for recipients, Part 74 and its incorporated provisions of the applicable Office of Management and Budget Circulars (with the exception of OMB Circular A–95) will be attached as appendices to the final manual distributed to HDS recipients. Those documents (referred to as Attachments A, B, and C to the GAM) are not included in this publication.

The Department has under consideration proposed regulations (i.e., 45 CFR Part 98) that would exempt States from the requirements of 45 CFR Part 74. If these regulations are adopted, we would exempt States from the provisions of this Manual as well.

In revising the Manual, we have broadened the discussion of issues which have frequently been cited in audit findings of recipient organizations, often resulting in monetary audit disallowances. Recipients of HDS grants have identified other areas which need additional clarification or interpretation. For example, more detailed guidance is provided in such areas as:

- Cash management
- Obligation and expenditure of funds
- Indirect costs
- Allowable costs common to HDS programs
- Grant payment systems
- Denial of refunding
- Overdue reports
- Program income
- A–95 project notification and review system
- Selection of the proper subaward instrument when transferring substantive programmatic work to another party
- Explanation of assurance clauses contained in Part V of the standard application form
- Use of consultants
- Damage, loss, or theft of property
- Copyrights
- Non-Federal audits and audit resolution

We have provided "Checklists for Internal Control" as suggested guides to assist recipient officials in assessing the adequacy of the organization's business management capabilities. The Checklists cover personnel management, payroll, accounting, budget, cash management, procurement, and property management. These Checklists are not all inclusive, but can serve as a resource for ongoing internal evluation.

In addition to the changes mentioned above, the Office of Human Development Services is taking this opportunity to clarify and simplify the existing policies.

Dated: September 28, 1982.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

HDS Discretionary Grants Administration Manual

Office of Human Development Services, Department of Health and Human Services

Table of Contents

Introduction
Organization of the Manual
Definitions

Part I—HDS Administrative Requirements

Chapter 1—Application and Grant Award Process

A. Application Procedures
  1. General Discussion
  2. Types of Applications
  3. Withdrawal of Pending Applications
  4. Recommended Level of Support
B. Eligibility
C. Maintenance of Effort
D. Salary Information in Applications
E. Project Notification and Review System
  1. Purpose
  2. Applicability
  3. Types of Clearinghouses
  4. Types of Applications Under Covered Programs
  5. Notification Requirements of Applicant
  6. Notification Format
  7. Clearinghouse Processing
  8. Submission of Comments by Applicant
F. Notice to Unsuccessful Grant Applicants
G. Complaints Against Federal Grant Award Decisions
H. Grant Awards
  1. New and Continuation Awards
  2. Awards for Supplemental Funds (Including Low-Cost Extensions)
I. Discretionary Grant Fund

1. General Discussion
2. Obligation and Expenditure of Funds
3. Liquidation of Obligations
J. Unobligated Balances
K. Transferring Work Through Subgrants or Procurement Contracts Under Grants
1. Prior Approval Considerations
2. Selecting The Proper Award Instrument
L. Post-Award Changes to Grants
1. Prior Approval Procedures
2. Summary of Changes Requiring Prior Approval of Notification
3. Budget Changes
4. Programmatic Changes
5. Changes Requiring Notification to Grants Officer

Chapter 2—Cost-Sharing and Matching

A. General Discussion
B. Acceptable Costs and Contributions
C. Qualifications and Exceptions
1. Costs Borne by Other Federal Grants
2. Costs or Contributions Counted Towards Other Federal Cost-Sharing Requirements
3. Costs Financed by General Program Income
4. Income Earned by a Contractor
5. Special Standards for Third-Party In-kind Contributions
D. Valuation of Third-Party In-Kind Contributions
1. Volunteer Services
2. Loaned Equipment or Space
3. Donated Supplies
4. Donated Land, Buildings, and Equipment
E. Appraisal of Real Property
F. Records of Matching Contributions
G. Cost-Sharing in Research Grants
1. Institutional Cost-Sharing Agreement
2. Project by Project Agreements

Chapter 3—Cost Principles and Procedures

A. Basic Consideration
1. General Discussion
2. Prior Approval Requirements
3. Cost Transfers
B. Indirect Costs
1. General Discussion
2. Provisional Rate
3. Indirect Costs on Subawards
4. Exceptions
5. Application of Indirect Cost Rates
6. Settlement of Indirect Costs
C. Direct Costs
D. Allowable Costs
E. Unallowable Costs

Chapter 4—Financial Requirements

A. Grant and Subgrant Payments
1. Payment Systems
2. Method of Payment
3. Instructions for Requesting Payments
4. Cash Expenditure Reporting
5. Withholding Payments
6. Payments to Subgrantees
B. Cash Management
1. Under Letter-of-Credit
2. Under Advances by Treasury Check
3. Guidelines for Proper Cash Management
C. Financial Management Standards
D. Grant and Subgrant-Related Income
1. Interest or Investment Income
2. Program Income
E. Reimbursement from Other Federal Agencies
1. General Discussion
2. Reporting Reimbursements to HDS
F. Federal Income Tax
G. Cash Depositories
H. Insurance
I. Bonding

Chapter 5—Administrative Requirements

A. General Discussion
B. Personal Administration
1. Requirement
2. Guidelines
3. Documentation
4. Conflict of Interest or Nepotism
5. Code of Conduct
6. Political Activity
C. Use of Consultants
1. General Discussion
2. Consultants: Use of an Organization's Own Employees
3. Documentation Standards
D. Retention and Access Requirements for Records
1. General Discussion
2. Freedom of Information
E. Acknowledgements of Support on Publications and Audiovisuals
1. Publications
2. Audiovisuals
3. How to Word An Acknowledgement of Support
4. Disclaimers
F. Surveys and Questionnaires

Chapter 6—Reports

A. Financial Reporting Requirements
1. General Discussion
2. Financial Status Report
3. Federal Cash Transactions Report
4. Grantee Report of Expenditures
5. Request for Advance or Reimbursement
B. Performance or Progress Reporting Requirements
C. Overdue Reports
1. Action on Overdue Reports to DFAFS
2. Action on Overdue Reports to DAO
3. Additional Actions

Exhibits:

Financial Status Report (Exhibit X–6–1)
Federal Cash Transactions Report (Exhibit X–6–2)
DFAFS Report 27 (Exhibit X–6–3)
Request for Advance or Reimbursement (Exhibit X–6–4)

Chapter 7—Public Policy Requirements

A. Public Policy Assurances
1. Civil Rights
2. Human Subjects
3. Animal Welfare
4. Hatch Act
5. Fair Labor Standards Act
6. Environmental Protection and Related Legislation
7. Flood Insurance
8. Relocation Assistance and Real Property Acquisition
B. Other Policies
1. Citizenship
2. Safety Precautions

Chapter 8—Recipient Procurements

A. General Discussion
B. Relying on Recipient's Judgement
C. Granting Office Review of Proposed Procurements
D. Lease vs. Purchase
E. Requirement on Equal Employment Opportunity

Chapter 9—Property

A. General Discussion
B. Title to Equipment and Supplies
C. Real Property
D. Damage, Loss, or Theft of Property
1. Recipient at Fault
2. Recipient not at Fault
E. Using or Remitting the Federal Share
F. Intangible Property
1. Patents and Inventions
2. Copyrights

Chapter 10—Grant Suspension, Termination, and Closeout

A. Guidelines and Procedures Applicable to Suspension and Termination
1. General consideration
2. Denial of Refunding
3. Initial Contact
B. Suspension
C. Termination
1. Termination for Cause
2. Termination by Mutual Agreement
3. Termination Settlements
D. Grant Closeout
E. Amounts Payable to the Federal Government

Chapter 11—Audits

A. Non-Federal Audits
B. Audit Resolution

Chapter 12—Appeals

A. General Discussion
B. Indirect Cost Rate Appeals
C. Appeals to Grant Appeals Board

Attachments

45 CFR Part 74 (Attachment A)
OMB Circulars A–102 and A–110 Incorporated by Reference in Part 74 (Attachment B)
Cost Principles (Attachment C)
Checklists for Internal Control (Attachment D)
Personnel Management
Payroll
Accounting
Budget
Cash Management
Procurement (Purchasing)
Property Management

Introduction

This manual sets forth applicable administrative policies and procedures to recipients of discretionary project grants or cooperative agreements awarded by program offices in the Office of Human Development Services (HDS). It is intended to serve as a basic reference for project directors and business officers of recipient organizations who are responsible for the administration and financial management or grants or cooperative agreements.

This manual has been written specifically for recipient organizations of HDS *discretionary* grants and cooperative agreements. It is

emphasized that, while much of the information contined herein applies to grant transactions on a Department-wide basis, the manual is not designed for the UDS formula grant programs. State and local governmental recipients administering both HDS formula grant and discretionary grant programs should assure that the provisions in this manual are applied only to their discretionary grants.

The policies and procedures included in this manual are subject to applicable Federal laws and regulations. In the event these policies are procedures conflict with applicable Federal laws and regulations, the following order of precedence shall prevail:

1. Federal legislation,
2. Federal regulations, other than 45 CFR Part 74;
3. Terms and conditions of award document;
4. HDS Grants Administration Manual;
5. 45 CFR Part 74.

The Department of Health and Human Services' regulation governing grants administration, 45 CFR Part 74, is directly applicable to HDS grants and subgrants. Part 74 contains certain options for HDS implementation. HDS policy, as it relates to these options, is indicated throughout this manual. The HDS Grants Administration Manual must, therefore, be read in conjunction with 45 CFR Part 74. In the past, HDS has implemented the requirements governing grants administration by paraphrasing or repeating 45 CFR Part 74. HDS is changing this method of implementation. Now the manual simply provides references to Part 74. To facilitate cross-referencing from the HDS Grants Administration Manual to Part 74 and to provide an all-inclusive reference manual for recipients, Part 74 and its incorporated provisions of the applicable Office of Management and Budget Circulars (with the exception of OMB Circular A–95) are attached to this manual.

Any questions concerning the interpretation of a policy or its applicability to a particular situation shall be directed to the designated HDS Grants Officer.

Recipients are encouraged to maintain, or have access to, copies of the following documents which present additional guidance of policies and procedures to be used in the administration of HDS grants and cooperative agreements. These documents are available for public inspection and copying in the Health and Human Services' central and regional offices or may be obtained from the: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

1. Federal Register

This publication is used to inform the public about proposed and final regulations, program announcements and other policies issued by the Office of Management and Budget, the Department of Health and Human Services and the Office of Human Development Services. Final regulations published in the **Federal Register** are included in revisions to the Code of Federal Regulations.

2. Title 45 of the Code of Federal Regulations

Title 45 includes a codification of the administrative and program regulations applicable to HDS grants and cooperative agreements.

3. HHS Grants Administration Manual

The HHS manual sets forth general guidance for the management of grants and cooperative agreements awarded by agencies of the Department.

Assistant Secretary for Human Development Services.

Organization of the Manual

The HDS Grants Administration Manual is divided into parts which differentiate between general policies and procedures applicable to all HDS discretionary grants and cooperative agreements (Part I) and unique requirements specific to discretionary grants and cooperative agreements awarded by a particular HDS program (Part II, et al.). The directives included in Part II, et al. supplement or deviate from, and take precedence over, policies and procedures included in Part I. Where an administrative matter is not discussed in the applicable program part or subpart, the provisions of Part I will apply. Therefore, recipients must be aware of the provisions of Part I as well as any program-specific requirements to have a complete understanding of the administrative requirements applicable to its projects.

Changes to the HDS Grants Administration Manual will be issued under serially numbered Transmittal Notices, signed by the Assistant Secretary for Human Development Services. Each such Notice will describe the new material transmitted, the old material superseded, and the purpose of the change. New material will be printed in looseleaf form, containing revised or additional pages, bearing the change number and date. When required, the HDS Grants Administration Manual will be reissued.

Definitions

- *Acquisition:* As defined in 45 CFR Part 74.132.
- *Acquisition Cost:* The net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.
- *Alteration and Renovation:* Work required to change the interior arrangements or other physical characteristics of an existing facility or installed equipment so that it may be more effectively used for the project. Alteration and renovation may include work referred to as improvements, conversion, rehabilitation, remodeling or modernization.
- *Budget Period:* The intervals of time into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. Budget periods are usually 12 months long, but may be for shorter or longer periods, if appropriate.
- *Code of Federal Regulations (CFR):* The Code of Federal Regulations (hereinafter referred to as "CFR") is a series of books published by the Federal government which contain a codification of the final regulations published in the **Federal Register** by agencies of the Federal government, including HHS and HDS. The CFR is divided into 50 titles which represent broad areas subject to Federal regulations. Each title is divided into chapters which bear the name of the issuing agency. HDS Program regulations may be found in title 45 chapter XIII.
- *Consultant:* A person who gives advice or services for a fee, but not as an employee. The term includes guest speakers when not acting as employees of the party that engages them. Note that in unusual cases it is possible for a person to be both an employee and a consultant at the same time. That is, for certain work he or she is salaried as an employee while for other work, not as an employee, he or she receives a consulting fee from the same party.
- *Contract:* As defined in 45 CFR 74.3. The terms "contract" and "subcontract" do not include any agreements between organizational components of the same legal entity—even if one of the components provides property or services to or for the other.

• *Cooperative Agreement:* An award of financial assistance where "substantial involvement" is anticipated between the HDS granting office and the recipient during performance of the contemplated activity. "Substantial involvement" means that the recipient can expect Federal collaboration or participation in the management of the project. For purposes of this manual and regulations governing HDS Programs, all policies and procedures pertaining to grants are applicable to cooperative agreements. See Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224).

• *Cost Sharing or Matching:* As defined in 45 CFR 74.51.

• *Cost-Type Contract:* A contract or subcontract in which the contractor or subcontractor is paid on the basis of allowable costs incurred. The term includes cost-plus-fixed-fee contracts and subcontracts. However, the term does not include any subcontracts under a fixed-price contract or subcontract.

• *Discretionary Grant:* An award of financial assistance. In making these awards, the HDS granting office exercises judgment in approving the project, the project period, the recipient and the amount of the award. Examples of the types of projects supported through a descretionary grant include:

(1) *Demonstration*—A project to establish or demonstrate the feasibility of new methods or new types of services.

(2) *Research*—A project to develop new knowledge or to evaluate existing knowledge in new settings.

(3) *Service*—A project to support the cost of developing, organizing, establishing, providing or expanding the delivery of services.

(4) *Training*—A project to support the increase in numbers of personnel trained in techniques pertaining to the delivery of services or to the performance of functions necessary to the development of such services.

• *Equipment:* An article of nonexpendable tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An organization may use its own definition provided that it at least includes all nonexpendable tangible personal property as defined herein. The definition of equipment for cost-sharing and matching purposes has the same meaning, except that instead of "acquisition cost," the words "market value at the time of donation" shall be substituted.

"Special purpose equipment" means equipment which is usable only for research, medical, scientific, or technical activities. Examples of special purpose equipment include microscopes, X-ray machines, surgical instruments, and spectrometers.

"General purpose equipment" means equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings; air conditioning equipment; reproduction and printing equipment; motor vehicles; and automactic data processing equipment.

• *Federally-Recognized Indian Tribe:* As defined in 45 CFR 74.3.

• *Financial Assistance:* A financial assistance relationship exists when the principal purpose of the transaction is the transfer of money or anything of value to accomplish a public purpose of support or stimulation. This term includes grants, cooperative agreements, subgrants or subcooperative agreements.

• *Government:* As defined in 45 CFR 74.3.

• *Grant:* As defined in 45 CFR 74.3. For purposes of this manual, all policies and procedures applicable to grants are applicable to cooperative agreements, even though the latter term does not appear in the provision. Under discretionary grants, the following types of awards are applicable:

(1) *New*—The initial grant made in support of a project.

(2) *Continuation*—An award which adds funds to the grant and extends the grant period to support a budget period after completion of the first budget period. There are two basic kinds of continuations:

• *Noncompeting*—A continuation for a budget period that is within the currently established project period. These are noncompeting because they do not extend the project period by one or more budget periods.

• *Competing* (formerly known as competing extension)—A continuation for a budget period that is beyond the currently established project period. These are competing because they add one or more budget periods to the project period as a result of a competitive review.

(3) *Supplemental*—An additional award to support an activity carried on in a currently funded budget period.

• *Grant Period:* The period of time for which funds have been awarded. In incrementally funded projects, this means from the beginning date of the project period to the expiration date of the most recently funded budget period.

• *Grantee:* As defined in 45 CFR 74.3.

• *Granting Office:* (1) With respect to a grant, the program office within HDS authorized to administer grants awarded under legislative or delegated authority, and (2) with respect to a subgrant, the grantee organization.

• *Grants Officer:* The individual designated to serve as the HDS official responsible for the business and non-programmatic aspects of particular grant project(s). The Grants Officer serves as the counterpart to the business officer of the grantee institution and is the focal point for matters such as interpretation of grant policies and provisions and ensures that generally accepted business and accounting practices are followed by the grantee. The Grants Officer works closely with the program or project officer who is responsible for the scientific, technical, and programmatic aspects of the grant project. In accordance with the provisions of section 201(a) of the Older Americans Act, with respect to grant actions of the Administration on Aging, the Grants Officer concurs on grant awards and correspondence for the purpose of advising the Commissioner whether the proposed action complies with Departmental procedures established for the administration of grants.

• *HDS:* The Office of Human Development Services within the Department of Health and Human Services. HDS administers human services programs for such groups as the elderly, children, youth, Native Americans, persons with developmental disabilities and public assistance recipients through its central and regional offices.

• *HHS:* The U.S. Department of Health and Human Services (formerly the Department of Health, Education, and Welfare).

• *Local Government:* As defined in 45 CFR 74.3.

• *Notice of Financial Assistance Awarded (NFAA) or Notice of Grant Awarded (NGA):* The official HDS document that notifies the grantee or cooperative agreement recipient that an award is made. The NFAA or NGA contains or makes reference to all terms and conditions of the award, and provides the documentation for recording the obligation of Federal funds on the Department's accounting system.

• *Obligations:* As defined in 45 CFR 74.71.

• *OMB:* The Office of Management and Budget in the Executive Office of the President.

• *Outlays:* Charges made to the grant or subgrant project. Outlays may be reported on a cash or accrual basis. For

reports that are prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expense charged, the value of inkind contributions applied, and the amount of cash advances and payments made to subgrantees and contractors. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, subgrantees, contractors, and other payees.

• *Personal Property:* As defined in 45 CFR Part 74.132.

• *Prior Approval:* Written permission provided by an authorized granting office official in advance of an act that would result in either (1) the obligation or expenditure of funds, or (2) the performance or modification of an activity under the grant or subgrant-supported project, where such approval is required. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost (See 45 CFR 74.176(b)(2)).

• *Private Nonprofit Organization:* Any corporation, trust, association, cooperative, or other organization which (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. For the purposes of OMB Circular A–122 (cost principles for nonprofit organizations), the term "nonprofit organization" excludes (1) colleges and universities; (2) hospitals; (3) State, local and Federally-recognized Indian tribal governments; and (4) those nonprofit organizations which are specifically excluded from coverage of OMB Circular A–122.

• *Project:* The identified activity funded by an HDS grant which carries out the purposes of the authorizing legislation.

• *Project Director/Principal Investigator:* A qualified individual designated by the recipient to be responsible for the overall direction of the project.

• *Project Officer:* A granting office representative responsible for the programmatic and non-business monitoring of a recipient's performance.

• *Project Period:* The total time for which a project under a discretionary grant has been approved for support, including any extensions.

• *Real Property:* As defined in 45 CFR 74.132. If a question arises about whether certain property should be classified as real property, the law of the state or foreign country in which the property is located governs.

• *Recipient:* As defined in 45 CFR Part 74.3. This term includes recipients of cooperative agreements.

• *Replacement Equipment:* As defned in 45 CFR 74.132.

• *State:* As defined in 45 CFR 74.3.

• *Subgrant:* As defined in 45 CFR 74.3. All policies and procedures applicable to subgrants refer equally to financial assistance subawards under cooperative agreements.

• *Subgrantee:* As defined in 45 CFR 74.3.

• *Supplies:* As defined in 45 CFR 74.132.

• *Suspension:* Temporary withdrawal of the recipient's authority to obligate grant or subgrant funds pending corrective action by the recipient or a decision to terminate the grant or subgrant.

• *Termination:* Permanent withdrawal of the recipient's authority to obligate previously awarded grant or subgrant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the recipient. Termination *does not* include:

(1) Withdrawal or surplus Federal funds. This includes withdrawal of amounts that the grantee will not obligate before the end of the grant period or eliminating the surplus by decreasing the amount of the grant;

(2) Withdrawal of the unobligated balance by the granting office upon the expiration of an award;

(3) Refusal by the granting office to extend an award or to award additional funds (such as refusal to make a competing or noncompeting continuation, extension, or supplemental award);

(4) Annulment, i.e., voiding of an award upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from inception.

• *Terms and Conditions:* As defined in 45 CFR 74.3.

• *Third Party:* With respect to a grant, any entity except (1) the Federal government; (2) the grantee or recipient of the cooperative agreement; and (3) subgrantees under that grant or cooperative agreement. Note that contractors of recipients are third parties under this definition, although subgrantees are not.

• *Unliquidated Obligations:* For financial reports prepared on a cash basis, the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they are the amount of obligations incurred by the grantee for which an outlay has not been recorded.

• *Unobligated Balances:* The portion of the Federal funds authorized which has not been obligated by the grantee during a given budget period.

Part I—HDS Administrative Requirements

Chapter 1—Application and Grant Award Process

A. Application Procedures

Cross-reference: Subpart N of 45 CFR Part 74

1. *General Discussion.* Application forms and instructions for filing applications may be obtained from the HDS granting office authorized to fund projects for which the application is made. The instructions will include information concerning deadlines for submission of applications.

2. *Types of Applications.* a. New Applications: New applications are those submitted for a project not currently receiving HDS support. Announcements of the availability of funds to support new projects are usually published in the **Federal Register.** This announcement describes the program, the amount of funds available, eligibility requirements, where to obtain application forms, the deadlines for submitting an application, and other information about the activity.

Occasionally, competition for grant funds is limited by HDS program legislation or by an HDS granting office official to specific type of organization or a geographical area; e.g., Indian tribal governments, accredited Schools of Social Work, applicants from only HHS Region VIII. In these cases, announcement of the availability of funds may be made through individual letters to all prospective applicants publishing notices in newspapers, or other suitable forms of public notice.

b. Competing Continuation (formerly known as Competing Extension) Applications: Applications for competitive continuation of HDS financial assistance for one or more budget periods beyond the approved project period may be submitted when (1) the original project period was approved for a period of time shorter than grant support was needed, or (2) the results of the original activity warrant support beyond the period originally recommended. Except for limited competitions as discussed in subsection 2a above, announcements of

the availability of funds to support competing continuation projects are published in the **Federal Register.** Applicants compete for approval against new applications, other competing continuation applications, and any supplemental applications from current grantees requesting funds for additional activities. If approved and funded, the extended period of support is treated as a continuation of the original project period.

c. Noncompeting Continuation Applications: Noncompeting continuation applications for a grant to continue project support beyond the initial budget period but within the established project period will be mailed to the grantee approximately six months before the beginning date of the next budget period. These applications shall be submitted in accordance with program instructions. If application forms are not received by the grantee at the proper time, it is the responsibility of the grantee organization to request them from the appropriate HDS granting office. Noncompeting continuation applications are not subject to competitive, objective review procedures and do not compete for funds.

d. Supplemental applications: Supplemental applications are those submitted by existing grantees during the approved project period to either (1) request support for new or additional activities which are not identified in the current grant or which significantly expand the project's scope beyond the purpose(s) for which the current grant was awarded, or (2) request support for an expansion of the grant-approved activities. Supplemental applications requesting support for new or additional activities shall compete against new, competing continuation, and other supplemental applications when these project activities are within the scope of a program announcement published in the **Federal Register.** Supplemental applications requesting support for new or additional activities which are not within the scope of a program announcement may be reviewed non-competitively when the HDS granting office obtains proper authorization to deviate from the competitive review process and funds are available.

Supplemental applications requesting support to expand the grant-approved activities within the current scope of work (no new or additional work) shall be reviewed on a competitive basis by the HDS granting office. Funding decisions will be made based on the availability of funds and HDS granting office approval.

Applications to request support for new or additional activities or to expand current grant activities may be obtained from the appropriate granting office upon request. The application must be accompanied by a detailed justification for the need to increase Federal funds, a revised budget, and revised project objectives citing the changes is project activity, as appropriate. (See "Grant Awards" in section H of chapter 1 for a discussion of an award for supplemental grant funds).

3. *Withdrawal of Pending Applications.* An application for grant support may be withdrawn at any time by an applicant organization at the written request of an authorized grantee official. Correspondence regarding withdrawal of an application shall be addressed to the HDS Grants office to which the application forms were submitted.

4. *Recommended Level of Support.* In completing the budget information on the application form, applicants shall provide estimates of Federal funds needed to support the project for future budget periods. Based on this information, the HDS granting office may choose to reflect on the "Notice of Financial Assistance Awarded" a recommended level of support for the remainder of the project period. The grantee may use the recommended level of support as the basis for requesting funds on a continuation application. However, such estimated amounts do not constitute a commitment by the HDS granting office to award future funds beyond the current budget period. Continued support for a project will be based on the availability of funds, satisfactory progress by the recipient, and a determination that continued funding is in the best interest of the Federal government.

B. Eligibility

Human Development Services' granting offices award grants to private, nonprofit organizations, institutions of higher education, Indian tribes, and other government agencies. Grants to for-profit organizations will be made only when specifically authorized by the program legislation or when the authorizing legislation is silent about the types of organizations eligible for grant awards. Private nonprofit organizations which have not previously received HDS support must submit proof of their nonprofit status with the grant application. Any of the following is acceptable evidence of nonprofit status:

- A reference to the applicant organization's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code.
- A copy of a currently valid Internal Revenue Service tax exemption certificate.
- A statement from a State taxing body or State Attorney General certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status, or
- Any of the above proof from a State or parent organization, and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

Eligibility requirements for individual grant programs are contained in the authorizing legislation and program regulations. Other limitations on eligibility by class of recipient may be administratively imposed by the granting office. Applicants should consult the appropriate program regulations or program announcement to determine if additional requirements apply. Grants inadvertently awarded to ineligible recipients will be annulled and closed out in accordance with the procedures discussed in chapter 10 of this manual.

C. Maintenance of Effort

Where required by program legislation or regulations, applications for grants must include a written assurance that the services provided under the project will be in addition to, and not in substitution for, comparable services provided without Federal assistance.

D. Salary Information in Applications

Grant applications for HDS support are required to include specific salary rates or amounts for key individuals. When submitting these applications, the applicant may request the HDS granting office not to make the salary information available to the application's reviewers who are not Federal employees.

To the extent permitted by law, the HDS granting office will honor such requests if the applicant:

- Includes the salary information on (or attaches it to) one copy of the application which shall be identified by the words "Restricted Information";
- Omits salary information from all other copies; and
- Includes in all copies the following:

(1) The names of key individuals (or position descriptions when individuals

have not been selected) identified in the project narrative;

(2) Positions or job titles;

(3) Percentage of key individuals' time expected to be devoted to work on the project; and

(4) The amount of total salary support requested from the grant.

Information regarding salaries, financial information and names of employees of funded grant applications is considered proprietary information and will not be disclosed to the public under Freedom of Information requests.

E. Project Notification and Review System

Cross-references:

- OMB Circular A–95 and
- Appendix I of the *Catalog of Federal Domestic Assistance*

1. *Purpose.* The Office of Management and Budget Circular A–95 provides for Federal agency cooperation with State and local governments in coordination and review of proposed projects under selected grant programs through State and areawide clearinghouses (see E3 below for definitions of clearinghouse). The intent of the review is to allow State and local agencies to have input into the proposed project design so that it best meets local needs in an unduplicated fashion as well as to protect the applicant and the HDS granting office from last minute questions or concerns which may jeopardize funding of grant applications.

2. *Applicability.* a. General: The requirements of this section are applicable to the HDS programs listed in Appendix I of the Catalog of Federal Domestic Assistance or Attachment D of OMB Circular A–95, subject to additions, deletions, or waivers subsequently approved by OMB. HDS granting offices also identify those projects covered by the A–95 review process when grant program announcements are published in the **Federal Register**. An applicant for HDS financial assistance covered by the A–95 review must notify both the State and areawide planning and development clearinghouses, in the jurisdiction in which the project is located, of the intent to apply for HDS assistance. If an applicant's project covers more than one State, notification must be sent to all affected State clearinghouses.

b. Applications from Federally-Recognized Indian Tribes: Applications from Federally-recognized Indian tribes are not subject to the requirements of the project notification and review system except under the circumstances described in the next paragraph. However, Indian tribes may voluntarily participate in the project notification and review system and are encouraged to do so.

Where a Federally-recognized Indian tribal government has established a mechanism for coordinating the activities of Tribal departments, divisions, enterprises, and entities, HDS will, upon request of the Tribal government (transmitted through the Office of Management and Budget) require that applications for financial assistance programs covered by A–95 be subject to review by the Tribal coordinating mechanism as though it were a State or areawide clearinghouse.

3. *Types of Clearinghouses.*

- *State.* State clearinghouses are designated by the Governor and are usually state comprehensive planning agencies.
- *Areawide.* Areawide clearinghouses are substate in scale although there are a number of interstate clearinghouses covering bi/tri-State metropolitan areas. Areawide clearinghouses are also usually comprehensive planning agencies. The Office of Management and Budget (OMB) normally designates areawide clearinghouses covering metropolitan areas. Governors designate all others. It is OMB's policy to seek the concurrence of the Governor before making a designation.

4. *Types of applications Under Covered Programs.*

- *Initial applications* for new grants, competing continuation grants, and applications for substantive changes or amendments to approved projects are subject to the full notification and review requirements described in E5 below.
- *Pre-applications* are subject to clearinghouse review and comment as provided in E5 below.
- *Noncompeting continuation grant applications* are subject to clearinghouse review and comment at the request of either the State or areawide clearinghouse. Requests by clearinghouses are to be made directly to the applicant organization. HDS granting offices may, by regulation or policy, require that applicants for noncompeting continuation grants notify clearinghouses of impending applications. The requirement shall be imposed when:

(1) The initial grants were awarded prior to the HDS program's addition to the list of covered programs and clearinghouses consequently have not had a previous opportunity to review any applications for the projects involved; or

(2) The continuations are expected to involve substantial changes in the original grant supported activity. Under some HDS programs, the same organization is funded each year to continue a permanent program for essentially the same group of beneficiaries. However, the specific activities undertaken may vary from year to year in nature, scope, location, or scale and the annual work plan in the continuation application reflects these changes. HDS granting offices shall require that such continuation applications comply with the full notification and review requirements.

- Applications not submitted to, or submitted to but not acted upon by, the HDS granting office within one year after completion of clearinghouse review shall be subject to re-review upon request of the clearinghouse.

5. *Notification Requirements of Applicant.* Notification to the clearinghouses should precede the preparation of the application at the earliest feasible time to assure maximum time for effective coordination and to avoid delay in the timely submission of the application when completed, "Earliest feasible time" means as soon as the applicant can provide useful information on the following six items:

- Name, address, telephone number, and contact person for the applicant organization;
- Geographic location of the project to be administered;
- Brief description of the project by type, purpose, general size or scale, estimated cost, beneficiaries, or other characteristics which will enable the clearinghouses to identify agencies of State or local government having plans or programs that might be affected by the proposed projects;
- A statement as to whether or not the applicant has been advised by the HDS granting office that it will be required to submit environmental impact information;
- Federal program title, *Catalog of Federal Domestic Assistance Number*, and agency under which assistance will be sought; and;
- The estimated date the applicant expects formally to file an application.

