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

WHO: The Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC
(two briefings)

WHEN: July 15 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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

OVERSEAS PRIVATE INVESTMENT CORPORATION

5 CFR Chapter XXXIII

22 CFR Part 705

RINs 3209–AA00, 3209–AA04, 3209–AA15, and 3209–AA16

Supplemental Standards of Ethical Conduct for Employees of the Overseas Private Investment Corporation

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Interim rule.

SUMMARY: The Overseas Private Investment Corporation, with the concurrence of the Office of Government Ethics (OGE), is issuing a regulation for employees of OPIC that supplements the executive branch-wide Standards of Ethical Conduct issued by OGE. The Overseas Private Investment Corporation is also repealing its existing agency standards of conduct regulations that are now superseded by the branch-wide Standards of Ethical Conduct and by the executive branch financial disclosure regulation also issued by OGE. In the place of those OPIC regulations, the Overseas Private Investment Corporation is substituting a cross-reference to the new branch-wide regulations and this supplemental regulation.

DATES: Interim rule effective July 17, 1993. Comments are invited and must be received on or before August 2, 1993.

ADDRESSES: Send comments to the Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527, Attention Ms. Scott.

FOR FURTHER INFORMATION CONTACT: Jane H. Chalmers or Kathlyn R. Scott, Overseas Private Investment Corporation, Office of Legal Affairs, telephone (202) 336–8400.

SUPPLEMENTARY INFORMATION:

I. Analysis of Regulation

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) for codification at 5 CFR part 2635. See 57 FR 35006–35067, as corrected at 57 FR 48557 (October 27, 1992) and 57 FR 52583 (November 4, 1992). The Standards, effective February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive agencies to publish agency-specific supplemental regulations that are necessary to properly implement their respective ethics programs. The Overseas Private Investment Corporation and OGE have determined that the following interim supplemental rule is necessary for successful implementation of OPIC's ethics program, in light of OPIC's operations.

5 CFR 2635.105 and 2635.803 authorize individual agencies, by supplemental regulation, to require employees to obtain approval before engaging in outside employment activities. This interim rule, for codification at 5 CFR 4301.101, will require any employee of OPIC who wants to engage in outside employment to obtain prior approval of such activity from OPIC's Designated Agency Ethics Official.

The Overseas Private Investment Corporation is also repealing its existing standards of conduct regulations at 22 CFR part 705 which, except for the sections noted immediately below, were superseded by the executive branch-wide Standards on February 3, 1993. Sections 705.735–104, 705.735–109 and part of 705.735–110 of OPIC's standards, dealing with financial disclosure, were superseded on October 5, 1992 by OGE's executive branch-wide financial disclosure regulation codified at 5 CFR part 2634. See 57 FR 11800–11830 (April 7, 1992), as amended at 57 FR 21854–21855 (May 22, 1992) and 57 FR 62605 (December 31, 1992). In place of its old standards at 22 CFR part 705, OPIC is issuing a residual cross-reference provision at new 22 CFR 705.101 to refer to both the branch-wide Standards and financial disclosure regulations and to OPIC's new supplemental regulation.

II. Matters of Regulatory Procedure

Administrative Procedure Act

As General Counsel of OPIC, I have found good cause pursuant to 5 U.S.C. 553(b) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these interim rules and repeal. The reason for this determination is that it is important to a smooth transition from OPIC's prior ethics rules to the new executive branch-wide Standards and financial disclosure regulations that these rulemaking actions take place as soon as possible. Furthermore, this rulemaking is related to OPIC organization, procedure and practice. Nonetheless, this is an interim rulemaking, with provision for a 45-day public comment period. The Overseas Private Investment Corporation will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence of the Office of Government Ethics.

Executive Order 12291, Federal Regulation

As General Counsel of OPIC, I have determined that this is not a major rule as defined in section 1(b) of Executive Order 12291 of February 17, 1981.

Regulatory Flexibility Act

As General Counsel of OPIC, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities because it affects only OPIC employees.

Paperwork Reduction Act

As General Counsel of OPIC, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 4301 and 22 CFR Part 705

Conflict of interests, Government employees.

Dated: March 3, 1993.

Jane H. Chalmers,

Acting General Counsel, Overseas Private Investment Corporation.

Approved: March 18, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Overseas Private Investment Corporation, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 22, chapter VII, of the Code of Federal Regulations, as follows:

TITLE 5—[AMENDED]

1. A new chapter XXXIII, consisting of part 4301, is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR CHAPTER XXXIII—OVERSEAS PRIVATE INVESTMENT CORPORATION

PART 4301—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION

§ 4301.101 Prior approval for outside employment.

Any employee of the Overseas Private Investment Corporation who is interested in engaging in outside employment must first obtain approval from the Designated Agency Ethics Official before engaging in such employment activity. For this purpose, employment has the meaning set forth in § 2635.603(a) of this title.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 3635.105, 2635.803.

22 CFR CHAPTER VII—OVERSEAS PRIVATE DEVELOPMENT CORPORATION, INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

2. Part 705 of 22 CFR chapter VII is revised to read as follows:

PART 705—EMPLOYEE ETHICAL CONDUCT STANDARDS AND FINANCIAL DISCLOSURE REGULATIONS

§ 705.101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Overseas Private Investment Corporation (OPIC) should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the OPIC regulation at 5 CFR 4301.101 which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

Authority: 5 U.S.C. 7301.

[FR Doc. 93–14212 Filed 6–16–93; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 999

[Docket No. FV–92–039FR]

Final Rule Establishing Pit and Pit Fragment Tolerances for Dried Prunes Imported Into the United States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting, without modification, as a final rule the provisions of an interim final rule which established pit and pit fragment tolerances for imported pitted and pitted macerated dried prunes. Prior to the interim final rule, no tolerance was specified for pits or pit fragments under the import regulation. This action is required under section 8e of the Agricultural Marketing Agreement Act of 1937 to bring the import requirements for dried prunes into conformity with the requirements of the marketing order for dried prunes produced in California.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901; or Kathleen M. Finn, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–1509.

SUPPLEMENTARY INFORMATION: This final rule, which adopts the interim final rule which amended the prune import regulation (§ 999.200), is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act. Section 8e provides that whenever certain specified commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. Marketing Order No. 993, as amended (7 CFR part 993), prescribes grade and size requirements for dried prunes produced in California.

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

This final rule has also been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

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

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

Import regulations issued under the Act are based on regulations established under Federal marketing orders for fresh fruits, vegetables, and specialty crops, like prunes. Thus, import regulations should also have small entity orientation and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms, including importers, are defined as those whose annual receipts are less than $3,500,000. Currently, pitted and pitted macerated dried prunes are not imported into the United States, and thus, at this time no importers are affected by the regulations implemented by this action.

Grade and size requirements are included in section 999.200 covering prunes imported into the United States. However, these requirements did not set standards for pitted and pitted macerated dried prunes. The interim final rule established the requirements

specified in Marketing Order No. 993 for California dried prunes as the comparable grade requirements for pitted and pitted macerated dried prunes imported into the United States. The interim final rule also did not subject imports of pitted and pitted macerated prunes to the size and undersized requirements specified in M.O. No. 993 because these requirements are applied prior to pitting and cannot be applied after the pits have been removed.

Imported prunes meeting grade and size requirements for such prunes are designated as standard prunes. Imported pitted and pitted macerated dried prunes meeting these grade requirements will be designated as standard pitted or standard pitted macerated dried prunes, as applicable. Prunes failing to meet either of those requirements will be designated as manufacturing grade substandard prunes if the prunes meet the maximum tolerances specified in paragraphs 1, 2, and 3 of Exhibit A of the grade requirements for mold, imbedded dirt, insect infestation, and decay. Manufacturing grade substandard prunes are used for human consumption outlets as prune products. Such prunes lose their form and character as prunes during processing.

The interim final rule modified paragraphs (a), (b), (c), (e), and (f) of the prune import regulation (7 CFR 999.200). Imported prunes will have to meet the same pit and pit fragment tolerances required of pitted and pitted macerated dried prunes that are specified under M.O. No. 993. Also, it is necessary to add definitions regarding pitted and pitted macerated dried prunes. Recently, the Department modified the quality requirements under the marketing order for dried prunes produced in California based on a recommendation by the Prune Marketing Committee (Committee). The Committee works with the Department in administering the marketing order program for dried prunes produced in California. Section 8e of the Act requires the import requirements for dried prunes to be in conformity with the requirements of the marketing order for dried prunes produced in California.

Paragraphs (a) and (b) of § 999.200 provide definitions and grade and size requirements for the importation of dried prunes, respectively. The interim final rule differentiated pitted and pitted macerated dried prunes imported into the United States and set pit and pit fragment tolerances for pitted and pitted macerated dried prunes.

Due to their attractive appearance, pitted dried prunes, with their shape maintained, are preferred by consumers for snacking. Such prunes are also used for cooking and baking. Such prunes are characterized by a uniform depression and minimal skin break where the pit has been removed (punched-out).

Pitted macerated dried prunes are characterized by a flattened appearance with slightly more skin break where the pit has been mechanically removed using rollers to squeeze the pits out. Such prunes are preferred as an ingredient for cooking and baking (appearance and identity are not as important) but can also be used for snacking.

Well macerated prunes are pitted prunes which have lost their shape as prunes by being cut or diced into small pieces or by being block pressed into cakes of pitted prune flesh. Cut or diced prunes generally are used as ingredients for cooking and baking. Block pressed prunes are used in prune products such as prune butter, prune paste, and prune purees.

The most common consumer complaint received by California prune handlers concerns pitted prunes and macerated prunes which contain pits and pit fragments. Nearly 2,000 such complaints are received annually, and the industry believes this figure significantly underestimates the magnitude of the problem. Many consumers who find pits and pit fragments simply discontinue purchasing a brand or all prune brands. Therefore, the Committee recommended establishing tolerances for pits and pit fragments for California prunes regulated under the marketing order. Pursuant to section 8e, the same or comparable requirements must be applied to prune imports. Thus, tolerances are established for pitted and pitted macerated dried prunes.

Prior to changing the requirements under the marketing order, the presence of pits and pit fragments in pitted and pitted macerated dried prunes was not scored as a defect under the marketing order. The Dried Fruit Association (DFA), the inspection agency employed under the marketing order, inspected pitted prunes and pitted macerated prunes for pits and pit fragments only at the request of the handler. The tolerance level used was the level set by the U.S. Food and Drug Administration (FDA) as a food defect action level. Pursuant to FDA requirements (The Food Defect Action Level), pitted prunes cannot contain more than an average of 2 percent by count whole pits and/or pit fragments 2 mm or longer and 4 of 10 subsamples of pitted prune samples cannot have more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer.

The Committee recommended applying the FDA's pitted prune tolerance to California produced pitted macerated prunes because such prunes are used mostly as ingredients in cooking and baking where pit or pit fragments are more easily noticed by the consumer. Thus, lots of California grown pitted macerated dried prunes shall contain no more than 2 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer and 4 of 10 subsamples of pitted macerated dried prunes shall contain no more than 2 percent by count of whole pits and/or pit fragments 2 mm or longer. The interim final rule applied the same standard to pitted macerated dried prunes imported into the United States.

No tolerance was recommended for well macerated prunes because these prunes are used only in prune products where there is no apparent pit or pit fragment problem. When well macerated prunes are used in manufactured products, pit fragments are generally so small that they are not noticed by consumers and thus, cause no problems.

There will be no size and undersized requirements for pitted and pitted macerated prunes. The size requirements under the marketing order regulations are applied prior to pitting and cannot be applied after the pits are removed. However, lots of pitted and pitted macerated prunes must meet the applicable minimum grade requirements set forth in § 999.200 (Exhibit A), except that skin and flesh damage shall not be scored as a defect in determining whether the prunes meet the grade requirements.

Because pitted dried prunes are mostly eaten out-of-hand as snacks, there is a greater chance of consumer dental injury due to pits and pit fragments remaining in the product. Consequently, the Committee recommended establishing a tolerance for California produced pitted dried prunes by requiring that no lot of such prunes, intended for human consumption as pitted prunes, shall be handled unless such prunes contain no more than an average of 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer and that 4 of 10 subsamples of pitted prunes contain no more than 0.5 percent by count of whole pits and/or pit fragments 2 mm or longer. The interim final rule applied the same standard to pitted dried prunes imported into the United States.

This action is being taken by the Department so that the prune import

requirements will be comparable to those applied to domestic production regulated under the marketing order—as required by section 8e of the Act. While there is no evidence that pitted and pitted macerated dried prunes are imported into the United States, such prunes could be imported in the future.

These tolerances will ensure a consistently higher quality product for consumers, which is expected to benefit importers, when and if they begin importing such prunes. The tolerances will apply uniformly to all pitted and pitted macerated dried prunes.

Minor conforming changes are also made in the import regulation to update the language and to reflect coverage of pitted and pitted macerated prunes.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the import regulation have been approved previously by the Office of Management and Budget.

An interim final rule concerning this action was published in the **Federal Register** on November 27, 1992 (57 FR 56243). Comments on the interim final rule were invited from interested persons until December 28, 1992. No comments were received.

After consideration of all relevant matter presented, it is found that the action, as set forth, will tend to effectuate the declared policy of the Act.

In accordance with section 8e of the Act, the United States Trade Representative (USTR) has concurred with the issuance of this final rule.

List of Subjects in 7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 999 is amended to read as follows:

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR Part 999 continues to read as follows:

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

2. For the reasons set forth in the preamble, the provisions of the interim final rule amending 7 CFR part 999 which were published at 57 FR 56243 on November 27, 1992, are adopted as a final rule without change.

Dated: June 11, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–14330 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 92–030F]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees reflect the increased costs of providing these services due primarily to the increase in salaries of Federal employees allocated by Congress under the Federal Employees Pay Comparability Act of 1990.

EFFECTIVE DATE: June 27, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700, (202) 720–3367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." It will not result in an annual effect on the economy of $100 million or more; in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The fee increases reflect a small increase in costs for establishments that elect to utilize certain inspection services.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions, all applicable administrative procedures must be exhausted. Under the Federal Meat and Poultry Products Inspection Acts, the administrative procedures are set forth in 7 CFR part 1.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The fees provided for in this document reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

Background

Mandatory inspection by Federal inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products; and the ordinary costs of it are borne by the U.S. Government. However, costs for these inspection services performed on holidays or on an overtime basis may be incurred to accommodate the business needs of particular establishments. Any or all of these costs which are not a part of the mandatory inspection service are recoverable by the Government.

FSIS also provides a range of voluntary inspection services (9 CFR 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5); the costs of which are totally recoverable by the Government.

These services, set forth in Subchapter B—Voluntary Inspection and Certification Service, are provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) to assist in the orderly marketing of various animal products and byproducts not subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

Each year the fees for certain services rendered by FSIS to operators of official meat and poultry establishments, importers, or exporters are reviewed. A cost analysis, which is on file with the FSIS Hearing Clerk and may be requested free of charge from the FSIS

Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700, is then performed to determine if such fees are adequate to recover the cost of providing the services. The analysis covers fees charged in connection with overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services. This year, the fees to be charged for these services have been determined by an analysis of data on the current cost of these services, by anticipated costs associated with changes in operations of the program, by increases in those costs due to an increase in the salaries of Federal employees allocated by Congress under the Federal Employees Pay Comparability Act of 1990, and by other increases affecting Federal employees, such as costs for benefits.

Based on the Agency's analysis of the increased costs in providing these services FSIS is increasing the fees relating to such services. These increased costs are a result of the pay raise of 3.7 percent for Federal employees effective January 1993; the increasing number of employees covered by the Federal Employees Retirement System in 1993 which is subject to the Federal Insurance Contributions Act tax, and increased health insurance costs. On March 16, 1993, FSIS published a proposed rule in the **Federal Register** (58 FR 14177) to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments.

FSIS received on comment in response to the proposal. The commenter was from a trade association representing a segment of the industry and this commenter indicated that the FSIS should do more to control program costs and minimize charges to industry.

FSIS is continually examining its programs and seeking ways to become more efficient and effective in its operations. After analyzing the available data relating to costs of providing these services, FSIS has determined that these are the rates that will be charged for 1993.

The new rates reflect only an incremental increase in the costs currently borne by those entities electing to utilize overtime and holiday inspection services and certain other voluntary inspection services.

These amendments to the regulations increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services due to the pay raise effective January 1993 for Federal employees. To recover these increased costs in a timely manner, the Administrator has determined that these amendments should be effective less than 30 days after publication in the **Federal Register.**

Done at Washington, DC, on June 11, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

List of Subjects in 9 CFR Part 391

Fees and charges, Meat inspection, Poultry products inspection.

Accordingly, 9 CFR part 391 of the Federal meat and poultry products inspection regulations is amended as follows:

PART 391—FEES AND CHARGES FOR INSPECTION SERVICES

1. The authority citation for part 391 continues to read as follows:

Authority: 21 U.S.C. 601 *et seq.*, 460 *et seq.*; 7 CFR 2.17 (g) and (i), 2.55; 7 U.S.C. 394, 1622, and 1924.

2. Sections 391.2, 391.3, and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $29.84 per hour, per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 shall be $30.72 per hour, per program employee.

§ 391.4 Laboratory services rate.

The rate of laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $51.80 per hour, per program employee.

[FR Doc. 93–14279 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 517

[No. 93–34]

RIN 1550–AA53

Minority-, Women-, and Individuals With Disabilities-Owned Business Outreach Program: Contracting for Goods and Services

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is adopting a Minority-, Women- and Individuals With Disabilities-Owned Business (MWIDOB) Contracting Outreach Program. This final rule is intended to ensure that business concerns owned and controlled by members of minority groups, women and individuals with disabilities are provided the opportunity to participate in the OTS's contracting programs. It also designates the official responsible for implementing the program and its oversight.

This program is required by the Financial Institutions Reform, Recovery and Enforcement Act of 1989. Designation of the responsible official will promote participation of minority groups in OTS's contracting programs.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Columbus D. Jude, Sr., Advocate, Minority- and Women-Owned Businesses (MWIDOBs) Outreach Program, Procurement Management Division, (202) 906–6346, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background, Legal Authority, and Description of the Proposal

The OTS is hereby establishing a Minority-, Women- and Individuals With Disabilities-Owned Business Contracting Outreach Program, to ensure the participation of firms that are owned and operated by minorities, women and individuals with disabilities in the OTS contracting program to the maximum extent possible. The program includes outreach activities for individuals with disabilities that are consistent with the intent of the Americans with Disabilities Act of 1990 and broader Federal guidelines pertaining to equal employment opportunity for individuals with disabilities.

The OTS MWIDOB Outreach Program applies to the contracting activities of the OTS, as required by section 1216(c) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Public Law 101–73, 103 Stat. 183 (codified at 12 U.S.C. 1833e (1990)) and is intended to further facilitate the participation of certain designated groups in the OTS's contracting processes. The FIRREA also requires the OTS to prescribe regulations establishing and overseeing a MWIDOB Outreach Program. OTS is applying the program, as well, to businesses owned by individuals with disabilities consistent with the intent of the Americans with Disabilities Act of 1990, Public Law 101–336, 104 Stat. 327.

The FIRREA requires the OTS and other financial institutions regulatory agencies to prescribe regulations to establish and oversee a minority outreach program within each agency. The program should ensure inclusion, to the maximum extent possible, of minorities, women and individuals with disabilities and entities owned by minorities, women and individuals with disabilities, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the agency with such persons or entities, public or private, in order to manage the institutions and their assets for which the agency is responsible, or to perform such other functions authorized under any law applicable to such agency.

On September 17, 1992, the OTS published for comment in the Federal Register a Proposed Rule to govern the outreach portion of the MWIDOB program. The Proposed Rule set forth the agency's proposed outreach program and proposed standards for qualification as a minority- or women- or individuals with disabilities-owned businesses.

II. Summary of Comments and OTS Response

The OTS received a total of four comments in response to the Proposed Rule. Commenters included one minority financial institution trade association, one minority-owned management and financial consulting firm, one minority-owned law firm, and one private hospital. One commenter supported the proposal without change. One commenter recommended an approach whereby Federal Government purchasing officials would be responsible for achieving a set percentage of business with minority-, women- and persons with disabilities-owned firms. OTS, however, already has such a set-aside program and, to the extent the commenters' concerns focused on other agencies of the Federal Government, they are beyond OTS's authority to address.

One commenter recommended that the OTS incorporate the definition of a "minority thrift" as contained in title III, section 308(b)(c) of the FIRREA, into the definition of minority-owned business. This definition recognizes the ethnic make-up of a thrift's management, board of directors and the communities they serve, in addition to the ethnic background of stockholders of stock-owned entities. The commenter also argued that trade organizations that represent minority groups should qualify to bid for OTS contracts.

The OTS has decided not to modify the definition of a minority business to reflect this commenter's suggestion. The definition adopted today, which follows that adopted by other Federal banking agencies, would include savings associations that otherwise meet its requirements. A separate reference to thrifts is, therefore, unnecessary.

The commenter further stated that, historically, there have been numerous cases of misrepresentation reported in special contracting entities. In addition to OTS's requirement that minority or women managers be in control of the day-to-day operations of the firm, the commenter believed that the resumes of the firm's managers should demonstrate a history of running the day-to-day operations of the organization. OTS believes that management experience should be taken into account on a case-by-case basis in determining whether it is appropriate to contract with a particular business that is controlled by minorities, women, or individuals with disabilities. Accordingly, it is unnecessary to include this requirement in the Outreach Program rule.

One commenter suggested changing the definition of a "minority" to use the term "African-American" rather than "Black." OTS has added the term "African-American" to the definition. Language has also been added clarifying the agency's intent on the scope of its definition. This language makes clear that OTS will construe the definitions in the regulation to include the most widely accepted and understood terms used to refer to the minority groups listed.

One commenter urged that the OTS Outreach Program Advocate be instructed to supply certification forms in any mailing to minority businesses and, in addition, to create and attach to that form a checklist with instructions for completing the form. The OTS Outreach Program Advocate will consider this approach in fulfilling that role, but OTS does not believe that it is necessary for the regulation to mandate this level of detail because the existing form is self-explanatory and will be made widely available.

III. Description of the Final Rule

The provisions of the final rule are substantially the same as those in the proposal, although several have been shortened and simplified. As it implements its Outreach Program, OTS continues to be receptive to suggestions to help program participants overcome hurdles they may encounter in the OTS's contracting process.

The final rule includes the following elements: identification of minority-, women-, and individuals with disabilities-owned firms capable of providing goods and services to the OTS; the agency's official policy; certification of identified firms; promotion of the program; guidelines for the solicitation of contracts that promote the participation of minority-, women-, and individuals with disabilities-owned firms in OTS's contracting; and the oversight and monitoring of the program.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the OTS certifies that this rule will not have a significant economic impact on a substantial number of small entities. OTS uses outside contractors only to a limited extent.

Executive Order 12291

The Director of the OTS has determined that this rule does not constitute a major rule. Therefore, a regulatory impact analysis is not required.

List of Subjects in 12 CFR Part 517

Government contracts, Minorities, Women, and Individuals with disabilities.

Accordingly, OTS hereby amends subchapter A, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

1. Part 517 is added to read as follows:

PART 517—THE MINORITY, WOMEN, AND INDIVIDUALS WITH DISABILITIES OUTREACH PROGRAM: CONTRACTING FOR GOODS AND SERVICES

Sec.

517.1 Purpose and scope.
517.2 Definitions.
517.3 Policy.

Sec.
517.4 Oversight and monitoring.
517.5 Outreach.
517.6 Certification.
517.7 Contract award guidelines.

Authority: 12 U.S.C. 1833(e); 42 U.S.C 12101 *et seq.*

§ 517.1 Purpose and scope.

The purpose of the OTS Minority-, Women- and Individuals with Disabilities-Owned Businesses Outreach Program (Outreach Program) is to ensure that firms owned and operated by minorities, women and individuals with disabilities are given the opportunity to participate to the maximum extent possible in all contracts entered into by the OTS. Sections 517.5 through 517.7 of this part apply to all contracting activities, with the exception of contracting for legal services, engaged in by OTS in any of its capacities, for all OTS functions authorized by law. These contracts will typically pertain to services in support of OTS's business operations, such as consulting, programming, auditing, expert witnesses, customized training, relocation services, information systems technology (computer systems, database management, software and office automation), or micrographic services; or in support of its day-to-day operations, such as facilities management, mail and printing services, or procurement of office supplies, furniture and office equipment.

§ 517.2 Definitions.

The definitions included in this part are derived from common usage of these terms. A term in this part includes all those who are commonly understood to be included within that term.

(a) *Minority- and/or women-owned (small and large) businesses and entities owned by minorities and women* means firms at least fifty-one (51) percent owned by individuals who are members of the minority group or women and who are citizens of the United States. In the case of publicly-owned companies, at least fifty-one (51) percent of each class of voting stock must be owned by one or more members of the minority group or by one or more women, who are citizens of the United States. In the case of partnerships, at least fifty-one (51) percent of the partnership interest must be owned by one or more members of the minority group or by one or more women, who are citizens of the United States. Additionally, the management and daily business operations of the firm must be controlled by one or more such individuals.

(b) *Minority* means any Black/African-American; Native American (American Indians, Eskimos, Aleuts and Native Hawaiians); Hispanic American; Asian-Pacific American; or Subcontinent-Asian American.

(c) *Small and large businesses and entities owned by individuals with disabilities* means firms at least fifty-one (51) percent owned by individuals with disabilities who are citizens of the United States. In the case of publicly-owned companies, at least fifty-one (51) percent of each class of voting stock must be owned by individuals with disabilities who are citizens of the United States. In the case of partnerships, at least fifty-one (51) percent of the partnership interest must be owned by individuals with disabilities who are citizens of the United States. Additionally, the management and daily business operations must be controlled by one or more such individuals.

(d) *Disability,* as used in this part, has the same meaning as the term used in section 3 of the Americans With Disabilities Act of 1990, Public Law 101–336, 104 Stat. 327 (42 U.S.C. 12101 *et seq*).

§ 517.3 Policy.

It is the policy of the OTS that minorities, women and individuals with disabilities and entities owned by minorities, women and individuals with disabilities are given the opportunity to participate to the maximum extent possible in all contracts entered into by the OTS.

§ 517.4 Oversight and monitoring.

The Director of OTS shall appoint an Outreach Program Advocate, who shall have primary responsibility for furthering the purposes of the Outreach Program.

§ 517.5 Outreach.

(a) The outreach program advocate shall perform outreach activities and act as liaison between the OTS and the public on outreach program issues.

(b) Outreach activities include the identification and registration of minority-, women-owned (small and large) businesses and entities owned by individuals with disabilities who can provide goods and services utilized by the OTS. This includes distributing information concerning the Outreach Program and providing appropriate registration materials for use by vendors and contractors. Identification will primarily be accomplished by:

(1) Obtaining various lists and directories maintained by other federal, state and local governmental agencies of Outreach Program businesses;

(2) Participating in conventions, seminars and professional meetings oriented towards Outreach Programs;

(3) Conducting seminars, meetings, workshops and various other functions; and

(4) Monitoring proposed purchases and contracts to assure that OTS contracting staff understand and actively promote the Outreach Program.

§ 517.6 Certification.

In order to qualify as an Outreach Program participant, each business or contractor must either:

(a) Self-certify ownership status by filing with the OTS Outreach Program Advocate a completed and signed Solicitation Mailing List Application, Standard Form 129 (SF–129), as prescribed by the Federal Acquisition Regulation (48 CFR part 53);

(b) Self-certify ownership status by filing with the OTS Outreach Program Advocate a completed and signed ABELS Registration/Certification Form, as prescribed by the U.S. Department of Commerce's Minority Business Development Agency and available from the Outreach Program Advocate at the headquarters address of the OTS as specified in 12 CFR 516.1(a); or

(c) Submit a valid Outreach Program certification received from a Federal agency, or a designated state or authorized local agency.

§ 517.7 Contract award guidelines.

Contracts for goods or services shall be awarded in accordance with OTS procurement rules and policies (48 CFR chapter 1 and FIRMR, 41 CFR chapter 201). The OTS Outreach Program Advocate shall work to facilitate the maximum participation of minority-, women-owned (small and large) businesses and entities owned by individuals with disabilities in the OTS procurement of goods or services.

Dated: March 10, 1993.

By The Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 93–14251 Filed 6–16–93; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–85; Special Conditions No. 25–ANM–74]

Special Conditions: Modified Lockheed Model 1329 Series Airplanes, High Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Lockheed Model 1329 series airplanes modified by AMR Combs, Inc., of Denver, Colorado. These airplanes are equipped with digital electronic flight instrument systems (EFIS) that perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the EFIS from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by these systems are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is June 2, 1993. Comments must be received on or before August 2, 1993.

ADDRESSES: Comments on these final special conditions; request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–85, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM–85." 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: Mark Quam, FAA, Standardization Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–85." The postcard will be date stamped and returned to the commenter.

Background

On May 3, 1993, AMR Combs, Inc., of Denver, Colorado, applied for a supplemental type certificate to modify the Lockheed Model 1329 series airplanes. The Lockheed Model 1329 is a business jet with four aft-mounted turbojet engines. The airplane can carry two pilots and 10 passengers and is capable of operating to 43,000 feet altitude. The proposed modification incorporates the installation of digital avionics consisting of an electronic flight instrument system (EFIS) that is potentially vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the FAR, AMR Combs, Inc., must show that the altered Lockheed Model 1329 series airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 2A15, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated reference in Type Certificate No. 2A15 include the following: Lockheed Model 1329 series: CAR 4b dated December 31, 1953, including Amendments 4b–1 thru 4b–9. In addition the following regulations apply to the EFIS installation for all Lockheed Model 1329 series airplanes: §§ 25.1301, 25.1303(b) and 25.1322, as amended through Amendment 25–38; §§ 25.1309, 25.1321(a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable worthiness regulations (i.e., CAR 4b or part 25, as amended) do not contain adequate or appropriate safety standards for the Lockheed Model 1329 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the modified Lockheed Model 1329 series airplanes that would require that the EFIS be designed and installed to preclude component damage and interruption of function due to the effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz—100 KHz	50	50
100 KHz—500 KHz	60	60
500 KHz—2000 KHz	70	70
2 MHz—30 MHz	200	200
30 MHz—70 MHz	30	30
70 MHz—100 MHz	30	30
100 MHz—200 MHz	150	33
200 MHz—400 MHz	70	70
400 MHz—700 MHz	4,020	935
700 MHz—1000 MHz	1,700	170
1 GHz—2 GHz	5,000	990
2 GHz—4 GHz	6,680	840
4 GHz—6 GHz	6,850	310
6 GHz—8 GHz	3,600	670
8 GHz—12 GHz	3,500	1,270
12 GHz—18 GHz	3,500	360
18 GHz—40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion

This action affects only certain unusual or novel design features on the Lockheed Model 1329 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified Lockheed Model 1329 series airplanes:

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition:

Critical Function. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on June 2, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 93–14145 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 17 and 18

Reporting Futures Positions of Commodity Pools, Commodity Trading Advisors and Partnerships; Definition of Financial Interest for Reporting Purposes and Reporting Information Concerning Controlled Accounts

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is adopting amendments to 17 CFR parts 17 and 18 of its regulations as part of its ongoing review of various reporting requirements. The amendments clarify the manner of reporting futures positions of commodity pools, certain commodity trading advisors (CTAs), and accounts controlled by two or more persons to the Commission. Additionally, the Commission is adopting amendments that more fully explain the information that should be provided under Rules 17.01(b) and 18.04(a) concerning financial interest in futures and options trading accounts. The amendments reduce the amount of information that must be provided to the Commission concerning controlled accounts that are a part of a customer trading program.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Division of Economic Analysis, 2033 K Street, NW., Washington, DC 20581, Telephone (202) 254–3310.