6. *Notification Format.* Where the applicant has questions concerning State or areawide clearinghouse notification procedures, the clearinghouse itself is to be contacted for instructions as to notification format. In the absence of any contrary instructions from clearinghouses, applicants shall use the Standard Application Form 424 to notify clearinghouses of their intent to apply for HDS assistance.

Some clearinghouses have developed their own notification forms and

instructions and will continue to use them in place of the SF–424. Applicants shall use these when supplied by clearinghouses.

7. *Clearinghouse Processing.* Upon receipt of an applicant's notification of intent to apply for financial assistance, State and area-wide clearinghouses have a period of 30 days in which to inform State agencies, local regional bodies, agencies authorized to develop and enforce environmental standards, public agencies charged with enforcing of furthering the objectives of State and local civil rights laws, or other agencies that may be affected by the project. Projects in one clearinghouse jurisdiction which may have an impact on development in a contiguous jurisdiction will be jointly studied. Within the 30 day period, the clearinghouse will arrange, as may be necessary, to consult with the applicant on the proposed project.

If the applicant receives no response by the end of the 30 day period, it may submit the application to the HDS granting office with an indication that no clearinghouse response was received.

If the clearinghouses notify the applicant that they have no interest in or problems with the proposed project, the applicant has fulfilled its obligation and needs no further consultation with the clearinghouses before completing and submitting the application to HDS. If either the State or areawide clearinghouse indicates to the applicant an interest in reviewing the completed application, the applicant shall submit a copy to the clearinghouse.

If the review is not completed during this initial 30-day period, the clearinghouse may work with the applicant in the resolution of any problems raised by the proposed project during the period in which the application is being completed. When, through such consultations, all issues are resolved satisfactorily, the applicant may complete and submit the application. If conflicts are not resolved, the clearinghouse will notify the applicant that it will have comments to accompany the completed application.

Clearinghouses may have, if necessary, an additional 30 days to review the completed application (after notifying the applicant and the granting office) and to transmit to the applicant any comments or recommendations the clearinghouse (or others) may have. Written comments submitted to the areawide clearinghouse by other jurisdictions, agencies, or parties must be included as attachments to the comments of the areawide clearinghouse when they are at variance with the clearinghouse comments. Others from whom comments were solicited and received must be listed. The granting office will not release a grant award until the clearinghouse completes its review, which must be submitted to the HDS granting office no later than 60 days after the initial notification by the applicant.

In the case of a project for which Federal assistance is sought by a special purpose unit of government, clearinghouses will assure that any unit of general local government having jurisdiction over the area in which the project is to be located, has an opportunity to confer, consult, and comment upon the project and the application.

8. *Submission of Comments by Applicant.* Applicants must include with the completed application as submitted to HDS the following:

- Any comments and recommendations made by or through the clearinghouses, along with a statement that such comments have been considered prior to submission of the application; or
- A statement that the procedures outlined above have been followed and that no comments or recommendations have been received from a clearinghouse. Upon receipt of the statement, HDS will process the application without clearinghouse comments. HDS will not award an assistance project under a covered HDS program unless the above information is provided by the applicant.

F. Notice to Unsuccessful Grant Applicants

Organizations whose grant applications have been disapproved or not funded will be notified in writing within 30 days after the decision is made not to fund the application. Notification of disapproval will be sent to the grantee official who signed the application. Upon request, applicants will be provided a full explanation of the reasons for disapproval. The explanation may include information on the score or ranking of the application and individual comments (although the names of individual panel members will not be disclosed) or a summary of comments by panel members, but shall not include the names of other *unsuccessful* applicants.

G. Complaints Against Federal Grant Award Decisions

An HDS granting office decision to disapprove a grant application may not be formally appealed to HDS or HHS, unless otherwise stated in an HDS program regulation.

H. Grant Awards

1. *New and Continuation Awards.* HDS provides financial assistance through either a grant or a cooperative agreement. Applicants whose projects have been approved for support by the HDS program will be advised by a "Notice of Financial Assistance Awarded" which will include the identifying number; the period for which the project is intended to be supported (project period); the amount of the Federal funds awarded for the budget period; any special conditions under which the grant is made; and whether the award is a grant or a cooperative agreement.

2. *Awards for Supplemental Funds (Including Low-Cost Extensions).* An award for additional funding during the current budget period may be made after a supplemental application has been submitted by a grantee, reviewed on a competitive basis, and approved by the HDS granting office. (See section "A" of this chapter). If awarded, the supplemental amount becomes part of the approved budget for the current budget period.

If more time is needed to complete the work of a project, a grantee may request an extension of the budget period, not to exceed 12 months, unless otherwise restricted by program legislation or regulations. These non-competing extensions may be made without additional funds (no-cost) or with a minimal amount (low-cost) of further support, if supplemental funds are available. To be considered "lowcost," a supplemental for a 12-month extension must not exceed 25% of the total approved budget for the previous budget period. For periods of less than 12 months, the amount of funds is computed on a monthly basis, prorating the 25% funding limitation, i.e., maximum of 2.09% per month time (x) the total approved budget for the prior budget period.

Low-cost extensions may not exceed the 25% limitation noted in the preceding paragraph. If additional funds are needed, the grantee should submit an application for a competing continuation grant. (See section "A" of this chapter).

I. Discretionary Grant Funding

1. *General Discussion.* All HDS discretionary project grants are funded either by a single grant award covering the entire period of time for which assistance is approved (not to exceed

one budget period) or for multi-year periods of assistance, in annual increments called budget periods. The budget period may be 17 months or less, but are usually 12-months in duration. The written approval of the Assistant Secretary for Human Development Services or the Commissioner on Aging for Administration on Aging grants is required if a budget period exceeds 17 months (exclusive of no-cost or low-cost extensions). The initial grant covers only the first budget period. At the end of each budget period, the next budget period (if any) is funded by a continuation award.

Although funded annually, most multi-year projects do not have to recompete each year. However, at the completion of each budget period, an assessment is made to determine if the grantee is making satisfactory progress in the conduct of the project and whether continuation of the project is in the best interest of the government. At the time of the initial award, the granting office may approve the project for a project period of more than a year and the continuations within that period are awarded without further competition. The granting office determines the length of a project period by considering the frequency of competitive review considered necessary, the total length of time for which grant support is requested, and limitations imposed by the HDS program statutes or regulations.

2. *Obligation and Expenditure of Funds.* Subject to each year's budget approval and any limitations or restrictions which may be imposed by the granting office, funds awarded to recipients remain available for obligation at any time during the project period with the following exceptions: (1) Recipients may not obligate grant funds to conduct project activities after grant support ends, either through expiration, termination or denial of refunding; (2) HDS assumes no liability for project costs which exceed the total amount of Federal funds authorized on the Notice of Financial Assistance Awarded. Thus, recipients should not incur costs that exceed the amount authorized in a particular budget period; and, (3) Grant funds may not be used for obligations or expenditures made prior to the beginning date of an initial grant for a new project unless preaward costs are specifically provided for in the approved budget and have been approved in writing by the granting office.

The following table illustrates when an obligation is considered to occur for various kinds of property and services.

If the obligation is for—	The obligation is made—
• Services by an employee of the recipient.	• When the services are performed.
• Services by a contractor...	• On the date the recipient makes a binding written commitment to obtain the services or work; or • On the date the services are received, if there is not an advance written commitment to obtain the services.
• Public utility services.....	• When the recipient receives the services.
• Travel.....	• When the travel is taken.
• Acquisition of real or personal property.	• On the date the recipient makes a binding written commitment to acquire the property; or • On the date the property is received, if there is not an advance written commitment to obtain the property.
• Rental of real or personal property.	• When the recipient uses the property.
• A pre-agreement cost that was properly approved under the cost principles in 45 CFR Part 74.	• On the first day of the effective date of the grant/subgrant period.

3. *Liquidation of Obligations.* Cross-reference: Chapter 6 of this manual: All obligations incurred by a grantee should be liquidated within ninety (90) days of the end of the project period to coincide with the submission of the final Financial Status Report (SF–260). Head start or Administration for Native American grantees with "indefinite" project periods should submit a final adjusted expenditure report 90 days after the end of each budget period. (This final adjusted report reflects the liquidation of obligations which remained outstanding at the time the 4th quarter report was submitted).

If it is not possible to totally liquidate all obligations within the 90-day period specified for submission of a final report, grantees shall submit a "provisional" final report, indicating when the final report may be expected. When all obligations have been liquidated, the grantee shall submit a final expenditure report, showing $0 balance of line 10(h) of the SF–269. This $0 balance must also be reflected on the final DFAFS Report 27 or Cash Transactions Report (SF–272).

Cash advances or payments to subgrantees or contractors under the grant are reported on the SF–269, line 10(b). Although such advances are considered as an outlay, i.e., a charge made to the project, a *true* liquidation of obligations has not occurred until the subgrantee or contractor has liquidated all of its obligations, and reports this back to the grantee. Therefore, the grantee must take appropriate steps to assure that subgrantees or contractors liquidate their obligations as quickly as possible and submit final expenditure reports to the grantee showing total liquidation of obligations.

If all obligations have not been liquidated at the subaward level by the time the final expenditure report is due, the grantee shall submit a " provisional" final report and put in the "Remarks" section of the SF–269 a statement that the outlays include $ *amount* in payments to a subgrantee or contractor for which the subawardee has not yet reported outlays. Indicate that this is a "provisional" final report and when the true final report will be submmitted.

J. Unobligated Balances

At the direction of the HDS granting office, estimated or actual unobligated balances remaining at the end of a budget period may be processed in one of the following ways:

• As a *withdrawal* of Federal funds authorized that the grantee acknowledges it will not obligate by the end of the most recently funded budget period. (If cash has already been transferred to the grantee, the grantee must refund the unobligated funds). This withdrawal is not a termination. It is merely and adjustment to the amount of the grant based on the latest information provided by the grantee.

• As a *withdrawal* of the "final" unobligated balance upon expiration or termination of grant support. After a grant expires or is terminated, the grantee may no longer obligate against the grant. Therefore, the final unobligated balance, if any, lapses and the HDS Grants Officer withdraws it.

• As a carryover* from the previous budget period to the current or next period and either: (*Note that an unobligated balance from a prior period does not authorize a grantee to obligate grant funds in excess of the total Federal approved budget reflected on the Notice of Financial Assistance Awarded for the current budget period.)

(1) *Deducting* (offsetting) the anticipated or actual carrover *from the Federal share* of the approved budget in calculating the award amount for the next budget period (i.e., the carrover funds are used to support the next budget period resulting in the need for less new Federal funds). This results in no dollar change in the total Federal share of the new budget period.

The determination of the amount offset may be based on the estimated or actual unobligated balance. Except in unusual and justified circumstances, the HDS Grants Officer will take action to reduce the obligational authority available by offsetting when the reported *estimated* unobligated balance exceeds twenty percent (20%) of the amount authorized (10%) for authorizations in excess of one million

dollars. This provision does not apply to amounts for which obligational authority has not existed for a full prior budget period. When the *actual* unobligated balance is known, the grant may be amended to reflect the correct amount of unobligated funds.

(2) *Restricting* an amount equal to the carryover funds from the next budget period's award. The restricted amount is not available for use in the current budget period, but will be taken into account, i.e., *offset* in calculating the Federal share in a subsequent award, if any.

(3) *Adding* the anticipated or actual carryover *to the Federal Share* of the approved budget (creating additional authority by increasing the total Federal dollars) in calculating the award amount for the current budget period. If the unobligated balance is to be carried over as additional authority and is not reflected in the application for refunding, the grantee must submit a request for additional authority to the HDS Grants Officer which shall include a justification for use of the unobligated balance. Such requests should normally be for one-time expenditures; e.g., purchase of a van, alterations and renovations. Guidance on the use of such funds may be obtained from the HDS granting office. Permission to carry over unobligated funds as additional authority does not represent a permanent increase in the grantee's funding level.

K. Transferring Work Through Subgrants or Procurement Contracts Under Grants

Cross-references:

- Subpart L of 45 CFR Part 74;
- "Post-Award Changes" in chapter 1 of this manual; and
- "Granting Office Review of Proposed Procurements" in chapter 8c of this manual.

Recipients shall obtain prior approval from the granting office before transferring to others by contracting, subgranting, or any other means, the actual performance of "substantive programmatic work," as defined in subpart L of 45 CFR Part 74. If the transfer is not explicitly included in the approved project plan at the time of the award, the approval must be obtained through a postaward request. Grantees may develop their own procedures for approving the transfer of subgrantee project activities to another party. A recipient may not act merely as a straw-party, i.e., to act as a mere conduit of funds to another party without performing a substantive role itself. Therefore, the HDS granting office shall authorize a grantee to transfer programmatic work only if the grantee will perform at least one of the following roles:

- Principal performer of project activities;
- Primary beneficiary of Federal financial assistance; or
- Overall administrator of a program in which another party performs activities or receives financial assistance.

When programmatic work is transferred by the recipient to another party, there shall be a written contract of agreement stipulating the terms and conditions of the award; the work to be performed; reporting requirements; the dollar amount of the award; and, for procurement contracts, the required contact provisions discussed in appendices G and H of 45 CFR Part 74 and chapter 8 of this manual. If not included in the approved application, the grantee shall submit the following to the HDS granting office before approval can be obtained to transfer programmatic work to another party:

- Name of the organization;
- Purpose of contract/agreement;
- Statement (scope) of work;
- Period of performance;
- Estimated dollar amount of award;
- Completed budget sections A & B of Part III of application and budget justification for each subgrantee; and
- Grantee role in administering subawards.

2. *Selecting the Proper Award Instrument.* The transfer of substantive programmatic work may be accomplished through either financial assistance (subgrant) or procurement (contract). Unless precluded by statute, the recipient may choose the type of subaward instrument based on its own discretion or the organization's usual practices. Where discretion may be exercised, the nature of the intended relationship between the recipient and another party should determine the appropriate instrument to be used. Basically, it is a matter of whether the two parties stand primarily in a financial assistance or a buyer-seller relationship. Buyer-seller relationships mean procurement; financial assistance relationships mean subgrants. It is the relationship that counts—not the name used for the award instrument. For example, a "contract" may be the instrument used to formalize the financial assistance relationship between a grantee and a subgrantee. In this case, the term "contract" is merely a label for a subaward but it does not change the intended financial assistance relationship. Conversely, if a grantee is buying a service from another party, it is procuring that service, and a "contract" is the instrument that is used to formally express this relationship.

The granting office has the option of limiting the kinds of parties eligible to perform work transferred to another party; e.g., State governments, non-profit organizations, institutions of higher education. However, the granting office may not select or require the recipient to select a specific party. The choice of a specific party is the recipient's.

As indicated above, the recipient chooses whether a subaward is a subgrant or a procurement contract based on the nature of the intended relationship. Two examples of HDS programs where grantees award subgrants and procurement contracts, respectively, are: (1) Subawards made by Head Start grantees to "delegate agencies" reflect a financial assistance relationship; therefore, the delegate agencies are considered "subgrantees"; and, (2) Subawards made by a Federally-recognized Indian tribe receiving Administration on Aging title VI funds to a purchase-of-service provider reflect a buyer-seller relationship; therefore, the provider agencies are considered "procurement contractors."

It makes a difference whether a subaward is regarded as a subgrant or a procurement contract as different rules apply. Examples of some of the differences include, but are not limited to, the following:

In awarding subgrants:

- Grantees may use their own procedures for soliciting and selecting subgrantees. The procurement standards in subpart P of 45 CFR Part 74 apply only to recipient procurement awards and do not apply to the awarding of subgrants.
- Unless otherwise specified, the provisions of 45 CFR Part 74 apply to subgrantees as well as to grantees (see 45 CFR 74.4). Examples include, but are not limited to: (1) Grantees normally have to make advance payments to their subgrantees; and (2) subgrants may not be terminated by the grantee without the agreement of the subgrantee except for noncompliance with terms and conditions of the subaward.
- Grantees are required to submit to the HDS granting office for review and prior approval copies of subgrant documents which transfer "substantive programmatic work" to another party. The purpose of the review is to ensure a substantive role for the recipient and proper programmatic stewardship by the grantee.
- Grantees must verify and document proof of nonprofit status of their

subgrantees, if applicable. Subgrants may not be awarded to individuals.

In awarding procurement contracts:

• Recipients are required to use one of the following in the solicitation and selection of the contractor who will perform the programmatic work: (1) Small purchase procedures; (2) competitive sealed bids; (3) competitive negotiation; or (4) non-competitive negotiation. These procedures and procurement standards are described in subpart P and appendices G and H of 45 CFR Part 74 and chapter 8 of this manual.

• Normally, costs incurred under a procurement contract are paid through reimbursements, rather than through advance payments.

• Granting offices may not require recipients to submit contract documents for prior approval if the requirements would be an unauthorized deviation from 45 CFR Part 74. Part 74 permits prior approval only in specific situations described in § 74.7 and appendices G and H to Part 74.

L. Post-Award Changes to Grant

1. *Prior Approval Procedures.* Certain post-award project changes and budget revisions as described in this section require prior approval from the granting office. All grantee requests that require prior approval must be submitted, in writing, to the responsible HDS Grants Officer. The HDS Grants Officer shall be responsible for reviewing the request with the HDS granting office officials and for informing the grantee of the final disposition within 30 days from the date of the receipt of the request for approval. If the decision is still under condideration at the end of 30 days, the grantee shall be notified in writing as to when to expect the decision.

The grantee will receive written notification of the approval/disapproval through a revised Notice of Financial Assistance Awarded (NFAA) or a letter. As provided in § 74.102 of 45 CFR Part 74, approvals shall not be valid unless they are in writing and signed by an authorized official. In HDS, post-award approvals are usually jointly signed by the HDS Grants Officer and the HDS granting office official, but may also be signed by the Regional Administrator, the Assistant Secretary for Human Development Services, or for post-award requests made by AoA grantees, only the Commissioner on Aging. grantees should assure that one of these authorized official's signature appears on the approval letter or NFAA. Grantees who take action on the basis of letters or NFAA's signed by unauthorized officials do so at their own risk. Such responses will not be considered binding by or upon HDS.

Grantees shall be responsible for reviewing requests from their subgrantees for the approvals required. If an action by a subgrantee will result in a change in the overall grant project or budget requiring HDS approval, the grantee must obtain that approval before giving its approval to the subgrantee. Approvals shall not be valid unless they are in writing and signed by an authorized official of the grantee.

2. *Summary of Changes Requiring Prior Approval or Notification.* Except for items of cost requiring prior approval, recipients may transfer funds between and among the object class categories of the grant or subgrant-approved budget without the approval of the granting office. No transfers may, however, be made which would cause the funds to be used for purposes other than those intended or which adversely affect or significantly change the grant or subgrant-approved project.

There are, however, various types of changes to HDS supported projects which may occur after the grant or subgrant is awarded and which require prior approval or require that the recipient notify the Grants Officer. These changes are summarized below and are discussed in more detail in subsections 3, 4, and 5.

Budget Changes:

• Specific costs requiring prior approval in the cost principles and subsection 3a below.

• Other budget changes requiring prior approval under subpart L of 45 CFR Part 74.

• Transfer of funds between or among grant functions or activities.

Programmatic Changes:

• Change in project scope or objectives.

• Change in key people.

• Providing financial assistance to another party.

• Transfer of substantive programmatic work to another party.

• No-cost extensions to a project/budget period.

• Audiovisual activities.

• Change of recipient organization.

• Other project changes.

Changes Requiring Notification to Grants Officer:

• Change in recipient name.

• Substantial decreases in project costs.

3. *Budget Changes.* The approval of a grant or subgrant budget constitutes prior approval for the expenditure of funds for specific items included in that budget. Except as provided below, HDS' recipients may make revisions between and among the object class categories within the total direct costs budget of the project, provided that the funds are used for allowable costs of the project.

a. Specific Costs Requiring Prior Approval: The cost principles prescribed in subpart Q of 45 CFR Part 74 state that before certain types of costs are incurred, prior approval must be obtained. The cost items requiring prior approval differ somewhat among the various cost principles; consequently, different types of recipient and contractor organizations are subject to different requirements.

Unless otherwise stated in the grant award, the following exceptions or supplements to the prior approval requirements in the cost principles apply:

• Under OMB Circular A–21, section J.43f pertaining to educational institutions, HDS waives the requirement for prior approval when expenditures for domestic travel exceed the amount allotted for such travel in the approved budget by the greater of $500 or 25%.

• For *all* HDS grants, subgrants, and contracts under grants or subgrants, prior approval is required for foreign travel costs. Each separate foreign trip must specifically approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located outside Canada and the United States and its territories and possessions, foreign travel means travel outside that country.

• For *all* HDS grants, subgrants, and cost-type contracts under grants or subgrants, prior approval is required from the granting office for general purpose equipment and other capital expenditures having a useful life of more than two (2) years and an acquisition cost of *$500* or more per unit. Prior approval is also required for special purpose equipment with a unit cost of $1,000 or more. The meaning of general purpose and special purpose equipment is in the "Definitions" section of this manual under "Equipment."

• For *all* HDS grants, subgrants, and cost-type contracts under grants or subgrants, prior approval is required for alteration and renovations exceeding $1,000.

b. Other Budget Changes Requiring Prior Approval: In addition to the items requiring prior approval under the applicable cost principles and subsection 3a above, recipients shall obtain prior approval for any budget revisions which will:

• Involve transfer of amounts budgeted for indirect costs to absorb increases in the direct costs;

• Involve transfer of amounts previously budgeted for student support tuition waivers, stipends and other payments to or for trainees); or

• Result in a need for the award of additional Federal funds, e.g., increasing the indirect cost rate once a final rate is established. See chapter I, section H of this manual for a discussion of awards for supplemental grant funds.

c. Transfer of Funds Between or Among Grant Functions or Activities: Cross-reference: Chapter 6, A2 of this manual.

Some HDS granting offices require recipients to breakout separate grant functions or activities in the application budget and project narrative. For example, Head Start requires that activities commonly identified by program accounts be broken out separately by object class category in the budget. The Notice of Financial Assistance Awarded may incorporate the sum total of all of the separate functions or activities under the total Federal approved budget.

Unless otherwise instructed by the HDS granting office, recipients may transfer grant or subgrant funds from one program account or discrete grant activity to another *only* with prior approval. If HDS approval is given, a revised Notice of Financial Assistance Awarded will be prepared to reflect the transfer of funds.

4. *Programmatic Changes.* a. Change in Project Scope or Objectives: The recipient shall obtain prior approval for any change to the scope or objectives of the approved project. (For construction projects, any material change in approved space utilization or functional layout shall be considered a change in scope.) Changing the scope or objectives may result from a significant alteration of the approved project activities, change in the direction of the project, the types of services delivered, the number of beneficiaries to be served, or training provided.

b. Changes in Key People: The recipient of a research grant or subgrant (or any other kind of grant or subgrant if the terms of the award make this rule applicable) shall obtain prior approval 30 days (unless this time period is waived by the granting office because of unanticipated changes) in advance of the following anticipated changes:

• To continue the project during any continuous period of more than three months without the active direction of an approved project director or principal investigator. The HDS grant may be terminated if the arrangements made by the grantee are not approved by the HDS granting office.

• To permit the project director or principal investigator (or any other persons named and expressly identified as key project people in the notice of grant or subgrant award) to devote substantially less effort to the project than was anticipated when the grant or subgrant was awarded.

• To replace the project director or principal investigator (or any other persons named and expressly identified as key project people in the notice of grant or subgrant award). Since approval of a project may to some extent have been based on the participation and/or qualifications of the named project director or principal investigator, prior approval of the proposed alternate plans for conducting the activity is required and must be requested before the actual departure of the incumbent. The recipient shall describe the qualifications of the proposed project director or principal investigator and include a biographical sketch with the request. If the arrangements proposed by the grantee, including the qualifications of any proposed replacement, are not acceptable to HDS, the grant may be terminated. The recipient may also request that the grant or subgrant be terminated if the recipient does not wish to continue the project or replace the project director or principal investigator.

c. Providing Financial Assistance to Another Party by Subgranting or Any Other Means (self-explanatory).

d. Transfer of Substantive Programmatic Work to Another Party: Procedures for obtaining approval for the transfer of "substantive programmatic work" to another party after the award is made are discussed in section K of this chapter under "Transferring Work Through Subgrants or Procurement Contracts Under Grants."

e. No-cost Extension to a Project/Budget Period: A grantee may request a no-cost extension of the budget or project period when it is determined that a project may not be effectively brought to a close within the time alloted. The request must be in writing to the HDS Grants Officer and must be submitted and approved prior to the end of the project period. Such a request must state the reasons for extending the project and the anticipated completion date. No-cost extensions may not exceed twelve (12) months.

f. Audiovisual Activities: Except to the extent explicitly included in the project plan at the time of award, using grant funds for any of the following requires prior approval:

• Producing an audiovisual when direct production or purchase cost is in excess of $5,000 or more.

• Buying ownership of any of the rights in the work embodied in the audiovisual (This does not apply to merely buying a license in any of the rights).

• Presenting or disseminating to the general public an audiovisual that was produced or bought with grant support. Examples include:

(1) Broadcast on commercial, cable, or educational television or radio,

(2) Showing in commercial motion picture theaters,

(3) Showing in public places such as airports, waiting rooms, bus or railroad depots, and vacation resorts, and

(4) Showing to civic associations, schools (except when used as a teaching tool in a classroom setting), clubs, fraternal organizations, or similar lay groups.

Prior approval is not required for:

• Any audiovisual activity under a subgrant.

• Any audiovisual whose direct production or purchase cost to the grantee is $5,000 or less.

• The production or purchase of any audiovisual as a research instrument or to document experimentation or findings, if the audiovisual is not intended for presentation or dissemination to the general public.

A grantee's request for approval to produce audiovisual materials shall be in writing and include the following:

• Name of project, grant number, name of grantee organization;

• Objectives of the project;

• Subject matter of films, and relation to project objectives;

• Intended audience, medium in which film will be shown;

• Estimated costs; and

• Format, credits, length, etc., and method of production.

g. Change of Recipient Organization: A change of recipient organization is the process whereby the legal and administrative responsibility for a grant or subgrant-supported project is transferred from one legal entity to another prior to the expiration date of the approved project period. Such a change may be accomplished only under the following conditions:

(1) Either:

• The grant/subgrant to be transferred has been terminated according to the procedures described in Subpart M of 45 CFR Part 74 and chapter 10 of this manual; or

• A noncompeting continuation award for the grant/subgrant to be transferred has been withheld for any reason where

the recipient's actions form the basis for the decision to withhold grant support; or

• The original recipient has agreed to transfer responsibility to a replacement recipient within the approved project period; *and*

(2) The need for the grant/subgrant-supported project that existed at the time of the award of the original grant/subgrant continues to exist at the time of the proposed award of the replacement grant/subgrant;

(3) There will be no significant change in project activities; *and*

(4) The change of recipient organizations is made in a timely manner.

When the principal investigator on a research project transfers from one domestic institution to another, the project in behalf of the same principal investigator may be supported at the new institution for the remainder of the previously approved project period in an amount not to exceed that previously recommended. The change may be made without competitive review provided that (1) one of the conditions listed above under 4g(1) exists; (2) the principal investigator plans no significant change in research objective and level of funding for direct costs from that of the original project; (3) the facilities and resources at the new location allow for successful performance of the project; and (4) the proposed replacement grantee submits an application for support of the project.

h. Other Project Changes: In addition to the above requirements, other kinds of changes to an approved grant or subgrant project may require prior approval, as stipulated by program regulations or other terms of the award.

5. *Changes Requiring Notification to Grants Officer.* a. Change in Recipient Name: This change occurs when a recipient legally assumes a different organizational identity. There is no alteration to the project activities. The grantee shall provide the following documents to the responsible HDS Grants Officer:

• A copy of the instrument which affected the name change signed by the authorized official of the State having jurisdiction;

• An opinion of counsel for the grantee that the change of name was properly effected in accordance with applicable statutes; and

• A list of all affected HDS assistance projects, accompanied by a revised SF-424 (application form) showing the new grantee name and the new principal officers, if applicable.

Once the documents are received, the responsible Grants Officer shall acknowledge in writing HDS' acceptance of the name change agreement through a revision to the Notice of Financial Assistance Awarded.

b. Substantial Decreases in Project Costs: When changes in the project result in a decrease in the anticipated project costs, the grantee should notify the responsible HDS Grants Officer. A request for a decrease of the approved budget or project cost must be accompanied with a revised budget and project objectives citing any changes in project activity.

Chapter 2—Cost-Sharing or Matching

Cross-reference: Subpart G of 45 CFR Part 74.

A. General Discussion

A number of Human Development Services' grant programs require that grantees contribute a portion of the total costs of the project (not all grants require cost-sharing or matching). This cost-sharing or matching requirement is usually prescribed by HDS program legislation and/or regulations and is stipulated in the grant agreement. The specific contribution is computed as a percentage of the total costs of the project.

B. Acceptable Costs and Contributions

With the qualification and exceptions listed in "C" below, a cost-sharing or matching requirement may be satisfied by either or both of the following:

• Allowable costs incurred by the recipient or cost-type contractor. This includes allowable costs borne by non-Federal grants or by cash donations from non-Federal third parties.

• The value of third-party in-kind contributions applicable to the grant or budget period to which the cost-sharing or matching requirement applies.

C. Qualifications and Exceptions

1. *Costs borne by other Federal grants.*

• 45 CFR 74.53(a) specifies that a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. The exception to this rule occurs when the legislative history of a program or the law itself clearly conveys the intent of Congress that such costs may be used to meet the cost-sharing or/matching requirements of other programs. Federal programs which permit this usually limit such use to purposes which complement their own objectives. Recipients should be fully aware of these limitations when they consider using costs borne by another Federal program to match HDS grant funds.

• 45 CFR 74.53()a)(2) discusses the use of general revenue sharing funds, which are not considered a Federal grant, to satisfy a cost-sharing or matching requirement.

2. *Costs or contributions counted towards other Federal cost-sharing requirements.* 45 CFR 74.53(b) specifies that neither costs nor the values of third-party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of an HHS grant if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

3. *Costs financed by general program income.* The limitation on the use of general program income for cost-sharing or matching purposes is discussed in 45 CFR 74.53(c).

4. *Income Earned by a Contractor.* Sometimes contractors under grant or subgrant earn income from the activitives carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property borne by this income may count towards satisfying a cost-sharing or matching requirement unless the other terms of the grant expressly permit this kind of income to be used to meet the requirement.

5. *Special Standards for Third-Party In-Kind Contributions.* 45 CFR 74.53(e) discusses the requirements in order for third-party in-kind contributions to count towards satisfying a cost-sharing or matching requirement.

D. Valuation of Third-Party In-Kind Contributions

1. *Volunteer Services.* Volunteer services are services which are not paid for by the recipient or cost-type contractor vis-a-vis the paid services a recipient may use to meet a cost-sharing or matching requirement. Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled persons. Each hour of volunteer service may be counted if the service is an integral and necessary part of an approved project. The procedures for valuing volunteer services are in 45 CFR 74.54.

Examples of volunteer services which may be counted as a third-party in-kind contribution include:

• The reasonable value of time donated by Head Start community members, Board, policy council, and parents in conducting the Performance

Standards Self-Assessment and/or attending business meetings.

• The difference between a reduced rate or fee charged to the recipient by an individual in his or her regular line of work and the individual's standard rate or fee. For example, a medical doctor may charge a grantee a fee of $10.00 for a medical examination provided, whereas the M.D.'s customary and prevailing fee is $20.00. The difference of $10.00 per medical exam may be counted as a third-party in-kind contribution.

• The reasonable value to time donated by an employee of the recipient organization if (1) the individual is not compensated through regular salary, overtime, or compensatory time; and (2) the service and time donated is not within the scope of the individual's paid employment.

2. *Loaned Equipment or Space.* As provided in 45 CFR 74.55(b), if a third party donates the use of equipment or space in a building but retains title, the contribution shall be valued at the fair rental rate of the equipment or space.

3. *Donated Supplies.* As provided in § 74.55(a), if a third party donates supplies, the contribution shall be valued at the fair market value of the supplies at the time of the donation.

4. *Donated Land, Buildings, and Equipment.* If a third-party donates land, buildings, or equipment and title passes to a recipient, the treatment of the donated property is as follows:

a. Donated Land: As provided in 45 CFR 74.56(b)(1), if approval is obtained from the HDS granting office, the fair rental rate of the donated land may be counted as cost-sharing or matching. If approval is not obtained, no amount may be counted for donated land. HDS gives its approval only if it determines that it would be appropriate for the party awarding the grant, subgrant, or contract to approve rental of the land as an allowable direct cost.

b. Donated Buildings: HDS granting offices *do not* allow the fair market value of donated buildings to be counted as cost-sharing or matching for HDS programs. This policy is an option used by HDS as provided in 45 CFR 74.56(b)(1). Only depreciation or use allowances based on the property's market value at the time it was donated may be counted. The depreciation or use allowances for this property are not treated as third-party in-kind contributions; instead, they are treated as costs incurred by the recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in subpart Q of 45 CFR Part 74, in the same way as depreciation or use allowances for purchased buildings.

c. Donated Equipment: As provided in 45 CFR 74.56(b)(2), if prior approval is obtained, the fair market value at the time of donation of the equipment may be counted as cost-sharing or matching. HDS gives its approval only if it determines that it would be appropriate for the party awarding the grant, subgrant or contract to approve the fair market value of the equipment as an allowable direct cost. If approval is not obtained, only depreciation or use allowances may be counted for donated equipment.

E. Appraisal of Real Property

If appraisal of real property is required, the procedures for establishing the fair market value of land or a building or the fair rental rate of land or space in a building are in 45 CFR 74.57.

F. Record of Matching Contributions

45 CFR 74.53(d) provides the requirements for records of cost-sharing or matching contributions. Records of matching contributions are subject to audit in the same manner and to the same extent as records dealing with the use of Federal grant funds.

G. Cost-Sharing in Research Grants

Grantees are required, by the HHS Appropriations Act, to share in the total project costs of all Departmental grant-supported research projects. Grantees may share in the costs either under (1) an Institutional Cost-Sharing Agreement, or (2) on a project-by-project basis.

1. *Institutional Cost-Sharing Agreement.* The Institutional Cost-sharing Agreement covers all research grants awarded by agencies of the Department to a particular grantee. In exceptional cases, separate agreements for individual departments or locations of a grantee organization may be negotiated, if deemed to be advantageous. These separate agreements are referenced in the Institutional Cost-sharing Agreement. In no case will individual cost-sharing agreements be required on projects that are covered by an Institutional Agreement.

The Public Health Service in the Department negotiates all Institutional Cost-sharing Agreements on behalf of HHS granting agencies. Under an Institutional Agreement, the grantee agrees to maintain a stipulated average percentage contribution for all research projects. The adequacy of the grantee's overall contribution will be tested on the basis of the grantee's fiscal year. This average contribution must be consistent with the level established by the agreement. During a given fiscal year, there may be no contribution (or only a token contribution) on some grant projects, provided that the overall percentage contribution is maintained through higher contributions on other grant projects. However, there must be at least some cost-sharing on every project during the project period.

Grantees are not required to obtain prior HDS approval of the manner in which contributions are to be provided. Contributions may be made in any allowable budget category or a combination of categories; e.g., salaries, travel, equipment, supplies, indirect costs.

Grantees requesting further information on institutional cost-sharing should direct their inquires to: Cost and Audit Management Branch, Office of Administrative Management, Public Health Services, 5600 Fishers Lane, Rockville, Maryland 20852.

2. *Project by Project Agreements.* Cost-sharing arrangements for individual research projects shall be negotiated separately with the HDS Grants Officer. The agreement will cover the entire project period (including all noncompeting continuation or supplements) and will provide for the percentage of total project costs, i.e., the combined Federal and grantee non-Federal share, which the applicant proposes to contribute to the planned research. There may be no contribution in some years of the project period, provided that the agreed overall percentage for the project as a whole is met. Separate cost-sharing arrangements will not be required for non-competing continuations and supplements.

The grant will not be awarded until the applicant and the HDS Grants Officer have agreed to a cost-sharing percentage for the project. This agreed percentage will be specified in the "Notice of Financial Assistance Awarded" and will signify acceptance of the applicant's cost-sharing arrangement.

If a grant is terminated or a continuation grant is denied refunding, the negotiated cost-sharing percentage will apply to the actual period of Federal support. However, the HDS Grants Officer may retroactively approve lower percentages to avoid unanticipated hardships on recipients.

The amount of the grantee's cost-sharing during the period covered by a "Financial Status Report" shall be indicated on that report. If the grantee did not cost-share during the period, "no cost-sharing" should be written on the appropriate line of the SF 269 form.

Chapter 3—Cost Principles and Procedures

Cross-references:
- Subpart Q of 45 CFR Part 74 and
- Attachment C of this Manual

A. Basic Consideration

1. *General Discussion.* The costs of a grant or subgrant-supported activity are comprised of its allowable direct costs plus its allocable portion of allowable indirect costs, less applicable credits. The principles for determining allowable costs are prescribed in subpart Q of 45 CFR Part 74 under five separate sets of cost principles. Each grantee is subject to only one set, according to the classification of that grantee. A subgrantee or cost-type contractor receiving funds under an HDS grant is subject to the cost principles according to its classification, which may not necessarily be the same as that of the grantee. For example, where a State government awards a subgrant or cost-type contract to an institution of higher education, OMB Circular A–21 would apply to the costs incurred by the institution of higher education while OMB Circular A–87 would apply to the costs incurred by the State.

To be allowable, costs must be: (1) Reasonable; (2) allocable; (3) consistently treated; (4) determined in accordance with generally accepted accounting principles; and (5) in compliance with any limitations or exclusions set forth in the applicable cost principles, program regulations, legislation, or this manual.

2. *Prior Approval Requirements.* The cost principles prescribed in subpart Q of 45 CFR Part 74 state that before certain types of costs are incurred, prior approval must be obtained. These prior approval requirements are discussed under "Post-Award Changes" in section L of chapter 1 of this manual. Prior approval is also required for certain programmatic changes and budget revisions under subpart L of 45 CFR Part 74.

3. *Cost Transfers.* Recent audit reports have cited instances where recipients have transferred costs from other projects or programs to HDS grants many months after the original charges had been recorded in the recipient's accounting records. In many cases, the transfers were not supported by documentation which adequately explained why the transfers were made. HDS recognizes that transfers of costs from one project to another are occasionally necessary to correct bookkeeping or clerical errors in the original charges. HDS also recognizes that closely related work may be supported by more than one funding source and that in such cases, a transfer of costs from one funding source to another may be proper. However, frequent, tardy, and unexplained (or inadequately explained) transfers, particularly where they involve projects with significant cost overruns or unobligated balances, raise serious questions about the propriety of the transfers themselves as well as the overall reliability of the recipient's accounting system and internal controls.

a. Correction of Errors: Transfers of costs to HDS grants which represent corrections of clerical or bookkeeping errors must be made promptly after the errors are discovered and, where possible, prior to the submission of the grant expenditure report. The transfer must be supported by documentation which contains a full explanation of how the error occurred and a certification of the correctness of the new charge. An explanation which merely states that the transfer was made "to correct error" or "to transfer to correct project" is not sufficient. It should be noted that frequent errors in the recording of costs may indicate the need for improvements in the recipient's accounting system and/or internal controls. Therefore, where such errors occur, recipients are encouraged and may be required to evaluate the need for improvements in these areas and to make improvements considered necessary.

b. Closely Related Work: When closely related work is supported by more than one funding source, a cost transfer from the originally charged funding source to an HDS grant may be made provided that the transfer meets all of the following conditions.
- The cost is a proper and allowable charge to the grant.
- The transfer is supported by documentation which contains a full explanation and justification for the transfer and a certification of the propriety of the transfer by the principal investigator or other responsible program official of the recipient organization.
- The transfer is reviewed and approved by a responsible financial or administrative official of the organization.

To the maximum extent possible, cost transfers involving closely related work should be made within 120 days of the original charge. Recipients are cautioned that transfers made long after the original charge raise serious questions concerning the propriety of the transfers. Therefore, if a transfer is made after the 120 day period, the supporting documentation, in addition to the normal explanation and justification for the transfer, must also include an explanation of why the transfer was tardy.

c. Retention of Documentation: The documentation described in paragraphs a. and b. above must be retained by the recipient for the period stipulated in subpart D of 45 CFR Part 74 and be made available for verification during the course of an audit or other review made by, or on behalf of, HDS. Recipients are expected to make all pertinent documentation regarding the transfers of costs available to the auditor at the time of the audit.

B. Indirect Costs

Cross-references: HHS GAM chapters 6–100, 6–110, 6–120, 6–150, and 6–160.

1. *General Discussion.* Indirect costs are those costs of an organization which are not readily identifiable with a particular project or program but nevertheless are necessary to the general operation of the organization and the conduct of its activities. The costs of operating and maintaining buildings, grounds, and equipment; depreciation; and administrative salaries are types of expenses which are usually treated as indirect costs.

In theory, all of these costs might be charged directly; however, practical difficulties frequently preclude this appproach. Therefore, these costs are usually grouped into a common pool(s) and distributed to benefiting organizational activities through a cost allocation process. The end product of this allocation process is an indirect cost rate(s) which is then applied to individual projects to determine the amount of indirect costs applicable to the projects.

The indirect cost rate is the ratio, expressed as a percentage, between the indirect costs and a direct cost base, commonly either direct salaries and wages or total direct costs excluding capital expenditures, major subawards, and other distorting items. An indirect cost rate is established on the basis of an indirect cost proposal submitted by grantees to the Department's Regional Division of Cost Allocation for the region in which the organization is located. (If the grantee is under the indirect cost negotiation cognizance of a Federal agency other than HHS, its indirect cost proposals should be submitted to that agency). Indirect costs are reimbursed to an organization based on its established rate, subject to administrative and legislative limitations, as part of the costs of individual grants and contracts awarded by the Department.

Recipients must submit indirect cost proposals for each fiscal year in which indirect costs are claimed. Exceptions to this requirement for certain local government agencies and training grants are specified in HHS GAM chapters 6–100–50A and 6–160. (Copies of these chapters may be obtained from the HDS Grants Officer). Grantees that fail to comply with this requirement will be deemed as not having a currently effective indirect cost rate. In the absence of this rate, future grants awarded to the grantee will not provide for the reimbursement of indirect costs. If a rate is subsequently established, based on the late submission of an indirect cost proposal, indirect cost reimbursement will be limited to the indirect costs applicable to the period subsequent to the date the proposal is submitted. Failure to submit a timely proposal may also result in the disallowance of indirect costs previously reimbursed based on the use of a provisional indirect cost rate.

Guidance on the preparation and submission of indirect cost proposals is provided in an indirect cost guide for each type of grantee organization which can be obtained from the Regional Division of Cost Allocation.

2. *Provisional Rate.* In some cases, a provisional (temporary) indirect cost rate is used to fund and report the approximate amount of indirect cost applicable to a grant until a permanent (final, fixed, or predetermined) indirect cost rate is established. Indirect costs based on provisional indirect cost rates are subject to adjustment when a permanent rate is established. The indirect costs previously reimbursed based on the provisional rate will be disallowed if the recipient fails to establish a permanent rate.

If the difference between a provisional rate and a permanent rate results in the need for funds in excess of the total amount awarded under a grant, such funds will be provided to the grantee *when they are available* from the same appropriation from which the grant was awarded.

3. *Indirect Costs on Subawards.* Indirect costs may also be paid on a subaward, i.e., subgrants and cost-type contracts, under a grant supported project. If a subaward provides for the reimbursement of indirect costs, the grantee will normally be responsible for negotiating and approving appropriate indirect cost rates with the subgrantee or contractor. Such rates shall be based on the cost principles prescribed in subpart Q of Part 74 applicable to the subgrantee or contractor. The procedures followed by the grantee in conducting the negotiations will be subject to review and audit by, or on behalf of, HHS. If the grantee requires assistance in connection with the negotiations, assistance may be requested from HHS' Regional Division of Cost Allocation.

Grantees are not required to negotiate indirect cost rates with subgrantees and contractors if any of the following conditions exist:

- The subaward does not provide for the reimbursement of indirect costs;
- The subaward is a subgrant for training purposes (unless the subgrantee is a State, local or Indian tribal government agency); or
- The subgrantee or contractor is also a direct recipient of an HHS grant or contract and must negotiate indirect cost rates or research patient care rates directly with the HHS Regional Division of Cost Allocation.

4. *Exceptions.* HDS grants provide full reimbursement of indirect costs with the following exceptions:

- Indirect cost reimbursement on training grants and subgrants to organizations other than State and local government agencies is limited to the lesser of an organization's actual indirect costs or 8% of total allowable direct costs, exclusive of traineeship costs (see next paragraph below) and expenditures for equipment. Where actual indirect costs exceed 8% total direct costs, excess (unreimbursable) indirect costs may be used to satisfy the grantee's cost-sharing or matching requirement, if applicable.
- Indirect costs are not reimbursed on traineeship awards, i.e. tuition, stipends, student-related travel, fees, and dependency allowances.
- Indirect costs on programs subject to legislative or regulatory restrictions on indirect cost reimbursement will be reimbursed in accordance with those restrictions, e.g., a statutory limitation on administrative costs.
- Indirect costs are not reimbursed on grants to organizations located outside the territorial limits of the United States.

Indirect costs are not reimbursed on construction grants.

5. *Application of Indirect Cost Rates.* The dollar amount of indirect costs applicable to a grant or subgrant-supported project will be determined by multiplying the appropriate indirect cost rate(s) by the direct cost base of the project.

In applying indirect cost rates to individual grants, the rates established for the periods in which the direct costs are actually incurred under the grants will be applied to those costs. Consequently, when a grant budget period does not coincide with the recipient's fiscal year, it is necessary to use two rates in computing the amount of indirect costs applicable to the grant, i.e., the rates established for the two fiscal years during which the grant was performed.

6. *Settlement of Indirect Costs.* Each grant expenditure report submitted by the grantee will reflect the proper amount of indirect costs applicable to the grant based on the most current rate(s) available at the time the report is submitted. If a provisional rate is used in the report, an adjustment will be necessary when a permanent rate applicable to the grant is established. In these cases, the grantee will submit a summary expenditure report adjustment sheet reflecting the adjustments to each grant (upward or downward) resulting from the differences between the provisional rate and the permanent rate. (Submission of revised individual expenditure reports to reflect the adjustments is not required.) This sheet will be submitted to the Indirect Cost Management Section, Office of Financial Management, National Institutes of Health, Building 31, Room B1B07, Bethesda, Maryland 20205, within one year after the Negotiation Agreement establishing the permanent rate is executed and will cover all grants affected by the Agreement. A separate adjustment sheet will be submitted for each Federal fiscal year covering the grants having a budget period beginning within that year. In addition, if adjustments are required by more than one HHS granting agency; e.g., HDS, National Institutes of Health, the Health Services Administration, a separate adjustment sheet will be submitted for each agency. All adjustment sheets, including those for other granting agencies, will be submitted to NIH, which will be responsible for coordinating the reviews of the sheets by the appropriate agencies. Upward adjustments will not be considered if the adjustment sheet(s) is not submitted within the one year period. Questions regarding these adjustments should be directed to NIH.

C. Direct Costs

A direct cost is any cost which can be identified specifically with a particular project or activity, or which can be directly assigned to the project or activity relatively easily with a high degree of accuracy. Costs identified specifically with a grant or subgrant-supported project are direct costs of the project and may be charged directly thereto. Costs identified specifically with other work of the organization are direct costs of that work and are not to

be charged to the grant either directly or indirectly.

Costs charged as direct costs to Federally-supported projects must be consistently treated as direct costs for other work of the organization in order to preclude an overcharge to the Federal government as a result of Federal participation in the indirect cost pool.

D. Allowable Costs

Provided below are *examples* of allowable costs commonly incurred by HDS recipients as direct costs in the conduct of an approved project. For certain recipients, some of these costs may be treated as indirect costs. The types of costs which are often treated as indirect are designated by an asterisk (*).

All costs are subject to the cost principles prescribed in subpart Q of 45 CFR Part 74. Recipient organizations should consult the appropriate cost principles for specific guidance on allowable and unallowable costs and should consult with the appropriate HDS Grants Office if there are questions concerning the allowability or treatment of a particular item.

• (*) *Advertising.* For: (1) Recruitment of staff, trainees under training programs, human subjects for research grants, (2) disposal of surplus materials; (3) procurement of goods or services; and (4) other purposes specifically permitted by the terms of the grant. Other types of advertising costs are unallowable (see "Unallowable Costs" in section "E" of this chapter).

• *Advisory or Policy Councils.* Costs incurred by advisory or policy councils to carry out grant programs. These costs may include travel, subsistence, and costs incidental to attending meetings.

• *Alterations and Renovations.* Alteration and renovation costs may be charged to the project provided they meet the cost principles' general standards of reasonableness, necessity, and allocability, and the following special conditions:

(1) The grant is not awarded to a foreign organization.

(2) The building has a useful life consistent with project purposes and can be readily modified to meet program requirements.

(3) The alteration and renovation is incidental to and essential for recipient's project, no other suitable space is available, and the space involved will actually be occupied by the project. Costs may be considered incidental if the amount budgeted or used for alteration and renovation does not exceed the lesser of $150,000 or 25 percent of the total direct costs approved for the entire project period. In the case of projects supported for an indefinite project period, the amount budgeted or used for alteration and renovation in any budget period shall not exceed 25 per cent of the total direct costs approved for that budget period; and

(4) Prior approval is obtained if the costs of the alterations and renovations exceed $1,000.

In connection with existing buildings, alteration and renovation costs shall be limited to the costs of work required to (1) make non-structural changes; (2) improve facilities on the property; or (3) install equipment. The costs of structural changes to foundations, roofs, floors, or exterior or load-bearing walls, and the costs of extending a building to increase its floor area, are unallowable.

Under the grantee's accounting system, certain costs of installing equipment may be listed as either equipment costs or alteration and renovation costs. These include the temporary removal and replacement of wall sections, door frames, etc., in order to place equipment in its permanent location. The costs of connecting utility lines, replacing finishes and furnishings, and installing any accessory devices required for the equipment's proper and safe utilization may be considered either equipment costs or alteration and renovation costs.

• *(*) Audits.* Costs for a CPA or other independent auditor to review and analyze recipient financial and administrative policies, practices, procedures, and records.

• *(*) Bonding.* When required by regulations or recipient organization practice.

• *(*) Books and Periodicals.* When required for the conduct of the project, if the organization has a library, direct charges for books and periodicals are allowable only where the organization can show that the books and periodicals cannot be provided as a normal library service. Such items are generally treated as indirect costs when they are provided by libraries operated by the organization.

• *Child Care Costs.* Child care costs to allow authorized participants or representatives to attend official board or council meetings, subject to limitations in program guidelines or regulations.

• *(*) Communication.* Costs of telephone calls, telegrams, postage, and other communication costs necessary to the project.

• *Consultant Services.* Payments including fees, travel expenses and related costs for individuals other than employees providing service to the project. A complete discussion of consultant services is included in section C, chapter 5 of this manual.

• *(*) Depreciation or Use Charges.* Recipients shall be compensated for the use of recipient-owned facilities through depreciation or use allowances. Methods of computation for such costs are included in the applicable cost principles.

• *(*) Dues.* For recipient organization membership in professional organizations or societies, if it can be shown that such membership is necessary to accomplish the purposes of the project.

• *Educational/Cultural Activities.* Costs associated with trips to museums, field trips, cultural events, and other educational activities, provided such activities are part of the approved program.

• *Equipment.* When required for project activities and subject to prior approval requirements in section L, chapter 1 of this manual.

• *(*) Equipment Maintenance and Repairs.* For equipment used specifically on HDS supported projects where necessary to keep the equipment in efficient operating condition.

• *Food Service.* Provided food services are part of the approved program. To the extent that the recipient receives reimbursement for food costs, such reimbursement shall be credited to costs of the grant or subgrant program.

• *Fringe Benefits.* The employer's share to the extent that the benefits are provided under established and consistently applied policies of the recipient organization. Some common examples of fringe benefit costs are:

(1) *Employee sick, vacation, and other leaves costs* may be charged on an accrual basis or a cash basis provided that a consistent policy is followed. Under an accrual accounting system, the costs are charged when leave is earned. Under a cash accounting system, the cost are charged when leave is paid.

(2) *Pension costs* are allowable provided the benefits are reasonable, are provided according to the established policies of the organization, consistently applied regardless of the source of funds, and conform to the standards in the cost principles.

• *Indemnification.* Securing the organization against liabilities to third persons (e.g., judgment or settlement costs) and any other loss or damage is allowable only (1) when specifically provided for in the award or approved by HDS and (2) when these liabilities are not covered by insurance and HDS reviews these situations on a case-by-case basis. The granting office may consider these costs as allowable only if

it can be demonstrated that the indemnification costs are necessary to operate the grant program and the recipient acted prudently under the circumstances.

• *(*) Insurance.* Premium costs for general liability, vehicle liability, fire and theft, property damage, and other insurance. Some HDS grant programs have specific insurance requirements and reference should be made to applicable program regulations or guidelines.

• *(*) Legal Costs.* The costs of legal services, where required in the administration of a grant-supported project, is allowable if reasonable and supported by adequate documentation regarding the need for such services. Costs may include retainer fees if supported by evidence of bona fide services available or rendered. The legal costs of pursuing an administrative action (e.g., a grant appeal) are allowable. Certain legal costs are unallowable (see section "E" of this chapter).

• *Motion Picture Production.* Subject to the specific limitations on audiovisual materials (see section L, chapter 1 for further discussion of this subject).

• *Overtime Pay.* Provided such compensation is consistent with the policies of the recipient organization and is applied to all activities regardless of the source of funds. However, overtime pay is not allowable for faculty members at institutions of higher education. In the case of nonprofit organizations subject to the cost principles in OMB Circular A–122, overtime premiums require prior approval except under the circumstances described in Attachment B, section 27 of Circular A–122.

• *Page Charges.* Page charges for articles and other papers in professional journals provided both of the following conditions are met.

(1) The article or paper reports work supported by the grant, and

(2) Charges for publication by the journal are levied impartially on all papers published by the journa,, whether or not by government-sponsored authors.

• *Publications.* Costs may include special plates, charts, diagrams, and reprints. Costs of publishing books, monographs, and pamphlets reporting the work are subject to policies concerning copyrights and disposition of program income. In the case of nonprofit organizations subject to the cost principles in OMB Circular A–122, publication costs, other than page charges in professional journals, require prior approval (see Circular A–122, Attachment B, sections 28 and 37).

• *(*) Relocation.* Transportation costs for employees, dependents, household goods, and other costs associated with relocation, when such costs are normally paid by the recipient regardless of the source of funds.

• *Registration Fees.* For professional meetings, when it can be shown to be necessary to accomplish project objectives.

• *(*) Rental of Equipment and Facilities.* Rental costs, except as provided in paragraphs (1) through (3), are allowable to the extent that the rates are reasonable, considering such factors as rental costs of comparable property; market conditions in the area; alternatives available; and the type, life expectancy, conditions, and value of the property.

(1) Rental costs under *"sale and leaseback"* arrangements are allowable only up to the amount that would be allowed under the applicable cost principles had the lessee continued to own the property. A sale and leaseback arrangement is one under which property owned by an organization is sold to and leased back from another organization or individual.

(2) Rental costs under *"less-than-arms-length"* leases are allowable only up to the amount that would be allowed under the applicable cost principles had title to the property vested in the lessee. A less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to, those between (a) divisions of an organization, (b) organizations under common control through common officers, directors or members, and (c) an organization and a director, trustee, officer, or key employee of the organization, or his/her family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

(3) Rental costs under *"material equity"* leases are allowable only up to the amount that would be allowed under the applicable cost principles had the lessee purchased the property on the date the lease agreement was executed (e.g., depreciation or use allowances, maintenance, taxes, insurance, excluding unallowable costs). A material equity lease is one under which the lessee acquires a material equity in the leased property. A material equity in the property exists if the lease is noncancellable, or is cancellable only upon the occurrence of some remote contingency, and has one or more of the following characteristics:

• The lessee has the right to purchase the property for a price which at the beginning of the lease appears to be substantially less than the probable fair market value at the time it is permitted to purchase the property (commonly called a lease with a bargain purchase option).

• Title to the property passes to the lessee during or after the lease period.

• The term of the lease (initial term plus periods covered by bargain renewal options, if any) is equal to 75% or more of the economic life of the property, i.e., the period the property is expected to be economically usable by one or more users.

Note.—The definition of "material equity leases" in this paragraph differs from the definition of this term in the cost principles for educational institutions (OMB Circular A–21). For these institutions, the definition in Circular A–21 shall govern.

• *Salaries and Wages.* Salaries and wages paid to employees of an organization for services provided in connection with a grant or subgrant supported activity. Such compensation must be consistent with the salaries and wages policy of the recipient organization applied to all activities regardless of the source of funds. Amounts charged to projects for salaries and wages must be based on organizational payrolls, documented and approved in accordance with generally accepted practices. Documentation standards and requirements are specified in the appropriate cost principles.

• *Supplies.* Expendable materials and supplies used in connection with project activities. Certain types of supplies, such as general office supplies, are frequently treated as indirect costs.

• *(*) Taxes.* When related to employment, services, travel, renting, or purchasing for the project. However, organizations must avail themselves of tax exemptions for which activities supported by Federal funds may qualify or for which the organization may be entitled by virtue of its status as a nonprofit organization.

• *(*) Transportation of Goods.* Costs incurred for freight, express, cartage, postage, and other transportation services relating to goods purchased or delivered. Additionally, the costs associated with the movement of equipment from one recipient to another when approved by the granting office.

• *Travel.* Travel costs are limited to the extent provided by written organizational travel policy. The organization's travel policy must be reasonable and consistently applied to all organizational activities, regardless of the source of funds. If the organization has no written travel

policy, Federal travel regulations (FTRs), including maximum per diem and subsistence rates, shall be used in determining the amount for travel that may be charged to the project. This information may be requested from the HDS Grants Officer.

Costs may include transportation, lodging, and subsistence expenses incurred for business-related travel by employees or officials of the recipient organization. First class air travel is unallowable except under conditions specified in the cost principles.

Transportation costs for clients or other eligible beneficiaries to service delivery sites are allowable, subject to HDS program regulations. The purchase of motor vehicles for this purpose (or any other purpose) is subject to the prior approval requirements applicable to equipment discussed in subpart L, chapter 1 of this manual.

E. Unallowable Costs

Provided below are *examples* of unallowable costs which might be incurred in connection with grant or subgrant supported activities. Federal funds generally may not be used for these purposes, nor may such costs be used to meet costsharing or matching requirements. Recipients should consult the appropriate cost principles for specific guidance on allowable and unallowable costs.

- *Advertising.* Costs of direct mail, exhibits, newspaper, magazine and radio or TV ads. Exceptions are included under "Allowable Costs" in section D of this chapter.
- *Bad Debts.* Losses (whether actual or estimated) arising from uncollectable customers' accounts and other claims, legal costs, and other related costs.
- *Construction.* Not allowable unless specifically provided for in the HDS program legislation.
- *Contingency Fund Reserves.* Funds for possible future events or conditions arising from presently known or unknown causes, the outcome of which is indeterminable. This restriction does not apply to (1) pension funds; (2) accrued costs such as accruals for earned leave; or (3) selfinsurance reserves.
- *Contributions and Donations.* Charitable contributions and donations are unallowable.
- *Entertainment.* Cost of amusements, social activities, ceremonials, and incidental costs relating to entertainment, such as meals, lodgings, rentals, transportation, and gratuities.
- *Fines and Penalties.* Fines and penalties resulting from violation or failure of the organization to comply with Federal, State, and local laws and regulations.
- *Fund Raising.* Costs of organized fund raising including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions.
- *Honoraria.* An honorarium is considered a payment or reward where the primary intent is to confer distinction on, or to symbolize respect, esteem, or admiration for, the recipient.
- *Influencing Legislation.* The HHS Appropriations Act contains language which has the effect that costs of influencing Congressional legislation are unallowable. Also, since influencing legislation at the State or local government level generally does not benefit HDS programs, the cost of these activities would, in most cases, be unallowable.
- *Interest Costs.* Costs incurred for interest on borrowed capital or temporary use of endowment funds is unallowable. However, in the case of State, local, and Federally-recognized Indian Tribal governments, interest costs associated with the acquisition of publicly owned buildings which are newly occupied on or after October 1, 1980 are allowable if a "rental rate" system or equivalent system reflecting actual costs is used (see sections C2a and D.7. of Attachment B of OMB Circular A–87).
- *Legal Costs for Certain Purposes.* Costs incurred in connection with defense of antitrust suits, and costs incurred in the prosecution of claims against the Federal government are unallowable. Costs of legal services incurred in connection with patent infringement litigation, organization, and reorganization, are unallowable unless otherwise provided for in the award.
- *Purchase of Land or Buildings.* Acquisition cost for real property is unallowable except as may be specifically authorized by the HDS program legislation. However, depreciation or use allowances on buildings are allowable costs.

Chapter 4—Financial Requirements

A. Grant and Subgrant Payments

Cross-reference: Subpart K of 45 CFR Part 74.

1. *Payment Systems.* HDS makes payments to grantees through either the HHS Departmental Federal Assistance Financing System (DFAFS), the Division of Accounting Operations (DAO), or the Regional Administrative Support Center (RASC), depending on such factors as the type of grant, where the grant is awarded, the aggregate dollar amount of HHS or HDS awards, the length of the anticipated relationship, and the financial management capabilities of the grantee. The grantee is notified in writing on the back of the Notice of Financial Assistance Awarded of how payments will be made under the award.

DFAFS uses the *single* letter-of-credit method or Treasury check issue for financing qualifying grantees. DFAFS does not make payments on a reimbursement basis. DFAFS is designed to operate under a cash pooling concept, i.e., cash on hand for a grantee is not identified by individual program awards. The cash is pooled and available for use for all the grantee's DFAFS financed awards on an overall basis. Cash held in the pool is the minimum required to meet the grantee's immediate disbursements for all awards financed through DFAFS.

Grantees not funded through DFAFS will be paid through either the Division of Accounting Operations (DAO) or the Regional Administrative Support Center (RASC). DAO is responsible for payments to (1) HDS grantees advanced funds by *individual grant* letters-of-credit; (2) HDS central office Head Start and Native American grantees; and (3) HDS foreign grantees. HDS regional office grantees not paid by letter-of-credit are funded through the RASC.

2. *Method of Payment.* The grantee will be advised of the method to be used by HDS to make payments under the grant. The HDS Grants Officer will make the determination of the appropriate payment method to be used. Consideration will be given to type of grantee organization, size of grant, past business practices of grantee, and other considerations.