SUPPLEMENTARY INFORMATION: On March 15, 1993, the Commission published for comment in the **Federal Register** proposed amendments to its large trader reporting requirements set forth in parts 17 and 18 of the regulations under the Commodity Exchange Act (Act), 58 FR 13716. These proposals make consistent the manner in which positions of commodity pools and CTAs are reported by ensuring that the positions are identified in the name of the controller of the account, clarify information that is required concerning participants in commodity pools, and limit the amount of information that traders provide routinely concerning controlled accounts that are part of a customer trading program. Three persons, all exchanges, commented on the Commission's proposed rule making.

I. Reporting Accounts Under Part 17—Ownership and Control

Generally, parts 17 and 18 of the regulations require reports from members of contracts markets, futures commission merchants (FCMs) or foreign brokers (firms) and traders, respectively, when a trader holds a "reportable position," i.e., any open position held or controlled by a trader at the close of business in any one futures contract of a commodity traded on any one contract market that is equal to or in excess of the quantities fixed by the Commission in 15.03 of the regulations, 17 CFR 15.03 (1992).[1]

When reporting large trader positions, firms must consider as a single account for reporting purposes all accounts that a person controls or in which a person

[1] Firms that carry accounts in which traders hold "reportable positions" are required to identify such accounts on a form 102 and report on a form 101 or electronically any reportable positions in the account, the delivery notices issued or stopped by the account and any exchanges of futures for physicals. Traders who own or control reportable positions are required to file annually a CFTC form 40 giving certain background information concerning their trading in commodity futures and, on call by the Commission, must submit a form 103 showing positions and transactions in the contract market specified in the call.

has a financial interest.[2] This manner of reporting compares with the manner in which compliance with speculative limits is enforced, since all futures positions that a person directly or indirectly holds or controls must be combined to determine compliance with speculative position levels. See, for example, Section 4a(1) of the Act, 7 U.S.C. 6a(1).

In a number of instances, control of an account is vested in a person other than the account owner. Reporting issues arise when a person maintains two or more accounts at the same FCM and different persons have authority to trade each of the accounts. This generally is the case with accounts held by commodity pools and with partnership accounts.

For a number of commodity pools, trading is conducted by multiple independent CTAs with each CTA given trading authority for separate accounts of the pool. Under current regulations there are two ways in which the accounts of a commodity pool and CTAs of the pool could be reported in a manner that would avoid duplicate reporting of the pool's and the CTA's position in futures.[3] Using the ownership standard, a firm may report accounts in the name of the pool or, alternatively, using the control standard, the firm may report accounts in the name of the CTA. Similar problems exist with partnership accounts.[4]

The Commission proposed that part 17 be amended to ensure that accounts of commodity pools under the trading control of independent CTAs uniformly were reported in the name of the CTA. As the Commission noted in its proposed rule making, the Commission, in a series of rule makings extending from October 1988 to September 1992,[5] amended part 150 of its regulations to provide certain exemptions from speculative limits for eligible entities,[6] such as commodity pools using independent CTAs, but continued applying the limits individually to positions held or controlled by such independent CTAs. Thus under the Commission's proposal accounts of an eligible entity such as a commodity pool under trading control of a particular independent account controller would be combined for reporting purposes with all other accounts held or controlled by that independent account controller.

In addition, the Commission proposed to clarify the manner in which accounts subject to trading control by two or more persons are to be combined for reporting purposes.[7]

In such cases, the Commission proposed that firms combine for reporting purposes only accounts which are under control by exactly the same persons.[8] All commenters were in favor of these amendments to the regulations. In view of this, the Commission is adopting its amendments as proposed.

II. Definition of Financial Interest

In addition to the above amendments, the Commission proposed to amend its regulations concerning the definition of financial interest contained in parts 17 and 18. For the purpose of filing reports under these parts of the regulations, Rules 17.00(b) and 18.01(a) currently define financial interest to mean, except for the interest of a limited partner or shareholder (other than the commodity pool operator (CPO)) in a commodity pool, an interest of 10 percent or more in ownership or equity of an account, 17 CFR 17.00(b) and 18.01(a) (1990).

The definition of financial interest contained in these sections alerts the firms and traders that certain accounts need not be combined to determine if the trader has a reportable position. For example, if a trader owns and controls accounts (personal accounts) and is a limited partner in a commodity pool traded by independent CTAs, then, using the Commission's definition of financial interest, the accounts of the commodity pool need not be combined with the trader's personal accounts to determine if reports must be filed. In its proposed rule making the Commission noted that, although this definition is pertinent to Rules 17.00 and 18.01, the current language makes it applicable to all sections of parts 17 and 18 and may result in a loss of important surveillance information. The term "financial interest" also is used in 17.01(b) and 18.04. These regulations require reporting firms and traders to identify persons who have a financial interest of 10 percent or more in a reportable account or trader and other persons or accounts in which the subject trader has a financial interest of 10 percent or greater. In all cases, it is important for the Commission to have this financial information, whether or not the accounts in question are limited partnerships.

In view of the above, the Commission proposed to amend §§ 17.00(b) and 18.01(a) by making its current definition of financial interest applicable only to these sections of the regulations rather than to parts 17 and 18 in general. These were not objections to the proposed amendment. In view of this, the Commission is adopting the amendment as proposed.

III. Reporting Information About Controlled Accounts in Managed or Guided Account Trading Programs

Many FCMs, CTAs, and others offer customer trading programs known commonly as managed or guided account programs. Such programs may include but are not limited to arrangements whereby participants enter into an agreement not obtained from other customers and make a minimum deposit or pay fees in excess of that required of others for the purpose of having their account traded by the program or to receive specific advice

[2] That is, the aggregate position for each expiration month of a contract market in all such accounts is reported if this aggregate position exceeds the Commission's reporting levels, 17 CFR 17.00(b) (1992).

[3] Duplicate position data collected by the Commission must be eliminated before the data can be used for regulatory analyses or publication.

[4] In the case of general partnership accounts, each partner may be authorized to trade the partnership account and, additionally, each partner may hold and/or control other accounts. The Commission does not wish firms to combine the partnership account with each of the partners' other accounts, since reporting a combined position for each partner results in duplicate reporting of the futures positions of the partnership. Moreover, there is no way for the Commission to distinguish the position of the partnership from the combined position in order to eliminate the duplicate reporting.

[5] See 53 FR 41563 (October 24, 1988); 56 FR 14306 (April 9, 1991); and 57 FR 44490 (September 28, 1992).

[6] Commission rule 150.1 defines an eligible entity as a commodity pool operator, the operator of a trading vehicle which is excluded, or who itself has qualified for exclusion from the definition of the term "pool" or " commodity pool operator," respectively, under 4.5 of this chapter, or a commodity trading advisor:

(1) Which authorizes an independent account controller independently to control all trading decisions for positions it holds directly or indirectly, or on its behalf, but without its day-to-day direction; and

(2) Which maintains only such minimum control over the independent account controller as is consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf.

[7] FCMs may carry master accounts that are opened for purposes of carrying funds to margin one or more subaccounts, which will be traded by selected CTAs. Typically, the selected CTAs have actual trading authority over the subaccounts. In such cases, the subaccounts, rather than the master accounts, will be considered as accounts for reporting purposes under part 17 of the regulations.

[8] As noted above, all futures positions that a person directly or indirectly holds or controls must be combined to determine compliance with speculative position levels. Accordingly, these reporting requirements do not alter the application of speculative limits to positions owned or controlled by a trader. Thus, although positions are reported in the manner specified above, the Commission will continue to combine all positions owned or controlled by a trader to determine if the trader is in violation of Commission or exchange speculative position levels. In this respect, traders must themselves make the necessary calculations of their overall position to ensure they are in compliance with Commission regulations and exchange rules.

and recommendations which are not available to others. For reporting purposes, futures positions in all accounts in a program are combined and reported as a single account pursuant to Commission Rule 17.00(b). Although positions in all accounts that are part of a program are combined, the firm, when reporting the positions for the first time, must provide the name and address of each customer with an account that participates in the program, 17 CFR 17.01(b)(6) (1992). In addition, the program manager or CTA directing the trading of the program must file a CFTC Form 40 showing the name and address of each customer with an account that participates in the program, 17 CFR 18.04(a)(5) (1992). Commission regulations also require this information to be updated whenever an account is added or dropped from the program. In some instances, several hundred customers may participate in a customer trading program. In such instances, the cost to initially provide and to update this information may be relatively high. Since, for the most part, participants in these programs tend to be small traders who do not direct trading in other accounts, their identity for market surveillance purposes is not needed on a routine basis.

In view of this, the Commission proposed to adopt a rule to limit the amount of information that is reported under 17.01(b)(6) and 18.04(a)(5). As proposed, these rules continue to require that firms and traders provide the names and addresses of persons whose accounts are under the control of another person. However, if the accounts are part of a customer trading program that is a managed or guided account program and there are 10 or more such accounts, only those accounts which are owned by commodity pools need to be identified. Additionally, the proposed amendments to Rule 17.01(b)(6) specify that the Commission will retain the authority to collect, on call, the names and addresses of all persons whose accounts are part of the customer trading program.[9]

One exchange commented that "a more positive approach would be to require disclosure of any owner within a managed account program who owns greater than 10% of the total position in the program." The Commission considered this approach, however it opted for the procedures discussed above because of the difficulties that the firms would face in compiling the information required by the alternative proposal. In view of these implementation burdens, the Commission has determined not to adopt this suggested modification.

Another exchange, concerned about the revision to require limited information about traders in customer trading programs, maintained that it "relies on complete controlled account lists and information in conducting its market surveillance and believes that such complete information is vital for the detection and enforcement of speculative position limits and timely identification of potential market disruptions."

Although this information is not central to the Commission's surveillance programs, nothing in the revisions would preclude an exchange from continuing to require more detailed information. In this respect, the proposed amendments require full disclosure of the names and addresses of program participants on call by the Commission when circumstances warrant. The Commission believes that being selective in requiring this information can relieve a burden on reporting firms by targeting only that information which is required for surveillance purposes. In view of the above, the Commission is adopting its amendments as proposed.

IV. Related Matters

A. The Regulatory Flexibility Act (RFA)

The RFA requires that agencies consider the impact of substantive rules on small businesses. These amendments affect large traders, FCMs, commodity pools, CTAs and other similar entities such as foreign brokers and foreign traders. The Commission has defined "small entities" in evaluating the impact of its rule in accordance with the RFA, 47 FR 18618–18621 (April 30, 1982).

In that statement, the Commission concluded that large traders and FCMs are not considered to be small entities for purposes of the RFA. In this regard, the proposed amendments to reporting requirements relating to the positions of CPOs and CTAs, fall mainly upon FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.*, large positions. Thus, pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Acting Chairman, on behalf of the Commission, certified that these proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission invited comments from any firm which believed that these rules would have a significant economic impact upon its operation. No comments were received.

B. Paperwork Reduction Act (PRA)

The PRA of 1980, 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted these rules in proposed form and their associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with these rules, and assigned OMB control number 3038–0009 to these rules. Copies of the OMB approved information collection package associated with these rules may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

The burden associated with the entire collection, including this rule, is as follows:

Average Burden Hours Per Response—.1587 hour

Number of Respondents—3709

Frequency of Response—Daily

List of Subjects

17 CFR Part 17

Brokers, Commodity Futures, Reporting and Recordkeeping Requirements

17 CFR Part 18

Commodity Futures, Reporting and Recordkeeping Requirements

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4g, 4i, 5 and 8a of the Act, 7 U.S.C. 6g, 6i, 7 and 12a (1989), the Commission hereby amends Chapter I of title 17 of the Code of Federal Regulations as follows:

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

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

Authority: 7 U.S.C. 6a, 6c, 6d, 6f, 6g, 6i, 7 and 12a.

2. Section 17.00 is amended by revising paragraph (b), as follows:

[9] The amendments to Rule 18.04 do not include this call provision since, under 18.05 of the regulations, the Commission already has authority to request this information.

§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.

(b) *Interest in or Control of Several Accounts.* (1) Except as otherwise instructed by the Commission or its designee, and as provided specifically below, if any person holds or has a financial interest in or controls more than one account, all such accounts shall be considered by the futures commission merchant, clearing member or foreign broker as a single account for the purpose of determining Special Account status and for reporting purposes. For purposes of this Section, the following shall apply:

(i) *Accounts of Eligible Entities*—Accounts of eligible entities as defined in Section 150.1 of the Chapter that are traded by an independent account controller shall, together with other accounts traded by the independent account controller or in which the independent controller has a financial interest, be considered a single account.

(ii) *Accounts Controlled by Two or More Persons*—Accounts that are subject to day-to-day trading control by two or more persons shall, together with other accounts subject to control by exactly the same persons, be considered a single account.

(2) For the purpose of this section 17.00(b), except for the interest of a limited partner or shareholder (other than the CPO) in a commodity pool, the term financial interest shall mean an interest of 10 percent or more in ownership or equity of an account.

* * * * *

(6) Section 17.01 is amended by revising paragraph (b)(6) as follows:

§ 17.01 Special account designation and identification.

* * * * *

(b) * * *

(6) The name and address of any other person whose futures or options trading is controlled by the account. Provided that, if the special account reported is that of a customer trading program, or the person controlling the trading thereof, that is a managed or guided account program in which ten or more accounts participate, the following information:

(i) the name of any commodity pool which participates in the program and the name and address of the CPO; and

(ii) on call by the Commission or its designee the name and address of each person who participates in the program.

* * * * *

PART 18—REPORTS BY TRADERS

(7) The authority section for part 18 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a and 19; 5 U.S.C. 552 and 552(b).

(8) Section 18.01 is amended by revising paragraph (a) as follows:

§ 18.01 Interest in or control of several accounts.

(a) *Multiple accounts.* If any trader holds, has a financial interest in or controls more than one account, whether carried with the same or with different futures commission merchants or foreign brokers, all such accounts shall be considered as a single account for the purposes of determining whether such trader has a reportable position and for the purpose of reporting. For the purpose of § 18.01, except for the interest of a limited partner or shareholder (other than the CPO) in a commodity pool, the term "financial interest" shall mean an interest of 10 percent or more in ownership or equity of an account.

* * * * *

(9) Section 18.04 is amended by revising paragraph (a)(5) as follows:

§ 18.04 Statement of reporting trader.

* * * * *

(a) * * *

(5) The name and address of each person whose option or futures trading is controlled by the reporting trader. Provided that if the reporting trader is a customer trading program, or the commodity trading advisor thereof, that is a managed or guided account program in which ten or more persons participate, the information furnished may be limited to the name of any commodity pool which participates in the program and the name and address of the CPO.

* * * * *

Issue in Washington, DC, this 11th day of June 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–14229 Filed 6–16–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Polyotic® (Tetracycline) Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by American Cyanamid Co. The supplemental applications provide for the safe and effective use of tetracycline soluble powder in calf and swine drinking water for the control and treatment of bacterial diseases susceptible to tetracycline. These approvals also reflect compliance with the results of the National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group (DESI) evaluation of the drug's effectiveness and FDA's conclusions concerning that evaluation.

EFFECTIVE DATE: June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8623.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Agricultural Research Division, Berdan Ave., Wayne, NJ 07470, filed supplemental NADA 65–269 Polyotic® (tetracycline hydrochloride) Soluble Powder (6.4–ounce (oz) packet) and NADA 65–441 Polyotic® (tetracycline hydrochloride) Concentrate Soluble Powder (4–oz packet) to provide for use at 10 milligrams per pound (mg/lb) of body weight for the control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia associated with *Pasteurella* spp., *Actinobacillus pleuropneumoniae* (*Haemophilus* spp.), and *Klebsiella* spp., susceptible to tetracycline. The applications were originally approved May 17, 1954. The drug was the subject of an NAS/NRC DESI evaluation of effectiveness (DESI 0012NV), and the findings were published in the **Federal Register** of July 8, 1970 (35 FR 10966). NAS/NRC evaluated the products and found them to be "probably effective" for oral treatment of animal diseases when such diseases are caused by pathogenic microorganisms sensitive to tetracycline hydrochloride, diseases such as: (1) Enteric and respiratory diseases in poultry; (2) gastrointestinal and respiratory diseases in swine; (3) infected wounds, gastrointestinal and respiratory diseases in calves, sheep, and goats; (4) digestive system and respiratory diseases, pyelonephritis, peritonitis, infected wounds, abscesses, ulcers, and secondary bacterial invaders in dogs and cats; (5) coccidiosis in dogs; and (6) hexamitiasis in turkeys.

NAS/NRC concluded that: (1) Most of the dosage directions provide for a less

than effective dose, and the recommended minimum oral dose for large animals is 10 mg/lb of body weight daily in divided doses and for small animals 25 mg/lb of body weight daily in divided doses; (2) claims for the treatment of viral diseases must be limited to microorganisms belonging to the psittacosis-lymphogranuloma group; (3) each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)," and if the disease cannot be so qualified the claim must be dropped; (4) claims made "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of"; (5) as applicable, the manufacturer's label should warn that treated animals must consume enough medicated water or medicated feed to provide a therapeutic dose under the conditions that prevail—as a precaution, the label should state the desired oral dose per unit of animal weight per day for each species as a guide to effective use of the preparation in drinking water or feed; (6) the manufacturer of boluses, oblets, or tablets must provide evidence that they disintegrate in the gastrointestinal tract of the medicated species to produce the desired therapeutic effect; (7) information is needed from manufacturers of boluses or oblets recommended for insertion in the uterus with respect to the degree of disintegration within the uterus, the presence of hazardous foreign body ingredients, and the chemical compatibility of the vehicle and active agent or agents, and the labeling should also provide information regarding proper sanitary techniques for intrauterine administration; and (8) additional documentation of effectiveness is needed to establish activity against *Clostridia* in animals.

FDA concurred with the NAS/NRC findings.

The NAS/NRC evaluation is concerned only with the drug's effectiveness and safety to the treated animal. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drugs or their metabolites as residues in food products derived from treated animals.

The supplemental NADA's are approved as of April 29, 1993, and the regulations are amended by revising § 520.2345d (21 CFR 520.2345d) to reflect the approvals.

FDA's approval of these supplemental applications does not involve a reevaluation or reaffirmation of the human food safety data in the applications. Such data will be evaluated and affirmed in accordance with the scheduled priorities of the agency. Tolerances for residues of the drug and its metabolites in calf and swine tissues of 0.25 part per million have already been established.

In addition, the disease microorganism *Haemophilus* spp. has been renamed *A. pleuropneumoniae*. Section 520.2345d is amended to add the new name and to retain the old name parenthetically.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals do not qualify for an exclusivity period because reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) essential to approval of the supplements and conducted or sponsored by the applicant were not required for the NAS/NRC DESI finalization of these approvals.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (address above) between 9 a.m. to 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.2345d is amended by revising paragraphs (e)(1)(iii)(A) through (e)(1)(iii)(C) and (e)(3)(iv)(A) through (e)(3)(iv)(C) to read as follows:

§ 520.2345d Tetracycline soluble powder.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(A) *Indications for use.* Control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia (shipping fever complex) associated with *Pasteurella* spp., *Actinobacillus pleuropneumoniae* (*Haemophilus* spp.), and *Klebsiella* spp., susceptible to tetracycline.

(B) *Limitations.* Administer for 3 to 5 days; do not slaughter animals for food within 4 days for 010042 and within 5 days of treatment for 054273; as sole source of tetracycline.

(C) *Sponsor.* See Nos. 010042 and 054273 in § 510.600(c) of this chapter.

* * * * *

(3) * * *

(iv) * * *

(A) *Indications for use.* Control and treatment of bacterial enteritis (scours) caused by *E. coli* and bacterial pneumonia associated with *Pasteurella* spp., *A. pleuropneumoniae* (*Haemophilus* spp.), and *Klebsiella* spp., susceptible to tetracycline.

(B) *Limitations.* Administer for 3 to 5 days; do not slaughter animals for food within 7 days of treatment for 010042 and within 4 days of treatment for 054273; as sole source of tetracycline.

(C) *Sponsor.* See 010042 and 054273 in § 510.600(c) of this chapter.

Dated: June 1, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–14308 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program; Deep Mining; Permit Application; Permit Review

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment concerns changes to subtitle 13, chapter 02, Deep Mining of Coal, in the Code of Maryland Regulations (COMAR). The amendment is intended to make the Maryland program consistent with the corresponding Federal regulations.

EFFECTIVE DATE: June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Office, 4th and Market Streets, suite 3C, Harrisburg, PA 17101; Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding the general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, Federal Register (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 30 CFR 920.15, and 30 CFR 920.16.

II. Submission of Amendment

By letter dated February 23, 1993, the Maryland Bureau of Mines (Bureau) submitted a program amendment to OSM (Administrative Record No. MD–563.00). The amendment requires that the surface element of the permit application for a deep mine contain the applicable provisions of COMAR 08.13.09.02 (Permit Applications: General Requirements) and requires that the application be reviewed by the Bureau in accordance with COMAR 08.13.09.04 (Permit Applications: Review Procedures). Effective April, 1993, COMAR 08.13.09 was recodified as COMAR 08.20.

OSM announced receipt of the proposed amendment in the March 26, 1993, Federal Register (58 FR 16384) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on April 26, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment submitted on February 23, 1993. Any revisions not specifically addressed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions that are not discussed below containing language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

Revisions to Maryland's Regulations That Are Substantively Identical to the Corresponding Federal Regulations

State Regulation—08.13.02.07A
Subject—Deep-Mining Bonds
Federal Counterpart—30 CFR 800.11(a)

Revisions to Maryland's Regulations That Are not Substantively Identical to the Corresponding Federal Regulations

1. Application Requirements

Maryland is revising its regulations at COMAR 08.13.02.02A to require that a person not continue or commence any deep-mining operation without first obtaining a permit from the State. Maryland is deleting the requirement that an applicant for a deep-mining permit register with the State, certify that he is the operator of the proposed deep-mining operation, and obtain all permits required by law. The Federal regulations at 30 CFR 773.11(a) require that a person obtain a permit issued by the regulatory authority prior to engaging in a coal mining operation. Deleting the requirement for obtaining other permits would not negate the mandate that those permits still must be obtained since any other permits would be required pursuant to other independent legal authority. The Director finds the proposed revisions at COMAR 08.13.02.02A no less effective than the counterpart Federal regulations.

2. Mining and Reclamation Plan

Maryland is deleting its existing provision for the surface element of a mining and reclamation plan and is revising COMAR 08.13.02.04B to require that the surface element of the mining and reclamation plan be prepared in accordance with the applicable provisions of COMAR 08.13.09 (now COMAR 08.20). Since COMAR 08.13.09 regulates both surface and underground coal operations, the Director finds that the deletion and subsequent revision are not inconsistent with the requirements of SMCRA and the Federal regulations.

Maryland is revising COMAR 08.13.02.04C to delete the requirements that the subsurface element of the plan be prepared at a scale of 200 feet to the inch and include the extent to which mining operations presently have been completed. There is no comparable Federal counterpart. Therefore, the Director finds the proposed deletion at COMAR 08.13.02.04C does not render the State program less effective than the Federal regulations.

3. Deep-Mining Bonds

At COMAR 08.13.02.07B, Maryland is revising its provisions for performance bonds to permit the acceptance by the State of cash or negotiable bonds, certificates of deposit or surety bonds. The Federal regulations at 30 CFR 800.12 permit the regulatory authority to prescribe the form of performance bonds. The bonds may be in the form of surety bonds, collateral bonds, self-bonds, or any combination of the above. The Director finds the proposed revisions at COMAR 08.13.02.07B no less effective than the counterpart Federal regulations.

Deletions to Maryland's Regulations

1. Definitions

At COMAR 08.13.02.01B, E, and M, Maryland is deleting the definition for the following terms: "abandoned," "disposal area," and "operator." The remaining sections are relettered for consistency. The definition of "abandoned" is retained in Maryland's deep mining statute at 7–5A–01(b) of the Annotated Code of Maryland. The Federal regulations at 30 CFR 701.5 do not define "disposal area." On November 16, 1992, the Director approved Maryland's revised definition of "operator" to include deep coal mining operators in sections 7–1–1(k), 7–501(o), and 7–5A–01(h) in the Annotated Code of Maryland (57 FR 53993). The Director finds that the proposed deletions at COMAR 08.13.02.01B, E, and M do not render the State program less effective than the Federal regulations.

2. Application Requirements

At COMAR 08.13.02.02C(2), Maryland is deleting the requirement that a permit application contain a copy of an application for each other permit

required for operation by the Natural Resources Article. The remaining sections are renumbered for consistency. The Federal regulations at 30 CFR part 777 contain no comparable provision. The Director finds that the proposed deletion at COMAR 08.13.02.02C(2) does not render the State program less effective than the Federal regulations.

3. Application Contents—Quadrangle Map

Maryland is revising COMAR 08.13.02.03E to delete the requirement that the quadrangle map specify the names and indicated depths of identified bodies of water. At COMAR 08.13.02.03J, Maryland is deleting the requirement that the quadrangle map identify the conditions of any adjacent deep mines. At COMAR 08.13.02.03M, Maryland is deleting the requirement that the quadrangle map identify the location of an approved reference monument. The remaining sections are relettered for consistency. The Federal regulations at 30 CFR 783.24 and 30 CFR 783.25 contain no comparable provisions. The Director finds that the proposed deletions at COMAR 08.13.02.03E, J, and M do not render the State program less effective than the Federal regulations.

4. Application Review Procedures

At COMAR 08.13.02.06, Maryland is deleting its procedure for the review of deep-mining permit applications. Maryland's review procedures for permit applications are specified at COMAR 08.20.04. Pursuant to COMAR 08.13.09.13A (now COMAR 08.20.13.01), "all surface operations and activities conducted in conjunction with deep mining of coal shall comply with" COMAR 08.13.09 including its provisions on permit applications. In a letter to OSM dated December 14, 1992, Maryland stated that deep mine permit applications will be reviewed in accordance with COMAR 08.13.09.02 (now COMAR 08.20.04). The Director finds that the proposed deletion at COMAR 08.13.02.06 does not render the State program less effective than the Federal regulations.

5. Interim Permits

At COMAR 08.13.02.08, Maryland is deleting its provisions for interim permits. No interim sites exist rendering this provision obsolete. The Director finds that the proposed deletion at COMAR 08.13.02.08 does not render the State program less effective than the Federal regulations.

6. Flagging or Marking Affected Areas

At COMAR 08.13.02.09, Maryland is deleting its requirements for marking affected areas at the time the plan is submitted to the State. There is no comparable Federal regulation. The Director finds that the proposed deletion at COMAR 08.13.02.09 does not render the State program less effective than the Federal regulations.

7. Standards Governing Surface Operations Related to Deep Mining Operations

At COMAR 08.13.02.10, Maryland is requiring that all surface operations and activities related to deep mining operations comply with COMAR 08.13.09 (now COMAR 08.20). Maryland is also deleting the regulations addressing face-up areas at COMAR 08.13.02.10A and disposal areas at COMAR 08.13.02.10B. In a letter to OSM dated December 14, 1992, Maryland stated that the standards for face-up areas and disposal areas are contained in COMAR 08.13.09.13 and .33, respectively (now COMAR 08.20.13 and .27). The Director finds that the proposed deletions at COMAR 08.13.02.10A and B do not render the Maryland program less effective than the Federal regulations pertaining to performance standards for underground mining activities at 30 CFR part 817.

IV. Summary and Disposition of Comments

Public Comments

The public comment period announced in the March 26, 1993, **Federal Register** (58 FR 16384) ended on April 26, 1993. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Department of Labor, Mine Safety and Health Administration and Bureau of Mines responded without comment.

EPA Concurrence

Section 503(b)(2) of SMCRA and 30 CFR 732.17(h)(11)(ii) require that the Administrator of the Environmental Protection Agency (EPA) concur with all State program provisions relating to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment submitted by Maryland on February 23, 1993.

The Federal regulations at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)]

provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 9, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S. 1201 *et seq.*

2. In § 920.15, a new paragraph (v) is added to read as follows:

§ 920.15 Approval of amendments to State regulatory programs.

* * * * *

(v) The following amendment submitted to OSM on February 23, 1993, is approved effective June 17, 1993. The amendment consists of the following modifications to the Maryland program:

(1) Revision of the following rules of the Code of Maryland Administrative Regulations:

08.13.02.02A—Application Requirements
08.13.02.03E—Quadrangle Maps
08.13.02.04B, C—Mining and Reclamation Plan
08.13.02.07A, B—Deep-Mining Bonds
08.13.02.10—Standards Related to Deep-Mining

(2) Deletion of the following rules of the Code of Maryland Administrative Regulations:

08.13.02.01(B), (E), (M)—Definitions
08.13.02.02C(2)—Application Requirements
08.13.02.03J, M—Quadrangle Maps
08.13.02.06—Application Review Procedures
08.13.02.08—Interim Permits
08.13.02.09—Flagging or Marking Affected Areas
08.13.02.10A, B—Standards Related to Deep-Mining

[FR Doc. 93–14313 Filed 6–16–93; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 93–13]

Special Local Regulations; Fireworks on the Upper Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Fireworks on the Mississippi. This event will be held on the Upper Mississippi River from mile 202.0 to mile 203.0, near Alton, Illinois from 9 p.m. to 10:30 p.m. on both July 3, 1993, and July 4, 1993. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective daily at 9 p.m. local time on July 3, 1993 and July 4, 1993, and terminate at 10:30 p.m. local time each day.

FOR FURTHER INFORMATION CONTACT: Ensign D. R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, Fax (314) 539–2685.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application for this event was not received until May 3, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are Ensign D. R. Dean, Project Officer, Second Coast Guard District Boating Safety Division and Captain L. I. McClelland, Project Attorney, Second Coast Guard District Legal Officer.

Discussion of Regulations

The Fireworks on the Mississippi is a fireworks display being shot over the Upper Mississippi River at Alton Pool, Illinois on July 3, 1993, and July 4, 1993, from 9 p.m. until 10:30 p.m. local time. These regulations are required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during part or all of the effective periods to all vessel traffic except participants, official regatta vessels, and patrol craft. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

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

PART 100—[AMENDED]

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

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

2. A temporary § 100.35–T0213 is added, to read as follows:

§ 100.35–T0213 Fireworks on the Mississippi

(a) *Regulated area.* Upper Mississippi River from mile 202.0 to mile 203.0.

(b) *Special local regulations.* (1) The U.S. Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A

succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

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

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

(5) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective dates.* These regulations are effective daily from 9 p.m. to 10:30 p.m. local time on July 3, 1993 and July 4, 1993.

Dated: June 3, 1993.

J.J. Lantry,

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

[FR Doc. 93–14701 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD1 93–041]

Special Local Regulations; Newburyport Grand Prix, Newburyport, MA

AGENCY Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Newburyport Grand Prix offshore powerboat race. The race will be held on Saturday, June 19, 1993, in the waters of the Atlantic Ocean between the Southern end of Plum Island and the Merrimack River inlet, Massachusetts. This regulation is needed to restrict access to the area of the race course and provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This temporary regulation is effective from 10 a.m. to 4 p.m. on June 19, 1993. In case of inclement weather, the regulations will be effective between the hours of 12 a.m. and 4 p.m. on June 20, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant Eric G. Westerburg, Chief Boating Safety Affairs Branch, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are LT E.G. Westerberg, Project Officer, First Coast Guard District Boating Safety Affairs Branch, and LCDR J.D. Stieb, Project Attorney First Coast Guard District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) has not been published for these regulations and good cause exists for making them effective less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until April 15, 1993. After adjusting the position of the race course and exclusionary zone to best accommodate the needs of the boating public, insufficient time remained to publish proposed rules prior to the event or to provide for a delayed effective date. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards associated with this type of marine event. The Newburyport Grand Prix has been conducted annually for the past five years. The event is of such local popularity that delay or cancellation to provide for a NPRM would be against the public interest.

Background and Purpose

The Newburyport Grand Prix is a high speed powerboat race which will be held in the waters of Ipswitch Bay, Massachusetts adjacent to Plum Island. This event will include up to 25 powerboats competing on a rectangular course at speeds approaching 100 mph. This regulation establishes an exclusionary zone for the race course and an anchorage area for spectator craft. The regulated area will be patrolled by the Coast Guard, Coast Guard Auxiliary, sponsor-provided patrols, and state and local law enforcement officials. No vessel, other than participants, spectator craft or those vessels authorized by the Coast Guard Patrol Commander, shall enter the regulated area. Other vessels will be able to transit around the regulated area without interference or delay. The potential hazards to participants, spectators, and transiting vessels are such that in the interest of safety, the Coast Guard District Commander is issuing special local regulations governing the regatta. The circumstances requiring this regulation result from the desire to protect the maritime public from possible hazards associated with high speed powerboat racing.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The regulated area does not obstruct commercial shipping lanes or harbor entrances. The Merrimack River will remain accessible to vessel traffic. The Coast Guard will attempt to minimize any delays for commercial vessels transiting the area. The economic impact of this rule is expected to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined above in the Regulatory Evaluation section, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and has concluded under section 2.B.2.c of Commandant Instruction M16475.1B, that it will have no significant impact and is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

In consideration of the foregoing, 33 CFR part 100 is amended as follows:

PART 100—[AMENDED]

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

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

2. A temporary § 100.35T01–041 is added to read as follows:

§ 100.35T01–041 Newburyport Grand Prix, Plum Island and Merrimack River Inlet, MA.

(a) Regulated area. The regulated area includes the coastal Atlantic waters between the Merrimack River Inlet and the Southern end of Plum Island, with a northern boundary extending from the South bank of Merrimack River Inlet Eastward to 42°-49′-00″ N, 70°-48′-07″ W, a southerly boundary extending from the southern most point of Plum Island to 42°-41′-01″ N and 70°-41′-05″ W. The eastern boundary of the regulated area consists of a North/South line between the end points of the northern and southern Boundaries. The western boundary of the regulated area is the shoreline of Plum Island. The race course will be located within the regulated area approximately 2 nautical miles off the shore of Plum Island. The designated area inshore of the race course will serve as a spectator area.

(b) Special local regulations. (1) Commander, U.S. Coast Guard Group Boston reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) The regulated area will be closed to all traffic except participants, patrol craft, and spectator vessels. The Commanding Officer, Coast Guard Group Boston or designee may, at his discretion, allow vessels to enter the regulated area between races. Transiting and spectating vessels are exempted from this requirement as follows:

(i) Transiting vessels exiting the Merrimack River Inlet must proceed in a Northerly or Easterly direction only: navigation through the regulated area is prohibited unless specifically authorized by Coast Guard patrol vessels.

(ii) Spectator Vessels. The spectator fleet will remain West of the race course adjacent to Plum Island. The sponsor shall provide a readily identifiable means to mark the spectator area. The boundaries of the spectator area are subject to the approval of the Commander, Coast Guard Group Boston. Spectator vessels may operate in the designated spectator area only.

(3) All persons and vessels shall comply with the instructions of Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and of other applicable laws.

(c) Effective period. This regulation will be effective between the hours of 12 a.m. and 4 p.m. on June 19, 1993. In case of inclement weather, the regulations will be effective between the hours of 12 a.m. and 4 p.m. on June 20, 1993.

Dated: June 7, 1993.

J.D. Sipes,

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

[FR Doc. 93–14072 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD2 93–15]

Special Local Regulations; Wheeling Symphony Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Wheeling Symphony Regatta. This event will be held on the Ohio River from mile 90.0 to mile 91.0, near Wheeling from 9:30 p.m. to 11 p.m. on July 4, 1993. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 9:30 p.m. local time on July 4, 1993, and terminate at 11 p.m. local time.

FOR FURTHER INFORMATION CONTACT: Ensign D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, Fax (314) 539–2685.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable. The information concerning this event was not received until May 24, 1993 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are Ensign D.R. Dean, Project Officer, Second Coast Guard District Boating Safety Division and Captain L.I. McClelland, Project Attorney, Second Coast Guard District Legal Officer.

Discussion of Regulations

The Wheeling Symphony Regatta is a Fireworks Display that is being shot from the Municipal Wharf in Wheeling, West Virginia, on July 4, 1993, from 9:30 p.m. until 11 p.m. local time. These regulations are required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during all or part of the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

List of Subjects in 33 CFR Part 100

Marine safety, navigation (water).

Regulations

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

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

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

2. A temporary § 100.35–T0215 is added, to read as follows:

§ 100.35–T0215 Wheeling Symphony Fireworks Display:

(a) *Regulated area.* Ohio River from mile 90.0 to mile 91.0.

(b) *Special local regulations.* (1) The U.S. Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in

expulsion from the area, citation for failure or refusal to comply, or both.

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

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

(5) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective dates.* These regulations are effective from 9:30 p.m. to 11 p.m. local time on July 4, 1993.

Dated: June 3, 1993.

J.J. Lantry,

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

[FR Doc. 93-14073 Filed 6-16-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

CGD 11-93-04

Drawbridge Operation Regulations

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: At the request of the Contra Costa County Public Works Department, the Coast Guard is establishing a temporary drawbridge operation regulation to allow the Waterfront Road Avon Bridge and adjacent Southern Pacific Railroad Bridge immediately upstream to remain in the closed to navigation position from June 1, 1993 through September 30, 1993. Both bridges cross Pacheco (Walnut) Creek in Martinez, Contra Costa County, California. This temporary regulation is being established to enable rehabilitation of the Avon Bridge. This action should enable Contra Costa County to improve the mechanical condition of the Avon Bridge, and should also accommodate the needs of marine traffic.

EFFECTIVE DATE: This rule becomes effective on June 1, 1993 and terminates on September 30, 1993. Comments are encouraged during the entire period the temporary regulation is in force.

ADDRESSES: Comments may be mailed to Commander (oan-br), Eleventh Coast Guard District, Building 10, room 214, Coast Guard Island, Alameda, CA 94501-5100, or may be delivered to room 214 at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (510) 437-3514. Commander (oan-br), Eleventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Bldg. 10, room 214, Coast Guard Island Alameda.

FOR FURTHER INFORMATION CONTACT: Jerry P. Olmes, Bridge Management Specialist, Eleventh Coast Guard District at (510) 437-3514.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedure would have been contrary to the public interest. The bridge has not been opened except for tests during the past ten years. The county has obtained state funds for rehabilitating and seismically upgrading the bridge and may lose the funding source if work is not begun by 1 July 1993. The regulation also authorizes closure of the adjacent Southern Pacific Transportation Company railroad bridge which cannot be opened unless the Avon Bridge is opened at the same time.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. A comment period is being provided during the entire period the temporary regulation is in force. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 11-93-04), and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Commander, Eleventh Coast Guard District will also evaluate all communications received during this comment period. A local Notice to Mariners and local Coast Guard Public Notice have also been issued. The regulation may be changed in light of comments received.

The Coast Guard plans no public hearing.

Drafting Information

The principal persons involved in drafting this rule are Jerry P. Olmes, Project Officer, and Lieutenant Commander Craig M. Jucknies, Project Attorney, Eleventh Coast Guard District Legal Office.

Background and Purpose

The Avon Bridge was built in 1948 as a swing bridge. It was built as a manually operated, movable bridge to allow for the infrequent passage of dredges and shallow draft marine construction equipment. There are no navigation facilities upstream of the bridge. The bridge needs maintenance and seismic upgrading.

Discussion of Regulation

The temporary drawbridge operating regulation would eliminate the requirement that the bridge open for waterway traffic between June 1, 1993 and September 30, 1993. Vertical clearances under both bridges, when closed, are 4 ft. at Mean High Water, and 9 ft. at Mean Lower Low Water. Horizontal clearance past the highway bridge is 40 ft. and 41 ft. past the railroad bridge. Any vessel exceeding these clearances would be unable to pass beneath either the highway bridge or the railroad bridge during that period.

Economic Assessment And Certification

This rule is not major under Executive Order 12291 on Federal Regulation and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The economic impact of this rule is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the economic impact of this rule is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)., the Coast Guard must consider whether this rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

Subpart B—Specific Requirements

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; and 33 CFR 1.05–1(g).

2. Section 117.185 is temporarily revised to read as follows:

§ 117.185 Pacheco Creek

During the period June 1, 1993 to September 30, 1993, the draw of the Contra Costa Highway Bridge, mile 1.0, and the Southern Pacific Railroad Bridge, mile 1.1, both near Martinez, need not open for the passage of vessels.

Dated: May 21, 1993.

M. E. Gilbert,

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

[FR Doc. 93–14066 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD 11–92–10]

Drawbridge Operation Regulations; Mokelumne River, Sacramento County, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the California Department of Transportation (CALTRANS), the Coast Guard is revising the regulations governing the Mokelumne River Bridge near Isleton, California. This change is being made because of serious highway traffic congestion during periods of peak highway and waterway use. This action will reduce highway congestion and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This rule becomes effective on July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Susan Worden, Bridge Section, Aids to Navigation and Waterways Management Branch, Eleventh Coast Guard District at (510) 437–3514.

SUPPLEMENTARY INFORMATION:

Drafting Information:

The drafters of this rule are Susan Worden, project manager, and Lieutenant Commander Craig M. Juckniess, project counsel, Eleventh Coast Guard District Legal Office.

Background and Purpose:

Highway 12 is the major east-west arterial in the Sacramento-San Joaquin River Delta. Traffic has been increasing on the roadway for many years and, in some locations near the Mokelumne River Bridge, peak traffic volumes exceed 1,000 vehicles per hour. The highway crosses three major recreational waterways on drawbridges, and peak highway periods often coincide with peak waterway use periods. Traffic backups on this two lane road are sometimes 8 miles long, and drawbridge openings exacerbate the highway traffic congestion. The Mokelumne River Bridge provides only 7 feet vertical clearance when closed and must open for most of the vessels using the waterway. Prior to the tests of this regulation, the bridge was sometimes open for vessels more than 30 minutes each hour. The revised regulation will limit openings for recreational vessels to three times an hour during peak highway traffic periods on summer weekends and holidays. Openings for commercial vessels are infrequent on weekends and holidays, and it is not safe for commercial vessels to maneuver or stop in the channel. Accordingly, commercial vessels are excluded from the regulation and will be provided openings upon signal.

Regulatory History

On February 8, 1993 the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** (58 FR 7499) concerning this proposal. The Commander, Eleventh Coast Guard District also published the proposal as a Public Notice 11–65d dated February 16, 1993. In each notice interested persons were given until March 25, 1993 to submit comments.

As early as 1988, regulations similar to the permanent regulation were tested to determine whether vessels could safety wait for openings spaced 20 minutes apart. In 1990, a temporary regulation was enacted for the summer boating period 1 may-31 October. The regulations was published in the **Federal Register** on June 7, 1990 (55 FR 23202) and in the local area, by a Public Notice. Comments were solicited during the period the regulations was in effect. In 1991, another similar regulation was published in the **Federal Register** on May 8, 1991 (56 FR 21301) and in the local area, by a Public Notice. Comments were solicited during the period the regulation was in effect. In 1992, another similar regulation was published in the **Federal Register** on April 22, 1992 (57 FR 14644) and in the local area, by a Public Notice. Again comments were solicited during the period the regulation was in effect.

Discussion of comments

As discussed in the NPRM, during the 1988 test and the 1990–1992 temporary regulation implementations, the Coast Guard received seven comments—four in support and three in opposition. During the most recent advertisement, three comments were received, all supporting the regulation. The commenters opposing the regulation expressed concern for vessels waiting for openings and vessels using a fuel dock near the bridge, and asked for a 15 minute opening interval instead of a 20 minute interval. The Coast Guard observed bridge operations under the new regulation and concluded that there is adequate room in the channel for pleasure vessels to await bridge openings and maneuver safely. The adjacent levees shelter waiting vessels from strong winds. The regulation had no noticeable effect on vessels using a nearby fuel dock. The opening interval appears to be a reasonable compromise between highway and waterway traffic.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this rule is expected to be so minimal that a full regulatory evaluation is unnecessary. Vehicular traffic flow will be enhanced and no vessels will be prevented from using the waterway. Since the economic impact of this rule is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

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

Federalism

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

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

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 as follows:

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

Subpart B—Specific Requirements

2. Section 117.175 is amended by revising paragraph (a) to read as follows:

§117.175 Mokelumne River.

(a) The draw of the California Department of Transportation highway bridge, the Mokelumne River Bridge, mile 3.0, at East Isleton shall open upon signal as follows:

(1) From November 1 through April 30 from 9 a.m. to 5 p.m.

(2) From May 1 through October 31 from 6 a.m. to 10 p.m., except that during the following periods the draw need only open for recreational vessels on the hour, 20 minutes past the hour, and 40 minutes past the hour:

Saturdays 10 a.m. until 2 p.m.
Sundays 11 a.m. until 6 p.m.
Memorial Day; 4th of July; and Labor Day 11 a.m. until 6 p.m.

(3) At all other times the draw shall open on signal if at least 4 hours notice is given to the drawtender at Rio Vista bridge over the Sacramento River, mile 12.8.

(4) Emergency vessels of the United States, state or commercial vessels engaged in rescue or emergency salvage operations, and vessels in distress shall be passed as soon as possible but no later than one hour after notice is given.

* * * * *

Date: May 21, 1993.

M.E. Gilbert,

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

[FR Doc. 93–14068 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Baltimore, MD Regulation 93–05–02]

Safety Zone Regulation; Hammerman Area of Gunpowder Falls State Park, Baltimore County, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the purpose of the Maryland "Swim For Life", at the request of the Maryland "Swim For Life" Committee of Baltimore, MD. The "Swim For Life" event will consist of a two and a one half mile swim from the Hammerman area beach number five, to the Maxwell Point buoy, thence to Oliver Point buoy and thence to Hammerman area beach numbers one and two. The safety zone is necessary to control small craft and recreational vessel traffic, and to provide for the safety of life and property on U.S. navigable waters from the hazards associated with this swimming event. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation will become effective at 7 a.m. June 19, 1993, and terminate at 1 p.m. June 19, 1993, unless sooner terminated by Captain of the Port, Baltimore, Maryland. The alternate event date will be June 20, 1993, encompassing the same area description and running from 7 a.m. to 1 p.m., unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Mark Williams at U.S. Coast Guard Marine Safety Office Baltimore, 40 S. Gay Street, Baltimore, Maryland, (410) 962–5100.

SUPPLEMENTARY INFORMATION: As allowed by 5 U.S.C. 553(b), the Coast Guard has not published a notice of proposed rulemaking on this regulation because it would be contrary to the public interest to cancel the event or to hold the event without appropriate regulatory safeguards for the participants.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade Mark R. Williams, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Commander Keith B. Letourneau, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

The Maryland "Swim For Life" Committee filed an application with the U.S. Coast Guard, Group Baltimore requesting a safety zone for the Maryland "Swim For Life" event, to take place on June 19, 1993. The alternate event date will be June 20, 1993, encompassing the same area description and time frame. As part of their application, the Maryland "Swim For Life" Committee requested the Coast Guard provide control of spectator and commercial traffic during the swimming event.

Discussion of Regulations

The event will start at the Gunpowder Falls State Park, Baltimore County Maryland, Hammerman area beach number five, and proceed southeast to the Maxwell Point buoy, thence north to the Oliver Point buoy, and return southwest to the Hammerman beach areas one and two, at Gunpowder Falls State Park. This safety zone will encompass all waters 500 yards on either side of lines drawn from a point at Hammerman area beach number five, located at latitude 39° 21.8′ N., longitude 76° 20.4′ W., to the Maxwell Point buoy, located at latitude 39° 21.6′ N., longitude 76° 19.9′ W., thence north to the Oliver Point buoy, located at latitude 39° 22.6′ N., longitude 76° 20.2′ W., and finally south to a point at the Hammerman area beach numbers one and two at latitude 39° 21.8′ N., longitude 76° 20.4′ W. This regulation is necessary to ensure the safety of spectator craft, recreational vessels as well as swimmers participating in the event, and to provide for the safety of life and property on U.S. navigable waters during the event. Since the Gunpowder Falls river will not be closed for an extended period, vessel traffic should not be severely disrupted.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic

impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

The Coast Guard also considered the impact of this regulation on small entities and concluded that such impact is expected to be minimal. Therefore the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard is amending part 165 of title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section 165.T5102 is added to read as follows:

§ 165.T5102 Safety Zone: Hammerman Area of the Gunpowder Falls State Park, Gunpowder State Park, MD.

(a) *Location.* The following area is a safety zone. All waters 500 yards either side of a line connecting the following points beginning at

Latitude	*Longitude*
39°21.8′ N.	76° 20.4′ W., thence to
39°21.6′ N.	76° 19.9′ W., thence to
39°22.6′ N.	76° 20.2′ W., thence to
39°21.8′ N.	76° 20.4′ W.

(b) *Designated COTP representative.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf. The following officers are designated by the Captain of the Port: the Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Office at the Marine Safety Office Baltimore, Maryland.

(c) *Local Regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(1) The operator of any vessel in this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(2) The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5100.

(3) The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF-FM channels 16 and 81.

(4) Any spectator vessel may anchor outside of the regulated areas specified in paragraph (2)(a) of these regulations, but may not block a navigable channel.

(d) *Effective dates:* This regulation is effective from 7 a.m. June 19, 1993, to 1 p.m. June 19, 1993; the alternate day will be June 20, 1993, encompassing the same area description and time frame; unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: May 25, 1993.

R.L. Edmiston,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 93–14074 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN03–2–5848; FRL–4667–3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is disapproving a State submittal of a revision to the Indiana State Implementation Plan (SIP) for ozone. On April 10, 1989, the Indiana Department of Environmental Management (IDEM) submitted a new rule, that applies to only one source, Jeffboat, Incorporated (Jeffboat), located in Clark County, Indiana, which is designated non-attainment for ozone. This rule was developed in response to a May 26, 1988, SIP call issued under the Clean Air Act (Act).

DATES: This final rulemaking becomes effective on July 19, 1993.

ADDRESSES: Copies of the SIP revision request and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Randolph O. Cano, at (312) 886–6036, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch (5AR–18J), U.S. Environmental Protection Agency, 77 West Jackson, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: On February 24, 1993 (58 FR 11200), USEPA published a proposed rule on this requested SIP revision, as summarized below. For a detailed explanation, the proposed rule should be consulted.

Section 172 of the Act, as amended in 1977, requires that an approvable SIP include legally enforceable requirements reflecting the application of reasonably available control technology (RACT) for stationary sources of volatile organic compounds (VOC) emissions. In partial response to the requirement for RACT VOC rules, Indiana submitted rules covering many of the applicable sources in the Indiana ozone nonattainment areas. Some source categories, however, were not covered by these rules. Because the State failed to adopt and submit to USEPA RACT level emission controls for all the required source categories, including marine vessel surface coating, section 110(a)(2)(H) of the Act required a SIP call.

On May 26, 1988, USEPA issued a SIP call, notifying the Governor of Indiana, pursuant to section 110(a)(2)(H) of the Act, that the Indiana SIP for ozone was substantially inadequate to attain the NAAQS. On June 17, 1988, USEPA sent a letter detailing the SIP inadequacies, including the absence of a marine vessel surface coating rule.

On November 15, 1990, Congress enacted the Clean Air Act Amendments of 1990. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7617q. Under section 182(a)(2)(A) of the 1990 Amendments, areas designated nonattainment before enactment of the 1990 Amendments and which retained that designation and were classified as "marginal" or above as of enactment are required to correct previously identified deficiencies. Under section 182(a)(2)(A), those areas are required by May 15, 1991, to correct deficiencies in the plan concerning RACT which was required under section 172(b) of the 1977 amendments, as that requirement was interpreted in pre-amended guidance. The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The ozone nonattainment area encompassing Clark County, Indiana is classified as "moderate" and is

therefore, subject to the RACT correction requirement. Indiana's SIP revision request which it submitted in response to the SIP call letter, also responds to part of the RACT correction requirement.

On April 10, 1989, the IDEM submitted a new rule, Title 326 of the Indiana Administrative Code (326 IAC) 8–2–13, Marine Vessel Surface Coating. This new rule applies to only one source, Jeffboat, located in Clark County, Indiana which is designated nonattainment for ozone and classified as a moderate nonattainment area. 326 IAC 8–2–13 was developed in response to USEPA's May 26, 1988, SIP call letter.

USEPA proposed to disapprove the requested SIP revision on February 24, 1993, (see 58 FR 11200) because of the State's failure to demonstrate that the rule represents RACT for Jeffboat. The public comment period on the proposed rule closed on April 26, 1993. No comments were received in response to USEPA's solicitation of comments on the requested SIP revision and the proposed rulemaking action.

Final Rulemaking Action

USEPA is disapproving this rule, Marine Vessel Surface Coating (326 IAC 8–2–13), because the State has not adequately demonstrated that the rule represents RACT for Jeffboat. Therefore, the rule does not meet the requirement under section 182(a)(2)(A) of the Act that Indiana correct that rule so that it meets the RACT requirement of section 172 of the Act as amended in 1977. This action becomes effective July 19, 1993.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This disapproval affects only one source, Jeffboat. Therefore, it does not have a significant impact on a substantial number of small entities. The request does not meet the requirements of the CAA and USEPA cannot approve the request. Therefore, USEPA has no option but to disapprove the submittal.

Under Executive Order 12291, today's action is not "Major".

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 3, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–14252 Filed 6–16–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 279

[FRL–4667–8]

Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) is correcting errors in the hazardous waste regulations that appeared in the **Federal Register** on May 3, 1993 (58 FR 26420). In that document, EPA published corrections to the used oil management standards that were originally promulgated on September 10, 1992 (57 FR 41566). In the May 3 notice, EPA inadvertently amended several sections of part 279 dealing with notification requirements for used oil handlers. This action corrects this error and restores the original language from the September 10, 1992 final rule. In addition, EPA inadvertently omitted the explanation for a correction in the May 3 notice. This action corrects this error.

EFFECTIVE DATE: June 17, 1993.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424–9346 (toll-free) or (703) 920–9810 in the Washington, DC metropolitan area. For specific information concerning the used oil management standards rulemaking, contact Ms. Eydie Pines at (202) 260–3509 or Bryan Groce at (202) 260–9550, Office of Solid Waste, U.S. EPA, 401 M Street, SW., Washington, DC, 20460.

SUPPLEMENTARY INFORMATION:

I. Reason for This Document

The Agency promulgated management standards for recycled used oils on September 10, 1992 (57 FR 41566) and published a subsequent correction notice on May 3, 1993 (58 FR 26420). In the correction notice, EPA inadvertently amended four regulatory sections of Part 279 dealing with notification requirements for certain used oil handlers. Specifically, the correction notice revised paragraph (a) of §§ 279.42, 279.51, 279.62, and 279.73. These amendments were mistakenly included in the correction notice; the Agency did not intend to change these provisions. Therefore, today's notice corrects these four sections and restores the original language contained in the September 10 final rule.

In the May 3 notice, EPA also inadvertently omitted the explanation for one of the corrections clarifying the applicability of the part 279 regulations to on-specification used oil. This correction included the removal of the last sentence of § 279.72 (a). This sentence, originally placed in subpart H, Standards for Used Oil Marketers, establishes that on-specification used oil "that is to be burned for energy recovery is not subject to the requirements of this part." EPA was concerned that this provision might be unclear in light of the more complete explanation of the applicability of these regulations to on-specification used oil found in § 279.11. The final sentence of § 279.11 reads as follows: "Once the used oil that is to be burned for energy recovery has been shown not to exceed any specification and the person making that showing complies with §§ 279.72, 279.73, and 279.74(b), the used oil is no longer subject to this part." EPA therefore removed the sentence in § 279.72(a) to avoid any confusion about the applicability of the Part 279 regulations to on-specification used oil.

II. Administrative Procedures Act Requirements

This action does not create any new regulatory requirements; rather, it reinstates existing language that was inadvertently changed by the Agency in a correction notice and restores an inadvertently omitted explanation. For this reason, EPA finds that good cause exists under section 3010(b)(3) of RCRA (42 U.S.C. 6930(b)(3)) and under 5 U.S.C. 553(d) to provide for an immediate effective date. EPA also believes good cause exists to waive the

notice and comment requirements of the APA. As this rule merely corrects errors in a previous final rule, notice and comment are unnecessary.

III. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis (RIA). Due to the nature of this regulation (correction notice), the amendment is not "major;" therefore, no RIA is required.

List of Subjects in 40 CFR Part 279

Petroleum, Recycling, Reporting and recordkeeping requirements, Used oil.

Dated: May 28, 1993.

Richard J. Guimond,

Assistant Surgeon General, USPHS Acting Assistant Administrator.

The following corrections are made to the rules in, Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards; Corrections, published in the Federal Register on May 3, 1993 (58 FR 26420).

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

1. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

2. Paragraph (a) of § 279.42 is revised to read as follows:

§ 279.42 Notification.

(a) *Identification numbers.* Used oil transporters who have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

* * * * *

3. Paragraph (a) of § 279.51 is revised to read as follows:

§ 279.51 Notification.

(a) *Identification numbers.* Used oil processors and re-refiners who have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

* * * * *

4. Paragraph (a) of § 279.62 is revised to read as follows:

§ 279.62 Notification.

(a) *Identification numbers.* Used oil burners which have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

* * * * *

5. Paragraph (a) of § 279.73 is revised to read as follows:

§ 279.73 Notification.

(a) *Identification numbers.* A used oil fuel marketer subject to the requirements of this subpart who has not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

* * * * *

[FR Doc. 93–14316 Filed 6–16–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 50

Sterilization of Persons in Federally Assisted Family Planning Projects

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends Public Health Service regulations, which govern the sterilization of persons in federally assisted family planning projects, by removing informational material concerning sterilizations contained in the appendix relating to "Required Consent Form." The Department had previously made this information generally available in the form of pamphlets, but it has recently updated the pamphlets, as much of the information has become obsolete, and it is no longer distributing the obsolete versions of the pamphets.

EFFECTIVE DATE: This rule is effective June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Samuel S. Taylor, Acting Director, Office of Family Planning, Office of Population Affairs, Office of the Assistant Secretary for Health, Hubert H. Humphrey Building, room 736–E, 200 Independence Avenue, SW., Washington, DC 20201; telephone: (202) 690–8151.

SUPPLEMENTARY INFORMATION: On November 8, 1978, this Department published in the Federal Register (43 FR 52146), final rules prescribing the requirements for sterilizations funded under the various health programs administered by the Department. Included with the portion of the rules pertaining to those programs administered by the Public Health Service (PHS), as part of the appendix to subpart B, was a copy of two pamphlets—one for women, one for men—explaining the sterilization procedure and its risks and benefits. The pamphlets are not part of the regulation and the removal of the text of the pamphlets does not affect the requirements and restrictions of the regulations. As the preamble to the rules explained, the pamphlets were published with the rules for informational purposes only:

> Many of the particular facts that comments suggested be required will generally be conveyed in the discussion of discomforts and risks. Requiring that a specific pamphlet be used would be analogous, so this suggestion has likewise been rejected. However, while the Department is not inclined to mandate use of an informational pamphlet, it is strongly of the view that provision of a pamphlet is an efficient and effective means of reinforcing the information required to be given orally. It also gives the individual to be sterilized information to consider during the waiting period. Consequently, it has developed pamphlets setting out the general information required under § 50.204(a) for male and female surgical sterilizations. The Department plans to make these pamphlets generally available for use by providers and encourages their use. These pamphlets are published following the rules below.

43 FR 52159. However, the pamphlets have continued to appear with the codification of the PHS rules from 1978 to the present; they do not appear with the codification of the companion Health Care Financing Administration (HCFA) rules at 42 CFR part 441, subpart F.

Numerous advances in information about sterilization procedures and the effectiveness of other forms of family planning, as well as the development of new family planning technologies, have made much of the information contained in the 1978 pamphlets obsolete or inaccurate. Consequently, the PHS has revised both pamphlets to incorporate current information and to clarify them and is making the revised pamphlets available to the public. (Copies of the revised pamphlets may be obtained by writing the Family Life Information Exchange, P.O. Box 37299, Washington, DC 20013–7299, or by calling 301–585–6636.) Further, the Department will no longer distribute the outdated version set out in the appendix to subpart B of part 50. This results in an anomalous situation in which the

version in the "Code of Federal Regulations," which purports to be the official version of the pamphlets, is in fact both outdated and no longer generally available.

The Department has concluded that this situation should be corrected. In order to effect a change in the material codified in the "Code of Federal Regulations," however, the Department must issue this change in the form of a final rule, even though the material being removed is informational only and not part of the existing regulations. Accordingly, this final rule amends 42 CFR part 50 by removing the obsolete pamphlet language contained in the appendix to subpart B—that portion of the appendix following the "Physician's Statement," beginning with the heading "Your Sterilization Operation: Information for Women" and the remainder of the appendix following this heading will be removed. This amendment will also make the codified PHS regulations more consistent with the companion HCFA regulations pertaining to sterilizations and eliminate any confusion that this discrepancy may have caused.

Justification for Omitting Notice of Proposed Rulemaking

Since this amendment is of a purely technical nature, and, in fact, does not alter or amend existing regulatory provisions, the Secretary has determined, pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures or to delay the effective date of this regulation.

Regulatory Flexibility Act and Executive Order 12291

This rule is merely a technical removal of supplemental out-of-date information. The rule will neither exceed the threshold level of $100 million established in section 1(b) of Executive Order 12291 nor does it meet any of the additional criteria contained in the Executive Order. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further more, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that this regulation will not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act of 1980

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

List of Subjects in 42 CFR Part 50

Family planning—Birth control, Grant programs—Health, Health facilities.

Dated: March 18, 1993.

Audrey F. Manley,

Acting Assistant Secretary for Health.

Approved: May 5, 1993.

Donna E. Shalala,

Secretary.

Accordingly, in 42 CFR part 50, the appendix to subpart B, "Required Consent Form," is amended as set forth below:

PART 50—POLICIES OF GENERAL APPLICABILITY

1. The authority citation for 42 CFR part 50 continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); Sec. 1006, Public Health Service Act, 84 Stat. 1507 (42 U.S.C. 300a–4), unless otherwise noted.