The types of payment metods used are briefly described below:

- Letter-of-Credit: The letter of credit is a document which authorizes a recipient to submit payment vouchers through its commercial bank to a Federal Reserve Bank or branch for deposit of cash in the grantee's commercial bank account. The letter-of-credit is a commitment certified by an authorized official of HHS indicating a dollar amount available to a designated grantee for a specified time period. A grantee must meet the requirements specified in 45 CFR 74.93 to qualify for advance funding by letter-of-credit.
- Advance by Treasury Check: When a grantee does not meet the conditions specified in 45 CFR 74.93(a)(1) for a letter-of-credit, cash advances shall be made by the direct Treasury check method. Payent is made directly to the grantee by a check issued and mailed by

the U.S. Treasury. Pre-determined payment schedules are used for grants paid through DAO or RASC. DFAFS requires that grantees submit requests for payment monthly.

• Reimbursement by Treasury Check: If a grantee does not meet the conditions stated in 45 CFR 74.93 for advance funding, payments shall be made by Treasury check as reimbursement for actual cash disbursements. The grantee may submit its request for reimbursements monthly and may submit them more often if authorized. The grantee will be paid as promptly as possible, ordinarily within 30 days after receipt of a proper request for reimbursement (see 45 CFR 74.96(b)(1)).

The grantee shall not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments (see § 74.96(b)(2) for further information).

3. *Instructions for Requesting Payments.* a. Letter-of-Credit: Whether paid through single letter-of-credit (DFAFS) or an individual grant letter-of-credit (DAO), a grantee submits Treausury TFS Form 5401, "Payment Voucher on Letter-of-Credit" to the grantee's commercial bank each time cash is to be drawn.

b. Treasury Check Advances:

• Through the Division of Accounting Operations (DAO) or the Regional Administrative Support Center (RASC)—

The HDS grants management offices, at the time of award, sends a payment authorization package containing the grantee's "Forecasted Cash Needs" (Part III, section D of grant application) to DAO or RASC. Then the finance office makes out a schedule of payments based on the Forecasted Cash Needs and sends it to Treasury, where the check is automatically issued to the grantee once each month. This "predetermined payment schedule" may be adjusted, if necessary.

• Through the Departmental Federal Assistance Financing System (DFAFS)—

Grants paid in advance by Treasury check through DFAFS will receive instructions for requesting payments with the transmittal of the grant award. These payments will be based on the submission of a Recipient's Monthly Cash Request form (OMB #68–R–1125) which will be furnished to the grantee when the grant award is entered into the DFAFS system.

c. Reimbursement by Treasury Check: The required forms for payment by reimbursement are discussed in §§ 74.75(a)(2) and 74.76 of Part 74.

4. *Cash Expenditure Reporting.* Each of the above payment systems includes a requirement for reporting grantee cash expenditures (see chapter 6 of this manual). Failure of a grantee to comply with the appropriate reporting requirements may result in a decision to pay the grantee on a reimbursement basis rather than in advance.

5. *Withholding Payments.* Cross-reference: 45 CFR 74.95.

Unless otherwise required by Federal statute, payments for proper charges incurred by grantees will not be withheld unless:

• The grantee has failed to comply with Federal reporting requirements; or

• The grant is suspended pursuant to 45 CFR 74.114; or

• The grantee owes money to the United States and collection of the debt by withholding grant payments will not impair the accomplishment of the objectives of any grant program sponsored by the United States.

Cash withheld for failure to comply with reporting requirements but without suspension of the grant will be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 74.114. When a debt is to be collected, HDS may withhold payments or require appropriate accounting adjustments to recorded grant cash balances for which the grantee is accountable to the Federal government, in order to liquidate the indebtedness.

6. *Payments to Subgrantees.* Cross-reference: 45 CFR 74.97.

Grantees shall observe the requirements stated in subpart K of 45 CFR Part 74 in making (or withholding) payments to subgrantees, with the following exceptions:

• Advance payment by check may be used instead of letter-of-credit;

• The forms specified in subpart I of 45 CFR Part 74 and in chapter 6 of this manual for requesting advances and reimbursements are not required to be used by subgrantees; and

• The reimbursement by check method may be used to pay any construction subgrant, whether or not HHS has agreed to use a letter-of-credit for all direct HHS grants to that same recipient.

B. Cash Management

Cross-reference: Subpart H of 45 CFR Part 74.

The standard for effective cash management which is discussed in 45 CFR 74.61(e) states that procedures must be established to minimize the time elapsing between the advance of grant or subgrant funds and their disbursement by the recipient. Grantees advancing cash to subgrantees must conform substantially to the same standards of timing and amount as apply to advances by HDS to grantees, including requirements for timely reporting of cash disbursements and cash balances. Failure to adhere to these provisions may cause the unobligated portion of the letter-of-credit to be revoked or future advances to be discontinued.

Federal funds shall be promptly refunded to the Department and redrawn when needed if the funds are *erroneously* drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are (1) when the funds involved will be disbursed by the grantee within seven calendar days, or (2) are less than $10,000 and will be disbursed within 30 calendar days.

These exceptions to the requirement for prompt refunding shall not be construed as approval for a grantee to maintain excessive funds; they are applicable only to excessive amounts of funds which are erroneously drawn.

1. *Under Letter-of-Credit.* Cash controls are essential in achieving the objective of the letter-of-credit system. Each recipient should develop these controls to meet its individual organizational pattern. The system must provide that:

• The authorized signatory official in the organization is continually aware of the cash position of each letter-of-credit at the time vouchers are presented for payment.

• Cash on hand for all programs combined is the minimum needed to cover immediate disbursements. This requires a system for matching the withdrawal pattern with the disbursement pattern.

• Total monthly withdrawals do not exceed the letter-of-credit ceiling. When the letter-of-credit is based on a monthly ceiling, excess funds cannot be drawn in one month to cover disbursements in the following month as a means to overcome an inadequate ceiling.

• No withdrawn cash is applied toward any disbursement amount which exceeds the grantee's project or program authorized amount.

2. *Under Advances by Treasury Check.* Cash management is equally important when advances are made by direct Treasury check, especially when sush advances are prescheduled. It is the responsibility of the financial officer of the grantee organization to monitor drawdowns vs. disbursements, and to request adjustments in the schedule of advances, as appropriate. Additionally, the grantee's finance officer should assure that no withdrawn cash is

applied toward any disbursement amount which exceeds the authorized amount in the approved budget.

3. *Guidelines for Proper Cash Management.* Suggestions for an effective cash management system may be found in attachment D of this manual.

Financial Management Standards

Cross-reference: Subpart H of 45 CFR Part 74.

The recipient's policies and procedures describing its financial management system shall be in writing and conform to the standards for grantee and subgrantee financial management systems as prescribed in subpart H of 45 CFR Part 74. Granting offices shall not impose additional standards on recipients unless specifically provided for in subpart H of Part 74 or in a Federal statute; e.g., the Joint Funding Simplification Act (Pub. L. 93–510, as amended). However, suggestions and assistance may be provided in establishing or improving financial management systems when needed or requested.

Recipients shall meet the following standards for their grant and subgrant financial management systems:

- *Financial Reporting.* Accurate, current, and complete disclosure of the financial results of each project or program shall be made in accordance with the financial reporting requirements of the grant or subgrant. The terms of grants and subgrants shall not require financial reporting on the accrual basis if the recipient's accounting system is maintained on the cash basis. When accrual reporting is statutorily required, a recipient whose accounting system is not maintained on that basis shall not be required to convert it to the accrual basis; the recipient may develop the accrual information through an analysis of the documentation on hand. The required financial reports should correspond to the recipient's accounting records.
- *Accounting Records.* Records which identify adequately the source and application of funds for grant/subgrant-supported activities shall be maintained. These records shall contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, outlays, income, and, if the recipient is a government, liabilities. The records should also show the value of third-party in-kind contributions, in accordance with the requirements in Subpart G of 45 CFR Part 74. Suggestions for an effective accounting control system may be found in attachment D of this manual.
- *Internal Control.* Effective control and accountability shall be maintained for all grant or subgrant cash, real and personal property covered by subpart O of 45 CFR Part 74, and other assets. Recipients shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes. For example, the recipient organization should, where possible, segregate responsibilities for receipt and custody of cash and other assets; maintaining accounting records on the assets; and authorizing transactions.
- *Budgetary Control.* The actual and budgeted costs for each grant or subgrant shall be compared. If appropriate or specifically required, recipients shall relate financial information to performance or productivity data, including the production of unit cost information. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

These comparisons should be used to: (1) Avoid incurring obligations in excess of total funds authorized under an award, as well as the funds authorized for specific project activities and object class categories (to the extent restricted by the award); and (2) ensure prompt requests for granting office approval of budget revisions when necessary.

Suggestion for an effective budget control system may be found in attachment D of this manual.

- *Advance Payments.*

Cross-references:

- Subpart K of 45 CFR Part 74 and
- "Cash Management" in Section B of this chapter

Procedures shall be established to minimize the time elapsing between the advance of Federal grant or subgrant funds and their disbursement by the recipient.

- *Allowable Costs.* Procedures shall be established for determining the reasonableness, allowability, and allocability of costs in accordance with the applicable cost principles prescribed by subpart Q of 45 CFR Part 74 and the terms ofthe grant. The recipient's accounting system should identify and segregate unallowable costs.
- *Source Documentation.* Accounting records shall be supported by source documentation such as cancelled checks, paid bills, payrolls, contract and subgrant award documents, etc.

Documentation of the costs of Federal awards must support the costs charged to the awards as well as the costs used to meet cost-sharing or matching requirements. For example, documentation supporting third-party in-kind contributions should show the nature, value, dates of the contributions, and how the values were determined.

- *Audits.* The financial management standards for audits are discussed in chapter 11 of this manual and §§ 74.61(h) and 74.62 of 45 CFR Part 74.

D. Grant and Subgrant-Related Income

Cross-reference: Subpart F of 45 CFR Part 74.

Grant and subgrant-related income refers to (1) interest and other investment income earned on advances of grant funds and (2) program income. These categories of grant-related income are discussed below. The recipient is accountable to the granting office for the Federal share of any grant-related imcome.

1. *Interest or Investment Income.*

Cross-reference: 45 CFR 74.47.

Except were exempted by Federal statute (see next paragraph of this subsection for the principal exemption), grantees shall remit to the Federal government any interest of other investment income earned on advances of HDS grant funds. This includes any interest of investment income earned by subgrantees and cost-type contractors on advances to them that are attributable to advances of HDS grant funds to the grantee. Unless the grantee receives other remittance instructions from the responsible HDS official, the grantee shall remit the amount due by check or money order payable to the Department of Health and Human Services.

In accordance with the Intergovernmental Cooperation Act of 1968 (Pub. L. 90–577), States, as defined in the Act, shall not be accountable to the Federal government for interest or investment income earned by the State itself, or by its subgrantees, where this income is attributable to grants-in-aid, as defined in the Act (42 U.S.C. 4213). "State" is defined in the Act to include agencies or instrumentalities of a State, but not political subdivisions of a State. The definition does not exclude a hospital or institution of higher education which is such an agency or instrumentality. "Grant-in-aid" is defined in the Act to exclude "payments under research and development contracts or grants which are awarded directly and or similar terms to all qualifying organizations, whether public or private" (42 U.S.C. 4201).

A governmental grantee must qualify as a "State" or a subgrantee of a State grantee in order to qualify for this exception. All other grantees, including local governments and Federally-recognized Indian tribes, are subject to the general rule requiring the return of interest or other investment income earned on advances of grant funds.

Recipients are cautioned that they are subject to the provision in 45 CFR 74.61(e) for minimizing the time between the transfer of advances and their disbursement. Those provisions apply even if there is no accountability to the Federal government for interest or other investment income earned on the advances.

2. *Program Income.* a. General Discussion: Program income as defined in 45 CFR 74.41 means gross income earned by a recipient from activities, part or all of the cost of which is either borne as a direct cost by a grant or counted as a direct cost towards meeting a cost-sharing or matching requirement of a grant.

b. Examples of Program Income:

- Monies received from sale of donated goods or services; e.g., cake sales for Head Start program.
- Fees for services provided (including voluntary payments for services provided)
- Sale of products/commodities/assets
- Usage or rental fees for space or equipment
- Copyright or patent royalties
- Publication sales
- License fees or permits

c. Examples of Non-Program Income:

- Revenues raised by a government recipient under its governing powers, such as taxes, special assessments, levies and fines, except as provided in 45 CFR 74.41(c)(1).
- Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant or subgrant.
- Credits, purchase discounts, rebates, allowances, adjustments for overpayments and other erroneous charges. These are considered "applicable credits" under the cost principles.
- Income earned from activities carried out by contractors or subcontractors under a grant or subgrant.
- Internal reimbursements or transfers of funds between organizational components of the same legal entity.
- Third party in-kind contributions.
- Gifts or financial assistance from another source, such as (1) a non-Federal grant, (2) charitable contributions (whether or not for a restricted purpose), and (3) another Federal grant.
- Interest or other investment income earned from investing advances of Federal cash.

c. Use of Program Income: Cross-reference: 45 CFR 74.43(b)

The recipient is accountable to the granting office for program income generated by HDS grant or subgrant-supported activities. All program income earned during the period of grant or subgrant support (except as provided under D.2.e. below) shall be retained by the recipient and treated in accordance with one or a combination of the following options discussed in 45 CFR 74.42:

- Income is deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based. (See *"deduction alternative"* in 45 CFR 74.42(c).)
- Income is counted toward satisfying a cost-sharing or matching requirement. (See *cost-sharing or matching" alternative* in 45 CFR 74.42(d).)
- Income is used by the recipient in addition to the allowable costs for any purpose that furthers the objectives of the legislation under which the award was made. (See *"additional costs" alternative* in 45 CFR 74.42(e).)

A decision will be made at the time of grant award regarding the appropriate use of progarm income. The alternative selected will be expressly stated in the terms of the grant or subgrant award.

d. Special Treatment of Certain types of Program Income:

- Copyright Royalties: The applicability of royalties and other income earned from a copyrighted work is discussed in 45 CFR 74.44.
- Income of this kind shall be retained by the recipient and used to further the objectives of the project under which the award was made, in accordance with the "additional costs" alternative in 45 CFR 74.42(e).
- Patent or Invention Royalties: The disposition of royalties or equivalent income earned on patents or inventions arising out of activities is discussed in 45 CFR 74.45.
- Sale of Real or Personal Property: See 45 CFR 74.43 for a discussion of the kinds of program income governed by subpart O of Part 74.
- Income Accrued After Grant or Subgrant Support: Progran income accrued after the period of grant or subgrant support, as discussed in 45 CFR 74.46, shall be retained by the recipient and used to further the objectives of the project under which the award was made, in accordance with the "additional cost" alternative. (See 45 CFR 74.42(e).)
- Records: Records of the receipt and disposition of program related income must be maintained by the recipient in the same manner as required for the funds provided by the grant or subgrant.
- Reporting: Under a grant, all earned program income must be reported on the Financial Status Report (SF–269) under item 10.c. and the Request for Advance or Reimbursement (SF–270), under item 11.b.

E. Reimbursements From Other Federal Agencies

Cross-reference: "Cost Transfers" in Section A3, Chapter 3 of this Manual.

1. *General Discussion.* HDS encourages grantees to seek other Federal funds to supplement financial assistance provided by HDS grant funds. Grantees who are able to reliably anticipate the funding of project costs by sources other than HDS shall not request funds for HDS to support the same activities. Grantees who are not able to anticipate the amount of reimbursement which may be obtained from other Federal sources or are not able to obtain advances from those sources shall budget HDS grant funds these costs.

If a grantee expends HDS grant funds and is subsequently reimbursed, in whole or in part, by another Federal agency for the same cost(s), the grantee shall transfer the charges from the HDS grant to the other Federal agency grant. This transfer of costs will prevent duplication of charges and will "free" the balance of funds for HDS grant-related purposes.

With the exception of income earned by a recipient from a Federal procurement contract or from a procurement contract under a Federal grant awarded to another party, a reimbursement from another Federal agency is not considered program income but instead is treated as an offset or reduction in expenditures to the particular item in the HDS grant budget.

2. *Reporting Reimbursements to HDS.* Reimbursements from other Federal agencies shall be reported in the "Remarks" section of SF–269, "Financial Status Report" submitted to HDS . If necessary, the grantee shall revise the grant budget to incorporate any budget changes which may result from reimbursements. This budget revision shall be forwarded to the cognizant HDS Grants Officer.

Grantees submitting continuation applications shall include, in the proposed work statement, details on how any carryover balances, including those resulting from other Federal agency reimbursements, will be used. Approval of the application through issuance of a Notice of Financial Assistance Awarded will constitute approval to expend these carryover balances.

F. Federal Income Tax

All recipients of HDS grant funds and their contractors are responsible for and must adhere to all applicable Federal income tax requirements.

Recipients that are political jurisdictions or separate public agencies are exempt from Federal income taxes and are not required to file any returns except for the employee withholding taxes. Recipients that are private, non-profit corporations similarly may qualify for exemption but must apply for exempt status (IRS Forms 1023 or 1024), obtain a written letter of authorization from the Internal Revenue Service, and file annual information returns (IRS Forms 990 or 990A). All recipients, other than political jurisdictions or separate public agencies, must also file information returns for each calendar year for certain payments (IRS Form 1099).

Other forms used by recipients are IRS Form 940, "Employers Annual Federal Unemployment Tax Return." and IRS Form 941, "Employers Quarterly Federal Tax Return." Questions concerning the applicability of these requirements to grant funds may be directed to the Internal Revenue Service (IRS).

G. Cash Depositories

Requirements governing cash depositories are discussed in subpart B of Part 74. Consistent with the national goal of expanding opportunities for minority business enterprise, recipients are encouraged to use minority-owned banks. A list of minority-owned banks may be obtained from the: Department of Health and Human Services, Office of Procurement, Assistance and Logistics, 200 Independence Avenue, SW., Room 517 "D", Hubert H. Humphrey Building, Washington, D.C. 20201.

H. Insurance

Unless the organization receives Head Start funds, the recipient shall observe its regular requirements and practices with respect to insurance. Special requirements under the Head Start program are discussed in Part II of this manual.

I. Bonding

Bonding requirements are discussed in subpart C of Part 74 and for Head Start grants, in Part II of this manual.

Chapter 5—Administrative Requirements

A. General Discussion

Cross-reference: 45 CFR 74.7.

In accepting a grant, the grantee agrees to administer the project in accordance with the HHS and HDS regulations and policies in effect at the time of award. The grantee is accountable for the fiscal and administrative management of the grant and completion of any special conditions prescribed for the conduct of the project. As provided in 45 CFR 74.7, special grant conditions more restrictive than those prescribed in Part 74 may be imposed as needed when the granting office has determined that the grantee:

- Is financially unstable;
- Has a history of poor performance; or
- Has a management system which does not meet the standards of Part 74.

Grantees may apply the provisions in § 74.7 to their subgrantees. Whenever they do so, a copy of the notice to the subgrantee shall be furnished to the HDS granting office. Additional information regarding special conditions is provided in § 74.7 of 45 CFR Part 74.

B. Personnel Administration

1. *Requirement.* Grantees shall develop and maintain a suitable personnel management system.

2. *Guidelines.* Suggestions and guidelines for an effective recipient personnel management system are in appendix D of this manual.

3. *Documentation.* The grantee's personnel policies and procedures shall be documented in writing and issued to, or made available to, all grantee employees. The personnel policies must be approved bythe governing body or person authorized to act on behalf of the grantee organization.

4. *Conflict of Interest or Nepotism.* Recipients shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. (see Part V of the standard application form).

To preclude potential conflict of interest, organizations receiving HDS grant support should have written guides for employees indicating the conditions under which outside activities, relationships, or financial interest are proper or improper and provide that potential conflicts of interest are reported to the responsible recipient official.

The recipient's personnel policies shall prohibit the hiring of any individual if a member of that individual's immediate family is employed in an administrative capacity in the agency or is a member of the governing board. The term "immediate family" means wife, husband, son, daughter, mother, father, brother, sister, or relative by marriage of comparable degree; the term "administrative capacity" means a position having responsibilities relating to the selection, hiring, or supervising of employees.

When a recipient organization cannot adequately staff positions without hiring such an individual, the recipient may deviate from this policy. However, employment records must provide evidence that no other individual within the service area is qualified and available for the employment.

5. *Code of Conduct.* As specified in chapter 8 of this manual, grantees shall maintain a written code of conduct which governs the performance of their employees engaged in the award and administration of procurement contracts supported by Federal funds.

6. *Political Activity.* Cross-reference: Chapter 7 of this manual.

If a recipient organization is covered by the Hatch Act which prescribes permitted and prohibited political activities, the personnel policies shall incorporate the provisions of the Act.

C. Use of Consultants

1. *General Discussions.* Recipients and their contractors are expected to carry out project activities by using the services of personnel receiving salary support under the grant, subgrant, or cost-type contract. HDS recognizes, however, that some efforts undertaken in connection with a project make it necessary for organization to use consultants to accomplish the project objectives.

HDS expects applicants to anticipate their need for consultants and to describe in their applications how consultants will be used. However, prior approval for the use of consultants is not required unless the consulting arrangement involves a transfer of substantive programmatic work to another party as discussed in section K, chapter 1 of this manual.

2. *Consultants: Use of an Organization's Own Employees.* a. Faculty members of educational institutions: Charges representing extra compensation (above base salary) paid by an educational institution to a salaried member of its faculty for consulting work are allowable only in unusual cases, only if the following conditions exist (see section J.6.e. of OMB Circular A–21, the cost principles for educational institutions):

(1) The consultation is across departmental lines or involves a separate or remote operation;

(2) The work performed is in addition to the faculty member's regular departmental load; and

(3) Such consulting arrangements are specifically provided for in the grant or approved in writing by the granting office.

b. All other cases: In all other cases, consulting fees paid in addition to salary by recipients or cost-type contractors to people who are also their employees may be charged to an HDS grant, subgrant, or cost-type contract only in unusual cases, and only if all of the following three conditions exist:

(1) The policies of the recipient or contractor permit such consulting fee payments to its own employees regardless of whether Federal grant funds are involved;

(2) The work involved is clearly outside the scope of the person's salaried employment; and

(3) It would be inappropriate or not feasible to compensate for the additional work by paying additional salary to the employee.

c. Requirements for Approval: Consulting fees paid by an organization to its employees must have specific prior approval in writing from the head of the recipient or contractor or from his or her designed representative. If the recipient or contractor is a government, the approval may be given by the head (or a designated representative of the head) of the government's agency which is primarily responsible for administering or carrying out the project or program. If the designated representative is personally involved in the project or program under consideration, the approval may be given only by the head. If the head is personally involved in the project or program under consideration, prior approval from the granting office is required. Each prior approval must include a determination that the applicable requirements in subsection 2 above are present.

3. *Documentation Standards.* Charges for consulting payments must be supported in the records of the recipient or cost-type contractor by an invoice from the consultant and a copy of the written report (if a report is appropriate) received from the consultant. If any of the following information is not shown on the invoice and/or report from the consultant, the information must be shown in a memorandum or other document prepared by the recipient or contractor for its files, or noted in handwriting on the consultant's invoice by the recipient or contractor. The memorandum, other document, or handwritten notation must be signed by an official of the recipient or contractor.

- The name of the consultant;
- The nature of the services rendered;
- The relevance of the services to the project if not apparent from the nature of the services; and
- Whichever of the following is applicable:

(1) (If the fee was based on a rate per day or hour worked), the rate and the dates and/or hours worked;

(2) (If the fee was based on a rate per unit of service rendered) the rate, the number of units of service rendered, and the beginning and ending dates of the overall period of service; or

(3) (If the fee was determined on some other basic) the fee and the beginning and ending dates of the period in which services were rendered.

D. Retention and Access Requirements for Records

Cross-reference: Subpart D of 45 CFR Part 74.

1. *General Discussion.* The requirements for retention and access to financial and programmatic records, supporting documents, statistical records, and all other records pertaining to a grant-supported project or required to be maintained by the terms of an HDS grant are discussed in subpart D of Part 74.

2. *Freedom of Information Act (FOIA).* The Supreme Court has ruled that the Freedom of Information Act does not apply to the records of recipients, unless obtained by the Federal granting acency. (*Forsham* v. *Harris, 100 S. ct. 978 (1980).*

E. Acknowledgements of Support on Publications and Audiovisuals

1. *Publications.* Recipient project directors are encouraged to make the results and accomplishments of their activities available to the public. Recipients shall have an acknowledgement of HDS support placed on any publication written or published with grant support and, if feasible, on any publication reporting the results of, or describing, a grant-supported activity.

2. *Audiovisuals.* Recipients shall have an acknowledgement of HDS support placed on any audiovisual which is produced with grant support and which has a direct production cost to the recipient of over $5,000. (See chapter 1, section L for a discussion regarding prior approval requirements for audiovisuals.) Unless the other terms of the grant make it apply, this requirement does not apply to audiovisuals produced as research instruments or for documenting experimentation of findings and are not intended for presentation or dissemination to the general public.

3. *How to Word an Acknowledgement of Support.* Examples of expressing an acknowledgement of support are:

- "This publication was made possible by a grant from* * *"
- "The project described in this article was supported by a grant from* * *"
- "Funding for this program was provided in part by* * *"

The words "sponsored by" or "produced for" or their equivalents do not correctly express the grant relationship and must not be used.

4 *Disclaimers.* The acknowledgement must not represent or suggest in any way that the views expressed are those of the Federal government. For audiovisuals covered under E2 above, the acknowledgement must include the following explicit statement or its equivalent, except if clearly unnecessary or inappropriate because of the nature of the subject matter.

The opinions expressed in this (*film, program, etc.*) do not necessarily reflect the views of (*name of the HDS granting office*).

Unless waived by the HDS granting office, this acknowledgement must also include the following statement or its equivalent:

The (*name of HDS granting office*) has not approved this (*film, program, etc.*) for presentation to the general public.

F. Surveys and Questionnaries

Whenever an HDS granting office sponsors the use by a grantee of a reporting form to collect identical information from ten or more sources outside the Federal government, the grantee must obtain, through the HDS Project Officer, the required Office of Management and Budget clearance in accordance with OMB Circular A–40, before making public contacts for the collection of data.

A report form or "plan" used by a recipient of an HDS program grant is considered to be sponsored by HDS when:

- The recipient of a grant uses the report form or "plan" to collect information that the responsible HDS granting office has requested for the planning, operation or evaluation of its grant project;
- The terms and conditions of the grant provide for approval by the granting office of the survey design, questionnaire content or data collection procedure; or
- The terms and conditions of the grant provide for submission of data to the HDS granting office received from individual respondents and/or special tabulations relative to the data.

Grantees collecting information may not represent to their respondents that the information is being collected for or in association with HDS unless the responsibile HDS granting office has determined that such a representation would be true in the particular case and has authorized the grantee in writing to make the representation in suitably qualified form. Such acknowledgements are encouraged but nor required.

Chapter 6—Reports

A. Financial Reporting Requirements

Cross-reference: Subpart I of Part 74.

1. *General Discussion.* Grantees are required to use certain specified forms to report financial information to HDS. General requirements for financial reporting are discussed in 45 CFR 74.72.

2. *Financial Status Report.*

Cross-references:

- 45 CFR 74.73;
- Exhibit X–6–1 of this chapter;
- Chapter 1, I.3 of this manual; and
- Chapter 1, L.3 of this manual.

All HDS grantees shall use Standard Form 269, "Financial Status Report" (or computer printouts with required information) to report the status of funds for all nonconstruction grants. Each grantee shall report program outlays and program income on the same accounting basis, i.e. cash or accrual, which it uses in its accounting system. Information reported must be reconcilable to the grantee organization's books of account. Financial data must be provided in the vertical columns (a) through (f) of the SF–269 for each grant function, activity, or program account in the budget. HDS will provide instructions to the grantee regarding the frequency of financial report submission. However, the report shall not be required more frequently than quarterly except as provided in §§ 74.7 and 74.72(e) of Part 74. If the HDS granting office does not specify the frequency of the report, it shall be submitted annually. A final report shall be required upon expiration or termination of grant support.

When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after end of the reporting period. Final reports shall be due ninety (90) days after the expiration or termination of grant support. Unless othewise instructed by the HDS Grants Officer, final reports are due at the end of each budget period for grantees with "indefinite" project periods.

Each financial report submitted by the grant must reflect the proper amount of indirect costs applicable to the grant based on the most current rate(s) available at the time the report is submitted. If a provisional rates(s) is used in the report, a subsequent adjustment will be necessary when a permanent rate(s) applicable to the grant is established. (See discussion of indirect costs in chapter 3B of this manual).

Grantees shall use the "Remarks" seaction (Item 12) of this report to identify any reimbursements received during the period from other Federal agencies for grant-supported activities. This information shall include the amount of funds received and the source. If such funds replace HDS grant funds originally budgeted for the same purpose, they shall also be included in Item 10–m of the report.

3. *Federal Cash Transactions Report.*

Cross-references:

- 45 CFR 74.72 and
- Exhibit X–6–2 of this chapter

The "Federal Cash Transactions Report" (SF–272) is used to monitor cash advanced to grantees and to obtain dusbursement or outlay information from grantees paid through either the Division of Accounting Operations (DAO) or the Regional Administrative Support Center (RASC). This report will be closely monitored by HDS grants management staff and the finance office to determine what cash balance and cash deficits the grantee maintains. Information contained on the Cash Transactions Report must be reconcilable to the grantee's books of account.

The SR–272 is submitted *in addition to* the Financial Status Report (SF–269). Grantees shall submit the report no later than 15 working days following the end of each quarter, unless otherwise instructed by the HDS payment office. The amounts represented on the last SF–272 submitted must be identical to those represented on the final SF–269 for the period, or the SF–272 must be adjusted accordingly.

Section 74.74 (b) and (c) of Part 74 provides additional information regarding the Federal Cash Transactions Report.

4. *Grantee Report of Expenditures.*

Cross-references:

- 45 CFR 74.74 and
- Exhibit X–6–3 of this chapter

All grantees paid through the Departmental Federal Assistance Financing System (DFAFS) must submit DFAFS Report 27 on either a monthly basis or quarterly basis (as determined by DFAFS). This report is in addition to the Financial Status Report (SF–269) submitted to the HDS granting office. Amounts represented on the final DFAFS Report 27 must be identical to those represented on the final SF–269.

5. *Request for Advance or Reimbursement.*

Cross-references:

- 45 CFR 74.75
- Exhibit X–6–4 of this chapter

HDS uses Standard Form 270, "Request for Advance or Reimbursement" only when (1) a grantee is paid by reimbursement for a non-construction grant, or (2) a grantee is paid by advance or reimbursement for a construction grant. The frequency for submitting payment requests is discussed in 45 CFR 74.96 and chapter 4A of this manual.

B. Performance or Progress Reporting Requirements

Cross-reference: Subpart J of Part 74.

Recipients are responsible for monitoring and reporting program performance to assure that adequate progress is being made toward achieving the objectives of the grant or subgrant program or activities.

Most HDS granting offices provide specific instructions for the completion of the performance report either in program regulations or guidelines. In some cases, more specific information to be included in these reports may be determined and agreed upon by the HDS granting office and the grantee at the time the grant is awarded. Depending on the grant award terms and conditions, a performance report is generally submitted with the Financial Status Report to the Appropriate HDS Grants Officer. The granting office may, however, waive the requirement for any performance report which is not needed (See 45 CFR 74.82(a)).

Monitoring and reporting of program performance is further discussed in subpart J of Part 74.

C. Overdue Reports

It is HDS policy that administrative action be taken in discretionay grant programs to obtain overdue reports (either current reports or reports from a prior funding period) from grantees as indicated below. The term "reports" is meant to include financial, performance or other reports required by the HDS granting office.

1. *Action on Overdue Reports to Payment Office.* Following reasonable notice to the grantee, The payment office shall make no further payments to the grantee until.

- The overdue report is received;
- The reporting requirement is waived; or
- A new due date is set.