Subpart B—Sterilization of Persons in Federally Assisted Family Planning Projects

2. The appendix to subpart B is amended by removing the centerhead "Your Sterilization Operation: Information for Women" and all text following it, and removing the centerhead "Your Sterilization Operation: Information for Men" and all text following it.

[FR Doc. 93–14155 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–17–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 92–164; FCC 93–219]

Class C Emergency Position Indicating Radio Beacons

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This Report and Order amends the Commission's Rules to phase out the use of the Class C Emergency Position Indicating Radio Beacons (EPIRBs) after February 1, 1999. This action is in response to a request from the United States Coast Guard. Informing the maritime community now that the Commission intends to eliminate authorization of Class C EPIRBs by February 1, 1999, will allow for amortization of existing Class C EPIRBs and provide sufficient time for the marine public to obtain another type of EPIRB prior to the full implementation of the Global Maritime Distress and Safety System.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: George R. Dillon, Aviation and Marine Branch, Private Radio Bureau, Federal Communications Commission, 2025 M St. NW., Washington, DC 20554; or telephone (202) 632–7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 92–164, adopted May 3, 1993, and released May 18, 1993. The complete text of the Report and Order, including Appendices, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The full text also may be purchased from the Commission's copy contractor: International Transcription Services, 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Report and Order

1. The United States Coast Guard requested that the Commission amend its Maritime Services Rules (part 80) to eliminate authorization of Class C EPIRBs by February 1, 1999. EPIRBs are small, battery powered transmitters carried on ships for the purpose of sending a distress signal. Class C EPIRBs transmit distress signals on marine VHF channels 15 and 16 both as an alarm to alert others that a ship is in distress and as a beacon to aid in its location by search and rescue personnel. Because satellites do not monitor marine VHF channels 15 and 16, other nearby ships and coast stations can receive their distress signal.

2. The Global Maritime Distress and Safety System (GMDSS), which will be fully implemented by February 1, 1999, changes the mandatory watch requirement for ships from marine VHF channel 16 to an automated watch on Digital Selective Calling (DSC) channel 70. The Coast Guard also intends to discontinue its watch on marine VHF channel 16 after February 1, 1999. This lack of monitoring by satellites, ocean going vessels and the Coast Guard will dramatically reduce the effectiveness and need for Class C EPIRBs during search and rescue operations. Informing the maritime community now that the Commission intends to eliminate authorization of Class C EPIRBs by

February 1, 1999, will allow for amortization of existing Class C EPIRBs and provide sufficient time for the marine public to obtain another type of EPIRB prior to the full implementation of the GMDSS.

3. Accordingly, *it is ordered that,* Pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), part 80 of the Commission's Rules, 47 CFR part 80, is amended as set forth below.

4. *It is further ordered that,* This Report and Order will be effective July 19, 1993.

List of Subjects in 47 CFR Part 80

Communications equipment, Marine safety, Radio

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Final Rule

Part 80 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.15 is amended by revising paragraph (e)(1) introductory text to read as follows:

§ 80.15 Eligibility for station license.

* * * * *

(e) EPIRB stations. (1) New class C EPIRB stations will not be authorized after February 1, 1995. Class C EPIRB stations installed and licensed before February 1, 1995, will be authorized until February 1, 1999:

* * * * *

3. Section 80.205 is amended by adding a new Footnote 13 to the "G3N" entry in the table in paragraph (a) to read as follows:

§ 80.205 Bandwidths.

(a) * * *

Class of emission	Emission designator	Authorized bandwidth (kHz)
*	*	*
G3N [3,13]	* * *	* * *
*	*	*

[3] Applicable only to EPIRB's.

* * * * *

[13] Class C EPIRB stations may not be used after February 1, 1989.

* * * * *

4. Section 80.207 is amended by adding a new Footnote 13 to the "156.750 and 156.800 MHz" entry in the table in paragraph (d) to read as follows:

§ 80.207 Classes of emission.

* * * * *

(d) * * *

Types of stations	Classes of emission
*	*
Distress, Urgency, and Safety [8,9]	
*	*
156.750 and 156.800 MHz[13].	* * *
*	*

[8] For direction finding equipment requirements see § 80.375.

[9] Includes distress emissions used by ship, coast, EPIRB's and survival craft stations.

* * * * *

[13] Class C EPIRB stations may not be used after February 1, 1999.

5. Section 80.209 is amended by adding a new Footnote 6 to the "Operating on 156.750 and 156.800 MHz" entry in the table in paragraph (a) to read as follows:

§ 80.209 Transmitter frequency tolerances.

(a) * * *

Frequency bands and categories of stations	Tolerances [1]
*	*
(5) * * *	
(iv) * * *	
Operating on 156.750 and 156.800 MHz[6].	* * *
*	*

[1] Transmitters authorized prior to January 2, 1990, with frequency tolerances equal to or better than those required after this date will continue to be authorized in the maritime services provided they retain type acceptance and comply with the applicable standards in this part.

* * * * *

[6] Class C EPIRB stations may not be used after February 1, 1999.

6. Section 80.1057 is amended by adding an introductory paragraph to read as follows:

§ 80.1057 Special requirements for Class C EPIRB stations.

Class C EPIRB's shall not be manufactured, imported, or sold in the United States after February 1, 1995. Class C EPIRB stations installed on board vessels before February 1, 1995, may be used until February 1, 1999, and not thereafter.

* * * * *

[FR Doc. 93–14244 Filed 6–16–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 930522–3122; I.D. #061493B]

Northeast Multispecies Fishery

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

ACTION: Amendment to emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) amends the regulations implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This amendment to the emergency rule published on June 8, 1993 (58 FR 32062) reopens to fishing the area designated as Closed Area II. The 2,500-pound (1,134-kg) haddock possession limit and ban on pair trawling in the Northeast multispecies fishery implemented by that rule remain in effect. The intended effect of this rule is to relieve some of the confusion and burden caused by the original implementation of the emergency interim rule while still providing additional protection to haddock and cod, and promoting the rebuilding of these depleted fish stocks.

EFFECTIVE DATES: This amendment to the emergency interim rule is effective June 14, 1993, through September 6, 1993.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Resource Policy Analyst (508–281–9252), Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION: On June 3, 1993, the Secretary implemented cod and haddock protection measures through an emergency interim rule published on June 8, 1993 (58 FR 32062). The rule implemented: A 2,500-pound (1,134-kg) haddock possession

limit applying to all vessels permitted under regulations for this fishery; the area known as Closed Area II was expanded by 20 minutes longitude to the west and 15 minutes latitude to the south along its existing western and southern boundaries; Closed Area II was closed through the month of June; and a ban on pair trawling in the multispecies fishery.

Regulations implementing the FMP (§ 651.21(a)) closed the area designated as Closed Area II from February 1 through May 31 of each year. On June 3, 1993, when the emergency interim rule became effective, vessels had already sailed and were fishing in the area to be re-opened under this rule. The area is approximately 120 miles (192.4 km) from shore and is fished primarily by larger vessels on trips lasting approximately 10 days.

On June 11, 1993, the Assistant Secretary of Commerce for Oceans and Atmosphere met with members of the fishing community from Maine, Massachusetts, and Rhode Island; local government officials from Gloucester, MA; Representative Peter Torkildsen; Congressional staff, a member of the Council, and the Council's Executive Director.

The representatives of the Council present stated that upon reviewing the Council's recommendation, it was not the Council's intention for the area to be extended in time but rather just expanded in area during the regulated closure months. They noted that the proposal being considered for Amendment 5 to the FMP would extend the area in time in the third year after implementation. The stated rationale for the delayed implementation was that it would allow Canada to implement a similar closure.

As a result of input from the fishing community and the confusion over what the recommendation from the Council was, the Secretary has determined that Closed Area II should be reopened immediately. The haddock possession limit of 2,500 pounds (1,134 kg) will remain in effect as well as the prohibition on the use of pair trawl gear in the Northeast multispecies fishery.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and with other applicable law.

The Secretary finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide full notice and opportunity for public comment on these emergency regulations, under the provisions of section 553(b) of the Administrative Procedure Act. Because this rule relieves a restriction, a 30-day delay of the effective date is not required under section 553(d)(1) of the Administrative Procedure Act. The Secretary notes, however, that substantial public comment was received and considered before deciding on this emergency action.

This emergency interim rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. The rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not practicable to follow the regular procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

This rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. This rulemaking has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 14, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 651.21 [Amended]

2. In § 651.21, the suspension of paragraph (a)(2) is lifted, and paragraph (a)(5) is removed, effective June 14, 1993 through September 6, 1993.

[FR Doc. 93–14319 Filed 6–14–93; 12:42 pm]

BILLING CODE 3510–22–M

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50 CFR Part 672

[Docket No. 921107–3068; I.D. 061493A]

Groundfish on the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 61 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 14, 1993, through 12 noon, A.l.t., July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The second quarterly allowance of pollock TAC in Statistical Area 61 is 6,239 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 second quarterly allowance of pollock TAC in Statistical Area 61 soon will be reached. The Regional Director established a directed fishing allowance of 5,615 mt, and has set aside the remaining 624 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 61 is prohibited, effective from 12 noon A.l.t., June 14, 1993, through 12 noon, A.l.t., July 1, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 14, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–14311 Filed 6–14–93; 12:13 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 115
Thursday, June 17, 1993

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 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1135, and 1138

[Docket No. AO–14–A65–RO2, etc; DA–91–013]

Milk in the New England and Certain Other Marketing Areas; Extension of Time for Filing Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Services, USDA.

ACTION: Extension of time for filing exceptions to proposed rules.

7 CFR part	Marketing area	AO Nos.
1001 ...	New England	AO–14–A65–R02
1002 ...	New York-New Jersey.	AO–71–A80–R02
1004 ...	Middle Atlantic.	AO–160–A68–R02
1005 ...	Carolina	AO–388–A5–R02
1007 ...	Georgia	AO–366–A34–R02
1011 ...	Tennessee Valley.	AO–251–A36–R02
1030 ...	Chicago Regional.	AO–361–A29–R02
1033 ...	Ohio Valley ..	AO–166–A62–R02
1036 ...	Eastern Ohio-Western Pennsylvania.	AO–179–A57–R02
1040 ...	Southern Michigan.	AO–225–A43–R02
1044 ...	Michigan Upper Peninsula.	AO–299–A27–R02
1046 ...	Louisville-Lexington-Evansville.	AO–123–A63–R02
1049 ...	Indiana	AO–319–A40–R02
1065 ...	Nebraska-Western Iowa.	AO–86–A48–R02
1068 ...	Upper Midwest.	AO–178–A46–R02
1079 ...	Iowa	AO–295–A42–R02
1093 ...	Alabama-West Florida.	AO–386–A12–R02
1094 ...	New Orleans-Mississippi.	AO–103–A54–R02
1096 ...	Greater Louisiana.	AO–257–A41–R02
1097 ...	Memphis, Tennessee.	AO–219–A47–R02
1098 ...	Nashville, Tennessee.	AO–184–A56–R02
1099 ...	Paducah, Kentucky.	AO–183–A46–R02
1106 ...	Southwest Plains.	AO–210–A53–R02
1108 ...	Central Arkansas.	AO–243–A44–R02
1124 ...	Pacific Northwest.	AO–368–A20–R02
1126 ...	Texas	AO–231–A61–R02
1131 ...	Central Arizona.	AO–271–A30–R02
1135 ...	Southwestern Idaho-Eastern Oregon.	AO–380–A10–R02
1138 ...	New Mexico-West Texas.	AO–335–A37–R02

SUMMARY: This notice extends the time for filing exceptions to the May 11, 1993, recommended decision on Class III–A pricing for 29 Federal orders. The new deadline of June 18 is consistent with the date announced in the Department's May 21 press release.

DATES: Exceptions now are due on or before June 18, 1993.

ADDRESSES: Exceptions (six copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued July 16, 1991; published July 22, 1991 (56 FR 33395).

Tentative Decision: Issued December 10, 1991; published December 19, 1991 (56 FR 65801) and corrected December 23, 1991 (56 FR 66482).

Revised Tentative Decision: Issued December 24, 1991; published January 2, 1992 (57 FR 15).

Interim Amendment of Orders: Issued December 27, 1991; published January 3, 1992 (57 FR 173).

Notice of Reopened Hearing: Issued August 11, 1992; published August 14, 1992 (57 FR 36609).

Notice of Reopened Hearing: Issued September 22, 1992; published September 25, 1992 (57 FR 44344).

Revised Tentative Decision: Issued October 20, 1992; published October 27, 1992 (57 FR 48575).

Interim Amendment of Orders: Issued October 29, 1992; published November 3, 1992 (57 FR 49633).

Recommended Decision: Issued May 11, 1993; published May 19, 1993 (58 FR 29133).

Preliminary Statement

Notice is hereby given that the time for filing exceptions to the May 11, 1993, recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the New England and 28 other marketing areas is hereby extended from June 8 to June 18, 1993.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Dated: June 11, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–14331 Filed 6–15–93; 10:30 am]

BILLING CODE 3410–02–P

7 CFR Parts 1033, 1036 and 1049

[Docket Nos. AO–166–A51; AO–179–A56; and AO–319–A39; DA 90–015]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts changes in the Ohio Valley, Eastern Ohio-

Western Pennsylvania, and Indiana Federal milk orders based on industry proposals considered at a public hearing held August 14–17, 1990, in Columbus, Ohio, and August 28–29, 1990, in Indianapolis, Indiana. For all three orders, the decision adopts a plan for pricing milk on the basis of its protein, as well as butterfat, components. For the first time in the Federal milk order system, the proposed pricing plan includes adjustments to the protein price based on the somatic cell count of producer milk.

The decision also adopts pooling standards for producer milk and pool distributing and supply plants that will be more uniform between the three markets. Amendments to the Ohio Valley and Indiana orders will price some diverted milk at the location of the plant from which it is diverted. The decision reduces the level of the Indiana Class I price differential and amends the location adjustment provisions of the Indiana order.

Other changes to the orders include increases in the rate of maximum allowable marketing service assessments for all three orders, and an increase in the maximum allowable administrative assessment under the Eastern Ohio-Western Pennsylvania order to the level allowable under the other two orders.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended orders will promote more orderly marketing of milk by producers and regulated handlers.

These proposed amendments have been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued July 25, 1990; published July 31, 1990 (55 FR 31056).

Notice of Reconvened Hearing: Issued August 21, 1990; published August 23, 1990 (55 FR 34569).

Recommended Decision: Issued July 30, 1992; published August 13, 1992 (57 FR 36536).

Extension of Time for Filing Exceptions: Issued September 14, 1992; published September 17, 1992 (57 FR 42899).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR part 900), at Columbus, Ohio, on August 14–17, 1990; and at Indianapolis, Indiana, on August 28–29, 1990. Notice of such hearing was issued on July 25, 1990, and published July 31, 1990 (55 FR 31056).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on July 30, 1992, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under material issue "1(c). Pool distributing plant definition (Orders 33 and 49).", a sentence is added at the beginning of paragraph 12, two new paragraphs are added after the second sentence of paragraph 14, the last part of paragraph 14 becomes a new paragraph with a new sentence added as the second sentence, paragraphs 15 and 33 are revised slightly, 5 paragraphs are added after paragraph 34, paragraph 35 is revised by adding a phrase in the last sentence and by adding another sentence, and a new paragraph is added at the end of 1(c).

2. Under material issue "1(d). Pool supply plant (all three orders).", two paragraphs are added after paragraph 7, and 12 paragraphs are added after paragraph 29.

3. Under material issue "1(e). Co-op pool plant (Order 33).", two paragraphs are added after paragraph 4.

4. Under material issue "1(g)(i). Diversion limits (all three orders).", 4 paragraphs are added after paragraph 13.

5. Under material issue "1(g)(ii). Pricing diverted milk (Orders 33 and 49).", five paragraphs are added after paragraph 10 and six paragraphs are added after paragraph 19.

6. Under material issue "4(a). Protein pricing.", two paragraphs are added after paragraph 29, eight paragraphs are added after paragraph 32, and three paragraphs are added after paragraph 33.

7. Under material issue "4(b). Somatic cell adjustment.", the first paragraph is revised, thirteen paragraphs are added after paragraph 15, paragraph 16 is revised, a new paragraph is added after paragraph 16, paragraphs 17 and 19 and the table following paragraph 19 are revised, paragraphs 20 and 21 are removed, and paragraph 27 is revised.

8. Under material issue "4. Multiple component pricing.", a new heading "c. Other changes.", has been added after paragraph 27 of issue 4(b), paragraphs 28 through 36 of issue 4(b) have become paragraphs 1 through 9 of issue 4(c), the first, second, and fifth through eighth paragraphs after the new heading are revised, and the ninth paragraph is deleted.

9. Under material issue "5. Class prices and location adjustments (Order 49).", eleven paragraphs are added after paragraph 11.

10. Under material issue "8. Administrative assessment (Order 36).", two paragraphs are added after paragraph 12.

11. Under material issue "10. Conforming changes.", the last paragraph is revised.

The material issues on the record of the hearing relate to:

1. Definitions.
   a. Route Disposition (Order 49).
   b. Supply plant (Order 49).
   c. Pool distributing plant (Orders 33 and 49).
   d. Pool supply plant (all three orders).
   e. Co-op pool plant (Orders 33 and 49).
   f. Pool plant disaster clause (Order 49).
   g. Producer milk.
   i. Diversion limits (all three orders).
   ii. Pricing diverted milk (Orders 33 and 49).
2. Reporting (Order 49).
3. Classification (Order 49).
4. Multiple component pricing (all three orders).
   a. Protein pricing.
   b. Somatic cell adjustment.
   c. Other changes.
5. Class prices and location adjustments (Order 49).
6. Accountability for 9(c) milk (Order 49).
7. Payments to producers.
   a. Due dates and late-payment charges (Order 49).
   b. Seasonal incentive payment plan (all three orders).
8. Administrative assessment (Order 36).
9. Marketing service assessments (all three orders).
10. Conforming changes.

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. Definitions

A number of proposals were made by several parties to amend some of the definitions under the three orders. The definitions proposed to be amended range from what were described as clarifying amendments to the route disposition and supply plant definitions under the Indiana order through the pool plant and producer milk definitions of all three orders. Most of the proposals dealing with pool plant and producer milk definitions address the issue of which plants and producers will be eligible to participate in the marketwide pools and, consequently, generated extensive testimony.

The clarifying amendments proposed by the Hoosier Milk Marketing Agency to the "Route disposition" and "Supply plant" definitions of the Indiana order should be adopted. Neither amendment is expected to change the pool status of any entity, but will assure that the order's provisions will be more easily understood and administered.

In general, the pooling provisions of the three orders should be made more uniform. Merger of the three orders was not an issue considered at the hearing and cannot be adopted on the basis of the record of this proceeding. However, the record does show that many of the marketing conditions that normally are considered as reasons for merging Federal order marketing areas are present in these three regulated markets.

Testimony and exhibits in the record show clearly that there is a great deal of overlapping of milksheds between the Indiana and Ohio Valley markets, and between the Ohio Valley and Eastern Ohio-Western Pennsylvania markets. In addition, the record demonstrates that handlers regulated under the three orders have substantial volumes of overlapping sales, and that the order under which some handlers are regulated changes with the proportion of sales the handlers have in each order. The existence of a number of plants that operate as common reserve supplies or common surplus outlets for more than one of the markets also contributes to a picture of three very interrelated markets. In such a situation, differing levels of performance standards for pool plants and producers clearly can create inequities between handlers and producers who are competing within the same areas. Therefore, it is important that the pool plant and producer milk provisions of the orders be similar enough to assure that order provisions do not constitute artificial barriers to the participation of handlers and producers in any of the three marketwide pools.

The two major cooperative associations operating in the three marketing areas proposed amendments to the pool plant definitions that primarily would have the effect of reducing handler access to the three marketwide pools. One of the dominant cooperative associations is Milk Marketing, Inc. (MMI), which markets approximately two-thirds of the milk pooled under the Ohio Valley order (Order 33) and about two-fifths of the milk pooled under the Eastern Ohio-Western Pennsylvania order (Order 36). The other principal cooperative association is Associated Milk Producers, Inc., which pools milk through the Hoosier Milk Marketing Agency (Hoosier) in concert with MMI. Hoosier markets approximately two-thirds of the milk pooled under the Indiana order (Order 49).

Most of the amendments proposed by the two cooperatives would make participation in the three marketwide pools more difficult for handlers and producers who are not assured of a stable and significant share of the markets' fluid use. National Farmers Organization (NFO) proposed amendments to all three orders that generally would allow slightly greater participation by producers in the three pools, on a more uniform basis than currently exists. Proprietary cheese plant operators and fluid milk handlers proposed amendments to Order 36 that would have opposing effects on the ability of pool supply plants to maintain their pool status.

For Order 49, in addition to the Hoosier proposals to tighten pooling provisions, NFO, the Milk Foundation of Indiana (MFI), an organization of milk plant operators, and New Paris Creamery, a proprietary handler, made and supported proposals that primarily would allow handlers and producers to participate in the marketwide pool more easily.

A set of proposals made by Hoosier (Nos. 20, 22 and 24), to exclude from the marketwide pool producers who are paid under the "Louisville" plan of another order during that order's "payback" months, was abandoned by proponent at the hearing, and not supported by any of the hearing participants. Since the record contains no support for these proposals, they are not considered in this decision.

a. Route Disposition (Order 49)

A witness for Hoosier testified that the organization had proposed two changes to the route disposition definition. The first proposed change is to include other distributing plants, as well as other persons, in the description of milk movements that comprise "route dispositions." The witness stated that Hoosier's intention is that fluid milk products packaged for another distributing plant be included as part of the packaging plant's route sales and thus part of the computation of the packaging plant's qualification for pooling. The second proposed change would describe Class I fluid milk moved to any milk or filled milk processing plant in other than bulk form as "packaged." The Hoosier witness explained that at the present time bulk milk transferred from one distributing plant to another is not included in the route disposition calculation. He went on to say that at one time omission of bulk fluid sales from pooling qualification was justified by the pattern of milk movement in Order 49, but that such sales are used now only to

manipulate the route disposition computation for determining qualification. There was no testimony opposing the proposal, and NFO's brief supported its adoption.

Although neither change to the current order language can be considered substantive, the proposed amendments do contribute some clarification to the route disposition definition. Therefore, the proposed changes should be adopted.

b. Supply Plant (Order 49)

An amendment to the Order 49 supply plant definition proposed by Hoosier that can be considered a clarification of current order language should be adopted. The witness for Hoosier stated that the addition of the words "and is physically unloaded and received into a distributing plant" to the supply plant definition would clarify what constitutes a delivery by a supply plant to a distributing plant. The present definition of a delivery may be considered open to interpretation by those unfamiliar with the order although, in fact, a court has ruled that the present language results in the same meaning that proponents wish to spell out. For purposes of clarity, the proposed language should be adopted, but its adoption in no way implies that the meaning which is to be spelled out more fully is deficient in conveying the requirement that milk that is "shipped to" must also be "physically unloaded and received into".

c. Pool Distributing Plant

Order 33. Two changes to the pool distributing plant definition of the Ohio Valley order proposed by MMI should be denied. MMI proposed that the pool distributing plant in-area sales requirement for Order 33 be reduced from 15 percent to 10 percent of a handler's route disposition. In addition, MMI proposed increases in the total percentage of a distributing plant's receipts that must be disposed of on routes, from 40 percent to 50 percent for the months of September through February (except December), from 35 percent to 40 percent for the months of March through July, and from 35 percent to 50 percent for the month of August.

Proponent's witness stated that a decrease in the in-area sales requirement, which would increase the likelihood of a partially regulated plant becoming fully regulated, is necessary to eliminate a partially regulated handler's competitive advantage over pooled handlers on raw milk costs. The witness stated that this competitive advantage is due to partially regulated handlers paying the equivalent of the Federal order blend price for their entire milk supply while regulated handlers must pay the Federal order Class I price for their Class I milk. The witness explained that his estimate of the cost difference between partially and fully regulated plants was between 60 cents per hundredweight and $2.19 per hundredweight, depending on which plants were compared. The proponent witness went on to explain that due to this competitive advantage in raw milk costs, partially regulated handlers are increasing sales in the Order 33 marketing area and thus taking sales from regulated handlers. The MMI witness characterized this situation as a disorderly marketing condition that would be remedied by their proposal.

Some concern was expressed by the proponent witness that because Order 36 would continue to have a 15-percent in-area sales requirement, certain plants would become regulated under Order 33 rather than under Order 36, causing proponents difficulty in economically supplying milk to these plants. In fact, the witness stated, a handler who had initially supported the proposal was now opposed to it because a proposed amendment to Order 36 was not also included in the hearing notice, as initially intended by the proponents.

In testimony and in a post-hearing brief the MMI witness explained that the second proposed change in the Order 33 pool distributing plant definition, to increase the total route disposition percentage, was needed to increase the amount of milk available to distributing plants. He said that when the requirements were lowered, in 1984, there was a surplus of milk in the marketing area. According to the witness, however, the situation has changed dramatically to the extent that substantial volumes of milk have had to be imported to satisfy the needs of the pool distributing plants in the Order 33 marketing area. The witness also explained that the increase was needed to prevent manufacturing plants from riding the pool by paying distributing plants for the opportunity to qualify for pooling.

Proponent witness explained that August should be added to the higher total route disposition standard because August has become a relatively high Class I demand month at a time when milk production is declining. The witness explained that this higher Class I demand is primarily due to the need to begin filling school inventories.

A witness for United Dairy, Inc. (United) testified in support of the MMI proposal, stating that United had lost an account because a partially regulated Virginia dairy had been able to offer a customer a 15- to 20-cent per gallon lower price. According to the United witness, a price difference of this size can be attributed only to a substantial difference in raw milk costs.

A witness representing Sani-Dairy, a partially regulated handler under Orders 33, 36 and 2 (New York-New Jersey), opposed adoption of the MMI proposal, and stated that no disorderly marketing conditions had been demonstrated. The witness explained that Sani-Dairy relies on uniform order provisions across the area in which it markets its products. The witness testified that at past hearings considerable effort has been made to make the provisions of Orders 33 and 36 the same. He stated that reducing the percentage of in-area route sales needed to qualify as a pool distributing plant in Order 33 without a corresponding change in Order 36 would likely cause his plant to become fully regulated under Order 33 while allowing Sani-Dairy's primary competitor in Johnstown, Pennsylvania, to avoid regulation.

The Sani-Dairy witness characterized the proposed change to Order 33 as an arbitrary change that would be disruptive and impede the free flow of goods, a result which the witness characterized as defeating the stabilizing purpose of the Federal order system. The witness also stated that Sani-Dairy needs to maintain its partially regulated status under the Federal order so it can continue to pay competitive prices to its producers.

A producer representing 133 producers shipping milk to Sani-Dairy also testified in opposition to the MMI proposal. The witness testified that if Sani-Dairy's pay price was reduced by Federal order regulation below Pennsylvania State pricing levels, he and other producers would have to consider shipping to another plant. If the price difference was significant, the producer stated, they would probably switch to another plant.

In a brief filed on behalf of Hoosier it was argued that information entered into the record for Toft Dairy, a partially regulated handler under both Orders 33 and 36, should be disregarded since it was not subject to cross-examination. Hoosier argued that Toft is able to distribute up to 15 percent of its receipts in each order without being fully regulated. The Toft information indicated that Toft pays the average of Order 33 and Order 36 Class I prices for raw milk, and argued that MMI had failed to meet the evidentiary burden necessary to justify adoption of its proposed amendment.

The portion of the MMI proposal that would reduce the in-area sales percentage requirement is the only amendment proposed by either MMI or Hoosier that would have the effect of loosening pooling standards to include more handlers in any of the three marketwide pools. Speculation by proponent witness that partially regulated handlers are able to increase sales in the regulated marketing areas because of an unfair advantage based on lower prices paid for raw milk is not a sufficient basis for reducing the in-area sales percentage at which a handler becomes fully regulated. The source of proponent's estimates of the size of two partially regulated plants about which he testified, and the magnitude of their disposition in the marketing areas (that of Order 36, as well as Order 33) was unclear, and the accuracy of the estimates was questionable. At any rate, Toft Dairy apparently represents less than .6 percent of the route disposition in the Order 33 marketing area, and approximately one-half of one percent of the Class I use in the marketing areas of Orders 33 and 36 combined. Reduction of the in-area sales percentage would, if Toft reduced its sales in order to avoid full regulation, remove from the Order 33 market fluid sales representing about .2 percent of the market's total Class I use.

Comments filed by MMI stated that the record does not reveal any insight into the value paid by Richfood Dairy, especially for sales outside the state of Virginia. However, information contained in the record about Richfood Dairy in Virginia, which apparently distributes milk in both the Order 33 and Order 36 marketing areas, indicates that the value paid by Richfood for raw milk is at least as much as the dairy's obligation would be under full Federal order regulation, because it does not incur any obligation to the Federal order pool as a partially regulated distributing plant.

Given the very small share of Order 33 Class I use that the dairies in question represent, there is no basis for trying to have the small volume of sales represented by the handlers in question become part of the marketwide pool.

The second part of the MMI proposal represents an inappropriate method of attempting to assure that an adequate supply of milk is made available for fluid use. Pool distributing plant standards exist for the purpose of determining which plants are substantially involved in distributing fluid milk products in the marketing area, and therefore should be included in the marketwide pool.

MMI exceptions in regard to Federal Order 33 charged that the hearing record had been either ignored or not read at all, and asserted that corrective action must be taken when pool distributing plants are paid a "pooling fee" to allow producer milk affiliated with manufacturing plants to ride the pool with no intention of making the milk available for Class I purposes. MMI noted that, contrary to the decision, corrective action to eliminate abuse of the system is not "inappropriate" and that pool distributing plant standards must be an integral part of "restricting producer access to the pool" if such producers are not helping to supply the Class I market when milk is truly needed.

MMI comments claimed that the Department's recommendation would allow "pool riders" and irresponsible organizations to dump surplus milk on markets in the name of "greater participation" when participation is not warranted, resulting in more disarray and less commitment to the local market. MMI asserted that the Department admitted within the recommended decision that a lack of commitment causes "problems". Additionally, MMI stated that the Dairy Division is required by law to draft decisions that contribute to orderly marketing conditions, rather than making recommendations that cause marketing problems.

There is no evidence in the record of this proceeding that would support a conclusion that a plant distributing 40 percent of its total receipts on routes during the market's months of relatively high Class I utilization is not a significant enough source of fluid milk products for the marketing area to justify its pool status. In fact, failure to regulate a plant distributing such a significant percentage of its total receipts on routes certainly could be expected to create disorderly conditions. The average Class I use percentage of milk pooled under Order 33 is barely over 55 percent, and exceeds 60 percent only about one month per year. Further, Class I use percentages do not support any argument that the pooling standard for the month of August should be increased. The record contains no basis upon which it can be determined that the current total pool distributing plant standards are not high enough. Attempts to assure that milk included in the marketwide pool is adequately associated with the fluid market are more appropriately directed at supply plant provisions.

Order 49. The pool distributing plant standards of the Indiana order should be reduced to more closely resemble those of the adjacent Ohio Valley order so that the order under which a given plant with route sales in both marketing areas is regulated is dependent upon the marketing order with which the plant has more association. The computation of the qualifying percentage should be amended to include as receipts diversions of producer milk from distributing plants, but not transferred receipts from other distributing plants or diverted receipts from other order plants. Provisions allowing continued pool status for plants which have met pooling percentages for the previous month or during summer months for plants which have qualified during the preceding September through May should be retained in modified form.

Three proposals were made to amend the pool distributing plant standards for the Indiana order. Hoosier's proposal would reduce the minimum route disposition percentage from 50 percent to 40 percent of total receipts for the months of May through July, include diversions from distributing plants as receipts in computing qualification percentages, and remove the ability of distributing plants to qualify for pooling on the basis of their previous pool status. Generally, the proposal advanced by Hoosier would make it more difficult for handlers to qualify their plants for participation in the marketwide pool.

Proposals by the National Farmers Organization (NFO), a producer cooperative association, and Milk Foundation of Indiana (MFI), a group of six handlers regulated under Order 49, would loosen Order 49 pooling qualifications for distributing plants. NFO proposed that the required route disposition percentage be reduced from 50 percent to 35 percent year-round, but modified its proposal at the hearing to conform to the percentages included in the MFI proposal, and the current route disposition standards of Order 33. NFO's proposal would exclude diverted receipts from other order plants from the receipts used to determine qualifying percentages. The MFI proposal would reduce the percentage of a handler's receipts that must be disposed of as route dispositions if the handler's plant is to qualify for pooling from 50 percent year-round to 40 percent during the months of September through February and 35 percent for the months of March through August.

According to testimony presented by a Hoosier witness at the hearing and arguments included in a brief filed on behalf of Hoosier after the hearing, the current pool distributing plant provisions of the Indiana order allow handlers to attract and maintain receipts

of milk without making them available for Class I use. The Hoosier witness stated that many distributing plant operators want a pooled milk supply for the purpose of making Class II products or diverting milk to nonpool plants for use in cheese or Class II products. Hoosier claimed that under the current provisions a distributing plant may be pooled all year on the basis of meeting the order's pooling standards in only 5 months.

The Hoosier witness stated that the Indiana market historically is deficit in milk production, and needs a supplemental supply for fluid use. He testified that during 1989 and 1990, Hoosier imported 3 to 8 million pounds of milk per month at a cost of $2.51 per hundredweight. The witness claimed that exclusion of milk diverted by handlers to nonpool plants from the computation of pool qualification percentages leaves a loophole for handlers to attract and maintain supplies of milk that are not made available for Class I.

According to the Hoosier witness, there is no evidence that the Hoosier proposal would result in depooling any distributing plants currently meeting pooling requirements, or impair the ability of any pool plants to remain pooled. The witness stated that the order should not allow the pooling of milk used in Class II while milk must be imported for Class I use at increased costs to handlers and consumers, and added that the Indiana market has one of the highest percentages of Class II use of the 3-class markets.

A witness for NFO testified that the cooperative markets approximately 16 million pounds of milk monthly on Order 49, and opposed Hoosier's proposals to tighten the pool distributing plant qualification requirements. NFO attributed changes in regulation of Wayne Dairy from Order 49 to Order 33, and back again to Order 49, to differences in the pooling standards for distributing plants under the two orders. As a result of the differing standards, according to NFO, Wayne Dairy was pooled on Order 33 even when the majority of the handler's sales were in the Order 49 marketing area. The cooperative asserted that changes in the order under which handlers are regulated create problems for other handlers and for producers because of the instability in the handler's regulatory status.

The NFO witness attributed Hoosier's proposals to tighten pool distributing plant requirements to former Hoosier customers changing their source of milk supply to other suppliers or to nonmembers, to an increase in the manufacture of Class II products in several of the Order 49 distributing plants, and to the competition of these distributing plants with Hoosier plants in the Class II finished product market. The NFO witness suggested that because Class II is a substantial portion of some distributing plants' product lines, the Order 49 distributing plant Class I disposition requirement should be loosened, not tightened. The NFO witness went on to say that any perceived problem generated by increased Class II use in the market was not caused by a few distributing plants, but by the increase in Class II use by nonpool plants, particularly by Hoosier members' plants.

According to NFO, the one-month lock-in provision for Order 49 distributing plants has been a stabilizing provision that has prevented pool plants from changing regulation under different orders, and should be retained. NFO criticized the Hoosier proposal as being anti-competitive, characterizing it as designed either to cause difficulty for Hoosier competitors in participating in the Indiana pool, or discourage competitors from competing with Hoosier by producing Class II products such as condensed milk. The NFO witness favored retaining the present pooling framework and changing the qualifying percentages for pool distributing plants to agree with those effective under Orders 33 and 36.

The witness for MFI stated that a number of small distributing plants increased their Class II production as a means of utilizing their surplus butterfat, and that when they were supplied by Hoosier these distributing plants helped balance the market by using seasonal and weekend surplus milk. Since they no longer receive their supply of milk from Hoosier, they must balance their own supply. The MFI witness went on to state that since Order 49 can be characterized as a two-part market, those that are Hoosier customers and those who are not, order provisions should not contribute to the restrictive practices of Hoosier. He added that the Hoosier proposals would make retention of pool status more difficult for certain distributing plants that use significant amounts of milk in Class II, which would benefit Hoosier plants and customers who compete for the same sales.

The MFI witness pointed out that when the distributing plant provisions were written, fluid cream was considered a Class I product. Since fluid cream is now a Class II product, a plant would have had to increase its Class I route sales to maintain the same percentage for qualification. He also stated that during the last year, Class II had made a positive contribution to the producers' blend price and that Class II should not be considered a detriment to the pool.

The MFI witness argued that Class II use in pool plants had been stable over the previous 5 years, and that the increased Class II use in the market is due to milk used by nonpool plants who have received milk diverted to them by the market's cooperative associations. The witness stated that Class II use of pool milk in nonpool plants had increased by a factor of 10 during 1989.

The post-hearing brief filed on behalf of MFI stated that while there is no evidence plants have taken advantage of the one-month lock-in provision, that provision serves the purpose of assuring that a distributing plant will not lose its pool status as a result of the loss of one large customer, but will have a month to try to increase its fluid sales to the extent necessary to meet pooling qualifications. The brief argued that ice cream operations are an integral part of pool plant operations and use seasonal surpluses caused by seasonally-reduced Class I demand and increased production. According to the brief, Hoosier would not denigrate the importance of Class II use if they thought it would be lost to the market instead of gravitating to Hoosier plants.

A witness for New Paris Creamery Company, a pool distributing plant under Order 49 and member of MFI, stated that when New Paris was a full supply customer of Hoosier, Hoosier would move milk in such a way that New Paris would remain qualified under the order. Now that Hoosier is not supplying New Paris, he testified, Hoosier characterizes the same type of milk movements in which it once participated as "sham pooling transactions."

A representative of Miller Corporation, a distributing plant operator pooled under Order 49 and a member of MFI, testified in opposition to Hoosier's proposal to tighten the pool distributing plant requirements. The Miller witness stated that he had been a full supply customer of Hoosier for many years until Miller developed a sizable market for its Class II condensed milk. He testified that Hoosier expressed unhappiness with the amount of Class II use at his plant and started assessing an extra charge for Class II products moving to other orders. The witness for Miller stated that Miller changed suppliers because Hoosier had pulled a considerable amount of milk from the Miller plant and was unhappy with Miller, and another supply became available. He continued by saying that

to a small distributing plant the loss of one account could mean the difference between being a pool plant and being a partially regulated plant. The witness indicated that in Miller's case, they would probably try very hard to maintain their pool status. He also stated that in many cases Miller's condensed product is in competition with condensed skim milk marketed by MMI, a member of Hoosier.

The record contains no justification for a higher pool distributing plant qualification percentage for Order 49 than for Order 33. These two adjoining orders share much of the same milkshed, and many of the handlers regulated under either of the orders have route disposition within the other order's marketing area. Approximately 10 percent of Indiana handlers' total route sales are within the Order 33 marketing area, and amount to over 6 percent of the total sales within the Ohio Valley marketing area.

The existence of significantly higher pooling standards in the Indiana order than in Ohio Valley can serve only as an artificial barrier that may have the effect of keeping plants pooled under Order 33 when they actually have more sales in the Indiana marketing area. As in Order 33, pool distributing plant standards should not be used as a means of restricting producer access to the pool, but solely as a means of determining which plants are significantly engaged in distributing fluid milk products in the marketing area, and which distributing plants have a close enough association with the market to justify their inclusion in the marketwide pool. Therefore, the pool distributing plant standards under the Indiana order should be relaxed to the level currently effective under the neighboring Ohio Valley order.

The receipts to be considered in calculating pool plant qualification should correspond with those included in the Ohio Valley order. The receipts to be considered, therefore, are fluid milk products received at and diverted from the distributing plant, but not bulk fluid milk products received as Class II or Class III by transfer or diversion from other plants. All producer milk for which the handler is responsible to the pool should be considered as receipts of the distributing plant, along with other fluid milk receipts for which Class II or Class III classification is not requested. Such receipts represent the supply of milk available to the handler for fluid use. Receipts of milk for which Class II or Class III classification is requested by both the selling and buying handler, however, represent a supply of milk for which fluid use has already been precluded.

The current provisions of the Indiana pool distributing plant definition that allow a plant to retain pool status for one month after meeting the pool plant percentage requirement and allow plants which have met pooling requirements for the previous months of September through May to retain pool status for the summer months of lower Class I use should remain in the order in modified form, as long as the plant meets the order's in-area route disposition requirement during the month. Plants regulated by the Indiana order clearly have greater than average proportions of their milk used in Class II. Indiana handlers apparently use milk for Class II products consumed in other marketing areas with lower percentages of Class II use.

Although Hoosier argued that Class II use does not enhance the pool, such use clearly had added significantly to the uniform price during the year preceding the hearing, and may do so again. This increased value should be recognized by accommodating the pool status of handlers using milk in cream products and soft manufactured products.

Comments objecting to the recommended decision's failure to eliminate the "lock-in" provision from Federal Order 49 were filed by Hoosier Milk Marketing Agency and Milk Marketing Inc. The exceptors stated that the recommendation continues to allow distributing plants to be pooled on a year-round basis by meeting the Order's performance standard only five months out of 12 or by less than a 25 percent route disposition on an annual basis. The comments claimed that such an unreasonable standard in Order 49, which they described as a deficit market with high Class I utilization, makes a mockery of the Federal Order system.

Hoosier proposed a modification of the recommended decision that would allow a handler with high Class II utilization to be given a choice of retaining year-round pool status either on the basis of every other month performance or by meeting the route disposition percentage requirements during each of the months of September through May. According to Hoosier, the proposed modification would address the concerns of handlers with high Class II usage while, at the same time, insuring that milk is made available to meet the demands of the fluid market during months of greatest demand for fluid products.

MMI comments noted that while the recommended decision calls for more uniformity for the purpose of relaxing pooling standards, this criterion is not applied when proposals call for greater participation by handlers and producers. MMI stated that the evidence weighs heavily in favor of more participation by handlers and producers in serving the Class I needs of the Indiana market, not less. Hoosier claimed that the Department rejected its proposal for pool distributing plant "reform" aimed at reducing the cost of supplying milk to fluid handlers and favored a regulatory provision that can only perpetuate and burden fluid handlers with unnecessary costs.

MMI and Hoosier noted that, contrary to the findings, a continuing need for supplemental milk to supply fluid milk requirements does exist in Order 49. MMI argued that although the NFO witness testified that his organization was willing and able to supply milk, NFO has never seemed willing to make a commitment to the Hoosier Agency, nor make milk available at a reasonable price when it is needed. MMI stated that it has had more success purchasing supplemental supplies from NFO in Wisconsin than from NFO locally, and speculated that the problem of supplying milk to fluid handlers in Indiana seems to be a pricing and commitment problem rather than a pooling standards problem.

Hoosier's and MMI's comments continue to reflect a view of distributing plant pooling standards as a means of limiting producer association with the market. Order provisions that would reduce the likelihood that a distributing plant with a significant share of its business in fluid milk sales in the marketing area would be able to maintain regular pool status would surely lead to disorderly marketing conditions. Other parties involved in marketing milk in the marketing area, both producers and handlers, could easily find themselves having to deal with continually changing conditions if the pool status of a significant fluid milk distributor changes on a frequent basis.

The provision that allows a pool plant to retain its pool status for one month after meeting pool qualifications for a month is unusual, but does exist in modified form in the Ohio Valley and Middle Atlantic orders. In a marketing area such as Indiana, where handlers have a greater than normal share of Class II use, it is entirely possible that a distributing plant losing a fluid milk customer could fail to meet pooling qualifications for a month. Disorderly marketing conditions, such as producers losing their pooling base because of a sudden loss of a handler's route dispositions, are more likely to result in the absence of the provision than to be caused by the provision. However, the

current provision should be amended to require that a handler meet at least the in-area route disposition requirement and be pooled for at least the two immediately preceding months to retain pool status. These changes should assure that any distributing plant to which the provision applies will be one with a continuing and significant role in distributing fluid milk products in the marketing area.

Similarly, the "free ride" provision for summer months is not contained in most orders, but has some utility in an order regulating the handling of milk in an area such as Indiana, which produces more than its per capita share of Class II products. Class I sales generally are at their lowest level while milk production usually increases during summer months, leaving handlers to deal with more surplus milk than during the rest of the year. Summer is also a time when demand is higher for Class II products such as ice cream and cottage cheese, and production of these products is at its highest level. Handlers who have met the distributing plant qualification percentages during the months of greatest demand for fluid products should not have to be concerned about meeting those percentages when fluid demand is low.

In comments filed by MMI, the cooperative recommended that August not be considered a "free-ride" month but rather a "transition" month when shipments should be required, but not at the same level as in other months, nor be a part of the qualification period for determining pool status during the months of June and July. This suggestion corresponds to data contained in the record. The percentage of the Indiana market's production needed for Class I use was higher in August for the period 1985–89 than for any of the months of June or July during the same period. In addition, the August Class I use percentage for any year during this period was as high as, or higher than, the Class I use percentage for the month of May. As recommended by MMI, however, it would be more appropriate to treat August as a "transition" period between months of being allowed to qualify on the previous year's dispositions and having to again meet the order's performance requirements. Therefore, August should become a month in which distributing plant pool qualification is dependent upon meeting percentage distribution requirements, but at the lower level of 30 percent.

d. Pool Supply Plant

Order 33. A proposal by Milk Marketing, Inc. (MMI), to increase the percentage of a supply plant's receipts that must be shipped to pool distributing plants from 35 percent to 50 percent if the supply plant is to meet pooling requirements should be denied, as should the portion of the proposal that would add August to the months in which shipping percentages must be met. The proposed requirement that qualifying shipments be met on a net basis should be adopted. The portion of the proposed net shipments provision that contains an allowance for transfers or diversions from distributing plants to supply plants during holidays because of reduced Class I consumption at such times should not be adopted, although the significant reduction in fluid milk consumption during the Christmas holiday season should be recognized by reducing the required shipping percentage for the month of December to 30 percent.

A witness for MMI explained that although there were no proprietary supply plants pooled under Order 33 at the time of the hearing, one was expected to qualify for pooling in the following month. The witness asserted that higher shipping standards are necessary because the market was experiencing a shortage of milk supplies at the time of the hearing. He observed that a pool supply plant should supply the fluid market and not ride the pool, reducing blend prices to producers. The MMI witness explained that as a result of increasing the percentage, only those supply plants actually supplying the market would be pooled. He stressed the need for a net shipment provision as a means of preventing a supply plant from shipping milk to a distributing plant and then having the distributing plant return milk to the supply plant, thus defeating the purpose of allowing the supply plant to participate in the pool. The witness stated that August should be added to the qualifying months to assure a supply of milk for the market when it is needed.

A representative of the Kroger Company, a handler operating a pool distributing plant under Order 33, testified in support of the proposal to increase Order 33 pool supply plant shipping percentages. The witness stated that Kroger has spent a great deal of money procuring a supply of milk for its Order 33 distributing plant, and expressed the belief that the adoption of the MMI proposal would result in more local milk being more readily available to the Class I market, reducing costs to handlers and therefore to consumers.

Briefs filed on behalf of MMI and Hoosier supported adoption of the proposal for the purpose of increasing milk supplies available to bottling plants and reducing the need for costly importation of supplemental supplies.

Evidence in the record fails to support any need for increased pool supply plant shipping percentages for the Ohio Valley market. In addition to the absence of any recent experience of such plants under the order or, consequently, any pooling difficulties associated with the order's present shipping percentages, the Class I use percentages for prior years do not support any increase in supply plant shipping requirements.

If supply plants were to become part of the Ohio Valley market, however, they should ship the required percentages without exchanging milk shipments with distributing plants for the purpose of evading the order's pooling standards. Therefore, the proposed net shipment provision should be adopted, without, however, including the allowances for holidays. The proposed percentage allowances for shipments of milk from distributing plants back to supply plants are needlessly complicated. For the purpose of allowing for reduced fluid milk consumption during late December, however, the shipping percentage for the month of December should be reduced to 30 percent.

The record of Class I use in the market also fails to support any need to remove August from the months during which supply plant operators who have met the order's requirements for the preceding period of relatively high Class I use may be pooled without meeting the order's shipping percentages. Increased shipments of milk for fluid use may be needed at the very end of August in order to satisfy school contracts, but such needs do not constitute a basis for requiring shipments at the full fall level for the entire month of August.

Comments opposing the Department's decision to deny a proposed increase in Federal Order 33 supply plant shipping requirements were filed by The Kroger Company (Kroger). Kroger reiterated its hearing testimony that an increase in supply plant shipping requirements combined with making August an additional qualifying month would encourage milk to move to the Class I market during months of greatest demand at a reduced cost to distributing plants, benefitting consumers of fluid dairy products. Kroger indicated that the Department's decision would allow supply plants to reap the financial benefits of participation in the pool without shipping adequate supplies of milk for the fluid market, and stated that the decision violates the primary goal of the Federal milk order program of

providing an adequate supply of milk for fluid use at a reasonable cost.

At the time of the hearing, more than three-quarters of the 16 Order 33 pool distributing plants in operation had either full or partial supply contracts with cooperative associations. It is most likely that those few distributing plants lacking such supply arrangements rely heavily on supplies of milk from nonmember producers, with supplemental supplies on an irregular basis from cooperative associations and, when available, supply plants. Given the market's supply arrangements, it is unreasonable to expect that any supply plant would be able to deliver a significant enough share of its milk on a consistent basis to distributing plants to maintain pool status if delivery requirements are set at a level near the Class I use percentage for the entire market.

Order 36. Shipping requirements for Eastern Ohio-Western Pennsylvania pool supply plants should be increased from 30 to 35 percent for the months of January and February with a provision added to require net shipments for all months, but the increases proposed by MMI and United Dairy should not be adopted. An MMI proposal that supply plants be required to transfer at least one tankerload of milk (45,000 pounds) during the fall months to maintain pool status should be adopted. A proposal by Brewster Dairy, a proprietary cheese manufacturer and supply plant operator, to allow supply plants to meet some of their qualifications for pooling on the basis of shipments to nonpool distributing plants should be denied.

Proposals by MMI and United Dairy, a proprietary pool distributing plant, would increase the amount of milk required to be moved from pool supply plants to pool distributing plants from 40 percent to 50 percent for September, October, and November, and from 30 percent to 40 percent for the remaining months of the year. The proposals also included a net shipment provision to eliminate sales back to the supply plants from pool distributing plants. The MMI proposal included a requirement that supply plants must ship at least 45,000 pounds of milk to a pool distributing plant during the months of September, October and November.

The witness for MMI explained that in recent years more and more supply plants are being pooled on Order 36. The witness went on to explain that the increase in supply plants has not increased the amount of milk available to pool distributing plants because some of these supply plants have accumulated a supply of Grade A milk and then have not performed the function of supplying the market. According to the witness, the intended function of a supply plant is to carry a reserve supply of milk for the market and provide milk for Class I use when the market needs it. The witness stated that these supply plants have not joined the market to serve the Class I needs of the market, but to help affiliated cheese plants obtain additional supplies of milk. The witness noted that for a supply plant to provide for the fluid needs of the market, it must be able to segregate, cool, store, load, and unload Grade A milk. According to the witness, the provision in the MMI proposal that would require supply plants to transfer at least one tankerload of milk during September, October, and November would demonstrate that a supply plant has the necessary facilities to supply the market.

The MMI witness continued by noting that the supply of producer milk had declined slightly over the last eight years in Order 36, while the combined Class I and Class II needs of Order 36 had increased by 17 percent during the same period. The witness went on to explain that supply plant shipping requirements had not changed during this time and that the requirements should be changed to reflect the change in the market, particularly since supply plants are joining the market to ride the pool.

A witness for United Dairy, who also represented Hillside Dairy and R. Bruce Fike Dairy, two other Order 36 pool distributing plants, testified in support of the United Dairy proposal, which he characterized as similar or identical to the MMI proposal. According to the witness, the net shipments provision is necessary to eliminate sales back to supply plants from pool distributing plants, a practice which he said does not increase the amount of milk available to the fluid market, and therefore does not benefit the market.

The United Dairy witness stated that in Order 36, supply plants do not fulfill their function as a reserve and balancing supply for the Class I market. The witness explained that the supply plants draw millions of dollars from the Order 36 pool and yet do not supply the market when the milk is needed. The witness testified that the supply plants use the pool money to pay their producers, which, combined with premiums derived from profitable cheese operations, allows the supply plants to outpay the distributing plants and thus attract a significant portion of a diminishing Grade A milk supply. The United Dairy witness concluded that the order must contain minimum supply plant shipping percentages that reflect the needs of the market, not only in the quantity needed but also at the times needed.

A witness for Hillside Dairy testified in support of United's proposal. The witness stated that supply plants are not releasing sufficient supplies of milk in the fall. He explained that distributing plants cannot compete with the supply plants for a supply of milk due not only to the draw the supply plants receive from the pool to pay their producers, but also the premiums they can afford to offer. The witness indicated that the supply plants can pay premiums because they can derive additional benefits from milk that distributing plants can not derive, such as higher cheese yields from higher protein milk. The Hillside witness testified that when the shipping percentages were reduced to their present levels in 1978, milk was plentiful. Since that time, he stated, the supply situation had changed, and therefore the proposed increase in the shipping percentage would enhance the marketing conditions in Order 36.

A witness representing Brewster Dairy, a pool supply plant under Order 36, testified in opposition to the MMI and United Dairy proposals, and in support of Brewster's proposal to include shipments by Order 36 supply plants to nonpool distributing plants in determining supply plant pool qualifications. The witness explained that supply plants such as Brewster serve an important function in the market by balancing the market when the demand for Class I milk does not meet the available Grade A supply. The witness noted that the supply plants not only balance the market seasonally but also on a daily, weekly, and monthly basis. The witness indicated that United Dairy's problems in acquiring milk at certain times of the year are not due to a shortage in the market, but to United Dairy's unwillingness to pay a reasonable price for the milk. The witness characterized United Dairy's problem as one of its own making, a problem that should not be remedied by regulation but by the marketplace.

The Brewster Dairy witness claimed that increasing the supply plant shipping percentage would not increase Class I use in the market but would require one sector of the market to supply milk for fluid use, thus leaving more milk for another sector of the market to use for manufacturing. Opposition to the MMI and United Dairy proposals by the Brewster Dairy witness also concerned a perceived inequity in the difference between the proposed shipping percentages for supply plants and the shipping percentages for cooperative pool plants.

The witness pointed out that in some neighboring Federal orders the shipping percentages for proprietary supply plants are the same as for cooperative supply plants and in at least one Federal order the requirements for a cooperative plant are greater than for a proprietary plant.

The Brewster witness explained that allowing proprietary pool supply plants to ship milk to other order distributing plants for qualification in Class I would enhance the Order 36 blend price and help to achieve greater equity between the two types of supply plants (proprietary and cooperative). The Brewster witness continued by stating that proprietary pool supply plants should be allowed qualifying shipments of milk to other order distributing plants for the same reasons that such shipments are allowed for cooperative supply plants. The Brewster Dairy witness' testimony in favor of the Brewster proposal was supported by two other Order 36 proprietary pool supply plants, Hans Rothenbuhler & Sons (Rothenbuhler) and Miceli Dairy Products Company.

A brief filed on behalf of the Dairy Industry Association of Pennsylvania expressed support of the MMI and United Dairy proposals to increase supply plant shipping percentages because of the difficulty of obtaining supplies of milk for Class I and Class II use, as demonstrated by temporary revisions of the shipping percentages during fall months in two recent years. The brief argued that the increased number of supply plants on the Eastern Ohio-Western Pennsylvania market has not had the effect of serving Class I needs. The supply plants were described as riding the pool during the flush production months, drawing payments from Class I handlers to pay producers the order's blend price plus premiums that enable the supply plant operators to capture a milk supply to fill their own manufacturing needs, and shipping milk out of the market during the fall months rather than supplying Order 36 distributing plants. The Association brief stressed the need for adopting a net shipments provision to make milk available for fluid use and fulfill the intent of the supply plant provision.

A brief filed on behalf of National Farmers Organization (NFO) took no position on the appropriate levels of shipment for proprietary supply plants, but suggested that higher shipping percentages could be justified for fall months because the proprietary supply plants are not required to meet qualifying percentages year-round, as cooperative plants are required to do.

The MMI and United Dairy proposals were opposed in briefs filed by Brewster Dairy and Rothenbuhler. Both briefs stated that United Dairy doesn't plan for and negotiate supplies of milk, and is unwilling to pay the prevailing rate for milk. They argued that the proposals are based on a temporary downward trend in production which, at the time of the hearing, was in the process of reversing itself. Brewster stated that no abuses were detailed in the record that warranted adoption of a net shipping standard, and asserted that there are valid reasons for distributing plants to return shipments. The brief charged that MMI wants supply plants making Class II products to have to release their supplies of milk to competing distributing plants.

The Brewster Dairy proposal to allow shipments to nonpool distributing plants to be included in determining whether supply plants meet the order's qualifying percentages was supported in briefs filed by Brewster Dairy and Rothenbuhler. The Brewster brief stated that although Brewster sells Class I milk to nonpool plants in the south and southeastern United States, the handler has also had to depool Order 36 milk because of deliveries to Order 33 pool plants because no local customer required the supplies.

Briefs filed on behalf of the Dairy Industry Association of Western Pennsylvania, United Dairy, Fike Dairy and Hillside Dairy, and MMI opposed adoption of the Brewster proposal. According to the briefs, if the proposal were adopted a supply plant could ride the pool during the flush production months while shipping only 20 percent of its receipts to pool distributing plants during the fall. The Association brief argued that Order 36 pool distributing plants should not have to pay prices consistent with both Order 36 and other markets for seasonal and spot supplies of milk.

Although the percentage of Class I use under Order 36 is generally slightly less than the same percentage under Order 33, the percentage of a supply plant's receipts that must be shipped to pool distributing plants to qualify the supply plant for pooling is 5 percentage points higher in Order 36 than in Order 33 for the months of September through November. This seeming discrepancy is explainable by differing marketing conditions and structure in the two markets. The record of this proceeding contains testimony about fluid milk handlers' difficulties in obtaining adequate supplies of milk under Order 36, while no such problems were described in relation to Order 33. In addition, only about half of the 26 Eastern Ohio-Western Pennsylvania pool distributing plants listed at the time of the hearing were described as having contracts with MMI for all or some of their milk supply, while more than three-quarters of the 16 Ohio Valley pool distributing plants were locked into a cooperative supply of milk. Clearly, a greater need exists for reliable supplies of milk at Order 36 distributing plants than for Order 33 plants, both in the proportion and number of plants that need to procure milk from sources other than the principal cooperative association.

Based on the apparent need for continued supplies of milk for Order 36 distributing plants from supply plants, there appears to be no reason to reduce the current shipping percentages to the level of Order 33. At the same time, the need to increase the shipping percentages to the levels proposed by MMI and United Dairy is not evident either. Even though the percentage of producer milk used in Class I had increased slightly in 1989 above 1987 and 1988 levels, it still represented a 10-percent decrease from the 1969–1975 period, when supply plant shipping standards were 10 percentage points higher.

It is reasonable to require that supply plants actually ship to distributing plants the percentage of their receipts specified by the order. Pooling standards that can be negated by offsetting shipments from distributing plants are meaningless. Therefore, the standards adopted should represent net shipments from supply plants to distributing plants.

The data in the record support a higher shipping standard for the months of December through February than for the "free ride" months of March through August. Class I use percentages for the market are noticeably higher during this period while schools are still in session, requiring a relatively high level of fluid milk products, and before milk production starts to increase seasonally. However, because of the customary decline in Class I use late in December, the percentage for only January and February should be increased. Therefore, the 30-percent shipping standard for all months except September through November should be increased to 35 percent for January and February and remain unchanged for the months of March through August, and December.

The MMI proposal that each supply plant be required to ship at least one tankerload of milk (at least 45,000 pounds) during the months of September, October and November to demonstrate that the plant has the

facilities to segregate, cool, store, load and unload Grade A milk is a reasonable criterion for a supply plant, and should be adopted. Proponent's testimony is unclear as to whether the intent of the proposal is to require the minimum volume of shipment in each of the three months, or in just one of the months. Establishing that a plant has the ability to handle the milk, however, should be necessary for only one of the three months, and the recommended language reflects such a requirement.

The Brewster Dairy proposal that proprietary supply plants be allowed to fulfill up to half of their required deliveries to pool distributing plants with shipments to nonpool distributing plants would not assure that Order 36 supply plants are contributing sufficiently to the supply of milk for fluid use in the Order 36 marketing area, and should be denied. Proprietary supply plants meet the order's shipping requirements for the purpose of being able to pay their producers the market's blend price, which is generated by the Class I use of pool distributing plant operators in the market under which they are pooled. It is the market's distributing plant operators who contribute the portion of the marketwide pool that exceeds the Class III price and that enables supply plant operators to pay their producers a higher price than manufacturing uses normally would generate.

Brewster Dairy apparently sells milk for fluid uses to more southerly markets during the fall months when those markets are experiencing even tighter milk supply conditions than exist in the Order 36 market. If Brewster's proposal were adopted, the handler (and other supply plant operators) would be able to use such sales as part of their qualifying shipping percentage under the Order 36 market, reap the advantages of collecting large premium payments from the southern handlers, and still maintain pool status under Order 36. Brewster would then be able to ride the Order 36 pool during the flush production months, shipping nothing to distributing plants during the months of March through August, while collecting equalization payments from the Order 36 pool to enhance its payments to its own producers.

Comments opposing an increase in supply plant shipping requirements from thirty to thirty-five percent for the months of January and February in Federal Order 36 were filed by Hans Rothenbuhler & Son (Rothenbuhler), Brewster Dairy, Miceli Dairy Products Company (Miceli), cheese manufacturing supply plant operators; and by Dairymens Oberlin Farms Dairy (Oberlin), a distributing plant operator. The comments argued that no evidence was presented which would indicate that distributing plants experienced difficulty in obtaining Class I milk during January or February. Moreover, the comments claimed that the testimony of MMI, United, and Hillside focused on the difficulties encountered during certain fall months.

Rothenbuhler stressed that there has been no request for a temporary increase in shipping requirements during the past two years. Rothenbuhler noted that the Department recently proposed reducing shipping requirements in the Northeast-West Iowa (sic., probably Nebraska-Western Iowa), Pacific Northwest, and Great Basin orders.