The only acceptable reasons for waiving the reporting requirement or setting a new due date are that either the report cannot be submitted in a timely manner for reasons over which the grantee has no control or the purposes for which the report is to be used will be accomplished through other means.

2. *Action on Overdue Reports to the Division of Accounting Operations and all other Overdue Reports.*

• *First letter:* The cognizant HDS Grants Officer, in coordination with the Federal Project Officer in the HDS granting office, will send a delinquency notification letter to the grantee requesting the report. The grantee shall submit the report or explain the reasons for not sending it within 30 days of the date of the Grants Officer's letter.

• *Second letter:* If neither the report nor an acceptable explanation is received, the HDS Grants Officer will send a follow-up letter to the grantee stating that the report must be received within thirty (30) days and failure to do so may result in:

(1) Suspension or termination of the grant;

(2) Withholding of any additional awards; or

(3) Additional and more severe action.

• Fund Cutoff: If neither the report nor an acceptable explanation is received by the HDS Grants Officer within 30 days of the second letter, no additional funds shall be awarded for the project while the report remains overdue and the grant, if still active, shall be suspended. The HDS Grants Officer, in coordination with the HDS granting officer's Federal Project Officer, will set a final date by which the report must be received. If the report or an acceptable explanation is not received by that date, the grant shall be terminated.

• Exception—Prompt Suspension or Termination: A notice of suspension or termination may be issued as soon as the report becomes overdue if failure to submit the report on time constitutes a material violation of grant terms and prompt suspension or termination is necessary to protect the Federal government's interest.

• Waivers and Extensions: If at any time the grantee does provide an acceptable explanation why the overdue report cannot be submitted promptly, the reporting requirement shall be waived or a new due date set. Further extensions of the due date will also be given, if justified.

3. *Additional Actions.* The HDS Grants Officer, in coordination with the HDS granting office's Federal Project Officer, may take any of the following additional actions when a grantee is delinquent in submitting a report:

• Withholding further grant payments;

• Converting to the reimbursement method of paying the grantee;

• Withholding any additional awards otherwise approved and pending for the specific project;

• Requesting a special audit by the HHS Office of Audit;

• Notifying other Federal granting agencies of the delinquency so precautionary measures may be taken;

• Awarding no discretionary grant funds while the report is overdue for some or all of the other eligible HDS projects conducted by the grantee organization; or

• Considering legal action with the HHS Office of General Counsel.

BILLING CODE 4130-01-M

FINANCIAL STATUS REPORT

(Follow instructions on the back)

1. FEDERAL AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH REPORT IS SUBMITTED	2. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER	OMB Approved No. 80-R0180	PAGE OF PAGES

3. RECIPIENT ORGANIZATION (Name and complete address, including ZIP code)	4. EMPLOYER IDENTIFICATION NUMBER	5. RECIPIENT ACCOUNT NUMBER OR IDENTIFYING NUMBER	6. FINAL REPORT ☐ YES ☐ NO	7. BASIS ☐ CASH ☐ ACCRUAL
	8. PROJECT/GRANT PERIOD (See instructions) FROM (Month, day, year)	TO (Month, day, year)	9. PERIOD COVERED BY THIS REPORT FROM (Month, day, year)	TO (Month, day, year)

10. STATUS OF FUNDS

PROGRAMS/FUNCTIONS/ACTIVITIES ►	(a)	(b)	(c)	(d)	(e)	(f)	TOTAL (g)
a. Net outlays previously reported	$	$	$	$	$	$	$
b. Total outlays this report period							
c. *Less:* Program income credits							
d. Net outlays this report period *(Line b minus line c)*							
e. Net outlays to date *(Line a plus line d)*							
f. *Less:* Non-Federal share of outlays							
g. Total Federal share of outlays *(Line e minus line f)*							
h. Total unliquidated obligations							
i. *Less:* Non-Federal share of unliquidated obligations shown on line h							
j. Federal share of unliquidated obligations							
k. Total Federal share of outlays and unliquidated obligations							
l. Total cumulative amount of Federal funds authorized							
m. Unobligated balance of Federal funds							

11. INDIRECT EXPENSE	a. TYPE OF RATE *(Place "X" in appropriate box)* ☐ PROVISIONAL ☐ PREDETERMINED ☐ FINAL ☐ FIXED			
	b. RATE	c. BASE	d. TOTAL AMOUNT	e. FEDERAL SHARE

12. REMARKS: *Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.*

13. CERTIFICATION

I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE REPORT SUBMITTED
TYPED OR PRINTED NAME AND TITLE	TELEPHONE *(Area code, number and extension)*

269-101

STANDARD FORM 269 (7-76)
Prescribed by Office of Management and Budget
Cir. No. A-110

INSTRUCTIONS

Please type or print legibly. Items 1, 2, 3, 6, 7, 9, 10d, 10e, 10g, 10i, 10l, 11a, and 12 are self-explanatory, specific instructions for other items are as follows:

Item	Entry
4	Enter the employer identification number assigned by the U.S. Internal Revenue Service or FICE (institution) code, if required by the Federal sponsoring agency.
5	This space is reserved for an account number or other identifying numbers that may be assigned by the recipient.
8	Enter the month, day, and year of the beginning and ending of this project period. For formula grants that are not awarded on a project basis, show the grant period.
10	The purpose of vertical columns (a) through (f) is to provide financial data for each program, function, and activity in the budget as approved by the Federal sponsoring agency. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the totals of all programs, functions or activities should be shown in column (g) of the first page. For agreements pertaining to several Catalog of Federal Domestic Assistance programs that do not require a further functional or activity classification breakdown, enter under columns (a) through (f) the title of the program. For grants or other assistance agreements containing multiple programs where one or more programs require a further breakdown by function or activity, use a separate form for each program showing the applicable functions or activities in the separate columns. For grants or other assistance agreements containing several functions or activities which are funded from several programs, prepare a separate form for each activity or function when requested by the Federal sponsoring agency.
10a	Enter the net outlay. This amount should be the same as the amount reported in Line 10e of the last report. If there has been an adjustment to the amount shown previously, please attach explanation. Show zero if this is the initial report.
10b	Enter the total gross program outlays (less rebates, refunds, and other discounts) for this report period, including disbursements of cash realized as program income. For reports that are prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contractors, subgrantees, and other payees.
10c	Enter the amount of all program income realized in this period that is required by the terms and conditions of the Federal award to be deducted from total project costs. For reports prepared on a cash basis, enter the amount of cash income received during the reporting period. For reports prepared on an accrual basis, enter the amount of income earned since the beginning of the reporting period. When the terms or conditions allow program income to be added to the total award, explain in remarks, the source, amount and disposition of the income.
10f	Enter amount pertaining to the non-Federal share of program outlays included in the amount on line e.
10h	Enter total amount of unliquidated obligations for this project or program, including unliquidated obligations to subgrantees and contractors. Unliquidated obligations are: Cash basis—obligations incurred but not paid; Accrued expenditure basis—obligations incurred but for which an outlay has not been recorded. Do not include any amounts that have been included on lines a through g. On the final report, line h should have a zero balance.
10i	Enter the Federal share of unliquidated obligations shown on line h. The amount shown on this line should be the difference between the amounts on lines h and i.
10k	Enter the sum of the amounts shown on lines g and j. If the report is final the report should not contain any unliquidated obligations.
10m	Enter the unobligated balance of Federal funds. This amount should be the difference between lines k and l.
11b	Enter rate in effect during the reporting period.
11c	Enter amount of the base to which the rate was applied.
11d	Enter total amount of indirect cost charged during the report period.
11e	Enter amount of the Federal share charged during the report period. If more than one rate was applied during the project period, include a separate schedule showing bases against which the indirect cost rates were applied, the respective indirect rates the month, day, and year the indirect rates were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.

FEDERAL CASH TRANSACTIONS REPORT

(See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272–A.)

Approved by Office of Management and Budget, No. 80–R0182

1. Federal sponsoring agency and organizational element to which this report is submitted

2. RECIPIENT ORGANIZATION

Name

Number and Street

City, State and ZIP Code

3. FEDERAL EMPLOYER IDENTIFICATION NO.

4. Federal grant or other identification number

5. Recipient's account number or identifying number

6. Letter of credit number

7. Last payment voucher number

Give total number for this period

8. Payment Vouchers credited to your account

9. Treasury checks received *(whether or not deposited)*

10. PERIOD COVERED BY THIS REPORT

FROM *(month, day, year)*

TO *(month, day year)*

11. STATUS OF FEDERAL CASH *(See specific instructions on the back)*

a. Cash on hand beginning of reporting period	$
b. Letter of credit withdrawals	
c. Treasury check payments	
d. Total receipts *(Sum of lines b and c)*	
e. Total cash available *(Sum of lines a and d)*	
f. Gross disbursements	
g. Federal share of program income	
h. Net disbursements *(Line f minus line g)*	
i. Adjustments of prior periods	
j. Cash on hand end of period	$

12. THE AMOUNT SHOWN ON LINE 11J, ABOVE, REPRESENTS CASH REQUIREMENTS FOR THE ENSUING *Days*

13. OTHER INFORMATION

a. Interest income	$
b. Advances to subgrantees or subcontractors	$

14. REMARKS *(Attach additional sheets of plain paper, if more space is required)*

15. CERTIFICATION

I certify to the best of my knowledge and belief that this report is true in all respects and that all disbursements have been made for the purpose and conditions of the grant or agreement

AUTHORIZED CERTIFYING OFFICIAL

SIGNATURE

DATE REPORT SUBMITTED

TYPED O. PRINTED NAME AND TITLE

TELEPHONE *(Area Code, Number, Extension)*

THIS SPACE FOR AGENCY USE

272-102

STANDARD FORM 272 (7–76)
Prescribed by Office of Management and Budget
Cir. No. A–110

INSTRUCTIONS

Please type or print legibly. Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

Item	*Entry*
3	Enter employer identification number assigned by the U.S. Internal Revenue Service or the FICE (institution) code. If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272–A, Report of Federal Cash Transactions—Continued; otherwise;
4	Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.
5	This space reserved for an account number or other identifying number that may be assigned by the recipient.
6	Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter "NA" for not applicable and leave items 7 and 8 blank.
7	Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.
11a	Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.
11b	Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.
11c	Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.
11f	Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also include the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the employee's share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.
11g	Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.
11i	Enter the amount of all adjustments pertaining to prior periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under "Remarks." Use plain sheets of paper if additional space is required.
11j	Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line e, less line h, plus or minus line i).
12	Enter the estimated number of days until the cash on hand, shown on line 11j, will be expended. If more than three days cash reqirements are on hand, provide an explanation under "Remarks" as to why the drawdown was made prematurely, or other reasons for the excess cash. The requirement for the explanation does not apply to prescheduled or automatic advances.
13a	Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under "Remarks." Do not report interest earned on advances to States.
13b	Enter amount of advance to secondary recipients included in item 11h.
14	In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing legislation. Use plain sheets of paper if additional space is required.

☆ GPO 1976—O-240-453 #22

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
DEPARTMENTAL FEDERAL ASSISTANCE FINANCING SYSTEM DATE AS OF 06/30/82
RECIPIENT REPORT OF EXPENDITURES

SORT: DOC NO

FINANCE OFFICER
ABC UNIVERSITY
MAIN STREET
NOWHERE, NJ 07100

PIN A123
PAYEE CRS NO. 1-100001479-A1

PART I - OPEN AWARDS

INSTITUTION CONTROL NO.	CRS NUMBER	DFAFS DOCUMENT NUMBER	AUTHORIZED AMOUNT	EXPENDED AMOUNT	FROE
00000000A011	1-100001479-A1	02-00750E2020	109,320.00	75,148.21	
00000000A015	1-100001479-A1	02-00760E8854	110,000.00#	107,197.41	F
00000000A019	1-100001479-A1	05-0124768594			
		FY 7 CAN-5022993	46,250,00	46,250.00	
		FY 7 CAN-5022994	52,000.00	52,000.00	
		FY 8 CAN-5021785	12,327.00	8,000.00	
		FY 8 CAN-5021786	19,500.00	4,000.00	
B0154	1-100001479-A2	06-9576486756	250,000.00	13,000.00	
C0108	1-100001479-A3	07-9569584037	25,000.00	1,250.00	
PART I TOTALS	(5 DOCUMENTS)		624,397.00	306,845.62	

PART II - AWARDS WITH FINAL EXPENDITURES

INSTITUTION CONTROL NO.	CRS NUMBER	DFAFS DOCUMENT NUMBER	AUTHORIZED AMOUNT	EXPENDED AMOUNT	FROE R	FROE A
00000000A010	1-100001479-A1	02-00760E1038	110,000.00	110,000.00	*	
00000000A012	1-100001479-A3	02-00750E3856	95,000.00	93,276.89	*	
0000000C0197	1-100001479-A3	07-3948576485	16,054.00	16,907.66	*	*
PART II TOTALS			221,054.00	220,175.55		
TOTALS, PART I AND PART II			845,451.00	527,021.71		

REQUEST FOR ADVANCE OR REIMBURSEMENT

(See instructions on back)

Approved by Office of Management and Budget, No. 80–R0183

PAGE OF PAGES

1. TYPE OF PAYMENT REQUESTED
a. "X" one, or both boxes ☐ ADVANCE ☐ REIMBURSEMENT
b. "X" the applicable box ☐ FINAL ☐ PARTIAL

2. BASIS OF REQUEST ☐ CASH ☐ ACCRUAL

3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY

5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST

6. EMPLOYER IDENTIFICATION NUMBER

7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER

8. PERIOD COVERED BY THIS REQUEST
FROM (month, day, year)
TO (month, day, year)

9. RECIPIENT ORGANIZATION
Name :
Number and Street :
City, State and ZIP Code :

10. PAYEE (Where check is to be sent is different than item 9)
Name :
Number and Street :
City, State and ZIP Code :

11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED

PROGRAMS/FUNCTIONS/ACTIVITIES ►	(a)	(b)	(c)	TOTAL
a. Total program outlays to date (As of date)	$	$	$	$
b. Less: Cumulative program income				
c. Net program outlays (Line a minus line b)				
d. Estimated net cash outlays for advance period				
e. Total (Sum of lines c & d)				
f. Non-Federal share of amount on line e				
g. Federal share of amount on line e				
h. Federal payments previously requested				
i. Federal share now requested (Line g minus line h)				
j. Advances required by month, when requested by Federal grantor agency for use in making prescheduled advances — 1st month				
2nd month				
3rd month				

12. ALTERNATE COMPUTATION FOR ADVANCES ONLY

a. Estimated Federal cash outlays that will be made during period covered by the advance	$
b. Less: Estimated balance of Federal cash on hand as of beginning of advance period	
c. Amount requested (Line a minus line b)	$

13. CERTIFICATION

I certify that to the best of my knowledge and belief the data above are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL — DATE REQUEST SUBMITTED

TYPED OR PRINTED NAME AND TITLE — TELEPHONE (AREA CODE, NUMBER, EXTENSION)

This space for agency use

270–102

STANDARD FORM 270 (7–75)
Prescribed by Office of Management and Budget
Cir. No. A–110

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are self-explanatory; specific instructions for other items are as follows:

Item	Entry
2	Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.
4	Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency.
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.
8	Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.
Note:	The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.
11	The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.
11a	Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.
11b	Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement.
11d	Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.
13	Complete the certification before submitting this request.

STANDARD FORM 270 BACK (7-76)

GPO : 1976 O - 616-570

BILLING CODE 4130-01-C

Chapter 7—Public Policy Requirements

A. Public Policy Assurances

There are a number of requirements that are based on legislation or regulation, which are termed "public policy requirements" with which applicants or grantees must comply. The following listing is not exhaustive and additional assurances or certifications may be required.

1. *Civil Rights.* Title VI of the Civil Rights Act of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Departmental regulations implementing this requirement are published in 45 CFR Part 80 and 45 CFR Part 81. Every applicant organization is required to have an Assurance of Compliance (Form HEW–441 or 441–B) on file with the Office of Civil Rights, Office of the Secretary, HHS, before an HDS grant may be made to the organization.

Section 504 of the Rehabilitation Act of 1973, as amended, provides that no otherwise qualified handicapped individual in the United States shall, solely by reason of the handicap, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A Departmental regulation implementing ths requirement is published in 45 CFR Part 84. Every applicant organization is required to have an assurance of compliance (Form HEW–641) on file with the Office of Civil Rights, Office of the Secretary, HHS, before an HDS grant may be made to the organization.

2. *Human Subjects.* Safeguarding the rights and welfare of human subjects who are involved in activities supported by HDS program funds is the responsibility of the grantee. This applies to grantee institutions performing research, development, demonstration or other activities. For the purposes of this policy, a human subject "at risk" is an individual who may be exposed to the possibility of injury, including physical, psychological, or social injury, as a consequence of participation as a subject in any grant supported activity which departs from the application of those established and accepted methods necessary to meet the subject's needs, or which increases the ordinary risks of daily life, including the recognized risks inherent in a chosen occupation or field of service. The individuals must be protected in accordance with the provisions of HHS regulations in 45 CFR Part 46.

No HDS grant for an activity involving human subjects at risk shall be made unless:

- An assurance of compliance with Departmental policy regarding the protection of human subjects has been submitted (Form HEW 596) with the grant application (whether for new, competing, or non-competing awards) by the grantee organization and is found acceptable by HHS; and
- A properly constituted committee of the grantee organization has reviewed and approved such activity and a certification is submitted with the grant application (or no later than 60 days after the dealine date for receipt of an application) stating that it has been reviewed in accordance with the organization's approved assurance. This certification must be submitted annually.

The Office for Protection from Research Risks, National Institutes of Health, DHHS, Bethesda, Maryland 20205, is responsible for the implementation and enforcement of this policy for the Department. Information concerning the preparation and negotiation of assurances, as well as copies of the regulation, may be obtained from that office.

3. *Animal Welfare.* Human care and use of animals in HDS grant-supported projects is the responsibility of the grantee organization. "Animal" means any live, vertebrate animal used or intended for use in research, experimentation, testing, training, or related purposes. "Animal facility" means any building, room, area, or vehicle designed to confine, transport, maintain, or use animals. No affected HDS grant will be made unless the applicant organization has provided an acceptable written assurance to the Office of Protection from Research Risks, National Institutes of Health (NIH), Bethesda, Maryland 20014, that it will comply with applicable provisions of the Animal Welfare Act (Public Law 89–544, as amended) and the Department's publications *Guide for the Care and Use of Laboratory Animals* (revised 1978) and *Principles for Use of Experimental Animals.* the assurance must also indicate the means by which the organization will review its facilities for warm-blooded animals for conformance with the provisions of the *Guide.*

A complete new assurance form must be submitted once every five years. Further information may be obtained from HIH.

4. *The Hatch Act.* The Hatch Act (5 U.S.C. 1501–1508) specifies permitted and prohibited political activities of:

- Employees of State and local governments whose principal employment is financed in whole or in part with Federal funds; and
- Any agency which assumes responsibility for planning, developing, and coordinating Headstart programs and receives assistance under the Head Start Act (section 641(a) of the Omnibus Budget Reconciliation Act, Pub. L. 97–35). Such an agency is considered a State or local agency for purposes of this policy.

The Act does *not* cover:

- An individual who exercises no functions in connection with that activity, or
- An individual employed by an educational or research institution * * * which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

All State or local employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and regulations (*5 CFR Part 151*). A State or local officer or employee may participate in all political activity not specifically restricted, including candidacy for office in nonpartisan election and candidacy for political party office.

A State or local employee may not:

- Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or
- Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a political party, committee, organization, agency or person for a political purpose; or
- Be a candidate for elective public office in a partisan election.

Section 656(b) of the Head Start Act further limits employees of Head Start organizations as follows:

> Programs assisted * * * shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with:
>
> - Any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office; or
> - Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

• Any voter registration activity."

5. *Fair Labor Standards Act.* The Federal Fair Labor Standards Act (29 U.S.C. 201 et seq.) imposes minimum wage and maximum hour provisions, as they apply to employees of State and local governments, employees of institutions of higher education, hospitals, and other nonprofit organizations.

6. *Environmental Protection and Related Legislation.* The National Environmental Policy Act of 1969 (Pub. L. 91–190) and related legislation establishes national policy goals and procedures for protecting and enhancing the physical environment and our cultural heritage. The provisions of this legislation are applicable to activities supported in whole or in part through grants awarded by HDS granting offices. If HDS believes proposed projects may create an environmental impact or affect important cultural assets, special application instructions may be given. The Department's rules implementing this legislation are set forth in *HHS General Administration Manual Part 30.*

Under the provisions of Section 106 of the National Historic Preservation Act of 1966, as amended, the Secretary of the Interior has compiled a national register of sites and buildings that are of significant importance to America's history. This listing may be obtained from the Advisory Council on Historic Preservation, 1522 K Street, NW., Washington, D.C. 20005.

7. *Flood Insurance.* The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) provides that no Federal financial assistance for construction or renovation and alteration of property may be provided in identified special flood areas in the United States unless, within one year after the affected community has been notified that it is flood-prone, the community participates in the National Flood Insurance Program, and flood insurance is purchased. Listings of flood-prone areas that are eligible for flood insurance are published in the **Federal Register** by the Department of Housing and Urban Development (HUD). Guidance on compliance with the Act is available from HUD and from the Office of Facilities Engineering and Construction in each HHS Regional Office.

8. *Relocation Assistance and Real Property Acquisition.* A State agency applying for HDS grant funds must assure that it will comply with the provisions required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) and the HHS regulations implementing those provisions (*45 CFR Part 15*). The term "State agency" means, for purposes of this manual, State or local institutions of higher education or hospitals or private entities acting as agents or contractors in the discharge of the university or hospital's responsibilities under a grant.

The Act provides a uniform policy for the fair and equitable treatment of owners and tenants of real property who are displaced by Federal or federally assisted programs or projects or whose real property or interests in real property is taken for or as a direct result of such programs or projects.

Title II of the act provides for a program of relocation payments, of relocation assistance (including advisory services), of assurances that prior to the displacement of persons, comparable quality, decent, safe, and sanitary replacement housing will be available for them.

B. Other Policies

1. *Citizenship.* The Office of Human Development Services will not intercede in behalf of a non-United States citizen who may be a project director or is otherwise participating on a project and whose stay in the United States may be limited by visa status. Therefore, a grantee institution shall determine, and the application should indicate, that any individual's visa will allow him or her to remain in the country a sufficient length of time to be productive on the project.

2. *Safety Precautions.* The Office of Human Development Services assumes no responsibility with respect to accidents, illnesses or claims arising out of any work performed under a grant-supported project. The grantee organization is expected to take necessary steps to insure or protect itself and its personnel and to comply with the applicable local, State and Federal safety standards.

Chapter 8—Recipient Procurements

Cross-references: Subpart P and Appendices G and H of 45 CFR Part 74.

A. General Discussion

In the past, HHS has implemented Attachment O to OMB Circular A–102 and Attachment O to OMB Circular A–110 by paraphrasing and combining the text of the two attachments in subpart P of Part 74. HHS has changed this method of implementation for both attachments and now requires compliance with the attachments which are placed in separate appendices to 45 CFR 74, without paraphrasing.

Thus, the requirements governing recipient procurements of supplies, equipment, and services (including construction) are in appendices G and H of Part 74 (as clarified in subpart P of Part 74) and this chapter. Governmental recipients shall comply with the standards in appendix G and non-governmental recipients, with the standards in appendix H of Part 74. These requirements do not apply to procurements of land, existing land improvement or structures, or any other existing real property, but do apply to construction.

b. Relying on Recipient's Judgment

Paragraph 2.a of appendix G prohibits a granting office from substituting its judgment for that of a recipient government unless the matter is primarily a concern of the Federal government (or in the case of a subgrant, a concern of either the Federal government or the grantee). For HDS grants and subgrants, this prohibition on granting offices also applies to procurements by nongovernmental recipients that are subject to appendix H of Part 74.

C. Granting Office Review of Proposed Procurements

Granting office pre-award review and approval of the recipient's proposed procurements and related procurement documents, such as requests for proposals and invitations for bids, is required or may be required only as follows:

• *Non-competitive procurements:* For both governmental and non-governmental recipients, prior approval is required if the procurement is expected to exceed $10,000 and (1) the procurement is to be made without competition or (2) the procurement is to be made where only one bid or offer has been received in response to a solicitation. At the discretion of the granting office, a non-governmental recipient may be required to obtain prior approval in either of these cases if the procurement is expected to exceed $5,000.

• *"Brand-Name" Procurements:* Governmental recipients are required to obtain prior approval if the procurement is expected to exceed $10,000 and specifies a "brand-name" product.

• *Procurement System Not In Compliance;* A granting office may require a governmental or nongovernmental recipient to obtain prior approval for any or all of the recipient's HDS-supported procurements and elated procurement documents if the recipient's procurement procedures or operation fails to comply with one or more significant aspects of appendices G and H of Part 74. If this occurs, the granting office shall notify the recipient

in writing, with a copy of such notification to the Office of Federal Procurement Policy, OMB, Washington, D.C. 20503. If the notification is issued by a grantee to a subgrantee, the grantee shall also send a copy to the HDS granting office.

• *Transfers of Substantive Programmatic Work:* Prior approval is required for any procurement by a governmental or non-governmental recipient if the procurement constitutes a transfer of substantive programmatic work, as explained in section K of chapter 1 of this maual. In this case, the procurement documents (request for proposals, final contract document, etc.) need not be submitted. However, unless otherwise instructed by the granting office, the recipient shall include with its request for prior approval (1) its plans for making the procurement, including the types of parties to be solicited, and (2) the specifications or scope of work.

D. Lease Versus Purchase

Appendices G (paragraph 8) and H (paragraph 3.C.(1)) of Part 74 require that an analysis shall be made of lease versus purchase alternatives to determine which approach would be the most economical. Generally, the decision to lease or purchase equipment shall be based on the lowest cost to the project considering the length of the project and life expectancy of the equipment. Prior approval must be obtained from the granting office before equipment may be purchased (see section L, chapter 1 of this manual).

E. Requirement on Equal Employment Opportunity

Appendices G and H of Part 74 require recipients to include in contracts in excess of $10,000 a provision requiring compliance with Executive Order 11246, concerning equal employment opportunity, as supplemented in Department of Labor regulations (*41 CFR chapter 60*). For HDS grants and subgrants, this requirement applies only if the contract is for construction.

If construction is to be assisted by a grant or subgrant, the Executive Order and the Department of Labor supplementing regulations apply, unless an exemption is granted by or under those regulations. Recipients shall observe all applicable requirements of the Order and regulations and include in their nonexempt construction contracts the specific clauses prescribed by 41 CFR 60–1.4(b) and, if applicable, 41 CFR 60–4.3.

Chapter 9—Property

Cross-reference: Subpart O of 45 CFR Part 74.

A. General Discussion

This chapter and Subpart O of Part 74 set forth applicable policies and procedures for the use and disposition of property acquired in whole or in part under grants or subgrants supported by HDS program funds. Equipment or supplies aquired by a contractor under a grant or subgrant are subject to the property requirements only if, by terms of the contract, title vests in the grantee or subgrantee. The applicability of the property requirements is discussed in § 74.130 of Part 74.

B. Title to Equipment and Supplies

Subject to the obligations and conditions set forth in Subpart O of Part 74 and this chapter, title to equipment and supplies acquired under a grant or subgrant shall vest, upon acquisition, in the grantee or subgrantee respectively. It is important to determine whether the grantee's or subgrantee's budget account was used to acquire the property to know in whom title is vested. When a grantee's budget includes equipment, title vests in the grantee; conversely, when a subgrantee's budget includes equipment, title vests in the subgrantee. It, therefore, depends on whose grant/subgrant account was used to determine who has title to the equipment.

C. Real Property

Unless authorized by the applicable program statute, neither Federal grant funds nor non-Federal cost-sharing or matching funds may be used to purchase real property. Nor may the fair market value of donated real property be counted as cost-sharing or matching. Charges for real property are subject to the depreciation or use allowance provisions of the applicable cost principles.

D. Damage, Loss, or Theft of Equipment

This section applies to equipment with a unit acquisition cost of $1,000 or more that, before disposition under 45 CFR 74.139, is damaged beyond repair, lost, or stolen.

1. *Recipient at Fault.* This subsection applies if:

• At the time of damage, loss, or theft, the recipient does not have a control system in effect as required by 45 CFR 74.140(c) and

• The damage, loss, or theft is not due to an act of God.

a. Equipment Replaced: If the equipment is replaced, the replacement is governed by 45 CFR 74.138 (b) and (c). When that happens, the market value of the original equipment at the time it was damaged, lost, or stolen is used instead of the amount received for trade-in or sale.

b. Equipment Not Replaced: If the equipment is not replaced, the Federal government has a right to an amount calculated by multiplying the Federal share in the equipment by its market value at the time of damage, loss, or theft. The amount is reduced pro rata if part of the Federal share of the equipment comes from an award under which the exemptions in 45 CFR 74.135 applied.

c. Other Remedies: The provisions in this subsection are in addition to other remedies available to the granting office if a recipient acquires equipment with grant or subgrant support but fails to establish the control system required by 45 CFR 74.140(c). (See in particular 45 CFR 74.7 and 74.113.)

2. *Recipient Not at Fault.* This subsection applies if:

• At the time of the damage, loss, or theft, the recipient does have a control system in effect as required by 45 CFR 74.140(c); or

• The damage, loss, or theft is due to or follows after an act of God.

a. Recipient Not Compensated: If the recipient is not compensated for the damage, loss, or theft through insurance or some other means, there is no obligation to HDS for the equipment.

b. Recipient Compensated: If the recipient is compensated for the damage, loss, or theft and replaces the equipment, 45 CFR 74.138 applies to the replacement equipment. If the recipient is compensated but does not replace the equipment, 45 CFR 74.139(b) applies as though the recipient had sold the equipment. (All of § 74.139(b) applies including the rule permitting the amount due the Federal government to be reduced by 10% of the proceeds or $100, whichever is greater.) The amount received for trade-in or sale is considered the lesser of (i) the amount of compensation or (ii) the market value of the equipment at the time it was damaged, lost, or stolen.

E. Using or Remitting the Federal Share

This section applies when the Federal government has a right to an amount of money upon *disposition or loss, theft, or damage of property.*

If the grantee's project program for which the property was acquired is still receiving grant support from the same Fedeal program, the HDS granting office may authorize use of the net money due for allowable costs of that project or program. Otherwise, the net amount must be remitted to the HDS granting office by check.

F. Intangible Property

1. *Patents and Inventions.* Cross-reference: 45 CFR 74.144.

The Department's regulations on patents and inventions arising out of activities assisted by a grant are set forth in 45 CFR 6 and 8. Requests for information should be addressed to: Assistant Secretary for Health, Department of Health and Human Services, 200 Independence Avenue, SW., Room 716 "G", Hubert H. Humphrey Building, Washington, D.C. 20201.

2. *Copyrights.* This subsection supercedes 45 CFR 74.145 and applies to the copyright in any original work of authorship prepared with grant support. In addition, if ownership of a copyright or of any of the exclusive rights comprising a copyright is purchased with grant support, this section applies to the purchased copyright or rights.

Copyrights may be secured by registering a claim in the Copyright Office. Application forms and further information may be obtained from: Register of Copyrights, Copyright Officer, Library of Congress, Washington, DC 20559.

a. Basic rules:

• HDS reserves a royalty-free, nonexclusive, and irrevocable license to exercise, and to authorize others to exercise, the rights for Federal government purposes. Subject to this license, the owner is free to exercise, preserve, or transfer all its rights. The recipient shall ensure that no agreement is entered into for transferring the rights which would conflict with the nonexclusive license of HDS.