Brewster Dairy claimed that there is no justification for the recommended increase in supply plant shipping requirements while at the same time the department denied Brewster's proposal to permit proprietary supply plants the same flexibility in serving Class I customers inside and outside the market as currently enjoyed by cooperatives. Brewster stated that the Department's reasoning that cooperative associations have year-round performance standards and proprietary supply plants qualify automatically from March through August is an effectively meaningless distinction because the "free ride" months are of inconsequential benefit to suppliers such as Brewster who make commitments to supply fluid customers on a year-round basis.

Comments opposing a net shipping requirement which provides that the shipments used in determining qualifying percentages shall be milk received by distributing pool plants less any transfers or diversions were filed by Miceli, Oberlin, Rothenbuhler, and Brewster. The comments claimed that supply plants serve an important balancing function by shipping to distributing plants during days of the week when demand is greatest and receiving milk from distributing plants on weekends and holidays when demand is low.

The Miceli comments stated that due to management decisions to acquire a large Italian cheese plant and producer pricing policies, the predominant cooperative operating in Federal Order 36 has encountered financial difficulties which make it difficult for the cooperative to compete for producer milk in the milkshed. Miceli and Oberlin indicated the cooperative experienced a significant drop in membership over the past two years. The exceptors claimed that passage of this amendment would reduce competition by causing the termination of relationships between proprietary supply plants and distributing plants, forcing bottlers and cheese manufacturers to deal solely with the cooperative at much higher prices. According to exceptors, such an outcome would leave the cooperative's cheese plant as the primary outlet for fluid handlers' surplus supplies.

Miceli pointed out that although this amendment was proposed in 1990, when there was a temporary shortage of milk in Order 36, there is now an abundance of milk bordering on over-supply. Miceli stated that if the net shipping percentage amendment has to be instituted it should be done at the discretion of the local milk market administrator and not arbitrarily instituted at the behest of the only major cooperative in Order 36.

Brewster Dairy stated that if a need is demonstrated in the record for a net shipment provision the Secretary should modify the Administrator's recommendations by adopting the proposed exceptions to net shipments that are contained in the Chicago order. Brewster claimed that such modification would better encourage such services to the fluid market by operators of supply-manufacturing plants as shipments of bulk milk to the market when needed and receipts of surplus milk supplies when fluid demand is low.

Hans Rothenbuhler & Son (Rothenbuhler) complained that the proposed provision that requires supply plants in Federal Order 36 to ship at least one tankerload of milk during one of the months of September, October, or November is unnecessary. Rothenbuhler agreed that supply plants should be expected to perform the tasks of segregating, cooling, storing, loading and unloading Grade A milk. However, Rothenbuhler argued, no evidence was presented which suggests supply plants cannot currently perform these tasks. Rothenbuhler claimed that requiring milk to be actually received at a supply plant simply wastes time and resources, stating that additional transfer causes an increased risk of contamination.

Although testimony at the hearing focused on the perceived need for increasing supply plant shipping percentages for the months of September through November, the marketwide Class I use percentages for those months do not support such an increase. However, the percentages of producer milk used in Class I during the months of January and February do support an increase in the required shipping percentages for those months to a level 5 percentage points lower than the September-November level. These are months when producer deliveries

continue to be at their lowest and seasonal demand for fluid milk products remains strong. Therefore, it is appropriate to have higher shipping standards for this period, which is included in the months during which the "free ride" status is earned for later months, than for the "free ride" period. In any case, the order still contains a provision allowing the shipping percentage to be increased or decreased by up to 10 percentage points, as necessary.

The proposal of reduced shipping standards for other orders are irrelevant in determining the appropriate level of shipments for the market in question. In addition, the fact that some supply plants may have year-round commitments to supply their distributing plant customers does not assure that milk will be made available to the fluid market, in the amounts needed, during the market's months of highest Class I use.

The requirement that supply plant shipments to distributing plants be computed on a net basis does not preclude supply plants from serving a balancing function, and should not require an end to cooperative relationships between supply and distributing plant operators. The provision contained in the Chicago order that provides an allowance for milk movements between the two types of plants should be unnecessary because of the reduced level of required shipments during December and other months affected by holidays. (And, of course, all months contain Saturdays). In addition, such a provision seems unduly complicated for the needs of this market.

It is difficult to see how the market can be assured that supply plants pooled under the order are able to perform the tasks of segregating, cooling, storing, loading and unloading Grade A milk unless they are required to demonstrate their ability at some point during the year. The necessity of receiving and reloading one tankerload of milk during the months in which the market has the greatest need for a reliable supply of milk for fluid use is not onerous. The value of the time and resources expended in such an effort is exceedingly small in comparison with the benefit gained by a cheese plant operator in being able to pay its producers the blend price. Further, in a plant that is fully capable of performing the necessary operations connected with supplying milk to the fluid market, surely the risk of contamination in receiving one load of milk is not excessive.

Order 49. The portion of a Hoosier proposal to amend the Indiana order pool supply plant provision that would reduce the shipping percentage for the "free ride" period from 50 percent to 35 percent should be adopted. The percentage of milk that must be moved by supply plants to distributing plants during the months of September through February should be reduced from 50 percent to 40 percent, to bring the order more closely into agreement with the other orders involved in this proceeding. Also, pooling qualification percentages should be subject to temporary adjustment by the market administrator when marketing conditions warrant.

Proposals by New Paris Creamery and the Milk Foundation of Indiana to allow diversions of milk, as well as transfers, from supply plants to distributing plants as qualifying shipments should be adopted, up to the limit of the volume of milk transferred. An aspect of the Hoosier proposal that would shorten the "free ride" period to May through July instead of April through August should be denied. The Hoosier proposal that shipments of condensed milk re-used in fluid milk products be included in supply plant qualifying shipments has been rendered moot in light of the recommended decision [Issued November 6, 1991; published November 22, 1991 (56 FR 58972)] on the record of the national hearing held in the Fall of 1990. [Docket No. AO–14–A64, etc. DA–90–017;RIN 0581–AA37].

The Hoosier witness characterized the Indiana market as a deficit market in which outside sources of milk have been needed for many years. He explained that since Hoosier supplies the majority of the supplemental milk for the market at a cost substantially above order prices, Hoosier's producers bear the brunt of the cost while other producers on the market share in the blend price, but not in the cost of supplying the market's Class I needs. The witness stated that present order provisions contribute to the problem by allowing supply plants to ride the pool.

The Hoosier representative testified that pool supply plant qualifying percentages should be computed on the basis of all producer receipts at the supply plant, including milk diverted to other plants and commercial food establishments. Other changes to the pool supply plant definition proposed by Hoosier included shortening the "free ride" period to May through July instead of April through August, allowing condensed skim milk to be used for qualification, and providing for the shipping percentages to be changed at the discretion of the market administrator.

The witness for Hoosier explained that the shipment of milk by supply plants to pool distributing plants should be on a net basis. He stated that adoption of a net shipment provision would prevent supply plants from establishing schemes to ship fluid milk to pool distributing plants for qualification and then have the distributing plants ship the fluid milk back to the supply plant or to a nonpool plant. The witness went on to say that the Hoosier proposal would allow condensed skim milk to be used by the supply plant as part of its qualification shipments. He stated that even though this type of movement does not occur presently under the order, the use of condensed skim milk or specialty condensed mixes for fortification is a coming trend, and provision should be made for this type of movement. The witness testified that Hoosier did not intend that condensed skim milk be considered a fluid milk product.

NFO opposition to Hoosier's proposal centered around the proposed reduction in the "free-ride" period. The NFO witness stated that tightening the shipping requirements by reducing the "free-ride" period has no sound basis, and would place Order 49 supply plants at a competitive disadvantage to supply plants regulated under Order 33. The NFO witness spoke in favor of the proposed net shipments provision provided that reasonable shipping requirements are used (presumably 35 percent in March through July and December, with no change for other months). The NFO witness also supported the portion of the Hoosier proposal that would give the Market Administrator authority to adjust shipping percentages as needed.

MFI presented testimony opposing the proposal to tighten the supply plant shipping requirements. The MFI witness stated that the only change in marketing conditions in the Indiana market had been that neither of the two supply plants operating under the order at the time of the hearing marketed their milk through Hoosier, and therefore at least one of them had had to make uneconomic movements of milk to remain a supply plant under Order 49. The witness explained that even though milk is moved to qualify a plant, the movement does not result in any more milk being available for the distributing plants, and in fact some milk moves when the distributing plants do not need it. The MFI witness stated that in view of Indiana market conditions, loosening the supply plant standards would be more appropriate than

tightening the standards as proposed by Hoosier.

The MFI witness explained that the MFI proposal to amend the supply plant qualification provisions, in contrast to Hoosier's proposal, would improve the efficiency of the market by allowing supply plants to divert milk to distributing plants to meet the supply plant qualification percentage. The witness testified that many other orders allow supply plants to qualify on the basis of milk movements to distributing plants direct from farms, and that such movements are recognized as the most efficient and least cost method of supplying milk to distributing plants.

In the 20 years between the merger of the Indianapolis, Fort Wayne and Northwestern Indiana orders to form the present Indiana marketing area and the hearing in this proceeding, the percentage of Indiana producer milk used in Class I declined approximately 10 percentage points. Over the same time period, the percentages of producer milk used in Class I in the Ohio Valley and Eastern Ohio-Western Pennsylvania marketing areas declined about 15 percentage points and 10 percentage points, respectively. (Official Notice has been taken of the Annual Federal Milk order Market Statistics for the years 1969–1990). Over the same twenty-year time period, Order 33 supply plant pooling requirements have been reduced by 15 percentage points, while the same requirements for Order 36 pool supply plants have been reduced by 10 percentage points.

It is apparent from these trends that a failure to loosen pooling provisions does not cause Class I use percentages to remain at a higher level. Also, with Class I utilization of about 60 percent annually, the Indiana market is clearly not seriously deficit in terms of milk supply for fluid uses. Although Hoosier obviously has imported large quantities of milk, sometimes at substantial cost, the market's need for such imported milk for fluid use is not clearly shown. The record indicates that some handlers have found it difficult to find fluid outlets for supplies of milk they wish to pool. Testimony by an NFO witness indicates that NFO would have been willing and able to supply some or all of the milk required by Hoosier to fulfill its supply contracts, in order to meet qualification requirements for its own milk supply. According to Hoosier testimony, 9 of the 10 fluid milk plants on the Indiana market at the time of the hearing were full or partial supply customers of Hoosier's, leaving 1 customer to be supplied by other sources.

In keeping with amendments to pool qualification provisions in Order 33 and Order 36, the Indiana pool supply plant shipping percentages should be reduced to 40 percent for the months of September through February, and to 35 percent for the months of March through August. The record provides no basis for changing the order's current "free ride" period, during which supply plants meeting the order's pooling requirements during the months of September through February retain their pool status for the following months of April through August, to May through July as proposed by Hoosier. The Class I use statistics for the previous 5 years show that the percentage of milk needed for fluid use drops sharply between the months of March and April in the Indiana market and rises most markedly between the months of August and September. In this respect the Indiana market differs slightly from the 2 Ohio markets, where the seasonal drop in Class I use is more marked between the months of February and March.

The percentage of a pool supply plant's milk supply that must be delivered to pool distributing plants should be a net requirement. As in the 2 Ohio markets, failure to adopt a net shipment requirement would result in meaningless shipping standards, and would not help to assure an adequate supply of milk for fluid use.

For the purpose of facilitating efficiencies in milk marketing, diversions of producer milk should be considered in determining supply plant qualifications, up to the amount of milk moved by transfer to distributing plants. Moving milk directly from farms to distributing plants is a more efficient way of getting milk to where it is needed than having to unload and reload the milk at supply plants. In addition, extra unloading and reloading increases the cost to handlers of handling milk and causes the milk to deteriorate in quality. Direct delivery by supply plants from producers' farms to distributing plants supplies the market just as transfers do, but at a lower cost.

Milk diverted by a supply plant operator should be considered a receipt at the plant for the purpose of determining pool qualification, as should .9(c) milk received from a cooperative association. Such milk constitutes the supply of producer milk available to the handler for shipment to distributing plants. In addition, allowing diversions of producer milk to be included as qualifying shipments necessitates that such movements be considered as receipts. Receipts of other source milk or transfers and diversions for which Class II or III classification is requested by both the shipping handler and receiving supply plant handler do not need to be considered as receipts for qualification purposes.

Provision should be made in the pool plant definition for the market administrator to temporarily adjust the percentage shipping requirement by up to 10 percentage points if such action is needed to assure an adequate supply of milk for fluid use, or to prevent uneconomic shipments of milk. Such a provision will allow more efficiency in adjusting regulations to marketing conditions.

e. Co-op Pool Plant

Order 33. A proposal by National Farmers Organization (NFO) to reduce the shipping percentages required of a cooperative association plant from 50 to 35 percent should be adopted. The modification to the proposal made by proponent at the hearing, to eliminate the requirement that qualifying shipments be to pool plants instead of to pool distributing plants, should not be adopted. The NFO witness testified that NFO's proposal to change the cooperative pool plant shipping percentage in Order 33 to equal the Order 36 cooperative pool plant shipping percentage would further NFO's goal of making the provisions of the 2 Ohio orders more uniform. The witness explained that the Class I utilization of the two orders was almost equal in 1989, and that no other parties at the hearing had proposed increasing the cooperative pool plant shipping percentages effective under Order 36. The NFO witness further stated that a long-time fluid milk customer had ceased bottling activity, causing NFO difficulty in meeting the order's pooling requirements.

The proposal was opposed by MMI and Hoosier on the basis that shipping requirements under Order 33 should be tightened, not loosened. The MMI brief argued that there is no reason to reduce shipping requirements in a market with 80 percent Class I and Class II use. The brief filed on behalf of Hoosier stated that the NFO plant at McCartyville is only 15 miles from the MMI New Bremen plant to which some of the NFO milk is delivered. The Hoosier brief stated that the NFO facility is a reload point, not an actual plant with the ability to cool or hold milk, and that its operation makes no economic sense and serves no balancing function for the market. The Hoosier brief also argued that NFO moves milk to its own plant first to multiply the pounds of milk it can qualify for pooling on the basis of sales to New Bremen and other handlers.

The current language of the order makes very clear that a cooperative pool plant can qualify for pooling only if 50 percent of the association's member producer milk is actually delivered to pool distributing plants, and leaves no room at all for pyramiding additional volumes of pooled milk on top of the milk which is qualified at the cooperative pool plant. In view of the Class I use percentage of the Ohio Valley market and the portion of the market dominated by MMI, it is unreasonable to require a cooperative association to deliver 50 percent of its milk supply to pool distributing plants on a year-round basis. Reduction of the required percentage to 35 percent will still require that cooperatives operating cooperative pool plants demonstrate a higher level of commitment to supplying the fluid market than regular supply plants must meet because supply plants that meet the 35-percent shipping percentage requirement for the months of September through February do not have to do so during the months of March through August. There is no reason to require cooperative pool plants to meet a significantly higher shipping percentage than regular supply plants, as well as meeting such a percentage on an average annual basis.

The proposal to allow any shipments to pool plants as qualifying, however, or to include shipments to nonpool distributing plants in cooperative pool plant qualification, would have the effect of ignoring the responsibility of such plants to supply the market for fluid use within the Ohio Valley Federal milk order marketing area. Therefore, these modifications to the proposal should not be adopted.

MMI filed exceptions to the recommended reduction in Order 33 cooperative pool plant shipping standards on the basis that the cooperative finds no justification for lowering standards in the Ohio Valley market. The cooperative observed that the market performed more smoothly when milk supplies declined, and stated that cooperative associations that have made a commitment to the fluid market, made an effort to deliver high-quality milk and not made unrealistic statements to their members have not had any difficulty in meeting pooling standards.

The justification for lowering the shipping requirements in question is set forth above. Further, the comment that the market performed more smoothly when milk production declined is no doubt true because in that situation the current performance standards were not unrealistically high. As milk production has increased, reductions in shipping standards have become necessary in order to prevent inefficient and uneconomic shipments of milk from occurring solely for the purpose of meeting the order's pooling requirements.

Order 49. A proposal by NFO that a cooperative pool plant provision be added to the Indiana order should not be adopted. The NFO witness stated that NFO's proposal was patterned after similar provisions in Order 33 and Order 36 where, he said, the cooperative supply plant provision has been a positive method of efficiently pooling the milk of cooperative members. The witness explained that this provision would allow the most efficient pooling of NFO's supply plant and the cooperative's total milk supply. The provision would allow a cooperative to qualify a cooperative supply plant if the cooperative shipped 35 percent of its total producer milk on the market year-round to pool distributing plants.

The proposal was opposed in a brief filed on behalf of Hoosier on the basis that the Indiana marketing area does not need supply plants, and has never needed a balancing plant. According to Hoosier, the NFO Madison plant doesn't serve the purpose of a balancing plant because it provides no processing of the market's reserve supplies.

The record provides no indication that a cooperative pool plant provision is needed in the Indiana order. There was no testimony that milk must be transferred from farm pick-up routes to over-the-road tankers to assure Indiana fluid milk handlers of a milk supply. The producer milk diversion allowances, relaxed under this decision, should allow NFO to continue to qualify its member producer milk associated with the Indiana market to retain pool status without adding an unnecessary provision to the order.

f. Pool Plant Disaster Clause (Order 49)

A "disaster clause" proposed by Hoosier for inclusion in the Indiana order should be adopted. The proposal would assure continued pool status for pool distributing and pool supply plants if a plant was unable to meet the order's pooling standards because of disastrous circumstances. Proponent witness defined such disasters as unavoidable circumstances such as natural weather-related events, fires, breakdowns and work stoppages, and proposed that relief be limited to two consecutive months to prevent abuse.

No opposition to the proposal was expressed at the hearing, and the NFO brief filed on the basis of the hearing record supported the proposal as preserving orderly marketing in the event of natural disasters or other events that could interfere with pool plant status. An order provision assuring continued pool status in the event of an unforeseen and unavoidable circumstance that is not a result of a handler's business decisions should enhance the orderly marketing of milk in the Indiana marketing area. Such provisions have worked well in other orders over a number of years. Therefore, the proposal should be adopted.

g. Producer Milk

(i) *Diversion limits (all three orders).* A proposal by NFO to make the diversion limits uniform between the three orders should be adopted. The amended orders would allow 50 percent of a handler's producer milk to be diverted during the months of September through February, except for the month of December when the allowable percentage of diversions would be 60 percent. Diversions during the months of March through August would continue to be unlimited. During the months of September through November at least one day's production of each producer's milk would have to be received at a pool plant. Proposals to eliminate requirements in Orders 36 and 49 that producer milk be received at pool plants before being eligible for diversion are adopted.

The NFO witness testified that the NFO proposal to amend the producer milk definitions of the three orders to achieve a higher degree of uniformity is based on the high degree of interrelation between the three marketing areas. The witness stated that NFO's proposal would achieve uniformity by (a) requiring each producer to "touch base" at a pool plant during each month of September through November, as is currently the case under Orders 33 and 36, (b) allowing a producer's milk to be diverted to a nonpool plant prior to being received at a pool plant, and (c) establishing a uniform 50-percent diversion limit for the months of September through February, excluding December.

NFO's proposal was opposed in briefs filed on behalf of MMI and Hoosier, wherein it was argued that the proposed diversion limits would liberalize and reduce shipping standards that are needed to protect the integrity of the pools and insure an adequate supply of milk for fluid use. In addition, Hoosier's brief stated that the pooling provisions of each order are established on the basis of production and marketing data unique to each. The brief argued that if the uniformity argument is not specious, the pooling provisions of Order 49

should also conform with those of Orders 30, 40, 32, 50 and 46.

NFO's proposed amendment to Order 36 would enable producers to maintain their producer status after a break in deliveries (such as in the case of a degrade) without having to touch base at a pool plant, as long as their milk has not been pooled under another order since being pooled under Order 36. The witness explained that under the present provisions of Order 36 a producer must maintain continuous association with the market to be diverted, even during those months when there is no touch-base requirement. According to the witness, uneconomical movements of milk result when a producer temporarily loses Grade A status. In such a case, the producer's first day's production upon returning to the market must be received at a pool plant, requiring that the entire load with which the producer's milk is picked up be received at a pool plant, and resulting in uneconomical and unnecessary movements of milk. The witness explained that NFO's proposal would allow a producer's milk to be diverted before being received at a pool plant if the producer has not been associated with another Federal order during the time the milk was not pooled. No testimony or briefs were received opposing the NFO proposal to amend the Order 36 producer milk provisions.

A proposal by Milk Marketing, Inc., to amend Order 36 would limit March through August diversions of producers with less than one-third of their milk pooled during the preceding months of September through November. The MMI witness stated that producers who share in proceeds from the fluid market during the flush production months should be expected to deliver some milk to market when it is most needed for Class I. The MMI brief referred to testimony in the record that some producers ship milk south in the fall and ride the Order 36 pool in the spring. The proposal was characterized by MMI as similar to provisions in other markets.

NFO opposed adoption of the proposal on the basis that it would be difficult if not impossible to administer. The NFO brief described the MMI proposal as an attempt to penalize or restrict movement of producers off of Order 36 and back on again. According to NFO, no problem necessitating adoption of the proposal was demonstrated at the hearing. The Dairy Industry Association of Pennsylvania filed a brief stating that the Association had no objection to the proposal if producers' milk may be diverted without limit in December and March through August when one-third of the producers' milk is pooled during the months of September through November.

The MMI proposal should not be adopted. The amended producer milk provisions should provide sufficient assurance that producers whose milk is qualified for pooling are adequately associated with the fluid market to share in the proceeds of the marketwide pool. The record contains little or no basis to support adoption of the proposal.

A proposal by Hoosier for Order 49 would amend the producer milk definition to allow producers to "touch base" at pool plants any time during a month, allow producer milk to be diverted to commercial food processors as well as to nonpool plants, and remove April and August from the months in which unlimited diversions are allowed. A brief filed on behalf of NFO supported the portions of the proposal that would allow diversions of producer milk to commercial food processors and allow a new producer's milk to be diverted before it is received at a pool plant. NFO opposed tightening Order 49 delivery standards, arguing that if Order 49 standards are significantly higher than those under Order 33, the result will be more milk pooled under Order 33 rather than more milk available to Order 49 pool distributing plants.

As adopted herein, the Indiana producer milk definition will allow producers to "touch base" at pool plants at any time during each of the months of September through November, for the same reasons of efficient hauling and handling that such provisions were adopted for Order 36. In addition, the November 1991 decision on the 1990 national hearing adopts provisions that allow producer milk to be diverted to commercial food processing establishments. Therefore, that issue is not addressed in this decision. Finally, the record provides no basis for tightening Indiana diversion provisions.

All of the ways in which the milk marketing activities of these three markets overlap support the argument that producer milk diversion limits should be more uniform between the three orders. The milkshed of the Ohio Valley marketing area overlaps significantly with those of the Eastern Ohio-Western Pennsylvania and Indiana marketing areas, to the extent that in December 1989 nearly 80 percent of the milk pooled under Order 33 was produced in counties which also supplied milk to Orders 36 and 49. Over 60 percent of the producer milk pooled under the Ohio Valley order was produced in the common milkshed with Order 49, while over 20 percent of the producer milk pooled under the Indiana order was produced in the common Order 33-Order 49 milkshed. Further, milk was pooled under Order 33 in 1990 from 12 counties in Indiana and Michigan that did not supply milk to Order 33 handlers in 1988 or 1989 but did supply Order 49 handlers, and from 6 Michigan, Pennsylvania and Ohio counties that did not supply milk to Order 33 handlers in 1988 or 1989 but did supply Order 36 handlers, indicating significant levels of changes in market by producers among the three markets.

The outlets for surplus milk supplies used by the three markets also demonstrate a high degree of interrelationship. During 1989 and 1990, 21 nonpool plants were listed as recipients of Class II and Class III milk from both Order 33 and Order 36, while 13 nonpool plants were listed as receiving surplus milk from handlers regulated under Orders 33 and 49. Ten nonpool plants received Class II and Class III milk from handlers regulated under Orders 36 and 49 in 1990, and 11 nonpool plants received Class II and Class III milk from handlers regulated under all three orders during the period 1985–90.

Two pool distributing plants, Smith Dairy and Wayne Dairy, shifted between orders in both 1989 and 1990; Smith Dairy becoming pooled under Order 33 instead of Order 36 during some fall months of both years, and Wayne Dairy shifting regulation from Order 49 to Order 33 during the summer of 1989 and fall of 1990. In addition, at the time of the hearing, the Shipshewanna supply plant was expected to shift regulation from Order 49 to Order 33. The effect of a shift in the order under which a plant is regulated will be disorderly for producers if they fail to meet the delivery requirements of the order under which they find their handler regulated, instead of the requirements of the order under which their handler had been regulated.

As noted earlier, the pooling provisions of the Indiana order have failed to be adjusted in accordance with marketing conditions as milk production pooled under the order has increased faster than Class I sales by regulated handlers. For this reason, and because of the need for uniformity between provisions of the three orders as outlined above, the producer shipping percentages of the three orders should be amended as proposed by NFO.

Milk Marketing, Inc., filed comments opposing the recommendation to

liberalize diversion allowances for all three orders and the denial of MMI's proposal for Order 36 to limit March through August diversions of milk from producers who had less than one-third of their milk pooled during the previous September through November period. MMI stated that evidence on the record indicates that handlers have used the three markets as "dumping grounds" after taking advantage of high premiums payments from other markets, but failed to cite such evidence. MMI claimed that although there is considerable overlap between Orders 33, 36, and 49, marketing conditions between the markets are different. MMI indicated that the Order 36 milkshed traditionally has had more than an adequate supply of producer milk to meet the Class I and Class II needs of the market without incurring significant transportation costs. In contrast, MMI claimed, a substantial amount of milk must be moved long distances in Orders 33 and 49 for delivery to processing plants.

MMI noted that provisions which allow milk not continuously affiliated with the market to ride the pool during the flush months are inequitable and will lead to more disorderly conditions. The cooperative stated that denial of its proposal is inconsistent with denial of the Brewster Dairy proposal to allow supply plants to include shipments to nonpool distributing plants in calculating supply plant pool qualifications. MMI stated that the Department apparently approves of moving milk as producer milk to other markets while not approving of plant transfers for the same purpose.

As noted by MMI in its exceptions, marketing conditions do differ somewhat between the three markets. However, the degree of overlap in production and distribution between the markets makes it necessary for the orders' diversion limits to be equitable, as described above. In fact, the differences in pooling provisions between the three orders may be as much a cause as an effect of the differing marketing conditions.

With regard to denial of the MMI proposal to preclude from unlimited diversions during the months of March through August the milk of producers who had less than one-third of their milk pooled during the preceding September through November, such a denial is not inconsistent with the denial of the Brewster Dairy proposal to consider diversions to nonpool distributing plants as part of a supply plant's qualifying shipments. Under the terms of Order 36 as adopted herein, producers participating in the pool cannot have their milk pooled under another order during the period between its physical receipt at an Order 36 pool plant and its diversion under Order 36 to a nonpool plant. The order also provides that milk diverted to another order plant can be producer milk only if moved for Class II or III use under the other order. Therefore, this decision is consistent in disallowing milk moved to other order plants for Class I use from participating in the Order 36 pool.

ii. Pricing diverted milk (Orders 33 and 49). Order 33. A proposal by MMI to amend the Ohio Valley order to price milk diverted to plants located outside the marketing area and outside the State of Ohio from farms located inside Ohio or in five Michigan counties at the location of the plant from which diverted should be adopted, with some modification. At the time of the hearing, proponent modified the proposal to require that producers whose milk is priced at the location of the plant from which it is diverted deliver at least 66 percent, or 20 days' production, of their milk to pool plants during each of the months of September, October and November. The proposal as adopted would be further modified by limiting the location adjustment applicable to the uniform price paid to such producer to that effective at the location of the producer's farm for the months of March through August, but only when 65 percent of a producer's milk is delivered to a pool plant or plants at which an equivalent or higher price is applicable during the months of September through February.

The MMI witness stated that every fluid milk market needs facilities or access to facilities to handle reserve supplies of milk that are not needed for fluid use on weekends and holidays. He testified that the number of manufacturing plants in the Order 33 marketing area has decreased to such an extent that on many occasions milk not needed for the Class I market must be moved long distances to be processed into storable products. According to the witness, milk produced outside the marketing area near the reserve processing plants creates no difficulty, but that milk produced within the marketing area that must be transported outside the area to manufacturing plants does create financial problems.

The witness testified that producers whose milk is moved to distant plants (located at Goshen and Auburn, Indiana) expect to be subject to prices and hauling rates competitive with their neighbors whose milk goes to nearby fluid outlets. He explained that disruptive and disorderly marketing conditions would occur if individual dairy farmers began competing for the local market and trying to avoid the cost of sending their milk to distant plants and receiving a lower blend price as well. The MMI witness argued that producers who have diverted their milk from local markets have already suffered financial loss due to increased hauling, and should not be subject to the additional loss of receiving a lower blend price as well. However, the witness also testified that producers pay a fixed rate for hauling under their contracts with haulers, regardless of the destination of their milk. Proponent cited what he described as similar provisions to those proposed for the Ohio Valley order in the current Southern Michigan order and former Lake Mead order.

It appears that adoption of the proposal may have the effect of causing milk to be moved to Goshen rather than to fluid plants in the southern part of the marketing area, where much less milk is produced and where more milk is needed for fluid use. The distance from New Bremen, Ohio, where much of the milk in question is normally received, to the surplus outlet at Goshen, Indiana, (about 120 miles) is about the same as the distance from New Bremen to Cincinnati, Ohio, in the southern part of the Ohio Valley marketing area. The ability of producers to easily receive the same price for deliveries to a surplus outlet as they would if their milk had gone to a nearby plant would remove the incentive intended by the order's location adjustment provisions to move milk to the more southerly part of the marketing area where it is needed.

Three-quarters of the distributing plants, at which milk is needed for fluid use, that are pooled under the Ohio Valley order are located south of Zone 2 and south of the area of heavy milk production in which the MMI witness indicated producers experience problems with additional negative location adjustments. In fact, in December 1989 over 50 percent of the Ohio milk pooled under Order 33 was produced in the Ohio counties of the Ohio Valley marketing area north of Zone 3, while less than 40 percent of the Ohio milk pooled under Order 33 was produced south of Zone 2. With less than 40 percent of Ohio milk available from nearby sources to supply approximately 75 percent of the Class I needs of the market, it is apparent that the need for price incentives to move milk from the heavy production area of northern Ohio to the southern Ohio area of greater Class I demand still exists in the market. Therefore, the incentives contained in the current location adjustment structure of the market

should not be curtailed as abruptly as proposed by MMI.

The provisions of the Southern Michigan order and the former Lake Mead order differ significantly from those proposed by MMI. Under the Southern Michigan order, only the milk of producers who each month deliver 65 percent of their production to plants at which the same location adjustment rate is applicable are eligible to have all of their milk deliveries subject to that same rate, rather than a lower rate for milk diverted to distant manufacturing outlets. The Lake Mead order provided that only those producers located in two counties for which the only nearby outlet was a fluid milk plant in Las Vegas, Nevada, would have their milk priced at the plant from which diverted. The location adjustment on prices paid to producers located in the vicinity of a distant manufacturing plant was capped at the rate applicable at that plant. Similar provisions for the Ohio Valley order would allow pricing at the location from which diverted only for the milk of producers located in the Cincinnati area, and require the assumption that the nearest surplus outlet is in Goshen, Indiana.