• One way that HDS may exercise its nonexclusive license is to authorize exercise of the rights by another project or activity that receives or has received grant support from the Federal government. That would be considered "for Federal government purposes."

• A grantee awarding a subgrant is permitted to impose subgrant terms reserving a nonexclusive license for itself, similar to the one reserved by this section for HDS, with respect to any copyright or rights subject to this section that arise under the subgrant.

b. Exceptions.

• It is permissible for the other terms of an award to restrict the author (owner) from exercising, preserving, or transferring the rights. For a subgrant, the restrictions may be in the terms of the grant or subgrant or both.

• HHS awards training grants and other kinds of grants under which individuals are provided stipends or other financial assistance for the primary purpose of aiding them to further their education or training. A copyright or rights acquired by an individual or group of individuals in the course of this education or training are exempted from the HDS nonexclusive licensive reserve by this section. It is permissible for the other terms of the grant to withdraw this exemption. Furthermore, the exemption does not apply if the preparation of the copyrighted work or purchase of the rights also receives other forms of support from the same or another HDS grant (such as a research grant).

Chapter 10—Grant Suspension, Termination, and Closeout

Cross-reference: Subpart M of Part 74.

A. Guidelines and Procedures Applicable to Suspension and Termination

1. *General Consideration.* Occasionally, situations arise which indicate that continued funding of a grant or subgrant-supported project is not in the best interests of HDS or the grantee organization. Granting office officials may make a decision to suspend a grant or subpart after determining that a recipient has materially failed to comply with the terms and conditions of an award, but that corrective measures may be taken. A decision to terminate a grant or subgrant may be made by granting office officials if appropriate corrective actions are not taken during the period of suspension or if the deficiency is so serious as to warrant immediate termination. A grant or subgrant, or portion thereof, may also be terminated at a recipient's initiative. Termination of a grant may be appealed under the HHS grant appeals procedures (see "Appeals" in chapter 12 of this manual).

2. *Denial of Refunding.* It is important to distinguish clearly between (1) stopping support of a project by not extending the grant period with continuation awards and (2) termination of a grant. A grant gives the recipient legal authority to obligate the funds awarded.

Unless the recipient consents, HDS may cut short that right only if the recipient has materially violated the grant's terms. Therefore, HDS gives grantees an opportunity for formal appeal when an HDS granting office decides to terminate a grant without the grantee's consent (see chapter 12 of this manual). However, when refunding is denied, a grantee has the right to appeal *only* where the denial is for failure to comply with terms of a previous award. (There are two exceptions to this general rule: Both the Head Start Act and title VIII of the Economic Opportunity Act, as amended, provide that if a Head Start or Administration for Native American grantee's application for refunding is denied (for any reason), the affected grantee must be given "reasonable notice and opportunity for a full and fair hearing".) This is because neither the approval of a project period nor the award of a grant gives the recipient any legal entitlement to receive additional awards. The HDS granting office's commitment to fund the project in succeeding budget periods of the project period is subject to the conditions listed in Chapter 1.A.4.

3. *Initial Contact.* When conditions are identified which may be serious enough to cause the granting office official to consider suspension or termination, the recipient shall be advised by letter of the reasons for possible suspension or termination and that failure to correct the deficiency may result in suspension or termination of the grant. The recipient shall respond in writing within thirty (30) days of the date of such letter, describing the action or the plan designed to correct the deficiency. As provided in 45 CFR 74.114(a), suspension (or termination for cause) may be made effective at once if a delayed effective date would be unreasonable considering the HDS granting office's responsibility to protect the Federal government's interests.

B. Suspension

Cross-reference: 45 CFR 74.114.

If a satisfactory written response to the letter described in A3 above is not received within thirty (30) days, the granting office may issue a notice suspending the recipient's authority to obligate grant or subgrant funds in whole or in part. The notice of suspension will be sent by registered or certified mail and will state the reasons for the suspension, any corrective action required of the recipient, the effective date of the suspension, and identify any costs which may be incurred by the recipient during the period of suspension. Recipients should refer to 45 CFR 74.114 for a full discussion of suspension policies.

Unless HDS program regulations provide otherwise, e.g., Head Start and Native American, suspension shall remain in effect until (1) the recipient has taken satisfactory corrective action; (2) the recipient has given assurance that corrective action will be taken; or (3) the granting agency terminates the grant. Uner (1) or (2) above, the suspension shall be lifted only by written notice from the granting office.

C. Termination

1. *Termination for Cause.*

Cross-references:

- 45 CFR 74.115(a); and
- Chapter 12 of this manual.

If a satisfactory written response to the letter described in A3 above is not received within thirty (30) days, the granting office may issue a notice terminating the grant or subgrant. The notice of termination will be sent by registered or certified mail and will state the reasons for the termination, together with the effective date.

2. *Termination by Mutual Agreement.* Cross-reference: 74 CFR 74.115(b)(1)

The policies in the referenced section apply to terminations mutually agreed upon by the granting office and the recipient. All such agreements shall be in writing and signed by the authorized recipient official and the responsible official of the granting office.

3. *Termination Settlements.* 74 CFR 74.115(c) discusses settlement of obligations incurred by the recipient prior to termination.

D. Grant Closeout

Cross-reference: 45 CFR 74.111.

Grant and subgrant closeout is the process by which the granting office determines that all applicable administrative actions and required work of the grant or subgrant have been completed by the recipient and the responsible granting office, with the possible exception of the final audit. Grants are also considered complete when the date appearing on the "Notice of Financial Assistance Awarded" document indicating the project ending date has been reached.

Grant closeout shall be completed within 180 days after the date of completion of the project. Recipients shall observe the closeout procedures prescribed in 45 CFR 74.111.

When a grantee requests a review by the Departmental Grant Appeals Board under the HHS grant appeals process, no grant closeout action will be taken during the review until a final determination is made. However, the filing of the request for the review does not affect the authority to suspend the grant during the proceedings.

E. Amounts Payable to the Federal Government

45 CFR 74.112 discusses debt(s) that may be owed by the grantee to the Federal government.

Chapter 11—Audits

Cross-reference: Subpart H of 45 CFR Part 74.

A. Non-Federal Audits

Subpart H of 45 CFR Part 74 incorporates the audit requirements in OMB Circular A–102 (Attachment P) covering governmental recipients and OMB Circular A–110 (Attachment F) for non-governmental recipients. The audit requirements in these Circulars are reproduced in Attachment B of this manual. In summary, the Circulars provide that each recipient must have itself audited by non-Federal auditors at least every two years and that the audit is to be performed on an organization-wide basis, with appropriate sampling of grant-related transactions. Unless authorized by program legislation or regulations, the granting office may not impose grant-by-grant (or subgrant-by-subgrant) audit requirements.

The audit provisions do not limit the authority of Federal agencies to make audits of recipient organizations. However, if independent audits arranged for by recipients meet the requirements prescribed in the OMB Circulars, all Federal agencies must rely on them, and any additional work must build upon the work already done.

Recipients are required to have audits performed by individuals who are sufficiently independent of those who authorize the expenditure of project funds in order to produce unbiased opinions, conclusions, and judgments. These audits may be conducted by (1) an internal auditor of the recipient organization who meets the standard of independence; or (2) an independent accountant selected by the recipient, who is certified or licensed by a regulatory authority of a State or other political subdivision of the United States. When public accountants are to perform the audits, only certified public accountants or those public accountants licensed on or before December 31, 1970, or persons working for a certified public accounting firm or a public accounting firm licensed on or before December 31, 1970, should be engaged.

The following General Accounting Office publications provide additional information on audits and may be obtained as follows:

"Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" (1981 Revision) available from the: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

"Guidelines for Financial and Compliance Audit of Federally Assisted Programs" (February 1980) available from the: U.S. General Accounting Office, Distribution Section, Room 1518, 441 "G" Street, NW., Washington, D.C. 20548.

B. Audit Resolution

Grantees must take timely and appropriate actions to resolve audit findings and recommendations. Grantees are usually allowed a 30-day period from the date of request to respond to the responsible audit resolution official (referred to as the "Action Official") concerning audit findings. Failure to submit timely responses to audit findings may result in cost disallowances or other actions by HDS or HHS. At the completion of the audit resolution process, the grantee will be notified of the Action Official's final decision. The grantee may appeal this decision in accordance with the applicable appeal procedures. Funds owed to the Federal government as a result of audit disallowances must be made in accordance with instructions issued by the Action Official or finance office.

OMB, HHS, and HDS are stressing the importance of timely and effective audit resolution. HHS has established a high level Audit Resolution Council to monitor the audit resolution process and review audit reports which have not been resolved within six months. This places a mutual requirement on HHS officials and grantees alike to respond to—and resolve—audit findings promptly.

Interest charges will be assessed on audit disallowances which are not paid within 30 days from the date of the Action Official's notification of the disallowance. If the grantee appeals the Action Official's decision and the disallowed amount is sustained in its entirety or is reduced through a negotiated agreement, interest will be charged for the full period on the sustained amount of the disallowance which was not paid as of the original due date.

Chapter 12—Appeals

Cross-references: 45 CFR 16 and 75.

A. General Discussion

Grantees have the right to apeal certain adverse final decisions by HHS officials. The following decisions may be appealed in all HDS discretionary grant programs:

- Termination, in whole or in part, of a grant for failure of the grantee to conform with the grant terms and conditions, including any law, regulation, or assurance applicable to the grant;
- A denial of a non-competing continuation award under the project period system of funding where the denial is for failure to comply with terms of a previous award.

• A disallowance or other determination denying payment of an amount claimed under an award, or requiring return or offset of funds already received. This does not apply to determinations of award amount or disposition of unobligated balances, or selection in the award document of an option for disposition of program income.

• Annulment (voiding) of a grant (i.e., a decision that an award is invalid because it was not authorized by statute or regulation or because it was fraudulently obtained).

• Cost allocation plans negotiated with State and local governments and

• Indirect cost rates, research patient care rates and amounts, computer, fringe benefit, and other special rates.

In reviewing cost allocation and rate disputes, the Board reviews the final written decisions issued as a result of the preliminary appeal process at 45 CFR Part 75.

B. Indirect Cost Rate Appeals

Cross-reference: 45 CFR Part 75.

Informal procedures for resolving disputes arising from determinations made by a Director in the HHS Regional Division of Cost Allocation (DCA) are set forth in 45 CFR Part 75, "Informal Grant Appeals Procedures". When an agreement cannot be reached in a negotiation, the Director, DCA, will promptly notify the grantee in writing of the Director's determination. Grantees must submit their written request for reconsideration to the appropriate HHS Regional Director (RD) no later than thirty (30) days after the postmark date of the notification to the grantee, unless an extension of time is granted by the RD. Although the reconsideration application need not follow any prescribed format, it must clearly identify the issue(s) in dispute and must contain a full statement of the grantee's position on the issue(s) along with pertinent facts and reasons in support of its position.

If the Regional Director's decision is adverse to the grantee, the notification will state the basis of the decision and will inform the grantee of its right to appeal the decision to the Departmental Grant Appeals Board under 45 CFR Part 16. Such an appeal must be made within thirty (30) days after the postmark date of the written notification or the decision will become final (unless an extension is granted by Grant Appeals Board).

C. Appeals to Grant Appeals Board

Cross-references: 45 CFR Parts 16 and 74.304.

Grantees may appeal certain adverse decisions to the Departmental Grant Appeals Board under 45 CFR Part 16. The Departmental Grant Appeals Board is in the Office of the Secretary of HHS. Filing shall be made with the Executive Secretary, Grant Appeals Board, U.S. Department of Health and Human Services, Washington, D.C. 20201.

The appellant must have received a final decision, and must appeal that decision within 30 days after receiving it. Details of how final decisions are developed and issued, and what must be in them, are contained in 45 CFR 74.304.

The notice of appeal must be submitted by registered or certified mail directly to the Board and need not follow any prescribed form. The notice of appeal must include a copy of the final decisions, a statement of the amount in dispute in the appeal, and a brief statement of why the decision is wrong.

The responsible HDS granting office shall be notified by the Grant Appeals Board that such an appeal has been made. The filing of the application shall not affect HDS authority to suspend the grant during appeal proceedings or to withhold payments under the grant.

Attachment D—Checklists for Internal Control

The checklists for internal control included in this manual under attachment D are provided as a suggested guide for recipient officials in assessing the adequacy of the organization's business management capabilities. The checklists are not all inclusive, but can serve as a resource for ongoing evaluation, as necessary. The types of problems continually cited in audit reports clearly indicate that greater attention must be given to the business management competence of recipient organizations. Proper internal control procedures will provide greater assurance that grant and subgrant awards will be adequately managed and should reduce the deficiences found in audits of the organization.

1. Personnel Management

• Is an up-to-date organizational chart in use?

• Does the position classification system:

(1) Differentiate between levels of responsibility and complexity of work?

(2) Require position descriptions and job titles?

(3) Identify position requirements?

(4) Call for periodically reviewing and updating position descriptions?

(5) Divide duties among employees responsible for the procurement, approval, verification (pre-audit) and disbursement functions of expenditure transactions?

• Does the recruitment and selection system:

(1) Provide for the announcement of vacancies to staff as well as other known sources of manpower?

(2) Establish controls to ensure consistency with the budget plan?

(3) Enable a comparison of job candidates with the budget plan?

(4) Establish procedures for applicant interviews, reference checks and final selection by an appropriate official?

(5) Evaluate the effectiveness of compliance with title VI of the Civil Rights Act of 1964, as amended?

• Is the compensation determination based on analysis of:

(1) Job requirements?

(2) Comparability with similar work in the local labor market?

(3) Periodic review of pay scales?

(4) Fringe benefits comparable to other similar organizations?

• Does the performance rating system:

(1) Establish performance standards?

(2) Require periodic rating?

(3) Form the basis for consideration of future pay adjustments?

• Is the merit promotion plan based on increased responsibility and employee qualifications?

• Does the staff utilization and career development program:

(1) Require analysis of manpower needs and staff use?

(2) Provide job training or retraining where applicable?

(3) Provide career counseling?

(4) Provide supervisory training?

• Is there a clear, consistent written policy with respect to:

(1) Working hours?

(2) Work schedules?

(3) Overtime?

(4) Vacation schedules and other absences?

(5) Maintenance of attendance records for all employees, with proper supervisory controls?

(6) Travel (including transportation, subsistence and lodging)?

(7) Training?

(8) Outside employment?

(9) Permitted and prohibited political activity, if covered by the Hatch Act?

• Does the personnel relations program include:

(1) Open channels of communication for distribution if information, expression of grievances, and the encouragement of ideas for organizational improvement?

(2) Written standards for employee conduct and conflict of interest?

(3) A fair and equitable disciplinary system to handle conduct violations?

(4) The provision of medical services to all employees, as appropriate?

• Does the file and records system include all official documents related to the employment of each staff member and other persons participating in grant supported activities?

(Such records should be maintained in an orderly and accessible file system which is capable of providing necessary information to supervisors, accountants, and auditors, as well as employees. Among the documents which would be included in these are actions related to hiring, dismissal, promotions, and commendations and adverse actions.)

2. Payroll

• Is the payroll checked at regular intervals against the personnel records?

• Are clerical operations involved in the preparation of payroll checks double-checked before checks are distributed?

• Are the functions involved in the preparation of payroll distributed among a number of employees?

• Are the duties of those preparing payrolls rotated?

• Are the unclaimed paychecks properly controlled?

• If a separate payroll bank account is maintained, is it reconciled by an employee independent of all other payroll preparation functions?

• Does the procedure followed in reconciling the payroll bank account include the checking of names on payroll checks and of endorsements against payroll records?

• Are payroll checks distributed by someone other than persons who prepare payrolls, supervise employees, approve time reports, or sign paychecks?

• Is the bank instructed not to clear payroll checks over 30 days after date issued?

• Are occasional surprise distribution of paychecks made by an independent employee having no financial duties?

• Are payroll checks always prepared after receipt of approved time-and-attendance reports and based on those reports?

• Is the issuance of any payroll checks before approved time-and-attendance reports have been received expressly forbidden?

• Is each new employee personally interviewed by both the department in which he is to work and by persons independent of that department?

• Are controls over employee termination adequate to prevent the continuance of pay for an employee no longer working?

• Where over 50 employees are on the payroll, are other methods or precautions applied to preclude the possibility of fictitious or non-working employees being added to the payroll?

• In an adequate current record maintained of all personnel and pay rates?

3. Accounting

• Is the accounting routine set out in an accounting manual?

• For very small grantees, is the financial system designed, at the minimum, so that no one person has access to all financial operations, procedures, and records?

• Are sources and application of Federal and non-Federal funds identified in the accounting system? (§ 74.61(b).)

(1) Authorizations

(2) Funds received (including program income)

(3) Reimbursements

(4) Obligations

(5) Unobligated balances

(6) Assets (including depreciation or use allowances)

(7) If applicable, grant-related income

• Does the accounting system accumulate and record the direct costs of each Federally-supported project for both Federal and non-Federal costs?

• Are individual cost elements in recipient's chart-of-accounts reconciled to the cost categories in the project's approved budget?

• Does the accounting system identify and segregate unallowable costs?

• Are accounting records supported by source documentation? (§ 74.61(g).)

• Are separate program activities or program accounts documented in the accounting system?

• Are transactions recorded and posted in the accounting books and records as frequently as possible, but at least every thirty days?

• Is the accounting function completely separated from procurement (purchasing) and receiving?

• Are general journal entries approved by a responsible employee?

4. Budget

• Are there procedures to determine the allowability, allocability, and reasonableness of costs? Are the procedures verified and/or approved by a responsible official?

• If costs have been transferred within the approved budget since the last award, are the transfers supported by justification/documentation?

• Was prior approval obtained on costs requiring same?

• Were any obligations for the current budget period incurred prior to the effective date?

• Are budgeted costs compared with actual costs (for both Federal and non-Federal)?

• Is action taken when the comparisons disclose problems?

• Are budgetary controls in place to preclude incurring obligations in excess of total funds available for (1) grant and (2) object class category?

5. Cash Management

• Is there more than a three-day lapse between the advance of grant funds and expenditures?

• Are separate or special purpose bank accounts controlled? (Special accounts may be used as needed but should be under same control as the regular accounts.)

• Are all cash receipts immediately recorded upon the books?

• Are cash receipt books properly controlled and safeguarded?

• Are validated duplicate deposit slips obtained for each deposit?

• For very small grantees, are certain functions such as receipt of bank statements, preparation of bank reconcilements, etc., carried out by independent bookkeepers or others for internal control purposes?

• Are bank statements received directly, unopened by the person who prepares the bank reconciliation?

• Are bank statements reconciled at least monthly?

• Are paid checks examined for date, name, cancellation, and endorsements at the time the reconcilement is prepared?

• Do supporting data accompany checks when they are submitted for signature?

• Are supporting documents cancelled to prevent subsequent use?

• Are vouchers or supporting documents identified by grant number, date, and expense classification?

• Are invoices or vouchers approved in advance by responsible department heads?

• Is the sequence of check numbers accounted for when bank account is reconciled?

• Is the bank instructed not to pay checks over 30 days after date shown on check?

• Are voided checks properly mutilated and retained for subsequent examination?

• Are blank checks properly controlled?

• Is the practice of drawing checks payable to "cash," "petty cash", "bearer" etc. prohibited?

• Are authorized signatures limited to persons who have no access to accounting records or to petty cash?

• If a mechanical or facsimile signature is used for disbursements, is the signature plate, die, key, etc. under adequate control?

• Is the issuance of checks on only verbal authority prohibited?

• Is the signing of checks in advance prohibited?

• Are employees prohibited from having custody of any unrecorded cash or negotiable documents (other than their own personal money) while on the premises of the grantee?

• Is responsibility for any petty cash fund vested in only one person?

• Are signed vouchers obtained written in ink for all petty cash disbursements?

• Is the maximum amount of any individual disbursement limited to $20.00 or to another reasonable amount?

• Are the amounts of petty cash funds limited so that reimbursement is required at relatively short intervals (not over 2 weeks)?

• Are petty cash vouchers cancelled or marked so as to preclude their reuse?

• Is petty cash kept locked at all times when not in use?

• Are employee loans prohibited?

• Are employee travel advances or other types of business advances accounted for promptly?

6. Procurement (Purchasing)

• Are the organization's purchasing practices and policies in writing in a purchasing manual?

• Is a separate purchasing department maintained?

• If not, is the responsibility for procurement assigned to one individual?

• Is the prenumbered sequence of used purchase orders accounted for?

• Does a copy of the receiving report go directly to the accounting office when goods are received?

• Are invoices checked in the accounting office against purchase orders and receiving reports?

• Is there definite evidence of responsibility for verifying invoices as to prices, extensions, additions, freight charges, discounts, etc.?

• Is account coding double-checked prior to disbursement?

• Are vouchers examined by a responsible individual to ascertain completeness of attachments and various required approvals?

• Are vendors' invoices delivered directly to the accounting office?

• Are purchases for employees expressly prohibited?

• Are purchase invoices routed through a voucher register and not directly through cash disbursements?

• If a voucher register is maintained, is it balanced monthly with the general ledger control account?

• Is a postage meter used for outgoing mail?

• Are controls established over use of any duplicating and photocopying equipment, and are quantities of material used or copies made accounted for?

• Are voided purchase orders mutilated and retained for future examination?

• Are purchase orders outstanding periodically reviewed and outstanding old orders accounted for?

• When competitive quotations are required in accordance with procurement policy, are they properly obtained?

• Are expenditure transaction files maintained in such a manner that documents supporting any transaction can be easily located?

• Is a master list maintained of all persons authorized to sign or approve purchase requisitions, purchase orders, receiving reports, invoices (approval for payment, time-and-attendance records, etc.), and are signature samples available for comparison?

• Are goods and services received prior to payment?

• Are small and/or minority businesses used as sources of supplies and services?

• Have sole source procurements been approved by the granting office?

• Have price or cost analyses been performed on all procurements?

• Has a lease vs. purchase analysis been made before procuring equipment?

• Prior to the purchase of equipment with grant funds, does an authorized grantee official certify that no similar equipment is on hand?

• Are the required conditions or provisions contained in contracts awarded by the organization?

7. Property Management

• Are the organization's property policies in writing in a property manual?

• Are the proper classifications made between equipment and supplies and reconciled to the grantee's budget?

• If equipment is "on loan" or "shared" with other organizations are costs allocated proportionally?

• Is a complete physical inventory of property taken at least every two years?

• Are the results reconciled with the property records?

• Where inventories are of great significance or where a central warehousing system is used are perpetual inventory records maintained?

• Is property adequately tagged or otherwise identified?

• Is the property ledger maintained so that any item of property can be located and identified?

• Is the property ledger balanced monthly against the appropriate general ledger accounts?

• Are retirements and disposals properly approved and recorded?

• Are the proceeds of any liquidated property properly recorded?

• Is damaged or lost property properly treated on the accounting records?

• Are insurance recoveries properly recorded?

• If inventories of consumable supplies exceed $500 in value, have adequate controls been established?

• Is equipment properly safeguarded?

• Are only depreciation or use allowances charged for grantee-owned buildings or buildings donated as a third-party in-kind contribution?

[FR Doc. 82-27310 Filed 10-6-82; 8:45 am]

BILLING CODE 4130-01-M

federal register

Thursday
October 7, 1982

Part IV

Interstate Commerce Commission

Implementation of the Bus Regulatory Reform Act of 1982

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011 and 1100

[Ex Parte No. 430]

Elimination of the Finance Board and the Transfer of its Remaining Functions to the Review Boards

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is eliminating the Finance Board and transferring any remaining functions to the Review Boards. The elimination of motor carrier securities jurisdiction pursuant to the Bus Regulatory Reform Act of 1982 (Pub. L. 97–261) eliminates the need for a separate board.

EFFECTIVE DATE: These rules will be effective on December 6, 1982.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245, or John J. Mattras, (202) 275–7677.

SUPPLEMENTARY INFORMATION:

Part 1011. Commission Organization: Delegations of Authority

This notice eliminates the Finance Board provided for in 49 CFR 1011.6 and transfers its remaining functions to the Review Boards. Section 19 of the Bus Regulatory Reform Act of 1982 repealed Commission jurisdiction over the issuance of securities or the assumption of obligation and liability with respect to securities of another, by motor carriers. In a separate proposed rulemaking in Ex Parte No. 429, *Elimination and Modification of Certain Securities Regulations*, it is proposed, among other things, to revise the regulations in Part 1115 to reflect the statutory change. The remaining functions do not merit retention of a separate board. The changes in Part 1011 are indicated in the Appendix.

Section 1100.225. Rules of Practice Governing the Procedures of the Motor Carrier Board, the Finance Board, the Operations Boards, the Special Permission Board, the Released Rates Board, the Tariff Rules Board, the Special Docket Board, the Tariff Integrity Board, and the Regional Motor Carrier Boards.

The securities matters remaining are relatively few, and will be referred to the Review Boards for determination as provided for at 49 CFR 1011.6(f). The Special Rules of Practice in § 1100.225 will no longer apply to these securities matters, and instead, the Rules of General Applicability in Subpart A of Part 1100 will apply. References in § 1100.225 to the Finance Board will be deleted.

Regulatory Flexibility Act. We certify that this final rule will not have a significant economic impact upon a substantial number of small entities. Elimination of the Finance Board will have no measurable effect on any sector. It is merely an internal reorganization of the Commission.

This action will not significantly affect either the quality of the human environment or energy consumption.

List of subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1100

Administrative practice and procedure.

(5 U.S.C. 553 and 49 U.S.C. 11301, 11302, and Sec. 19 of the Bus Regulatory Reform Act of 1982)

Dated: September 30, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

Appendix

Title 49, Chapter X is amended as follows:

PART 1011 [AMENDED]

§ 1011.6 [Amended]

1. In § 1011.6, (b) and (f)(3) are removed.

2. In § 1011.6, paragraphs (f)(4), (5), (6), and (7) are redesignated as (f)(3), (4), (5), and (6), respectively.

3. In § 1011.6, paragraphs (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) are redesignated as (b), (c), (d), (e), (f), (g), (h), (i), (j), and (k), respectively.

PART 1100 [AMENDED]

4. In § 1100.225, paragraph (a) is revised, paragraph (c) is removed, paragraph (d) is redesignated as paragraph (c) and the newly redesignated paragraph (c) is revised to read as follows:

§ 1100.225 Rules of Practice governing the procedures of the Operations Boards, the Special Permission Board, the Released Rates Board, the Tariff Rules Board, the Special Docket Board, the Tariff Integrity Board, and the Regional Motor Carrier Boards. (Rule 225).

(a) The proceedings of the Operations Board, the Special Permission Board, the Released Rates Board, the Tariff Rules Board, the Special Docket Board, the Tariff Integrity Board, and the Regional Motor Carrier Boards shall be informal. No transcript of these proceedings will be made. Subpoenas will not be issued, and, except when applications, petitions, or statements are required to be attested, oaths will not be administered.

* * * * *

(c) A petition for reconsideration pursuant to paragraph (b) of this section and reply thereto will be governed by the Commission's rules of practice, except as provided in paragraphs (d), (e), and (f) of this section.

* * * * *

5. Section 1100.225 is further amended by redesignating paragraphs (e), (f), (g) and (h) as paragraphs (d), (e), (f) and (g), respectively.

[FR Doc. 82–27629 Filed 10–6–82; 8:45 am]

BILLING CODE 7035–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1100

[Ex Parte No. MC-162]

Procedures for Complaints Against Bus Carrier Rates and Fares

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: Section 11 of the Bus Regulatory Reform Act of 1982 (Bus Act) extends to motor carriers of passengers a zone of rate freedom similar in concept to the zone for motor carriers of property adopted in the Motor Carrier Act of 1980. Bus carriers may now raise or lower their rates or fares, within certain percentages, without investigation or suspension by the Commission. Nevertheless, subsection 11(c) of the Bus Act permits interested parties to file complaints (under 49 U.S.C. 11701) challenging the reasonableness of an effective rate or fare established through use of the zone mechanism. The Commission is required to decide these complaints within 90 days. The proposed rules govern the filing and handling of those complaints.

DATE: Comments are due October 27, 1982. Because of time constraints in the Bus Act, no extensions will be granted. Final Rules may be made effective on less than 30 days' notice.

ADDRESS: Send an original and, if possible, 15 copies of comments to: Ex Parte No. MC-162, Office of Proceedings, Room 5340, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway (202) 275-7277 or Tom Smerdon (202) 275-7277.

SUPPLEMENTARY INFORMATION: The Bus Regulatory Reform Act of 1982 (Bus Act) amended subtitle IV of title 49, United States code, to reduce unnecessary Government regulation of the intercity bus industry. Congress generally provided for rate freedom, eased entry, and eased exit in the industry to encourage more competitive pricing and improved service. The ratemaking flexibility contained in the zone of rate freedom (ZORF), in particular, was designed to encourage individual ratemaking, meet inflationary cost increases without undue regulatory delay, and allow carriers to adapt to changing conditions in individual markets. This ZORF is similar in concept to the ZORF for property carriers established by the Motor Carrier Act of 1980.

Under the zone, passenger carriers may raise or lower their rates or fares within certain specified percentages,[1] without investigation or suspension on the grounds that such rate is unreasonable on the basis that it is too high or too low. The use of general rate increases by a passenger carrier will count against the upward zone of freedom. After three years, the Commission may not suspend or investigate any proposed rate on the basis of its being unreasonable, except on ratemaking actions where antitrust immunity is retained, or where a rate is predatory or discriminatory.

Nevertheless, under subsection 11(c) of the Bus Act, 49 U.S.C. 10708(f), interested parties are permitted to file complaints under 49 U.S.C. 11701 challenging the reasonableness of rates or fares established by a passenger carrier under the zone mechanism. Complaints will be permitted even when the specific parameters of the zone are removed after 3 years. S. Rep. 97-411, 97th Cong., 2d Sess. 24 (1982). The Commission is required to decide these complaints within 90 days after they are filed. The purpose of this proceeding is to consider procedural rules governing the filing and handling of these special complaints against the reasonableness of passenger carrier rates or fares filed under the zone of rate freedom.

Complaints against the reasonableness of bus fares or rates filed under the zone of rate freedom must be decided by the Commission within 90 days. Accordingly, we propose that, simultaneously with the filing of its complaint, the complainant shall also file its evidentiary case-in-chief (verified statement of facts and argument). The evidence relied on must be set forth in sufficient detail to support the complaint, such as costs of service (actual costs if available, bus industry average costs, explained estimated costs of the carrier over the route in question, or some other logical basis), rate or fare comparisons, or other information which may be pertinent (such as type of service rendered, distance traveled, or patronage experienced).

Within 20 days, the defendant shall file its answer containing its entire case-in-rebuttal (verified statement of facts and argument). Complainant may file a reply within 10 days thereafter (a reply is timely filed if received by the Commission on the 30th day after the complaint was filed).

Because of the strict time frames, motions for discovery will be granted if such requests are made within five days of the filing of the complaint and ask for information relevant to the complaint. Carriers must respond in a timely fashion. We seek comments on possible problems regarding discovery.

All parties will be required to serve their respective pleadings on each other on the same day they are filed with the Commission. The Commission will not serve these complaints. This appears to satisfy the notice requirement of 49 U.S.C. 11701(a). Cf. former 49 U.S.C. 304(c).

The Commission's decision will be issued no later than the 90th day after the complaint is filed. Our decision will be administratively final, except petitions may be filed to reopen under Rule 98 of the Rules of Practice (49 CFR 1100.98) or for discretionary review.