According to the record of this proceeding, there are at least six nonpool plants located in Zones 1 and 2 of the Ohio Valley marketing area and the three northwestern Ohio counties that lie between the Order 33 and Order 49 marketing areas that receive Class II and Class III milk from pool plants for use in the manufacture of ice cream, yogurt, and evaporated milk. A number of surplus outlets also exist in Zones 3 and 4 for milk usually delivered to pool plants in that area that must be diverted from fluid use at times when the fluid plants do not need it. These plants certainly represent closer surplus outlets for the milk of producers in northern Ohio and southern Michigan than the Goshen facility, as does a Kraft ice cream plant in Huntington, Indiana.

Although proponent witness referred specifically to problems encountered in the diversion of producer milk to manufacturing outlets on weekends and holidays, it is apparent from seasonal production and fluid use statistics that a greater problem exists in connection with moving surplus milk to manufacturing outlets in the spring and summer months when production increases and fluid milk needs decline.

For the period March 1987 through February 1988, which apparently was unaffected by any shift in plant regulation under Order 33, the average daily volume of producer milk used in Class III during the months of March through August exceeded the average daily Class III use for the following September through February period by more than 130 percent, or over 1,600,000 pounds per day. In view of the availability of some nearby manufacturing plants and the wide seasonal variation in the amount of surplus milk that must be disposed of, changes in the pricing of diverted producer milk should be confined to the season in which significant volumes of surplus milk are produced. Further, those producers who benefit from the amended provision should not benefit to the extent of having milk that is diverted to a lower-priced area priced at the same rate as if it were received at a plant in a higher-priced zone. In order to avoid such a situation, the location adjustment provisions should limit the price paid for diverted milk to the price effective for the zone in which the farm is located.

The provisions adopted in this decision will assure that the order retains a price incentive to move milk from the northern area of heavy production for the Ohio Valley market to southern Ohio, where consumption is greater relative to production. Only producers whose milk is regularly received at pool plants during the months when supply plants are required to ship milk to distributing plants should be eligible to have their diverted milk priced at the plants where it is regularly received rather than at reserve processing plants. Adoption of a provision pricing most milk at the location from which it is diverted, even if applicable only to producers in a particular vicinity, would provide a disincentive to move milk from farm locations to the cities where it is needed for fluid use.

Although MMI's comments expressed pleasure at the recommended decision's acknowledgment that milk produced in excess of fluid needs must be moved away from the primary market, dissatisfaction was expressed with several aspects of the decision. The comments indicated an MMI concern that the decision has an unequal impact on the cooperative as compared with other producers and ignores the price difference between Cincinnati and New Bremen. MMI's comments argued that the decision overstated the number and location of nonpool plants in the marketing area. MMI stated that it would be more appropriate to price milk at the plant from which diverted rather than the farm location because hauling rates and prices at neighboring farms do not change just because milk is diverted away from the market. The cooperative also suggested that the month of December should be added to the months for which location adjustments on diverted milk are altered.

The decision should not affect cooperative members and nonmembers inequitably, since the revised order language does not require a higher level of performance of cooperative members and applies to all producers. Although there is a 21-cent price difference between New Bremen and Cincinnati, such a difference amounts to only about 1.6 cents per hundredweight per 10 miles, or significantly less than the amount required to move the milk. The current location adjustment rate cannot be expected to provide enough of an incentive to cause milk to move long distances to pool plants when the milk is needed at the cooperative's manufacturing plant to maintain the desired level of operation. The number and location of nonpool plants that were cited in the recommended decision as being closer than Goshen to the Order 33 production area was derived from the only information available in the hearing record regarding such facilities.

MMI's argument that its member producers on neighboring farms should be subject to the same hauling rates and prices disregards MMI's own testimony that the co-op's members pay a fixed rate for hauling under their contracts with haulers, regardless of destination, and overlooks the reblending privilege available to cooperative associations. That privilege allows MMI to assure that its members located on adjoining farms would receive the same price for their milk, regardless of its destination. Further, the price received at the location to which milk is customarily delivered is irrelevant to the appropriate price to be paid for diverted milk.

The amendment is adopted as a means of assuring that producers whose milk must be diverted to distant manufacturing plants are not unfairly penalized for such movements in addition to any extra hauling charges that may be incurred. It would be inequitable to assure that such diversions would result in the same return as movements of needed milk to distributing plants located in higher-priced zones.

Data in the hearing record indicate that the percentage of producer milk used in Class I in December under Order 33 is as high or higher than in the other months included in the September through February period. Therefore, it should not be necessary to include December as a month for which diverted milk is not subject to location adjustments.

Order 49. A proposal by the Milk Foundation of Indiana (MFI) to price all diverted milk at the location at which it

is received instead of the location from which it is diverted should be adopted, with modifications. MFI, a group of proprietary distributing plant operators, proposed the deletion of a provision of the Indiana order that allows milk diverted to a plant located in the marketing area, the State of Ohio, or south of the marketing area to be priced at the plant from which diverted. The witness for MFI stated that the provision allows Hoosier to take as much as $60,000 a month out of the pool by moving milk to nonpool manufacturing plants for surplus use instead of to fluid milk plants for Class I use, as normally intended by location adjustment provisions.

A portion of Hoosier's proposal to amend the producer milk definition would have provided for diverted milk to be priced at the location of the last pool plant from which it was diverted, and, in the case of a dairy farmer who was not pooled under the order in the prior month, for such milk to be priced at the location at which it is first received.

MFI's proposal was opposed by Hoosier and Milk Marketing, Inc., on the basis that producers who normally deliver milk to a particular plant expect to receive the price paid at that location, not a lower price when their milk must be diverted to a distant plant for which they incur higher hauling costs. According to the brief filed by Hoosier, the Indiana market is unlike most Midwest areas, in that diverted milk pooled under the Indiana order primarily moves from inside the marketing area to the periphery, instead of from the periphery to the center. Further, the brief stated, Indiana differs from many Midwest areas where the milk supply is located to the north of the fluid handlers and location adjustments are needed to avoid paying "phantom freight" for diversions of milk to nearby manufacturing plants. The Hoosier brief stated that there is no "phantom freight" in Order 49, and that the present provision is justified on the same basis as the Lake Mead provision referred to in relation to the Ohio Valley location pricing proposal.

Hoosier explained that many of its producers are located near handlers to which milk is delivered when needed. When not needed by fluid handlers, the brief stated, the milk is diverted to a balancing outlet some miles distant. Hoosier argued that such producers should not be penalized by receiving lower prices for their milk that must be diverted, as well as incurring higher hauling costs.

Hoosier's argument that diverted Indiana pool milk moves from the center of the market to the periphery, and not from a northern production area, is contradicted by record evidence. According to data in the record, milk production in the northern part of the Indiana market is much heavier in relation to fluid needs than is the case in the southern part of the market. Sixty percent of the milk produced for the Indiana market is produced in the northern part of the marketing area, where the primary surplus outlets are also located and where negative location adjustments are effective. A number of other surplus outlets are located in Illinois, where minus location adjustments apply, and in Ohio Valley zones with lower Class I differentials under Order 33 than under the Indiana base zone, but subject to no location adjustments under the Indiana order.

Only one-half to two-thirds of the volume of milk used in Class I in the Indiana zero adjustment zone is produced there. Similarly, seventy to ninety percent of the milk needed for Class I use in the minus 20-cent zone, just north of the zero zone, is produced within the minus 20-cent zone. Eighty-five to ninety percent of the Indiana Class I milk is distributed from plants located in the zero and minus 20-cent zones, but less than 40 percent of the milk in the pool is produced in the Indiana portion of the zero and minus 20-cent zones where the distributing plants are located.

The need for supplemental milk supplies in the two southern zones of the Indiana order makes it clear that the order should provide some incentive for milk to be moved from northern Indiana, Ohio and southern Michigan, where it is produced, to southern and central Indiana distributing plants. The present order provisions, allowing milk to be priced at the plant from which diverted, contain no economic incentive to move milk to where it is needed for fluid use. Provisions similar to those adopted for the Ohio Valley order, as explained above, should provide the needed economic incentive to move milk for fluid use without unduly penalizing handlers who must move milk to distant manufacturing plants when their milk supplies are not needed for fluid use.

Because of the dearth of outlets for surplus milk in the southern portion of the Indiana marketing area, the diverted milk of producers who meet the 65-percent shipping requirement to pool plants in the southern zones during any month should not be subject to any additional minus location adjustments. However, milk delivered primarily to locations in the northern part of the marketing area, in which most of the primary surplus outlets are located, should be priced at the plant at which it is physically received. Such provisions will assure that producers whose milk is usually received in the lower-priced northern portion of the market will have a price incentive to allow their milk to be moved south, where it is more likely to be needed for fluid use. In addition, the provisions adopted in this decision will more closely resemble the Southern Michigan and Lake Mead provisions cited by Hoosier and MMI than do the current Indiana order provisions regulating the pricing of diverted milk.

For the reasons stated above, the Indiana order should require that 65 percent of a producer's milk be delivered to a pool plant or plants in the current zero and minus 20-cent pricing zones of the marketing area during any month in order to have the producer's diverted milk priced at the location from which diverted. Milk customarily delivered elsewhere should be priced at the location at which it is physically received.

Comments regarding the recommended decision for Federal Order 49 to price diverted milk at the location at which it is received instead of the location of the plant from which it is diverted, with some modifications, were submitted by Hoosier Milk Marketing Agency and Milk Foundation of Indiana.

Hoosier's comments stated that the amending language of the recommended decision failed to account or provide clearly for the manner of pricing diverted milk of producers located in the plus 10-cent, zero, and minus 10-cent, zones of the marketing area, or in the 35-cent zones when 65 percent or more of such milk is delivered to a zero or proposed minus 10-cent zone handler. Hoosier observed that the stated intention of the decision is not to allow the price for the diverted milk of a producer located in the minus 35-cent zone, who delivers to a zero zone plant 65 percent or more of the time and whose milk is diverted to a minus 20-cent zone plant, to be adjusted downward to the uniform price applicable to the (minus 35-cent) location of the producer's farm, even though the milk was received at 20-cent location plant. Hoosier argued that the diverted milk of any producer should be priced at the location of the plant from which the milk is diverted as long as 65 percent or more of the producer's milk is delivered to a zero, minus 10, or plus 10-cent plant location in any month.

Milk Foundation of Indiana comments asserted that the proposed order language does not provide for

producers in such counties as Jefferson, Washington, Scott, and others (in the plus 10-cent zone). MFI stated that a producer in those counties could not qualify under the 65 percent provision since there are no plants "at which the same or higher uniform price is applicable" to which the milk could be moved economically. MFI suggested a modification to the recommended order language that would eliminate the discrepancy.

Hoosier's concern about the minus 35-cent zone producer who delivers milk to a minus 20-cent zone plant is unfounded. The amended order language provides that the uniform price for such milk not be adjusted downward below the uniform price applicable at the location of the producer's farm. The language does not require (nor intend) that the uniform price be adjusted below the price applicable at the location to which the milk is delivered.

The MFI comments regarding producers located in the plus 10-cent zone warrant a slight modification to the recommended order amendments to specify more clearly the area in which 65 percent or more of a producer's milk must be delivered if diversions outside that area are to be priced at the location of the farm.

Hoosier's assertion that diverted milk should be priced at the location of the plant from which diverted in all cases in which 65 percent of more of a producer's milk is delivered to a minus 10-cent, zero, or plus 10-cent, zone is not persuasive. Location adjustments are intended to assure that milk produced in one part of the marketing area and needed in another location will be provided an economic incentive to move to where it is needed. If no movement that requires additional hauling expense occurs, location adjustments should not be necessary.

2. Reporting (Order 49)

A Hoosier proposal to eliminate from Order 49 a reporting requirement that handlers notify the market administrator of their intention to divert milk prior to doing so should be adopted. According to proponent witness, the notification requirement has not been enforced for many years. He also stated that such a reporting requirement would be cumbersome, if not impossible, to fulfill, and that the market administrator has no use for such data even if it were reported. No opposition to the proposal was received at the hearing, and its adoption was supported in the brief filed on behalf of NFO.

The provision proposed to be deleted appears to be not only unnecessary, but, if it were enforced, a positive hindrance to the efficient and economical marketing of producer milk. Diversions of milk to nonpool plants apparently have become much more common and voluminous since the provision was adopted. Many diversions also would not be planned for with enough time to give prior notice to the market administrator. Other Federal milk orders operate well without such provisions, as the Indiana order apparently has for some time without it being enforced. Therefore, the requirement should be removed.

3. Classification

The portion of the multiple component pricing proposal that would have changed the classification of packaged fluid milk products in inventory at the end of a month from Class III to Class I does not need to be considered in this proceeding because the proposed change was included in the November 1991 recommended decision on issues considered at the national hearing held in the fall of 1990.

A proposal by New Paris Creamery to amend Order 49 to change the classification of milk used in infant formulas from Class II to Class III because of a difference in classification of the product between the Indiana and Southern Michigan orders also is not addressed in this decision. The November 1991 recommended decision on national hearing issues included uniform classification provisions for all Federal milk orders. Adoption of uniform classification should eliminate the problem addressed by the New Paris Creamery proposal.

4. Multiple Component Pricing (All Three Orders)

a. Protein Pricing

A proposal to incorporate a multiple component pricing plan in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana Federal milk orders should be adopted, with some modifications. The pricing plan generally would be patterned after the multiple component pricing plan that has operated under the Great Basin milk order for several years. Producers would be paid on the basis of the pounds of milkfat and protein contained in their milk, and would share in the value of the pool's Class I and Class II uses on a per hundredweight basis. Regulated handlers would pay for the milk they receive on the basis of total milkfat, the protein used in Classes II and III, the skim milk used in Class I, and the hundredweight of total product used in Classes I and II.

The pricing plan recommended in this decision would vary from the initial protein pricing plan in the Great Basin order by using the percentage of protein contained in the milk included in the Minnesota-Wisconsin price survey rather than the marketwide average protein percentage, and by adjusting protein prices paid to producers and charged to handlers by the somatic cell count of the milk.

The proposal to incorporate multiple component pricing in Orders 33, 36 and 49 was proposed by Milk Marketing Incorporated (MMI), and Hoosier Milk Marketing Agency (Hoosier). The proponents' witness explained that in May of 1990 MMI marketed approximately 67 percent of the milk pooled on Order 33 with 1,988 producers and approximately 40 percent of the milk pooled on Order 36 with 2,020 producers. The witness explained that Hoosier consists of Associated Milk Producers, Inc. (AMPI) and MMI. These two cooperatives, through Hoosier, represent 1,475 producers whose milk is pooled on Order 49, and 65 percent of the producer milk pooled under that order.

Proponent witness explained that milk has been priced on the basis of butterfat and volume for many years. He stated that in recent years, however, demand for lowfat dairy products has changed the emphasis as to which fraction of the milk has the most value. For many years, he testified, the butterfat fraction had the most value and therefore was a major pricing factor in milk. However, with the popularity of lowfat products, the skim fraction has become the major factor of value in milk. Data introduced by the witness showed that since the 1960's butterfat has gone from 77 percent of the value of milk down to 32 percent of the value, with the skim showing a corresponding increase in the percentage of value in the milk. The witness went on to state that by pricing milk on the basis of its protein, as well as butterfat content, the producers would receive the pricing signal necessary to adjust to changes in the marketplace.

The proponents' representative presented several reasons for the implementation of multiple component pricing under Orders 33, 36, and 49. The first reason given by the witness was that these three orders should have mandatory multiple component pricing regulated by the Federal order system. The witness stated that although 77 percent of the Order 33 producers, 65 percent of the Order 36 producers, and 99 percent of the Order 49 producers were eligible for some form of multiple component pricing in May of 1989, the

multiple component pricing plans currently in effect vary in their payment criteria, resulting in disorderly marketing conditions in these three markets.

The witness explained that since proponents' plan would incorporate the pooling of the protein value, producers with above average protein would benefit. According to the witness, some milk is bypassing certain plants to receive multiple component pricing, thus increasing transportation costs and helping create a disorderly marketing condition. He stated that producers would benefit from having their milk shipped to the nearest plant rather than bypassing bottling plants and going to manufacturing plants.

The second reason given by the proponents' witness for implementing multiple component pricing was that the current pricing system does not properly reflect the value of the milk. The witness pointed out that the skim fraction of milk has gone from representing 25 percent of the value of milk during the 1960's to representing 65 percent of the value of milk at the present time. The witness stated that as a result the most valuable portion of the milk is not priced. Therefore, he concluded, the market does not send economic signals to the producer about the composition of the milk produced.

The third reason given by the proponents' witness for implementing multiple component pricing under the Federal orders is the growing interest by consumers in the nutritive value of their diets. The witness explained that consumers are becoming increasingly interested in the nutritive content of their dairy foods, while the present pricing system does not recognize the relative value of these components in milk. The witness pointed out that while the present system does not reward dairy farmers who produce milk containing more than average protein, which is valued by consumers, it does pay for additional butterfat, which is rejected by consumers. The witness continued by explaining that the proposed multiple component pricing plan would encourage producers to increase the content of milk components that are worth more, such as protein, in relation to the components of milk that are not worth as much, thus improving the milk to meet the demands of the marketplace.

The representative for the proponents explained that the proposed multiple component pricing plan is modeled from the Great Basin order, and would include protein as a component to be priced, in addition to the butterfat and product pounds that are now used in determining producers' pay prices.

Proponent witness stated that the proposed multiple component pricing plan is modeled on the Great Basin order because the provisions of that order incorporate the current structure of the three orders for which the plan is proposed, and have been used successfully for several years. He stated further that the Great Basin order excludes adjustments to the Class I price, an important feature for maintaining uniformity in Class I handler costs. The witness also argued that the Great Basin order provides for multiple component pricing on Class II and Class III milk, where there is a demonstrable relationship between the components of milk and the yield of finished products.

The witness then explained the modifications of the Great Basin order's multiple component pricing plan proposed by proponents. The first modification addressed the computation of the protein price. Under the initial protein pricing plan of the Great Basin order, the handler protein price is computed by dividing the Class III skim price by the previous month's marketwide average protein percentage. According to the witness, use of a different marketwide protein test for each market would result in each market having a different protein price and, therefore, differing Class III prices between markets, leading to disorderly marketing conditions.

Proponent witness described five alternatives for determining the protein price, and said that the most preferred method would use formulas to compute a butterfat price and a protein price, probably based on the Chicago butter market and the Green Bay cheese exchange. However, the witness indicated, this type of change in pricing would not be practical now. All of the remaining alternatives for computing the protein prices would use the Class III skim price divided by one of several protein percentages. The witness stated that proponents prefer the method which would use the protein percentage of the milk received by plants included in the Minnesota-Wisconsin survey. According to the witness, use of this protein percentage under all three orders would result in the same handler protein price under the three orders, thus avoiding a potential source of market disorder. The protein price would then reflect more closely the value of protein contained in milk included in the M–W survey.

The witness also pointed out that by using the M–W protein percentage, producers will be able to increase the protein content of their milk without reducing the protein price, a result which would occur when market average protein content is used. Another alternative suggested by the witness would be to have the Market Administrators of Orders 30 and 68 (for the Chicago and Upper Midwest marketing areas) test and report a protein percentage for the plants that are in Minnesota and Wisconsin and are pooled on those orders. A third alternative that the witness listed for determining the protein percentage was to have the department conduct a survey of plants in Minnesota and Wisconsin to determine the average protein content of their milk. This average would then be used to determine the handler protein price. The witness added that if the protein percentage from one of the above alternatives cannot be obtained, use of the current month's market average protein percentage would be acceptable.

Another modification of the Great Basin order advocated by proponents' witness was to include the Class II price differential in computing the producer protein price. The Great Basin order uses both the Class I price differential and the Class II price differential in computing the producers' weighted average differential price. In proposing this change, the witness stated there would be a Class II protein price as well as a Class III protein price. The witness said that this change would show the producer that the protein fraction of the producer's milk is worth something and would thus encourage producers to increase the protein content of their milk.

Another change from the Great Basin order proposed by proponents is the separate pricing of Class II and Class III milk used-to-produce manufactured products, and the other milk uses in these two classes. The proponents' proposal would price milk used to produce manufactured items on the basis of protein and butterfat, while the other Class II and Class III uses, such as inventory, shrinkage, and fluid cream products, would be priced as they are now; i.e., on the basis of skim and butterfat. The witness stated that this change is favored because non-used-to-produce items do not rely on the protein content of the milk for their value. Therefore, he said, handlers should not have to pay for protein that has no relationship to yield. The witness also advocated the inclusion of transfers and diversions to nonpool plants under the multiple component pricing plan.

Proponents' representative explained that the final modification proponents desired to make in the Great Basin order

to adapt its use to the three orders under consideration is the inclusion of somatic cells in the computation of handler protein prices and producer protein prices. The witness characterized this difference as pricing protein on its' "true value". The witness said that the industry recognizes somatic cells as a factor in the "availability" of protein for use by handlers, and therefore as affecting the value of protein to handlers. The witness continued by saying that producers would receive the proper return for their milk by including somatic cells in the computation of each producer's pay price. The pricing of milk according to its somatic cell content will be discussed in detail later in this decision.

A witness for National All-Jersey, Inc., testifying in support of proponents' multiple component pricing plan, stated that including multiple component pricing in these three orders will provide an important mechanism for enhancing the efficiency of milk production and marketing. The witness pointed out that not only will handlers and producers benefit from multiple component pricing, but consumers also will benefit.

The witness explained that handlers would benefit because they would be required to account for the milk components that give milk value. With multiple component pricing, handlers would know the protein content of the milk they are receiving and would consequently be able to do a better job of using the protein to yield the best return. The witness compared accounting for protein to the present accounting for butterfat. The witness went on to explain that handlers do not want to pay for something that they don't receive, and that with the proposed multiple component pricing plan, they would pay only for what they get.

Producers would benefit, explained the witness, because they would be rewarded if they produce the higher-protein milk that is demanded by the marketplace, in contrast to the present system in which there is no reward for higher-protein milk. Also, he said, since under the proposed multiple component pricing plan the producer would be paid for pounds of protein, pounds of butterfat, and total product pounds, the producer could clearly determine what component of his milk is giving the greatest return and therefore what component to improve in his herd. The witness also pointed out that since the product pounds will be valued at the weighted average differential the producer can see what value participation in the pool contributes to his return.

A representative of National Farmers Organization, a dairy farmer cooperative, testified in support of the proposed multiple component pricing plan. The witness explained that NFO supports multiple component pricing because producers will be rewarded for supplying the market with the milk components that the marketplace demands. The witness went on to explain that NFO supports the proposed pricing plan because, unlike the initial Great Basin multiple component pricing plan, the producer protein price would not be reduced as the marketwide percentage of protein increases.

The NFO witness also expressed support for the use of protein rather than nonfat solids in the proposed multiple component pricing plan. He supported the use of protein rather than nonfat solids because protein is the component most demanded by handlers in the marketplace, and because producers are familiar with protein levels in their herds due to protein testing by the Dairy Herd Improvement Association (DHIA) and by USDA sire summaries. The NFO witness did, however, express concern over the use of a producer protein price that may cause a decline in income for 50 percent of the producers. The witness suggested that a neutral protein range be adopted with a plus adjustment for protein percentages above the neutral range and negative adjustments for protein percentages below the neutral range.

A representative of Dairylea Cooperative, Inc., testified that Dairylea has approximately 2,300 members, with the milk of one hundred and twenty of these producers pooled on Order 36. The Dairylea representative stated that at Dairylea's last annual meeting a resolution was passed favoring Federal order amendments that encourage the use of protein or nonfat solids as part of the pricing system. The witness continued by saying that the time has come for protein pricing, particularly since the value of butterfat has declined substantially relative to the value of the protein or nonfat fraction of milk solids.

A witness for Kraft USA testified in favor of the multiple component pricing proposal. The witness expressed particular support for the use of the M-W protein average in computing the handler protein price. The Kraft witness explained that by using the M-W protein average rather than a market average, handlers' cost of protein from market to market would be equal, as it is for butterfat. This would allow handlers from areas with varying protein levels to compete on an equal price basis. According to the witness, this would not be the case when the market average protein percentages are used to compute the handler protein price.

The multiple component pricing proposal was also supported by a representative of National All-Jersey Inc., and the American Jersey Cattle Club. The witness explained that National All-Jersey is a national dairy farmer organization affiliated with the American Jersey Cattle Club, a breed registry organization for owners of Jersey cattle that provides marketing services to its members. The witness stated that the two organizations have 796 members in Indiana, Ohio, and Pennsylvania. He explained that a milk pricing system should give producers the incentive to produce the components demanded by consumers, be of value to processors, and be fair to producers. The witness testified that the present pricing system does not accomplish this function, while the proposed multiple component pricing plan would. The witness said that the present pricing system, because it does not account for the protein or solids in milk, encourages a producer to produce water for which he receives the same return as he does for the solids. By accounting for and pricing protein, the witness stated, the multiple component pricing plan would encourage producers to manage their herds to obtain the greatest return by increasing their protein levels. The witness continued by saying that the production tools are in place to increase protein levels, even to the extent of increasing protein while decreasing butterfat. All that is lacking, he said, is the marketing incentive to do so, and incentives will be provided with the implementation of multiple component pricing.

The multiple component pricing proposal was supported in a post-hearing brief filed on behalf of Brewster Dairy, a proprietary supply plant operator regulated under Order 36. The Brewster brief favored adoption of the proposal on the basis that the proposed provisions providing a uniform price per pound for protein and an economic adjustment for somatic cells are needed.

A brief filed on behalf of the Dairy Industry Association of Western Pennsylvania opposed adoption of the multiple component pricing plan on the basis that the record of the hearing supports a national multiple component pricing plan with consistency between orders. The Association's brief states that over-order premiums already are substantial and significant enough to provide incentives and send signals for producers to increase the protein content of their milk production until

uniform multiple component pricing provisions can be adopted nationally. The brief acknowledged the benefits from and demand for higher protein content and lower somatic cell counts demonstrated in the hearing record.

Multiple component pricing should be included in the amended orders, with pricing on the basis of butterfat and protein. The record shows that a large percentage of producers whose milk is pooled under the three orders already are eligible for or receive some form of multiple component pricing, and that nearly all of these component pricing plans use protein as a pricing component. The record also indicates, however, that different handlers have differing protein premium payment programs, resulting in nonuniform bases of payments to producers. Such differing bases for payment may cause, and according to proponents has caused, disorderly conditions in the procurement of milk supplies by competing handlers. In addition, adoption of multiple component pricing will allow the order to recognize the additional value in milk with a higher-than-average protein content by incorporating such pricing within the order.

The hearing evidence leaves no question that payment for milk on the basis of its protein content can be justified on the criterion of economic value. Milk containing a higher percentage of protein will result in greater yields of most manufactured products than milk with a lower protein test. Handlers receiving milk that will result in greater volumes of finished products such as cheese or cottage cheese than an equivalent volume of milk testing lower in protein should be required to pay more for the higher-testing milk. At the same time, the dairy farmer producing milk that yields greater amounts of finished product deserves to be paid more for it than a dairy farmer producing the same volume of milk that results in less product yield.

Pricing milk on the basis of its protein content also meets the criteria of measurability, intrinsic value, and variability. The evidence in the record shows that protein can be easily measured and, in fact, that the variability in measurement may be less than the variability in butterfat testing because protein does not separate as butterfat does. Second, the record evidence shows that protein has value to the manufacturing sector in the form of improved product yield and product structure. The value to the fluid sector was not quantified in the hearing record; however, testimony indicated some benefit to the fluid sector from higher-protein milk, resulting in a more nutritional product. The criterion of variability is necessary to justify pricing a component separately from the product in which it is contained. In the case of protein in milk the record shows that the level of protein varies from season to season, region to region, and farm to farm. In view of its economic value in dairy products, its widespread use as a pricing component in the three markets, and its qualification under the three criteria above, protein appears to be the appropriate component for pricing milk in these orders.

Pennsylvania Farmers Union and Farmers Union Milk Producers Association (Farmers Union) filed comments objecting to the proposed component pricing formula on the basis that it would result in reduced returns to low-protein producers and drive many producers out of business. Pennsylvania Farmers Union's comments stated that it is difficult to reverse a half-century of breeding for butterfat, and expressed the fear that the proposed pricing plan would result in an instant penalty for butterfat production.

Although the component pricing plan adopted in this decision will reduce returns to producers whose milk contains less than average percentages of protein, that fact does not provide a basis for failing to adopt a multiple component pricing plan. It is not unfair to pay producers according to the actual value of their milk used in dairy products. In fact, the present method of payment could be considered inequitable to the extent producers producing higher-than-average levels of protein are not compensated for the full value of their milk.

The price for protein should be based on the Minnesota-Wisconsin price and the protein content of the milk included in the Minnesota-Wisconsin price series. The handler protein price should be computed by subtracting from the Minnesota-Wisconsin price for the month the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk included in the determination of the Minnesota-Wisconsin price.

Proponents presented several alternatives for computing the handler protein price because it was not known at the time of the hearing whether or not the protein content of the Minnesota-Wisconsin milk would be available to compute the handler protein price. Since the hearing, however, the protein content of the milk used for the Minnesota-Wisconsin price has begun to be collected and reported for the month preceding the month for which the M–W price is announced. This data can be adjusted for the current month using historical data collected by the market administrators of the Upper Midwest and Chicago Regional milk orders. With the availability of this information, the other alternatives are no longer relevant. Not only did the testimony strongly favor using the protein content of the Minnesota-Wisconsin milk to determine the handler protein price, but as multiple component pricing becomes a more common feature of Federal milk orders, it will be necessary that a standard price for protein be used.

The proponents' proposal to price Class II and Class III used-to-produce items separately from Class II and Class III other uses should not be included in the amended orders. This proposal would result in the three orders included in this proceeding having five classes of utilization as well as different protein prices for Class II and Class III. At the present time, almost every Federal order has a three-class market, with the industry moving to more uniform classification rather than away from it. The November 1991 recommended decision on the national Federal milk order hearing includes provisions for uniform classification in all of the federal orders. Adoption of proponents' modification would compound problems of interorder differences in regulation. At the same time, there is some question about whether only used-to-produce items are favorably affected by higher protein content. Testimony at the hearing indicated that fluid cream products benefit from higher protein levels, and therefore should be included in the protein pricing of Class II items. The remaining products that make up the proposed "other uses" portion of Class II and III are a very small percentage of the milk pooled and would therefore not affect the producer protein price. In fact, on the basis of pool data from the hearing record, this particular portion of the multiple component pricing proposal would have no effect on the weighted average differential and producer protein price or handlers' cost of milk.

Kroger, Superior Dairy, and Dairy Industry Association of Western Pennsylvania (on behalf of the Association, Superior Dairy, Inc., and United Dairy of Ohio, Inc.) filed comments opposing the application of multiple component pricing to all Class II and Class III milk. The comments argued that there is no economic justification for incorporating a protein pricing formula on uses of milk which are not affected by protein content.

Comments on behalf of Kroger explained that some used-to-produce Class II products such as frozen desserts and dips will not derive an economic benefit by incorporating multiple component pricing in their cost structure because the price or product yield of none of these items are influenced by the amount of protein in the raw milk used in their manufacture. Kroger complained that the proposed pricing system potentially would make it impossible to recover the cost of these products compared to competitors regulated in markets where component pricing does not exist. Kroger claimed that the proposed decision will create inequitable and uncompetitive Class II and Class III market conditions for processors regulated in Orders 33 and 49.