Since the Bus Act only provides that a complaint challenging the *reasonableness* of a rate or fare filed within the zone should receive expedited consideration, it is our conclusion that complaints on other grounds, such as discrimination, should continue to be filed under the normal rules and not under these special rules. The same is true for predatory practices. The legislative history tends to support this construction. The Commission's authority to suspend bus rates or fares filed under the zone is completely removed after 3 years, except with respect to rates and fares which are collectively established under an approved agreement or those which are alleged to be predatory or discriminatory. Nevertheless, reasonableness complaints may be filed against rates or fares even after the 3-year period elapses. S.R. No. 97-411, 97th Cong. 2d Sess. 24 (1982). It seems unlikely that Congress intended these specific complaints alleging unreasonableness (i.e., that rates are too high or too low) to also embrace chares of predatory or discriminatory pricing when the suspension remedy is, and will continue to be, available against these practices.

The legislative intent of section 10708(f) as stated on page 24 of the Senate Report [2] appears to support our

[1] Passenger carriers may raise or lower any passenger or express fare (other than charter or special transportation fares) not more than 10 percent above the rate in effect one year prior to the effective date of the proposed rate or more than 20 percent below the lesser of the rate in effect on the effective date of the Bus Act (or a subsequently established new rate) or the rate in effect one year prior to the effective date of the proposed rate. One year after the effective date of the Act, the limits for the zone become 15 percent above and 25 percent below rates then in effect; and two years after, 20 percent above and 30 percent below.

[2] The pertinent portion of page 24 is as follows: "Three years after the effective date, paragraph (e)

interpretation of the complaint remedy. However, from an overall policy basis, a question arises as to the relationship between sections 10708(d)(4), (d)(5), and (e), on the one hand, and section 10708(f), on the other. There is an apparent conflict between the Commission's lack of authority to investigate, suspend, revise, or revoke ZORF filings, and our after-the-fact-authority to regulate these rates through the complaint remedy. It may be unrealistic to assume that the "reasonableness" of these rates can be regulated through the complaint mechanism, when we have been precluded from addressing these concerns upon the filing of the rate itself. Comments are requested on our interpretation of the relevant provisions as well as the possible statutory inconsistency noted above.

Comments from interested parties are invited on every aspect of the proposed rules. As required by the Bus Act, the Commission intends to conclude this rulemaking and adopt final rules within 60 days. This necessitates making the rules effective on less than 30 days notice. Further, we are providing a 20-day comment period, rather than the usual 30 days, in order to allow as much time as practicable, in keeping with the requirements of due process, to consider fully the positions of all interested parties before adopting final rules. We do not contemplate extending the time for filing comments.

The provisions of 5 U.S.C. 603 require that the Commission also examine the impact of proposed rules on small businesses and small organizations. Since the contemplated complaints would be filed against individual rates of fares, it is unlikely that they would have a significant impact on a substantial number of small business entities. It is possible that various small bus companies may be affected if a rate or fare is ordered canceled. Nevertheless, this is a statutorily-mandated procedure, and the overall purpose of section 11 is to improve the financial condition of the intercity bus industry, including both large and small companies. The complaint process is integral to the ZORF mechanism. To a small extent, the effect of our rules could be adverse because of potential litigation expenses associated with these regulations. In framing these rules, we have attempted to minimize the burdens on small entities. Otherwise, we anticipate no significant economic impact on small entities as a result of the proposed regulations.

This proposal should not significantly affect the quality of the human environment or conservation of energy resources.

Comments may be filed on any of the matters discussed above.

(Sec. 11(c) of the Bus Regulatory Reform Act of 1982; 49 U.S.C. 10321, 10708(f), and 11701; and 5 U.S.C. 553)

List of Subjects in 49 CFR Part 1100

Administrative practice and procedure, Buses

Decided: September 30, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

Appendix

PART 1100 [AMENDED]

Chapter X Title 49 of the Code of Federal Regulations is proposed to be amended by adding the following § 1100.210 to the Subpart B—Special Rules of Practice:

§ 1100.210 Special rules for filing and handling complaints against intercity bus rates and fares under the zone of rate freedom (49 USC 10708(d)(4) and 10708(d)(5), Section 11 of the Bus Regulatory Reform Act of 1982).

(a) *Filing of complaint.* (1) A person seeking the cancellation of an effective rate or fare published by an intercity motor carrier of passengers under provisions of the zone of rate freedom shall file a formal complaint. The complaint may challenge only the reasonableness of the rate or fare under these special rules. Complaints on other grounds, such as discrimination or predatory practices, shall be filed under the General Rules of Practice.

(2) Complainant's verified statement of facts and argument shall be filed simultaneously with its complaint, and they shall constitute complainant's case-in-chief. Whatever evidence is relied upon shall be set forth in sufficient detail to support the complaint, such as cost of service, rate or fare comparisons, or other information which may be pertinent (such as type of service rendered, distance traveled, or patronage experienced).

(3) Complainant shall serve a copy of its complaint and verified statement on defendant. Such service and filing shall comply with 49 CFR 1100.20, (ignoring the exception there for formal complaints).

(b) *Answer by defendant.* The answer to the complaint shall contain the entire case-in-rebuttal, consisting of defendant's verified statement of facts and argument. It shall be filed within 20 days of the filing of the complaint and verified statement. The answer shall be served on complainant. Such service and filing shall comply with 49 CFR 1100.20.

(c) *Reply by complainant.* Complainant may file a reply to defendant's answer within 10 days from the date the defendant's answer is due. The reply shall also be served on defendant as described in paragraph (a) of this section.

(d) *Discovery.* Discovery procedures shall be available to the complainant pursuant to our rules at 49 CFR 1100.55 so long as the request is made within 5 days of the filing of a complaint and asks for information relevant to the complaint.

(e) *Copies.* An original and six copies of all of the above pleadings (complaint, statements, answer, reply, notice and request) shall be furnished for the use of the Commission.

[FR Doc. 82-27632-Filed 10-6-82; 8:45 am]

BILLING CODE 7035-01-M

removes ICC authority to suspend rates, except on ratemaking actions where antitrust immunity is retained or where any rate is predatory or discriminatory. Interested parties may, however, file a complaint under Section 11701 of this title challenging the reasonableness of a rate filed under the zone. The complaint remedy continues to be available after the specific parameters of the zone are removed after three years. * * *"

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49 CFR Parts 1113, 1114, and 1115

[Ex Parte No. 429]

Elimination and Modification of Certain Securities Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to (1) eliminate as unnecessary the regulations in Part 1113, which provide procedures for the filing of applications for a guaranteed loan under Part V of the Interstate Commerce Act, (2) eliminate as unnecessary the regulations in Part 1114, and to process on an *ad hoc* basis any future application for authority to modify the financial structure of a railroad, and (3) relieve motor carriers of the regulations at 49 CFR 1115, and the offering circular requirement to form OP-F-200 to implement Section 19 of the Bus Regulatory Reform Act of 1982 (Pub. L. 97-261), and eliminate restrictions on motor carriers imposed in past proceedings in connection with the issuance of securities or the assumption of obligations and liability with respect to securities except with respect to public offerings already authorized but not yet fully implemented.

DATES: Comments are due November 8, 1982.

ADDRESSES: All interested persons are invited to comment. Comments (an original and 10 copies if possible) should be sent to: Ex Parte No. 429, Section of Finance, Room 5417, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Louis E. Gitomer, 202 275–7245
or
John J. Mattras, 202 275–7677.

SUPPLEMENTARY INFORMATION:

Part 1113. Guaranty of Loans to Carriers by Railroad.

The Transportation Act of 1958, 75 Stat. 41, provided for the guaranty by the Commission of loans made to rail common carriers for the purpose of acquiring, constructing, or maintaining facilities and equipment. Implementing regulations setting forth the method and procedure of applications for loan guarantees are contained at 49 CFR Part 1113. However, the Commission's authority to extend new loan guarantees terminated as of June 30, 1963. Six loans that have been guaranteed by the Commission are now outstanding. Data pertaining to these loans are maintained by the Commission's Bureau of Accounts. In view of the fact that no new loan guarantees can be extended, continued publication of the rules in Part 1113 serves no useful purpose and we propose to discontinue them.

Part 1114. Alteration or Modification of Securities and the Provisions of Instruments and Filing of Certificates and Reports.

Under 49 U.S.C. 11361, the Commission has exclusive jurisdiction to authorize changes in the financial structure of railroads not in receivership or reorganization.

Implementing regulations at 49 CFR 1114 permit a carrier to seek significant changes in its capital structure, including the modification, alteration or issuance of stock and deferral of the maturity date and payment of interest on debt securities. The purpose of the regulations is to avoid financial failure with the concomitant disruption of service contrary to the public interest.

No applications under Part 1114 have been filed for approximately ten years. We have, therefore, determined that continued publication of these rules in the Code of Federal Regulations serves no useful purpose and is wasteful of Commission and other resources. Accordingly, we propose to delete the rules and replace them with a policy statement outlining our concerns in considering applications which may be filed in the future. Such proposals will be dealt with on a case-by-case basis.

Proposed Policy Statement. No applications under Part 1114 have been filed for some time. The statute itself fully explains the conditions under which the Commission may consider applications for changes in financial structure. Accordingly, we believe that detailed regulations concerning the form and content of an application are unnecessary. In order to initiate a proceeding for changes in financial structure, parties should submit a statement setting forth the salient features of their proposal, including the reasons why the change is sought. On reviewing the application, we will determine, on a case-by-case basis, the scope and extent of any additional information which must be filed.

In reviewing future applications for changes in financial structure, we will be guided by the transportation policy of 49 U.S.C. 10101a and its legislative history, particularly the objectives of ensuring the development and continuation of a sound rail transportation system and of fostering sound economic conditions in transportation (49 U.S.C. 10101a (4) and (5), respectively). Parties must demonstrate that their proposal is consistent with these objectives.

Part 1115. Issuance of Securities, Assumption of Obligations, and Filing of Certificates and Reports

Section 19 of the Bus Regulatory Reform Act of 1982 repeals Commission jurisdiction over the issuance of securities by motor carriers or the assumption by one motor carrier of obligation and liability with respect to the securities of another motor carrier as provided in 49 U.S.C. 11302. The changes proposed in 49 CFR Part 1115 implement the statute by removing all motor carriers from the requirements. (See Appendix). We also propose to amend securities form OP–F–200 by eliminating the need for circulars in connection with public offerings by motor carriers. (see Item 7 of Form OP–F–200 as "Appendix, Form OP–F–200"). The circular requirement was adopted in Ex Parte No. 279, *Securities Regulations-Public Offerings*, 347 I.C.C. 443 (1974) (Ex Parte No. 279). Originally, it applied to motor and rail carriers, but by supplemental order dated March 24, 1976, the Commission excluded from those regulations railroad securities other than those evidencing an interest in a railroad equipment trust. The latter change was the result of the enactment, on February 5, 1976, of the Railroad Revitalization and Regulatory Reform Act of 1976, (Pub. L. No. 94–210) which placed railroad securities other than equipment trusts under the requirements of the Securities Act of 1933. Since motor carriers may no longer be subject to the provisions of Ex Parte No. 279 given the Bus Act's changes in the Commission's jurisdiction, no useful purpose remains for the requirements pertaining to motor carriers adopted in Ex Parte No. 279.

We also propose to lift retroactively all restrictions imposed by the Commission on motor carriers in the past in connection with the issuance of securities or the assumption by one motor carrier of an obligation and liability with respect to the securities of another. However, with respect to public offerings already authorized but not yet fully implemented, Commission requirements as to the content and distribution of the offering circulars shall be complied with unless further authorization is obtained from the Securities and Exchange Commission or other appropriate governmental authority. This includes restrictions such as prohibiting the payment of dividends or the use of borrowed funds to redeem stock. Congress has terminated the Commission's jurisdiction as to future securities issuances. For the same reasons that Congress concluded that regulation is no longer appropriate, the conditions imposed in such proceedings in the past have no continuing merit. This section will avoid many petitions for relief from past conditions which would be a needless cost to the motor carriers as well as the Commission.

Regulatory Flexibility Act. Section 604 of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (September 19, 1980) requires us to analyze the impact of our proposed actions on small entities (e.g., small businesses, not-for-profit organizations, and small governmental bodies).

The purpose of this proceeding is to eliminate rules for which there is no further statutory or administrative need or to replace formal rigid rules presently codified in the Code of Federal Regulations with a general policy statement concerning changes in a railroad's financial structure. Small entities will generally not be directly affected. However, to the extent that a lesser amount of information may be required of applicants in individual cases, all members of affected industries will benefit through a decrease in administrative filing burdens and associated costs.

This decision will not significantly affect either the quality of the human

environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1113

Loan programs, Transportation.

49 CFR Parts 1114 and 1115

Administrative practice and procedure, Railroads, Securities.

(5 U.S.C. 553 and 559, 49 U.S.C. 10321, 11302 and 11361)

Decided: September 30, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

Appendix

We propose to remove 49 CFR Parts 1113 and 1114 and to amend certain portions of 49 CFR Part 1115, *Issuance of Securities, Assumption of Obligations, and Filing of Certificates and Reports,* as follows (only those portions to be changes are indicated below).

PARTS 1113 AND 1114 [REMOVED]

1. Parts 1113 and 1114 of Title 49 would be removed.

PART 1115 [AMENDED]

2. Section 1115.1 would be revised to read as follows:

§ 1115.1 Application form.

All carriers and other persons subject to 49 U.S.C. 11301, making application for authority to (a) nominally or actually issue securities, (b) sell, pledge, repledge, or otherwise dispose of securities nominally issued or assumed or nominally outstanding, or (c) assume any obligation or liability as lessor, lessee, guarantor, endorser, surety or otherwise in respect of the securities of any other person, natural or artificial, actually outstanding, shall make such application substantially in the form of application designated Form OP–F–200.

3. In § 1115.2, paragraphs (a), (b), and (c) would be revised to read as follows:

§ 1115.2 Definitions.

(a) "Carrier" means a rail or sleeping car carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under Subchapter 1 of Chapter 105 of title 49 of the United States Code (except a street, suburban, or interurban electric railroad system of transportation, and a corporation organized to provide transportation by rail carriers subject to the Subchapter.

(b) The term "holding company" means a person which is not a rail carrier but which is authorized by a decision entered under 49 U.S.C. 11343 to control a carrier or carriers and, as provided in 49 U.S.C. 11348, is to be considered a carrier subject to 49 U.S.C. 11301.

(c) The term "securities" is used herein as it is defined in 49 U.S.C. 11301.

* * * * *

(4) Section 1115.4 would be revised to read as follows:

§ 1115.4 Disposal of pledged or treasury securities.

(a) Certificates of notification required by 49 U.S.C. 11301(c) to be filed with the Commission within 10 days after the sale, pledge, repledge, or other disposition of securities previously pledged or held unencumbered in the treasury of the carrier, shall be filed substantially in the form designated as Form OP–F–220.

(b) As used in 49 U.S.C. 11301(c) securities described as "pledged or held unencumbered in the treasury of the carrier" are securities previously nominally issued, or reacquired and held in the treasury of the carrier, except securities held by trustees in sinking or other funds. [32 FR 20101, Dec. 20, 1967, as amended at 39 FR 35367, Oct. 1, 1974]

5. In section 1115.5 paragraph (d) is removed and paragraphs (a) and (c) are revised to read as follows:

§ 1115.5 Issuance of short-term notes.

(a) Certificates of notification required by 49 U.S.C. 11301(b)(2) to be filed with the Commission within 10 days after the making of short-term notes within the limits within which such notes may be issued without authorization, shall be filed substantially in the form designated as Form OP–F–230.

* * * * *

(c) The limits within which short-term notes may be issued without authorization are those specified in 49 U.S.C. 11301(b)(2).

6. In § 1115.6, paragraph (a) is revised to read as follows:

§ 1115.6 Report of securities issued or obligations assumed.

(a) Within 30 days after the initial date of issue of any security or assumption of any obligation or liability authorized, a report showing the issue or assumption shall be filed with the Commission on Form OP–F–240, as revised. An interim report shall be made concurrently with any subsequent application for authority filed under 49 U.S.C. 11301, showing the action theretofore taken, and any balance previously authorized but not disposed of, in the same form; otherwise no interim report is required. A final report shall be made upon completion of the issue or assumption, and may be made in lieu of the initial report within the 30-day period following the initial action.

* * * * *

7. In § 1115.25, paragraphs (a) and (b) are revised to read as follows:

§ 1115.25 Applications for authority to sell securities without competitive bidding.

(a) Special application for exemption from the competitive bidding requirement shall be made in the form designated as Form OP–F–210 only when for any reason it is not practicable to include the request for exemption in an application filed in Form OP–F–200 pursuant to the instructions (§§ 1115.1–1115.3) respecting applications filed under 49 U.S.C. 11301.

(b) The requirement that, with certain specified exceptions, all classes of railroad securities other than equipment, issued under authority granted pursuant to the provision of 49 U.S.C. 11301 be offered for sale at competitive bidding, or its equivalent, set forth in the Commission's report in Ex Parte 158, *In Re Competitive Bidding in the Sale of Securities,* 257 ICC 129, decided May 8, 1944, and modified by findings in *Atlantic Coast Line R. Co. Competitive Bidding Exemption,* 282 ICC 513, decided June 18, 1952, and further modified by supplemental report in Ex Parte 158, *Ibid.,* 307 ICC 1, decided August 14, 1958 with respect to securities issued or proposed to be issued incident to a loan guaranteed under the provisions of part V of the Act, is published in an appendix to this section.

* * * * *

[FR Doc. 82-27630 Filed 10-6-82; 8:45 am]

BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 422]

Removal of Extraordinary (Financial) Conditions Imposed Upon Carrier and Noncarrier Holding Companies and Their Motor Carrier Subsidiaries and Removal of Noncarrier Holding Companies From Regulation Imposed Under 49 U.S.C. 11348

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed policy statement.

SUMMARY: The Commission is proposing to remove all extraordinary financial conditions previously imposed on carrier and noncarrier holding companies of motor carriers and their motor carrier subsidiaries and to cancel our regulation of noncarrier holding companies previously exercised under 49 U.S.C. 11348. The imposed conditions and regulations are deemed inconsistent with regulatory policy. The public interest in protecting individual motor carriers from financial mismanagement has lessened as a result of the enactment of the Motor Carrier Act of 1980 (Pub. L. 96–296) and the Bus Regulatory Reform Act of 1982. (Pub. L. 97–261).

DATES: Comments are due November 8, 1982.

ADDRESSES: All interested persons are invited to comment. Comments (an original and 10 copies, if possible) should be sent to: Ex Parte No. 422, Section of Finance, Room 5417, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275–7245

or

John Mattras, (202) 275–7677.

SUPPLEMENTARY INFORMATION: We propose to remove the extraordinary financial conditions previously imposed on carrier and noncarrier holding companies and their motor carrier subsidiaries, and to remove such noncarrier holding companies from Commission regulation previously exercised under 49 U.S.C. 11348.

Generally, the Commission imposed conditions [1] in connection with the acquisition of a regulated carrier by a carrier or non-carrier holding company, if the evidence demonstrated that the financial condition of the motor carriers involved was marginal, or past intercorporate practices of the carriers and noncarrier firms suggested that the assets of the carrier might be drained by the corporate parent. See *Am.Exp. Industries, Inc.-Invest. of Control,* 116 M.C.C. 851 (1974). We also sought to discourage commingling of carrier assets with those of its noncarrier affiliates for the protection of the carrier. See *California Parlor Car Tours Co.-Pur.-Greyhound.* 127 M.C.C. 605, 612 (1979). The Commission also exercised its regulatory authority when it found that approval of the control transaction would significantly and immediately influence the national transportation system. Under such circumstances, the Commission concluded that the noncarrier holding companies should be designated carriers pursuant to 49 U.S.C. 11348. The imposition of regulation required a holding company to comply with the accounting, reporting, and securities issuance provisions of 49 U.S.C. 11142, 11144, 11145 and 11302 to the extent specified by the Commission in the individual case. *See International Util.-Control- Pacific Intermountain, 127 M.C.C. 752, 753 (1981).*

Our regulation of the motor carrier industry is intended to assure that the public receives safe, efficient, and economical motor carrier transportation. Our responsibilities in this regard began with the Motor Carrier Act of 1935, 49 Stat. 543, and were supplemented by the Transportation Act of 1940, 54 Stat. 899, which gave us discretionary jurisdiction over noncarrier holding companies in order to prevent such companies from jeopardizing the financial stability of their regulated carrier subsidiaries, thus disrupting the national transportation system.

Our recent decisions in *International Util., supra., California Parlor Car, supra,* and *C&H Transp. Co., Inc.—Pur.-Equipment,* 127 M.C.C. 764 (1981) acknowledged that the need for imposing conditions or subjecting holding companies to our regulation under 49 U.S.C. 11348 has been drastically reduced as a result of the transformation of the motor carrier industry's competitive and regulatory environment. The change in the regulatory environment is evidenced by enactment of the Motor Carrier Act of 1980 (Pub. L. 96–296) and the Bus Regulatory Reform Act of 1982 (Pub. L. 97–261). The removal of the regulatory restraints currently imposed upon the carrier and noncarrier holding companies of motor carriers and their motor carrier subsidiaries will facilitate their operational and financial independence. It harms these companies when they are required to file a formal application each time an investment opportunity arises. With rapidly fluctuating interest rates, the availability of investment is highly transitory, and the delay associated with our regulatory oversight can have serious consequences. The availability of funds is affected by our regulation, as is the level of return to investors. These effects significantly restrain the ability of the motor carriers to draw capital from their parent, and from the market generally.

Our previous regulations sought to prevent failure of motor carrier subsidiaries due to the consequences of financial mismanagement by the parent holding company. Our concern was that failure of a carrier would heavily impact on the shipping public relying on the service. Today ease of entry allowed by the Motor Carrier Act of 1980 virtually eliminates this concern since the effect of mismanagement falls mainly on a carrier's stockholders. The repeal of our motor carrier securities jurisdiction in the Bus Regulatory Reform Act and the authorization given the Commission to exempt mergers, consolidations, and acquisition of control transactions involving motor carriers of property from our regulation are additional indications of Congressional intent that we greatly reduce our regulation in this area.

Therefore, we propose in this policy statement to remove all extraordinary financial conditions previously imposed on carrier and noncarrier holding companies and their motor carrier subsidiaries, and to cancel our regulation of noncarrier holding companies of motor carriers previously exercised under 49 U.S.C. 11348. We also propose not to impose the extraordinary financial conditions and not to subject noncarrier holding companies of motor carriers to our regulation under 49 U.S.C. 11348 in the future.

If we adopt these proposals, we will allow persons to petition for continuation of the conditions in specific cases where they were imposed in the past, or for the continuation of our regulation over particular noncarrier holding companies which have been previously subjected to our jurisdiction. Parties seeking this relief will be required to demonstrate that the need for continuation of the conditions or regulation given the circumstances of the particular case, outweighs the need to remove regulatory restraints, and the benefits associated with the removal.

[1] The conditions prohibited, essentially, (1) payment of cash dividends in excess of 50 percent of earnings in the dividend period, (2) making any advances, whether in cash or property, to affiliates, (3) encumbering any assets for noncarrier purposes and (4) engaging in any other monetary or property transactions, except as necessary in the course of motor carrier operations.

Regulatory Flexibility Analysis

Section 604 of the Regulatory Flexibility Act, 94 Stat. 1164, requires us to analyze the economic impact of the proposed action on small entities (*e.g.*, small businesses, not-for-profit organizations, and small governmental bodies). The proposed policy statement is intended to conform our regulatory policy to legislative goals in light of present conditions in transportation. In eliminating the extraordinary financial conditions and regulation over noncarrier holding companies of motor carriers and their motor carrier subsidiaries, we end unnecessary review of their financial transactions and correspondingly reduce their costs of operation and permit them greater access to needed investment capital. Small entities will be directly affected only to the extent of their involvement in an acquisition proceeding, in which case they will benefit from these rules as would larger entities. Additionally, small entities who are shippers or other users of motor carrier service may benefit indirectly from our action through lower rates, better service, or both. The reduction in costs of regulation will be reflected in lower operating costs for the carriers. In addition, holding companies that will no longer be required to obtain our prior approval for their operational and financial actions will be able to react more quickly to favorable marketing and investment opportunities. Thus, to the extent small entities may be affected by the proposed policy statement, the impact is likely to be beneficial.

Issuance of this notice will not significantly affect either the quality of the human environment or the conservation of energy resources.

(5 U.S.C 553 and 49 U.S.C. 10101, 11301, 11302, and 11348)

Dated: September 30, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27631 Filed 10-6-82; 8:45 am]

BILLING CODE 7035-01-M

federal register

Thursday
October 7, 1982

Part V

Office of Management and Budget

Budget Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Budget Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report twenty deferrals of fiscal year 1983 funds totaling $598,780,000. The deferrals are primarily routine in nature and do not, in most cases, affect program levels.

The deferrals are for programs in International Development Assistance, the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Interior, State, Transportation, Treasury, the District of Columbia, the Pennsylvania Avenue Development Corporation and the Railroad Retirement Board.

The details of each deferral are contained in the attached reports.

Ronald Reagan.

The White House,
October 1, 1982.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral #	Item	Budget Authority
	Funds Appropriated to the President	
	International Development Assistance	
D83-1	Functional development assistance program	8,129
	Department of Agriculture	
	Forest Service	
D83-2	Timber salvage sales	10,002
D83-3	Expenses, brush disposal	44,575
	Department of Commerce	
	International Trade Administration	
D83-4	Participation in U.S. expositions	3,356
	National Oceanic and Atmospheric Administration	
	Promote and develop fishery products and research pertaining to American	
D83-5	fisheries	30,619
	Department of Defense-Military	
D83-6	Military construction, all services	64,063
	Department of Defense-Civil	
	Wildlife Conservation, Military Reservations	
D83-7	Wildlife conservation,	1,061
	Department of Energy	
	Energy Programs	
D83-8	Fossil energy research and development	20,136
	Department of Health and Human Services	
	Alcohol, Drug Abuse, and Mental Health Administration	
	Construction and renovation, St.	
D83-9	Elizabeths Hospital	9,714
	Office of Assistant Secretary for Health	
	Scientific activities overseas	
D83-10	(Special foreign currency program)	6,420
	Department of the Interior	
	National Park Service	
D83-11	Land and water conservation fund	30,000
	Department of State	
	United States Emergency Refugee and	
D83-12	Migration Assistance Fund	37,692
	Department of Transportation	
	Federal Aviation Administration	
	Civil supersonic aircraft development	
D83-13	termination	46
	Facilities and equipment (Airport and	
D83-14	airway trust fund)	158,485
	Department of the Treasury	
	Office of Revenue Sharing	
	State and local government fiscal	
D83-15	assistance trust fund	106,474
	State and local government fiscal	
D83-16	assistance trust fund	7,909
	Federal Law Enforcement Training Center	
D83-17	Construction	3,078
	Other Independent Agencies	
	District of Columbia	
	Loans to the District of Columbia for	
D83-18	capital investment	38,832
	Pennsylvania Avenue Development Corporation	
D83-19	Land acquisition and development fund	17,949
	Railroad Retirement Board	
	Milwaukee railroad restructuring,	
D83-20	administration	240
	Total, Deferrals	598,780

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SUMMARY OF SPECIAL MESSAGES
FOR FY 1983
(in thousands of dollars)

	Rescissions	Deferrals
First special message	---	598,780

NOTE: All amounts listed represent budget authority except for $7,909 thousand in one general revenue sharing deferral of outlays only.

Deferral No: D83-1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Funds Appropriated to the President	New budget authority (P.L. ____): $ - - -
Bureau: International Development Assistance	Other budgetary resources: 10,408,550
Appropriation title & symbol: Functional development assistance program: 11X1023 Food and Nutrition; 11X1025 Education and Human Resources Development; 11X1026 Selected Development Activity	Total budgetary resources: 10,408,550
	Amount to be deferred: Part of year: $ 8,128,550
	Entire year: ____
OMB identification code: 11-1021-0-1-151	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [ ] Annual; [ ] Multiple-year ____ (expiration date); [X] No-year	Type of budget authority: [X] Appropriation; [ ] Contract authority; [ ] Other ____

Justification: The Agency for International Development (AID) functional development assistance program provides economic resources to developing countries. AID has identified $8.1 million of funds that are not needed at this time, and are now being deferred pending an assessment of requirements for FY 1983. This deferral is consistent with congressional intent to provide no-year funding for these activities and is made under the provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effects: Deferral of these funds will have no programmatic or budgetary effects due to its part-year duration.

Outlay Effect: None.

Deferral No: D83-2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Agriculture	New budget authority (P.L. 94-588): $ 7,900,000
Bureau: Forest Service	Other budgetary resources: 10,002,000
Appropriation title & symbol: Timber Salvage Sales 1/ 12X5204	Total budgetary resources: 17,902,000
	Amount to be deferred: Part of year: ____
	Entire year: 10,002,000
OMB identification code: 12-5204-0-2-302	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [ ] Annual; [ ] Multiple-year ____ (expiration date); [X] No-year	Type of budget authority: [X] Appropriation; [ ] Contract authority; [ ] Other ____

Justification: The Secretary of Agriculture is authorized pursuant to the National Forest Management Act of 1976 to require purchasers of dead, damaged, insect infested, or down timber to make monetary deposits into a designated fund to cover the costs associated with such sales.

This deferral is possible because of the time lag between the deposit of receipts from salvage sales and the expenditures of funds to cover costs associated with making additional sales on that National Forest.

The collections becoming available in the current year are estimated and the related salvage sale operations may not necessarily be planned in the same year. Efficient program planning and accomplishment is facilitated by administering a stable program well within the funds available in any one year for this purpose. The amount deferred is in excess of planned program requirements and is being withheld in accord with the provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effects: Deferral of these funds will have no programmatic or budgetary effects as there are sufficient resources to meet the year's programmatic requirements.

Outlay Effect: None.

1/ This account was the subject of a similar deferral in FY 1982 (D82-2A).

Deferral No: D83-3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Agriculture	New budget authority (P.L. 16 USC 490): $ 50,700,000
Bureau: Forest Service	Other budgetary resources: 49,213,184
Appropriation title & symbol: Miscellaneous permanent appropriations: (Expenses, Brush Disposal 1/ 12X4206)	Total budgetary resources: 99,913,184
	Amount to be deferred: Part of year: ____ Entire year: 44,574,784
OMB identification code: 12-9922-0-2-302	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other ____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification: Purchasers of National Forest timber deposit the estimated cost to the Forest Service of disposing of brush and other debris resulting from their cutting operations pursuant to 16 USC 490. The deposits becoming available in the current year are estimated and the related disposal operations are planned for the following year. Disposal operations related to deposits made during certain periods of the year cannot be initiated until weather conditions permit. Thus, seasonal factors frequently require deferring use of deposits until the following fiscal year. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effect: Deferral of these funds will have no programmatic or budgetary effects as much of the disposal work for which deposits have been made cannot be done or is not planned to be done during the same year that the timber is harvested and collections realized.

Outlays Effect: None.

1/ This account was the subject of a similar deferral in FY 1982 (D82-3A).

Deferral No: D83-4

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Commerce	New budget authority (P.L. ____): $ ---
Bureau: Internation Trade Administration	Other budgetary resources: 9,034,000
Appropriation title & symbol: Participation in United States Expositions (132/51805) 1/	Total budgetary resources: 9,034,000
	Amount to be deferred: Part of year: $ ____ Entire year: 3,356,000
OMB identification code: 13-1805-0-1-376	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other ____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multiple-year September 30, 1985 (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification: This account provides for Federal participation in the Louisiana World Exposition to be held in New Orleans, Louisiana, in 1984. Funding requirements are determined by the construction and operation schedules of the Federal exhibits at the exposition and the amount being deferred will not be needed until FY 1984 and 1985. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effects: Deferral of these funds will have no programmatic or budgetary effects.

Outlay Effect: None.

1/ This account was the subject of a similar deferral during FY 1982 (D82-4).

Deferral No: D83-5

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Commerce	New budget authority (P.L.) $ --
Bureau: National Oceanic & Atmospheric Administration	Other budgetary resources 35,619,245
Appropriation title & symbol: Promote and Develop Fishery Products and Research Pertaining to American Fisheries 13X5139	Total budgetary resources 35,619,245
	Amount to be deferred: Part of year 30,619,245
	Entire year
OMB identification code: 13-5139-0-2-376	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program: ☒ Yes ☐ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☐ Appropriation ☐ Contract authority ☒ Other U.S.C.

Justification: The funding for this appropriation is derived from 30% of the gross receipts from customs duties on imported fishery products under the provisions of the Saltonstall-Kennedy Act. The Bureau of the Census determines the amount of gross receipts for the Department of Agriculture, which in turn computes the 30% available to the National Oceanic and Atmospheric Administration (NOAA). These funds supplement funds appropriated to NOAA under the "Operations, Research and Facilities" appropriation for development of the U.S. fishing industry. These receipts are being deferred pending Congressional action on a proposal to transfer these funds for the "Operations, Research and Facilities" appropriation for fisheries research, management, and development activities.

Following congressional action on the proposed transfer, the funds will be transferred or released for obligation.

Estimated Effect: This deferral will be in effect pending congressional action on the transfer request.

Outlay Effect: None.

Deferral No: D83-6

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Defense - Military	New budget authority (P.L.) $
Bureau	Other budgetary resources 2,653,167,2
Appropriation title & symbol: See Coverage Below	Total budgetary resources 2,653,167,2
	Amount to be deferred: Part of year $ 64,062,5
	Entire year
OMB identification code: See Coverage Below	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☒ Multiple-year September 30, 1983; September 30, 1984; September 30, 1985; September 30, 1986 (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Coverage: 1/

Appropriation	Symbol	OMB Identification Code	Amount Deferred
Military construction, Army	212/62050	21-2050-0-1-051	
Military construction, Army	211/52050	21-2050-0-1-051	
Military construction, Army	210/42050	21-2050-0-1-051	
Military construction, Army	219/32050	21-2050-0-1-051	
Military construction, Navy	172/61205	17-1205-0-1-051	
Military construction, Navy	171/51205	17-1205-0-1-051	
Military construction, Navy	170/41205	17-1205-0-1-051	
Military construction, Navy	179/31205	17-1205-0-1-051	
Military construction, Air Force	572/63300	57-3300-0-1-051	$13,924,500
Military construction, Air Force	571/53300	57-3300-0-1-051	
Military construction, Air Force	570/43300	57-3300-0-1-051	
Military construction, Air Force	579/33300	57-3300-0-1-051	
Military construction, Defense Agencies	972/60500	97-0500-0-1-051	3,000,000
Military construction, Defense Agencies	971/50500	97-0500-0-1-051	538,000
Military construction, Defense Agencies	970/40500	97-0500-0-1-051	
Military construction, Defense Agencies	979/30500	97-0500-0-1-051	

Military construction, Army National Guard	212/62085	21-2085-0-1-051	
Military construction, Army National Guard	211/52085	21-2085-0-1-051	
Military construction, Army National Guard	210/42085	21-2085-0-1-051	
Military construction, Army National Guard	219/32085	21-2085-0-1-051	
Military construction, Air National Guard	572/63830	57-3830-0-1-051	1,750,000
Military construction, Air National Guard	571/53830	57-3830-0-1-051	
Military construction, Air National Guard	570/43830	57-3830-0-1-051	
Military construction, Air National Guard	579/33830	57-3830-0-1-051	
Military construction, Army Reserve	212/62086	21-2086-0-1-051	
Military construction, Army Reserve	211/52086	21-2086-0-1-051	
Military construction, Army Reserve	210/42086	21-2086-0-1-051	
Military construction, Army Reserve	219/32086	21-2086-0-1-051	
Military construction, Naval Reserve	172/61235	17-1235-0-1-051	4,850,000
Military construction, Naval Reserve	171/51235	17-1235-0-1-051	
Military construction, Naval Reserve	170/41235	17-1235-0-1-051	
Military construction, Naval Reserve	179/31235	17-1235-0-1-051	
Military construction, Air Force Reserve	572/63730	57-3730-0-1-051	
Military construction, Air Force Reserve	571/53730	57-3730-0-1-051	
Military construction, Air Force Reserve	570/43730	57-3730-0-1-051	
Military construction, Air Force Reserve	579/33730	57-3730-0-1-051	
North Atlantic Treaty Organization Infrastructure	97X0804	97-0804-0-1-051	35,000,000
			364,062,500

1/ These accounts were the subject of a similar deferral during FY 1982 (D82-68).

Justification:

The above amounts in the listed five-year and no-year appropriations are currently deferred under provisions of the Antideficiency Act (31 U.S.C. 665) which authorize the establishment of reserves for contingencies.

These funds are deferred due to administrative delays, such as project designs not being completed and incomplete coordination of projects with either other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon completion of project design and/or coordination.

Estimated Effect:

These deferrals have no programmatic or budgetary effect because the funds would not be obligated if they were made available.

Outlay Effect:

These deferrals have no effect on FY 1983 outlays.

Deferral No: D83-7

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Defense -- Civil

Bureau: Wildlife Conservation, Military Reservations

Appropriation title & symbol: See coverage section below

OMB identification code: See coverage section below

Grant program: ☐ Yes ☒ No

Type of account or fund:
☐ Annual
☐ Multiple-year _____ (expiration date)
☐ No-year

New budget authority (P.L. 16 USC 670f)(a): $1,449,000
Other budgetary resources: 1,050,743
Total budgetary resources: 2,499,743

Amount to be deferred:
Part of year: _____
Entire year: 1,060,743

Legal authority (in addition to sec. 1013):
☒ Antideficiency Act
☐ Other _____

Type of budget authority:
☒ Appropriation
☐ Contract authority
☐ Other _____

Coverage 1/

Appropriation	Symbol	OMB Identification Code	Amount Deferred
Wildlife Conservation, Army	21x5095	21-5095-0-2-303	$835,427
Wildlife Conservation, Navy	17x5095	17-5095-0-2-303	81,000
Wildlife Conservation, Air Force	57x5095	57-5095-0-2-303	144,316
			$1,060,743

Justification: These are permanent appropriations. The budgetary resources consist of anticipated receipts and unobligated balances generated from hunting and fishing fees collected on military reservations, pursuant to 16 U.S.C. 670. They may be used only in accordance with the purpose of the law--to carry out a program of natural resources conservation. These funds are being deferred because: (1) installations may be accumulating funds over a period of time to fund a major project, and (2) there is a seasonal relationship between the collection of fees and their subsequent expenditure. Most of the fees are collected during the winter and spring months, while most of the program work is performed during the summer and fall months. This necessitates that funds collected in a prior year be deferred in order to be available to finance the program during the summer and fall months. Additional amounts will be apportioned if program requirements are identified. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 665).

D82-7

Estimated Effect: Deferral of these funds will have no programmatic or budgetary effect because the funds could not be obligated if made available.

Outlay Effect: None.

1/ These accounts were the subject of a similar deferral during FY 1982 (D82-8A).

Deferral No: D83-8

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L._____): $---
Bureau: Energy Programs	Other budgetary resources: 46,186,000
Appropriation title & symbol: Fossil Energy Research and Development 89X0213 1/	Total budgetary resources: 46,186,000
	Amount to be deferred: Part of year: 20,136,000
	Entire year:
OMB identification code: 89-0213-0-1-271	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: The Fossil energy research and development program is being redirected from accelerating the development and large scale demonstration of near term technologies to performing more generic and technology base research. This means that Government support for near term proprietary technologies will be deemphasized. In accordance with this policy, we propose to begin in FY 1983 the orderly termination of selected activities no longer consistent with Fossil energy research and development objectives. Savings can be achieved by the termination of some of these activities. These savings are proposed for deferral. The deferred funds will be used in FY 1983 to finance personnel costs, contract termination costs, and other expenses related to restructuring and streamlining the fossil energy field organization.

Estimated Effects: The phase-out of these near term research projects and deferral of funds will still allow for an orderly transition to more generic and technology based R&D.

Outlay Effect: None.

1/ This account was the subject of a similar deferral in FY 1982 (D82-236).

Deferral No: D83-9

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Health and Human Services	New budget authority (P.L._____): $---
Bureau: Alcohol, Drug Abuse, and Mental Health Administration	Other budgetary resources: 19,213,386
Appropriation title & symbol: Construction and Renovation, Saint Elizabeths Hospital 75X1312 1/	Total budgetary resources: 19,213,386
	Amount to be deferred: Part of year:
	Entire year: 9,712,386
OMB identification code: 75-1312-0-1-551	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Funds were provided in the Second Supplemental Appropriations Act, 1978 for the purpose of upgrading Saint Elizabeths Hospital to meet accreditation standards. In 1979 the Joint Commission on Accreditation of Hospitals granted a one year accreditation contingent upon implementation of the renovation plans. Saint Elizabeths Hospital received a one year accreditation in August 1980 and a two year accreditation in October 1981. This deferral represents amounts not required for obligation in FY 1983, based on the current renovation schedule for the hospital. This deferral is consistent with Congressional intent to provide no-year funding for this project, and is taken under the provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effects: Deferral of these funds will have no programmatic or budgetary effect because the funds could not be effectively obligated if made available, due to the planned renovation schedule.

Outlay Effects: None.

1/ This account was the subject of a similar deferral in FY 1982 (D82-12A).

Deferral No: D83-10

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Health and Human Services	New budget authority (P.L.) $ ---
Bureau: Office of the Asst. Secretary for Health	Other budgetary resources 11,420,000
Appropriation title & symbol: Scientific Activities Overseas Special Foreign Currency Program 1/ 75X1102	Total budgetary resources 11,420,000
	Amount to be deferred: Part of year ; Entire year 6,420,000
OMB identification code: 75-1102-0-1-552	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: The Scientific Activities Overseas Program of the Department of Health and Human Services (HHS) is funded with appropriations that consist of excess foreign currencies owned by the United States. The currencies of Burma, Guinea, India, and Pakistan held by the Treasury have been designated as in excess of normal U.S. needs. Funds for this program, which remain available until expended, are used for scientific research projects in those countries.

The funds to be deferred were determined after a careful review of the scientific merit of project proposals in the countries for which excess currency is available. They are in excess of current program requirements and are therefore reserved for contingencies under provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effect: Deferral of these funds will have no programmatic or budgetary effect because they would not be obligated if made available.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1982 (D82-13A).

Deferral No: D83-11

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of the Interior	New budget authority (16 U.S.C. 460L (10a)) $ 30,000,000
Bureau: National Park Service	Other budgetary resources 53,902,000
Appropriation title & symbol: Land and Water Conservation Fund, National Park Service 14X5005 1/	Total budgetary resources 83,902,000
	Amount to be deferred: Part of year ; Entire year 30,000,000
OMB identification code: 14-5005-0-2-303	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual 2/ ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☒ Contract authority (annual) ☐ Other

Justification: Under existing law, $30 million of contract authority becomes available each fiscal year to the Land and Water Conservation Fund in addition to regular appropriations. This authority is made available for use specifically as an anti-escalation measure in purchasing authorized Federal recreation land. The authority was last used in 1969 and 1970, lapsing in fiscal years 1971-1981 and rescinded by Congressional action for fiscal 1982. Deferral of these funds is taken under the provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effects: Deferral of these funds will have no programmatic or budgetary effect as they are expected to be made available for obligation only in unforseeable circumstances.

Outlay Effect: None.

1/ This account was subject to a similar deferral during FY 1982 (D82-14A).
2/ The deferred funds have a one-year availability.

Deferral No: D83-12

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of State	New budget authority (P.L._____): $ ---
Bureau:	Other budgetary resources: 37,692,000
Appropriation title & symbol: United States Emergency Refugee and Migration Assistance Fund 11X0040 1/	Total budgetary resources: 37,692,000
	Amount to be deferred: Part of year: 37,692,000
	Entire year:
OMB identification code: 11-0040-0-1-151	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Section 501(a) of the Foreign Relations Authorization Act, 1976, (Public law 94-141) and Section 414(b)(1) of the Refugee Assistance Act of 1962 (22 U.S.C. 2601) authorized a fund not to exceed $50 million to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

The Emergency Fund contains an estimated $37.7 million in unobligated balances from prior-year authority that have been deferred. Reapportionments may be made case-by-case as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C.665).

Estimated Effects: Deferral of these funds will have no programmatic or budgetary effect due to its part-year duration.

Outlay Effects: None.

1/ This account was the subject of a similar deferral in FY 1982 (D82-19A).

Deferral No: D83-13

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Transportation	New budget authority (P.L._____): $ ---
Bureau: Federal Aviation Administration	Other budgetary resources: 46,295
Appropriation title & symbol: Civil Supersonic Aircraft Development Termination 69X0106 Research and Development 69X1300 1/	Total budgetary resources: 46,295
	Amount to be deferred: Part of year: 0
	Entire year: 46,295
OMB identification code: 69-0106-0-1-402	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: These accounts help to finance the termination of the supersonic transport development program. Because of the difficulty in ending such a complex and massive undertaking, termination has taken a number of years. Settlement has been accomplished as quickly as possible consistent with the legitimate claims of the contractors and the protection of government interests. This deferral action is consistent with congressional intent to provide no-year funding and is taken under the provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effect: Deferral of these funds will have no programmatic or budgetary effect because they could not be obligated if made available.

Outlay Effect: None.

1/ This account was the subject of a similar deferral during FY 1982 (D82-20).

Deferral No: D83-14

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Transportation	New budget authority (P.L.) $ ---
Bureau Federal Aviation Administration	Other budgetary resources 424,733,611
Appropriation title & symbol Facilities and Equipment (Airport and Airway Trust Fund), FAA 1/ 69X8107 690/48107 699/38107 2/ 691/58107 692/68107	Total budgetary resources 424,733,611
	Amount to be deferred: Part of year -0- Entire year 158,484,611
OMB identification code: 69-8107-0-7-402	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual 699/38107 September 30, 1983 690/48107 September 30, 1984 ☒ Multiple-year 691/58107 September 30, 1985 (expiration date) ☐ No-year 692/68107 September 30, 1986	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Funds from this account are used for facilities and equipment for the expansion and modernization of the National Airspace System. Projects financed from this account include construction of buildings and purchase of new equipment for new or improved air traffic control systems and expansion and improvement in the navigational and landing aid systems. Because of the lengthy procurement and construction lead times for interrelated new facilities and complex equipment systems, it is not possible to obligate all funds necessary to complete each project in the year funds are appropriated so these funds are deferred until needed. This deferral action is consistent with the Congressional intent to provide multi-year funding for the total costs of these projects, and is taken under provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effect: This deferral action is consistent with normal operation for this program. The amount deferred could not be economically used if made available in FY 1983 because of the planned multi-year procurement, construction, and installation cycle.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1982 (D82-213).
2/ None of these funds is deferred.

Deferral No: D83-15

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of the Treasury	New budget authority (P.L.) $ --
Bureau Office of Revenue Sharing	Other budgetary resources 106,473,856
Appropriation title & symbol State and Local Government Fiscal Assistance Trust Fund 20X8111 1/ 2/	Total budgetary resources 106,473,856
	Amount to be deferred: Part of year 2,500,000 Entire year 103,973,856
OMB identification code: 20-8111-0-7-851	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act P.L. 92-512, P.L. 94-488 (Sec. 6) ☒ Other P.L. 36-604
Grant program ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: The Secretary of the Treasury must hold in reserve an amount to meet valid claims from State and local governments that past general revenue sharing payments to them will be too small. Because the total amount appropriated for all governments is fixed, the alternative to such a reserve is recurring recomputations of the entitlements of 39,332 governments for prior entitlement periods. Accordingly, the Office of Revenue Sharing withholds from obligation an amount equal to one-half of one percent of the amounts appropriated (exclusive of noncontinguous States adjustment funds) for each entitlement period through FY 1975. In addition, one-half of one percent of the $4,988 million (exclusive of noncontiguous States adjustment funds) appropriated for general revenue sharing in the Economic Stimulus Appropriations Act, 1977 (P.L. 95-29) and the amounts in the FY 1978 and the FY 1980 Appropriations (exclusive of noncontiguous States adjustment funds - P.L. 95-119, P.L. 96-103) were also withheld from obligation. An additional amount of $1.8 million is projected to be held in reserve from the FY 1983 appropriation.

This cumulative unobligated reserve is available to the Secretary of the Treasury to satisfy legitimate claims against the Trust Fund for prior entitlement periods.

D83-15

After adjusting for such releases from the reserve, the deferred amount projected to carryover in FY 1983 is $106.5 million. The unobligated amount of $106.5 million plus the additional amount of the 1983 appropriation retained in the Trust Fund will be further reduced whenever the Secretary determines the amount is adequate to meet foreseeable liabilities against the Trust Fund. The reduction will be made by paying the additional amount to recipients as part of the regular distribution.

Estimated Effect: This action will postpone distribution of the amount of the reserve until necessary adjustments and corrections have been identified. It will also avoid substantial confusion and complexities in the administration of the program.

Outlay Effect: This deferral has the effect of shifting $52.0 million in outlays from FY 1983 into FY 1984 and $52.0 million from FY 1984 into FY 1985.

1/ This account is subject to another deferral (D83-16).
2/ This account was the subject of a similar deferral during FY 1982 (D82-22).

Deferral No: D83-16

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of the Treasury	New budget authority (P.L.) $ ---
Bureau: Office of Revenue Sharing	Other budgetary resources 106,473,856
Appropriation title & symbol: State and Local Government Fiscal Assistance Trust Fund 20X8111 1/ 2/	Total budgetary resources 106,473,856
	Amount to be deferred: Part of year 7,908,900
	Entire year
OMB identification code: 20-8111-0-7-851	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act P.L. 92-512 Sections 121 & 123 ☒ Other P.L. 94-488 P.L. 96-604
Grant program ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: The State and Local Government Fiscal Assistance Trust Fund is the vehicle for disbursement of general revenue sharing funds. This deferral represents payments withheld from various governments involved in annexations or disincorporations and for reasons of noncompliance with the requirements of the State and Local Fiscal Assistance Act, as amended.

Estimated Effect: The release of these funds is contingent upon adherence by the various governments to the compliance regulations, and determinations as to which higher level of government is eligible to receive those funds withheld because of annexations and disincorporations.

Outlay Effect: None.

1/ This account is subject to another deferral (D83-15).
2/ This account was the subject of a similar deferral during FY 1982 (D82-23A).

Deferral No: D83-17

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of the Treasury	New budget authority (P.L._____) $ ---
Bureau Federal Law Enforcement Training Center	Other budgetary resources 6,096,000
Appropriation title & symbol Construction 20X0103 1/	Total budgetary resources 6,096,000 Amount to be deferred: Part of year _____ Entire year 3,078,000
OMB identification code: 20-0103-0-1-751	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other _____
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: This appropriation provides the necessary expenses to prepare plans and specifications, acquire land, and construct facilities for the Federal Law Enforcement Center. The deferral includes that portion of the money not already obligated, or required in the current year. Deferred funds will be available for maintenance, repairs, and renovations in subsequent years. This deferral is consistent with congressional intent to provide no-year funding and is taken under the provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effects: Deferral of these funds will have no programmatic or budgetary effect as they could not be effectively obligated if made available.

Outlay Effect: None.

1/ This account was the subject of a similar deferral during FY 1982 (D82-24).

Deferral No: D83-18

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency District of Columbia	New budget authority (P.L._____) $ ---
Bureau	Other budgetary resources 38,832,500
Appropriation title & symbol Loans to the District of Columbia for Capital Outlay 20X0137	Total budgetary resources 38,832,500 Amount to be deferred: Part of year _____ Entire year 38,832,500
OMB identification code: 20-0137-0-1-852	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other _____
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: This appropriation provides for loans for capital improvements to the District of Columbia, as authorized by the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, as amended.

These funds are unobligated balances from FY 1982 and are deferred in anticipation of a fiscal year 1983 appropriation that will limit capital outlay loans to $145,000,000.

Estimated Effects: Deferral of these funds will have no programmatic or budgetary effect because the District of Columbia will be limited to $145 million in new direct loan obligations.

Outlay Effect: None.

Deferral No: D83-19

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Pennsylvania Avenue Development Corp.	New budget authority (P.L. 97-100): $ 0
Bureau:	Other budgetary resources: 29,500,000
Appropriation title & symbol: Land Acquisition & Development Fund 42X4084 1/	Total budgetary resources: 29,500,000
	Amount to be deferred: Part of year: $ 0
	Entire year: 17,949,000
OMB identification code: 42-4084-0-3-451	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☐ Appropriation ☐ Contract authority ☒ Other: Borrowing Authority

Justification: This account provides borrowing authority to acquire private property to accelerate redevelopment in the Pennsylvania Avenue project area. The 1974 land use plan for the eastern sector of the project area was reviewed and updated in light of current real estate trends and market conditions.

In order to ensure that new development will be economically self-sufficient and within the resources available to private developers and to limit the level of net outlays, $17.9 million of borrowing authority is deferred.

Estimated Effects: The Corporation will not proceed with significant new land acquisition activity in the area east of the FBI building. However, borrowing authority will be released on a case-by-case basis to solve problems when development is delayed by recalcitrant owners declining to sell property at a fair price, by title difficulties or by other causes.

Outlay Effect: This deferral will shift $12 million of FY 1983 outlays into FY 1984 and $5 million of FY 1984 outlays into FY 1985.

1/ This account was the subject of a similar deferral in FY 1981 (D81-40A) and of another deferral in FY 1982 (D82-25A).

[FR Doc. 82-27761 Filed 10-6-82; 10:24 am]
BILLING CODE 3110-01-C

Deferral No: D83-20

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: U.S. Railroad Retirement Board	New budget authority (P.L.): $ ---
Bureau:	Other budgetary resources: 432,318
Appropriation title & symbol: Milwaukee Railroad Restructuring Administration 60X0108 1/	Total budgetary resources: 432,318
	Amount to be deferred: Part of year:
	Entire year: 240,000
OMB identification code: 60-0108-0-603	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: This account funds administrative expenses incurred by the Board in disbursing benefit payments under the Milwaukee Railroad Restructuring Act. The Board estimates that $240 thousand is not required for obligation in 1983 and will be carried forward into fiscal year 1984 and thus should be deferred. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effects: No programmatic or budgetary effect.

Outlay Effects: None.

1/ This account was the subject of a similar deferral in FY 1982 (D82-25D).

Reader Aids

Federal Register

Vol. 47, No. 195

Thursday, October 7, 1982

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-5237
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

United States Government Manual 523-5230

SERVICES

Agency services	523-5237
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

43351-43658.....1
43659-43934.....4
43935-44110.....5
44111-44222.....6
44223-44536.....7

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

456.....44229

3 CFR

Executive Orders:

8979 (Revoked in part by PLO 6341).....43953
12384.....43935
12385.....43937
12386.....43939

Proclamations:

4707 (Superseded in part by Proc. 4980).....43659
4768 (Superseded in part by Proc. 4980).....43659
4980.....43659
4981.....44223
4982.....44225
4983.....44227

5 CFR

213.....43634
831.....43634

Proposed Rules:

831.....43641, 43981

7 CFR

16.....43941
51.....43661, 43942
910.....43662
982.....44231
1079.....43351, 44232

Proposed Rules:

1071.....44268
1073.....44268
1104.....44268
1106.....44268
1124.....43390
1126.....44268
1132.....44268
1701.....43391

8 CFR

204.....44233
212.....44233
214.....44233
223.....44233, 44239
237.....44233
242.....44233
245.....44233
248.....44233
249.....44233
265.....44233
274.....44239

10 CFR

110.....44111
600.....44076
1004.....44112

11 CFR

Proposed Rules:

106.....43392
9031.....43392
9032.....43392
9033.....43392
9034.....43392
9035.....43392
9036.....43392
9037.....43392
9038.....43392
9039.....43392

12 CFR

Ch. VII.....43943
207.....44241
220.....44241
221.....44241
721.....44242

Proposed Rules:

Ch. II.....43528
303.....43983
337.....43985
545.....44333
556.....44333
561.....44334
563.....44334
701.....44340

13 CFR

314.....43663

14 CFR

39.....43663, 44243
71.....43664-43666, 44244, 44245
91.....44246
95.....43667
320.....43352
385.....43362

Proposed Rules:

21.....44341
23.....44341
71.....43714, 44342
326.....43986

15 CFR

Proposed Rules:

Ch. III.....43716

16 CFR

305.....44246

17 CFR

1.....44113
211.....43673

18 CFR

271.....44113-44115

Proposed Rules:
271 43986

19 CFR

Proposed Rules:
10 43717
19 43717
24 43717
113 43717
125 43717
141 43717
142 43717
143 43717
144 43717
146 43717

20 CFR

404 43673
410 43673

21 CFR

106 43363
137 43363
146 43364
176 43365
182 43366
184 43366
186 43366
524 43367
540 43368
558 43369
601 44062
1316 43370

Proposed Rules:
182 ..... 43392, 43396
184 43392–43402
310 ..... 43566, 43572
343 43562
357 43540

24 CFR

200 ..... 43674, 44247
201 43371
203 ..... 43372, 44247
204 44247
205 43372
207 43372
213 ..... 43372, 44247
215 ..... 43674, 44247
220 ..... 43372, 44247
221 ..... 43372, 44247
222 44247
226 44247
227 44247
232 43372
233 44247
234 43372
235 ..... 43372, 43674, 44247
236 ..... 43372, 43674, 44247
237 44247
240 44247
241 43372
242 43372
244 43372
425 44247
426 44247
570 43900
804 44247
805 44247
812 43674
841 44247
885 44116

Proposed Rules:
885 44122

26 CFR

1 44247
53 44247
54 44247
301 44247

Proposed Rules:
1 ..... 44343, 44345

27 CFR

5 43944
19 43944
170 43944
173 43944
194 43944
250 43944
251 43944

28 CFR

0 ..... 43370, 44254
16 ..... 44255, 44256

Proposed Rules:
2 43988

29 CFR

91 43375

30 CFR

716 44116
785 44116
906 44208

Proposed Rules:
870 44204
903 44194
944 44122

32 CFR

286b 44117
292a 44257
651 43685

33 CFR

100 44257
117 44258

Proposed Rules:
115 43736
117 ..... 44346, 44347

39 CFR

111 43951

Proposed Rules:
3001 44348

40 CFR

52 ..... 43375, 43952, 44117, 44259–44261
65 43377
81 ..... 44261, 44263
86 44118
228 43379

Proposed Rules:
52 43404
60 ..... 44350, 44354
123 43405
228 44122

41 CFR

1–1 43692

42 CFR

405 ..... 43610, 43618, 43650
433 43644
435 43644
436 43644

Proposed Rules:
405 43578

43 CFR

20 43380
2800 43953

Proposed Rules:
426 44356
429 43406

Public Land Orders:
5183 (As Amended by PLO 6341) 43953
6329 44120
6341 43953

44 CFR

312 43380

Proposed Rules:
67 43988

45 CFR

205 43383
206 43383
232 ..... 43383, 43953
233 ..... 43383, 43953
234 43383
235 43383
238 43383
239 43383
302 43953
303 43953

46 CFR

Proposed Rules:
33 43736
35 43736
75 43736
78 43736
94 43736
97 43736
160 43736
161 43736
167 43736
180 43736
185 43736
192 43736
196 43736

47 CFR

0 43383
73 ..... 43384–43388, 43697, 43698, 44120

Proposed Rules:
22 43842
73 ..... 43410, 43740–43744

49 CFR

1 43699
171 44466
172 44466
176 44466
178 44466
192 44263
193 44263
1011 44516
1100 44516

Proposed Rules:
173 44356
195 43745
1039 43988
1100 44517
1113 44518
1114 44518
1115 44518
1121 43747
1206 44359
1207 44359

50 CFR

17 ..... 43699, 43957
23 43701
260 43704
611 ..... 43964, 44264, 44266
651 43705
654 44267
663 43964

Proposed Rules:
17 44125

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
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	

List of Public Laws

Last Listing October 6, 1982

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 (telephone 202–275–3030).

H.J. Res. 496 / Pub. L. 97–277 To provide for the designation of the week beginning on November 21, 1982, as "National Alzheimer's Disease Week". (October 4, 1982; 96 Stat. 1206) Price: $1.75.

H.R. 5288 / Pub. L. 97–278 Granting the consent of Congress to the compact between the States of New Hampshire and Vermont concerning solid waste. (October 4, 1982; 96 Stat. 1207) Price: $1.75.

S.J. Res. 193 / Pub. L. 97–279 Designating the week of November 7 through November 13, 1982, as "National Respiratory Therapy Week." (October 4, 1982; 96 Stat. 1210) Price: $1.75.

S.J. Res. 165 / Pub. L. 97–280 Authorizing and requesting the President to proclaim 1983 as the "Year of the Bible". (October 4, 1982; 96 Stat. 1211) Price: $1.75.

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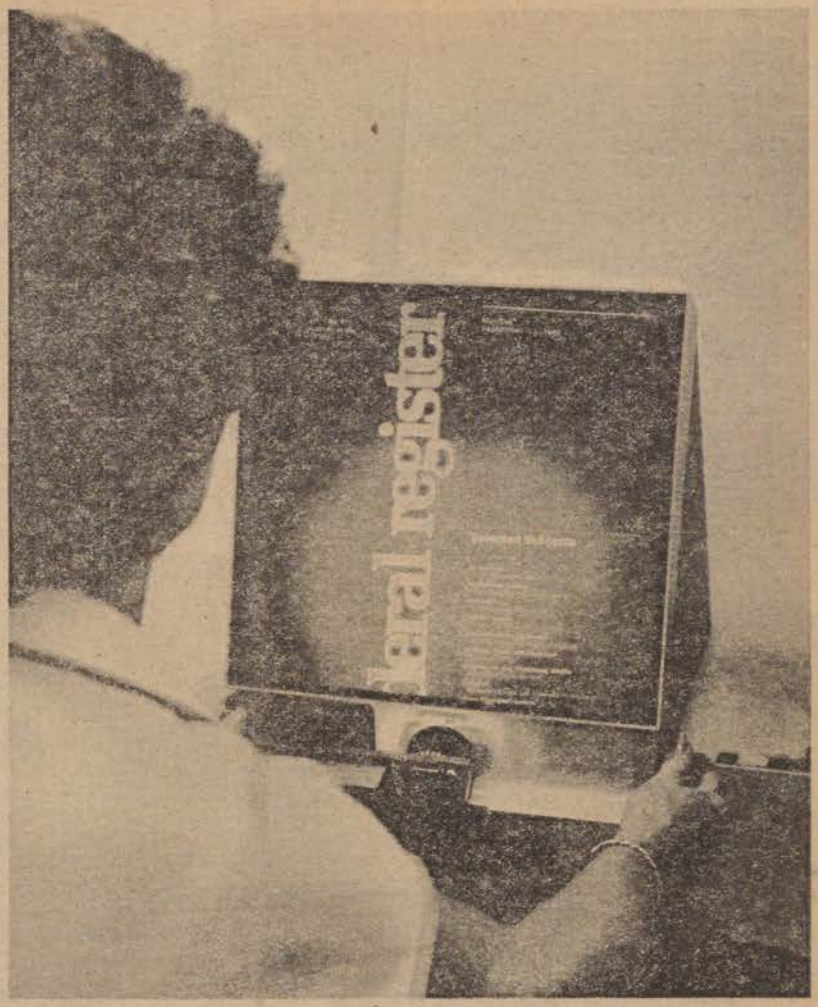
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882