Kroger and the Dairy Industry Association of Western Pennsylvania, (the Association) stated that the argument presented by the Department of establishing uniformity among Federal Orders is unsubstantiated. Kroger posed the question of why the Department granted Class III–A classification to some and not all federal orders if the Department is as determined to establish uniform classification within the order system as the national hearing decision indicates. The Association explained that many Federal Orders do not have a multiple component pricing system and that the proposed decision is breaking new ground with regard to the establishment of such pricing.

The Association claimed that the statement that the proposal would create five classes of milk gives a misleading impression that if the proposal were adopted the orders would not be compatible with the more general three-class structure. The organization stated that the used-to-produce and non-used-to produce categories are merely subcategories of the existing Classes II and III, and that no products were shifted between those classifications. In addition, the organization stated that there would be no difficulty in combining the subcategories in Classes II and III to give totals for those classes comparable to other orders when required.

Kroger proposed that the originally proposed language, which priced only "used-to-produce" Class II and III manufactured items, be adopted. Kroger stated that such a provision would assure handlers regulated under Orders 33 and 49 that costs of Class II and III items whose price, cost, and yield are determined by components other than protein would be similar to their competition in other orders.

The Association claimed that increased protein content does not add any measurable benefit to most fluid cream products on the market. However, the Association's comments stated that if on the basis of the testimony the Secretary finds that fluid cream does directly benefit from higher protein levels, fluid cream products should be shifted to a used-to-produce category rather than have the orders fail to differentiate between used-to-produce and other uses.

Division of Class II and III into "used-to-produce" and "non-used-to-produce" categories for the purpose of pricing differences is an unnecessary complication. Most handlers' receipts will not differ greatly from the average protein content, as the milk of many producers, when commingled, will tend toward an average protein test. In addition, the value of "used-to-produce" milk as determined by Class prices cannot differ materially from the value of such milk as determined by component prices since the component prices add up to the Class III price. Further, according to expert testimony, the protein content of milk affects the ability of such products as whipping cream and ice cream mix to hold air, affecting the quality or yield of both products. The inclusion of milk used in these products, combined with Class I classification of packaged fluid milk products in ending inventory, would result in very little milk to be priced in the "non-used-to-produce" category.

The experience of using pricing systems similar to the one adopted in this decision in the Great Basin marketing area since April 1988 and in the Middle Atlantic marketing area since January 1992 indicates no dissatisfaction with pricing all Class II and III milk on the basis of its components. In fact, although a hearing was held in August 1990 to consider proposed amendments to the Great Basin order that included several proposals to adjust details of the Great Basin protein pricing procedure, no handlers or producer groups whose milk is regulated under that order proposed that any changes be made in pricing all of the milk used in Classes II and III on the basis of its components.

The argument that protein used in Class II should have a higher price than protein used in Class III was not supported by the evidence at the hearing. The testimony at the hearing clearly showed that protein has value in used-to-produce products in both Class II and Class III, but the testimony did not establish any additional value or additional contribution of the protein used in Class II products versus protein used in Class III products. Therefore, the added value of Class II products should be represented entirely by the weighted average differential rather than by a Class II protein price.

Comments filed by MMI expressed concern that the protein content of bulk milk, and its somatic cell content, need to be followed throughout the accounting process in order to be properly priced. In addition, MMI stated, the protein content of milk transferred to other handlers should be accounted for.

The order language accompanying this decision requires handlers to report the butterfat and protein content of milk transferred and diverted to other plants. Beyond this requirement, it is not feasible or necessary to follow protein content and somatic cell counts through processing within the plant. In addition to the unlikelihood that milk will be segregated for further use after receipt at a plant, there is no indication in the record of this proceeding that protein or somatic cells are easily separable from the skim milk in which they are contained. Requiring such accounting, and the testing necessary to carry it out, would be unnecessarily burdensome for handlers. Therefore, the orders should operate under the assumption that "protein follows skim", prorating protein to the uses of the skim milk in which it is contained.

Comments filed on behalf of the Milk Industry Foundation (MIF) opposed the application of multiple component pricing to Class I milk, stating that handlers' payments for Class I milk should not be based on the protein content of the milk. The pricing plan adopted in this decision does not intend, and should not result in, adjustments for protein content to handlers' value of milk used in Class I.

b. Somatic Cell Adjustment

The value of milk should reflect the level of somatic cells contained in that milk. The change in value should be made by adjusting the protein price paid by handlers for Class II and Class III milk, and the protein price paid to producers, for the somatic cell content of the milk.

An expert witness for proponents of the multiple component pricing proposal testified that a somatic cell count is a measure of the concentration of white blood cells in milk. According to the witness, these cells are present in the milk as an immune response to a bacterial infection of a cow's udder. The white blood cells attack and destroy the bacteria and, in the process, contribute to the damage the bacteria has done in the secretory system. They also release

enzymes that not only attack the bacteria, but also affect the milk. Besides causing loss of quality of the milk, the somatic cells also may cause a decrease in production in the affected animal and, in very severe cases, death of the animal.

The witness continued by saying that the effect of somatic cells on milk occurs primarily in the udder of the cow where conditions are favorable for the development of bacteria and the activity of the somatic cells. Once the milk has been removed from the cow and placed under correct handling conditions, stored at or below 4.4 degrees Celsius (40 degrees Fahrenheit), the activity of the cells is reduced and further deterioration of the milk is minimal. Some of the enzymes, however, are not destroyed during pasteurization and therefore may continue to affect milk quality. The expert witness testified that somatic cells cause a breakdown of fat with a resultant release of free fatty acids. These fatty acids cause a rancidity and an off-flavor in dairy products.

Proponents' expert witness testified that the effect of somatic cells on manufactured products is attributed to the enzymes released by the somatic cells. These enzymes attack the casein in the milk and break the casein down into shorter chain proteins that are then lost in the whey during the cheese-making process. The general result is that under identical conditions with milk of equal protein tests, milk with a higher somatic cell count will yield less cheese due to lower casein levels than will milk with a lower somatic cell count. The witness also explained that somatic cell levels affect the final moisture content of the cheese and the activity of the cheese starter. According to the witness this reduction in the functional ability of protein to result in a high-quality manufactured product is not limited to cheese. He stated that any manufactured product that relies on protein to give it structure or form is also affected by degradation of the protein by somatic cells.

Several proponent witnesses testifying on the issue of somatic cells stated that as the number of somatic cells increases, the quality of milk, even that used in fluid products, decreases. A witness for Brewster Dairy testified that Brewster's fluid customers are willing to pay a premium for low somatic cell count milk because of its extended shelf life. Another witness, representing Dean Foods, stated that lowering the somatic cell counts helps bottlers by increasing the quality of the milk, consequently increasing the shelf life of the fluid products.

The quantitative effect of various somatic cell levels on the yield of cheese was discussed at great length at the hearing because this measurement is the basis for the somatic cell differential levels included in the protein payment proposal. Proponents' witness indicated that commingled milk shows a more linear relationship between somatic cell counts and cheese yield than does milk from individual cows, and that milk from individual udder quarters will show more variability from a linear relationship of the two factors than milk from individual cows. However, he stated, the relationship between changes in somatic cell counts and cheese yields is not linear, even with commingled milk. Proponents' witness explained that there is a sudden decrease in cheese yield of about one percent as the somatic cell count increases to approximately 100,000. As the somatic cell count increases from 100,000 to 1,300,000, he testified, the decline in cheese yield may be an additional one to two percent depending on milk handling conditions. The witness testified that there is a three- to four-percent decline in cheese yield as the somatic cell count goes from 100,000 to 1,000,000. Although there is an apparent discrepancy between one of the studies introduced and the testimony of the proponent witness, both show a relationship between somatic cell levels and cheese yields.

The witness went on to discuss research that showed cheese yield decreasing by approximately five percent as somatic cell counts increased from 100,000 to 500,000. The study showed that as somatic cell counts increased from 500,000 to 1,000,000, cheese yields decreased an additional 3.7 percent for a total decrease in yield of 8.7 percent. The witness pointed out that the researcher identified a loss in cheese yield of .045 kg per 45.36 kg of milk for every 100,000 increase in somatic cell counts. This translates to a 1/10th of one percent decrease in cheese yield per every 100,000 increase in somatic cells.

A witness for Kraft USA summarized the results of the three studies received into evidence by concluding that the studies showed an average .07 pound decrease in cheese yield for every 100,000 increase in somatic cell count. A representative of Brewster Dairy stated that Brewster uses as a rule of thumb a 1/10th of one pound change in cheese yield for each 100,000 change in the somatic cell count.

A witness for MMI explained that the five percent figure used in the multiple component pricing proposal to compute the somatic cell differential was derived from the conclusion that as somatic cell counts increase from 100,000 to 1,000,000, cheese yields decline by one pound. The witness stated that this one pound decline represented a ten percent factor of the cheese price and that the proposal was intended to represent one-half of the reduction in cheese yield attributable to somatic cells. The proposed ten percent factor represents the incremental change of one tenth of one pound of cheese and not the percentage change in the cheese yield if the yield changed from 10 pounds of cheese per 100 pounds of milk to 9.9 pounds of cheese per 100 pounds of milk.

A witness for MMI stated that the neutral range in the somatic cell differential was chosen because that is the range into which MMI's weighted average somatic cell count falls. Proponents proposed that producers' pay prices increase with somatic cell counts below the neutral range and decrease with somatic cell counts above the neutral range. Proponent witness explained the use of 200,000 cells as the lowest category by stating that there is no significant effect on cheese yields as somatic cell counts decline below 200,000. A witness for Kraft USA stated that the 200,000 somatic cell level was used as the minimum category because McDonald College of McGill University considers somatic cell counts below 200,000 to be from a healthy cow.

A witness for Kraft USA, testifying as a proponent, explained that somatic cell testing consists of counting the number of cells in a specified size sample of milk, and described two procedures used for counting somatic cells: the direct microscopic somatic cell count (DMSCC) and the optical somatic cell count (OSCC). The DMSCC is a manual microscope counting method while the OSCC is an electronic method.

The Kraft witness explained that there are two different machines that use different techniques for determining somatic cell levels. The Fossomatic machine uses a dye to stain somatic cell nuclei and then counts the stained cells. The Coulter counter counts particles of a certain size. A witness for proponents observed that the Fossomatic was the more commonly used machine in the dairy industry. It was also pointed out that both machines must be calibrated against a known standard, and that in the case of somatic cell testing, the standard is the DMSCC method.

A witness for MMI testified that both MMI and the Ohio DHIA use the Fossomatic machine for their somatic cell testing. The witness stated that a Fossomatic machine costs around $65,000, while another proponent

witness put the cost of OSCC machines between $38,000 and $195,000, depending on the options included, as compared to the $2,000 to $4,000 for the DMSCC.

The proponent witness noted that, as with any laboratory procedure, employee training and skill are critical to the results of the procedure. The record states that the coefficient of variation for somatic cell testing should be below 5 to 7.5 percent while the coefficient of variation for butterfat and protein testing is approximately one half of one percent. However, according to proponents' expert witness, the variability in testing is randomly distributed and therefore would not consistently bias a producer's pay price one way or another. The witness also testified that since there are many industry payment plans using somatic cells as part of their payment criteria there is an industry standard for somatic cell testing that the industry trusts and uses.

For somatic cell counts to be used for determining payments to producers, the level of somatic cells must affect the value of the milk to the user. The hearing record contains substantial testimony to the effect that as somatic cell counts increase the functional value of the milk decreases. The record shows that this change in functional value affects all dairy products, from fluid milk to hard products. In fact, several witnesses testified that high somatic cell counts reduce the quality and shelf life of fluid milk products. The record also shows that somatic cell levels have an effect on the molecular structure of soft manufactured products, including the ability of cream to whip properly. In the manufacture of hard products, record evidence shows that the yield of cheese is directly related to the level of somatic cells in milk.

The recommended decision in this proceeding proposed that the producer protein price for all milk be adjusted for somatic cell count outside the pool, as is currently the case with butterfat. Although there was little opposition to the incorporation under the order of some form of somatic cell adjustment, a number of exceptions were filed in response to the recommended decision on this issue. The exceptions focused primarily on the effect the proposed somatic cell adjustment would have on fluid milk handlers and the basis for making somatic cell adjustments applicable to all milk. In addition some handlers, even those who favored applying such an adjustment to all milk, considered the proposed neutral zone of 400,000–500,000 too high.

Many of the Class I handlers in the three marketing areas argued that the application of price adjustments on all milk for somatic cell count was not proposed in the hearing notice or in testimony at the hearing. These commentors stated that the hearing record contains no evidence of any measurable economic benefit to fluid milk handlers from reduced levels of somatic cells, and that any testimony supporting such adjustment was casual and incidental.

Some of the Class I handlers complained that the recommended adjustments, by being based on the cheese price, would affect the advance notice feature of Class I pricing because the cheese price is not available when the Class I price is announced. Consequently, they stated, the somatic cell adjustment would have to be estimated.

Several of the Class I handlers also stated that they would be unable to recover the benefit of low somatic cell count milk in the marketplace. They argued that adoption of the recommended provisions would give fluid milk handlers a strong economic incentive to procure low-quality milk as a result of the increased cost of high-quality milk. According to these exceptors, the somatic cell adjustment would increase their cost of milk and make them uncompetitive with handlers regulated under other orders.

A number of exceptors argued that a neutral range of 400,000–500,000 somatic cells is too high, with one comment suggesting 250,000–300,000 as a more appropriate range, and others advocating 300,000–400,000. Several comments observed that the new Pasteurized Milk Ordinance Grade A standard for somatic cells, to be effective in 1993, will be reduced from 1,000,000 to 750,000 somatic cells, and argued that when observations greater than 750,000 are eliminated, the average somatic cell count will decrease. Another comment stated that 40–50 percent of producers' milk falls within the 200,000–400,000 range.

Two comments filed by a veterinarian/dairy farmer contradicted evidence about somatic cell testing in the hearing record and asserted that testing for somatic cells suffers from inaccuracy, variability and lack of repeatability. He argued that connecting payment for protein with somatic cell counts would result in penalties for high-protein milk that enhances cheese yield. The veterinarian/dairy farmer and comments filed by the Milk Foundation of Indiana urged that a limit be established on the amount of somatic cell adjustments, such as 15 cents or 12-18 cents.

Several comments favoring adoption of the recommended decision were submitted, including comments filed on behalf of Hoosier and MMI. Hoosier characterized the testimony supporting the application of somatic cell adjustments to all milk as substantial. In addition, National All-Jersey urged the application of protein pricing, as well as somatic cell adjustments, to all milk.

The effect of somatic cell adjustments on the advance nature of Class I prices could be expected to be minimal. The somatic cell adjustments are a very small portion of the cheese price, and any changes from month to month would be correspondingly small in relation to changes in the cheese price. In addition, the biggest factor in Class I price movements is the amount of change in the Minnesota-Wisconsin price, which can be expected on average to represent 10 times the change in the cheese price.

Regarding assertions that somatic cell adjustments would increase Class I handlers' cost of milk significantly, it is unlikely that any handler's total milk receipts would vary greatly from the market's average somatic cell count. It is also probable that application of somatic cell adjustments to Class II and III milk, but not to Class I, will result in Class I handlers receiving lower-quality milk from suppliers without the payment of some additional premium.

Although the record contains significant testimony relating the somatic cell count of milk to the quality, including flavor and shelf-life, of fluid milk and cream products, there was insufficient opportunity for opponents to counter the testimony supporting such a modification of proponents' proposal. The provisions included in this decision adjust handlers' costs for the protein in milk used in Classes II and III for somatic cell count and the protein prices paid to producers for all of their milk. The aspect of the recommended decision that would have included somatic cell adjustments by handlers on all protein in producer milk, including that used in Class I, has been changed.

In addition, the neutral range proposed and recommended at 400,000–500,000 is reduced to 301,000–400,000. Although the average somatic cell count for the period for which MMI entered statistics did fall within the 400,000–500,000 range, a closer inspection of the statistics shows that the median somatic cell count is significantly lower. In other words, the somatic cell count of over half of the producer milk for which MMI had statistics was generally in the

lower half of the 301,000–400,000 increment, and sometimes just under 300,000. The average in this case clearly is substantially influenced by several observations in the 1–2 million somatic cell count range.

In this situation, an attempt to make the somatic cell adjustment neutral for "average" producer milk requires using the median somatic cell count instead of the average. In addition, because of the reduction in the maximum permissible somatic cell count, 750,000 and over will become the maximum increment for which protein prices will be adjusted for somatic cell content. Because of differences between the market administrators and health departments in the number of leucocyte (somatic cell) tests taken in a given period of time, it is entirely possible that some Grade A producers may have an average somatic cell count of 750,000 or more for a month without losing Grade A status.

A further modification of the recommended decision is the breakdown of somatic cell counts into smaller increments for adjustment purposes. Increments of 50,000 will assure producers that if slight testing inaccuracies (which are greater in the case of somatic cells than for butterfat or protein) cause their protein price to be adjusted to the next lower level, that adjustment will not represent the entire value of a 100,000 increment of somatic cell count.

Since the value of milk has been shown to be affected by the level of somatic cells, appropriate adjustments must be determined to apply to the various levels of somatic cells. These adjustments will then be used to adjust handlers' values of protein in Classes II and III, and the protein prices paid to individual producers. The somatic cell adjustment to handlers' value of milk will be computed by multiplying the appropriate constant for each handler's weighted average somatic cell count by the monthly average 40-pound block cheese price at the National Cheese Exchange as published monthly by the Dairy Division. The resulting somatic cell adjustment on milk used in Class II and Class III will be added or subtracted from the protein price paid by each handler.

In computing the producer protein price, negative somatic cell adjustments will be added to, and positive adjustments subtracted from, the total value of handler protein and Class I skim milk, with the result divided by the pounds of producer protein in the pool. Because of the necessity of pooling the somatic cell adjustments in order to avoid affecting the Class I price of milk to handlers, it will be necessary for the somatic cell counts for all producer milk to be reported at pool time.

The somatic cell adjustment to be used in determining protein prices paid to handlers and producers is derived from the reduction in cheese yield as the somatic cell level goes from zero to 1,000,000, converted to a value per pound of protein. The evidence contained in the hearing record shows that as somatic cells increase from 100,000 to 1,000,000 cheese yield declines anywhere from three percent to nine percent, with a substantial amount of this decline occurring somewhat below 200,000 somatic cells and above 900,000 somatic cells. Since the record clearly shows that the relationship between cheese yield and somatic cell count is not linear, the relationship adopted in this decision between the somatic cell adjustment and the somatic cell count is not linear, but reflects the proportional change in cheese yields as the somatic cell level changes.

The constant to be used was computed by dividing the change in the cheese yields attributable to changes in somatic cell counts by a representative protein test of producer milk (3.2%). As proposed, the adjustment to the producer protein price for somatic cell content would be computed by dividing the product of the cheese price and a factor, which varied with the somatic cell level, by the average protein percent used in calculating the handler protein price. The proposed factors varied from .15 for a somatic cell count below 200,000 to −.30 for a somatic cell count above 1,000,000. The proposed factors changed by .05 for every 100,000 change in somatic cells, with a neutral range of 400,000 to 500,000 somatic cells. The factors contained in the proposal were based on the reduction in cheese yield associated with varying somatic cell counts, assuming a linear relationship between cheese yields and somatic cell counts.

Because the reduction in cheese yield with increasing somatic cells is not linear, the factors to be used in adjusting handler and producer protein prices for somatic cell content are revised from the proposal, as shown in Table 1. Dividing these factors by a standard protein content of 3.2 yields the constants shown in Table 1 to be used for computing the somatic cell adjustment. Use of a constant substantially simplifies the computation of the somatic cell adjustment without changing the corresponding value. This result occurs because the protein percentage must change by a considerable amount before the adjustment will change. Therefore, the somatic cell adjustment will be calculated by multiplying the constant corresponding to each somatic cell count interval by the average price of 40-pound block cheese at the National Cheese Exchange as reported monthly by the Dairy Division.

TABLE 1.—FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL ADJUSTMENT

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
1 to 50,000	.300	.09375
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.000000
351,000 to 400,000	.000	.000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	−.100	−.031250
601,000 to 650,000	−.125	−.0390625

TABLE 1.—FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL ADJUSTMENT—Continued

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
651,000 to 700,000	−.150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 and above	−.250	−.078125

In an ex parte communication received after the hearing, a veterinarian from Ohio expressed opposition to the inclusion of somatic cell adjustments in the multiple component pricing plan. His opposition stemmed from the variability in somatic cell testing that he had seen in his practice. His major complaint was with the accuracy of testing when the Coulter Counter is used for somatic cell testing.

As specified in the Agricultural Marketing Agreement Act of 1937, one of the functions of the market administrator is "Providing * * * for the verification of weights, sampling, and testing of milk purchased from producers." Since the market administrator will now be verifying the sampling and testing of milk for somatic cells, the variation in somatic cell levels due to testing should be minimized much as differences in butterfat tests due to testing variations were minimized when the Federal milk order program was first instituted. The concern expressed in the ex parte communication over the accuracy of the Coulter Counter is, perhaps, relevant in the current situation in which producer payments are affected by somatic cell counts only outside the Federal order. However, the Coulter Counter testing method is not one of the methods approved by the American Association of Analytical Chemists (AOAC) for determining somatic cell content, and is not likely to be deemed acceptable for determining producer payments under the Federal order. (Official Notice is taken of the publication "Standard Methods for the Examination of Dairy Products"; 15th Edition; Gary H. Richardson, Ph.D., Editor; American Public Health Association; 1985).

In the brief filed on behalf of NFO, the cooperative objected to the inclusion of somatic cells in the multiple component pricing plan. The brief contained four arguments against the inclusion of somatic cell adjustments to producer payments: (1) somatic cells are not part of the milk, and therefore are not subject to price differentials under the Agricultural Marketing Agreement Act in section 8c(5) 7 U.S.C. 608c(5), (2) somatic cells are a product of disease and subject to wide fluctuations that could lead to inaccurate pricing unless every load is tested, (3) under the proposal, Class I handlers would not have to pay for somatic cells even though the hearing record showed that somatic cell levels are important to such handlers, and (4) the somatic cell adjustment contained in the multiple component pricing proposal uses a linear price reduction while the evidence in the hearing record indicated that the relationship between somatic cell levels and the value of milk to handlers is non-linear.

The Agricultural Marketing Agreement Act in section 8c(5) 7 U.S.C. 608c(5) specifically authorizes adjustments to prices paid to producers for "the grade or quality of the milk delivered." Because the record of this hearing shows that the presence of somatic cells directly affects the quality of milk and that the level of somatic cells in producer milk affects the grade of the milk in that somatic cell counts above a certain level will result in loss of a producer's Grade A permit, the argument that somatic cells can not be used as a criteria for adjusting a producer's pay price is not valid.

The contention that somatic cell counts have wider fluctuations than butterfat or protein tests is apparently valid. However, the hearing record does not contain enough evidence that the variability in testing outweighs the benefits of including somatic cell counts in the multiple component pricing plan.

Point numbers three and four of NFO's objections to including somatic cells in the multiple component pricing plan are discussed earlier in this section of this decision.

c. Other changes

With the inclusion of multiple component pricing in the three orders affected by this decision, certain conforming changes need to be made in these orders to implement this decision. Since protein will now be priced under the three orders included in this decision, each handler will need to include the amount of milk protein and somatic cells contained in total producer receipts, including protein and somatic cells contained in producer milk diverted to other plants, with its report of receipts and utilization. As in the Great Basin order, the assumption will be made that the protein is uniformly contained in the skim portion of the milk and may not be separated easily. Therefore, the protein will follow the skim milk through the allocation process and be allocated proportionately with the skim milk. This allocation procedure means that handlers will not have to report the protein content of milk transferred to other handlers. For handlers filing payroll reports with the market administrator, the milk protein content and the average somatic cell count of each producer's milk will be included on the payroll report in addition to the information currently reported to the market administrator on such reports.

To properly price the components under the amended orders, several price computations must be defined. These are the skim milk price, the butterfat price, and the protein price. The skim milk price per hundredweight will be determined by subtracting the butterfat differential multiplied by 35 from the Class III price. The butterfat price per pound will be determined by adding the skim milk price divided by 100 to the butterfat differential multiplied by 10. The handler protein price per pound will be determined by subtracting the butterfat price per pound, multiplied by 3.5, from the Class III price and dividing the result by the average protein content of milk used in obtaining the basic formula price (the Minnesota-Wisconsin price). Since the proposed skim milk prices, butterfat prices, and protein prices for Class I and Class II are not specifically needed to determine the weighted average differential or the producer protein price, these prices are not defined in this decision.

Two separate marketwide pools will be used to determine the amount that producers will be paid for the milk, and the protein contained in the milk, that they deliver. The first marketwide pool will determine the weighted average differential, while the second marketwide pool will determine the producer protein price. The weighted average differential is the additional

value of the Class I and Class II milk in the pool and will be paid on all producer milk. The producer protein price is determined by the amount of protein used in Class II and Class III and the amount of skim milk used in Class I. In determining payments to producers, the producer protein price will be adjusted for each producer's somatic cell count, and be paid on a per pound of protein basis.

The weighted average differential is determined by computing, for each handler, the differential value of the product pounds used in Class I and Class II, and then adding or subtracting, as is appropriate, the value of such items as inventory reclassification, shrinkage or overage, receipts of other source milk allocated to Class I, receipts from unregulated supply plants, and location adjustments. The above values are then combined for all handlers and the value of producer location adjustments and one-half the unobligated balance in the producer settlement fund are added. The resulting value is then divided by the total pounds of producer milk in the pool and an amount not less than four cents or more than five cents will be subtracted to arrive at the weighted average differential for the zero zone.

The producer protein price is determined by combining, for all handlers, the value of the pounds of skim milk allocated to Class I at the skim milk price with the value of protein contained in the skim milk allocated to Class II and Class III at the handler protein price adjusted for the average somatic cell count of the handler's receipts. The resulting total is modified to include somatic cell adjustments on all producer milk, and divided by the total pounds of protein contained in pooled producer milk. Each producer's protein price will then be adjusted for the average somatic cell count of the individual's producer milk. The somatic cell adjustment will be determined by multiplying the cheese price by the appropriate constant for each producer's average somatic cell count.

Each producer will be paid based on total product pounds at the weighted average differential price at the applicable zone, the pounds of protein contained in the producer milk at the protein price adjusted for the producer's average somatic cell count, and the pounds of butterfat contained in the producer milk at the butterfat price.

The value of producer milk to each handler will consist of the sum of the value of pounds of producer milk in Class I times the difference between the Class I and Class III prices, the pounds of producer milk in Class II times the difference between the Class II price and the Class III price, the value of overage, inventory reclassification, other source milk, receipts from unregulated supply plants, handler location adjustments, the value obtained by multiplying the pounds of skim milk in Class I by the skim milk price, and the value obtained by multiplying the pounds of protein contained in the skim milk in Class II and Class III by the protein price adjusted for the somatic cell content of the handler's receipts. The pounds of protein shall be computed by multiplying the pounds of skim milk in Class II and Class III by the percentage of protein contained in the skim milk of the handler's producer milk.

A handler's obligation to the producer settlement fund will be the difference between the value of producer milk to the handler and the sum of: (a) The value of the handler's receipts of producer milk at the weighted average differential price after adjusting for the producer's location, (b) the value, adjusted for the producer's somatic cell counts, of the protein contained in the handler's receipts of producer milk at the producer protein price, and (c) the value of other source milk at the weighted average differential price adjusted for the location of the plant from which the milk was shipped.

5. Class I Price and Location Adjustments (Order 49)

The Class I price differential and location adjustment provisions of the Indiana order should be amended to bring pricing within the Indiana marketing area into closer alignment with surrounding marketing order areas. The MFI proposal to amend the Indiana Class I price and location adjustment provisions should be adopted in a modified form to minimize intermarket price misalignment and enhance price alignment within the marketing area. A proposal by Hoosier to amend the order's location adjustment provisions should be denied, but changes that would address some of Hoosier's concerns should be made.

Hoosier proposed that the order's location adjustment provisions be changed to provide for adjusting prices downward at locations in the State of Ohio and in parts of Indiana not specifically zoned by the distance of such locations from the Indiana basing points. Proponents argued that the proposed amendment would result in pricing all receipts of producer milk at locations outside the marketing area on an equal basis, and would remove incentives for handlers to associate milk with the Indiana order and then divert it to Ohio locations at no reduction in the blend price. They also stated that the language "south of the marketing area," in the current location adjustment provision, describing locations at which no location adjustment is applicable, is inexact and confusing. An NFO witness opposed the Hoosier proposal as arbitrary and without economic justification, and stated that it would apply negative location adjustments in areas subject to higher milk prices.

Hoosier's proposal would, indeed, result in the application of negative location adjustments in locations at which higher prices apply, and such a misalignment of prices between orders would be very unlikely to result in more orderly marketing conditions. If the proposal were adopted, the Indiana Class I price adjusted for location at Louisville would be 35 cents less than the price at Louisville under the Louisville-Lexington-Evansville order. Producer prices for milk pooled under the Indiana order but delivered to the Louisville area would fall short of Louisville producer prices by 24 cents more than the current amount by which the Louisville blend price exceeds the Indiana blend price. Similarly, a negative location adjustment under the Indiana order at, for instance, Dayton, Ohio, would result in an Indiana Class I price at Dayton 26 cents lower than the Ohio Valley price for the same location. The difference in producer prices under the two orders at Dayton, Ohio, (or at any Ohio location) would be at least 10–15 cents, with Indiana producer milk receiving the lower price.

A provision such as that proposed by Hoosier would give handlers located outside the Indiana marketing area an incentive to acquire pool status under the Indiana order or to procure supplies of milk pooled under the Indiana order. Price alignment between the Indiana marketing area and locations to its south and east would be most equitable to both handlers and producers who receive and price milk pooled under the adjoining order areas if the Indiana price were adjusted to a level equivalent to that effective at the other order locations where Indiana-pooled milk is received. Accordingly, such language should be included in the order.

A witness for the Milk Foundation of Indiana (MFI), which proposed changes in the order's Class I differential and location adjustments, stated that the Foundation is composed of six proprietary handlers, five of which are pool plant handlers under the Indiana order. The witness testified that the Food and Security Act of 1985 had resulted in the Indiana Class I price differential being increased significantly

more than the Class I price differentials for the surrounding markets were increased. He stated that, based on the location of Indianapolis relative to other population centers in the region, the Indianapolis Class I price is too high and results in an intermarket misalignment of prices. The MFI witness argued that there would be no shortage of milk for Class I use if the Indiana Class I price differential were reduced to correspond more closely with the price levels in surrounding marketing areas. According to the witness, the interorder misalignment of prices has caused Indiana handlers to lose sales to handlers regulated under other orders because they are unable to compete on the basis of price.

The MFI witness also testified in support of the MFI proposal to reduce the rate of location adjustments within the Indiana marketing area. The proposal, as modified at the hearing, would combine the present minus 20- and 30-cent zones into one minus 10-cent zone, and change the location adjustment of the present minus 40-cent zone to minus 30 cents. The witness stated that the location adjustments in the Indiana order do not serve the purpose of attracting milk to the market's principal consumption centers because the price differences are not reflected in differences in payments to cooperative member producers. At the same time, he said, the order's location adjustments create a disparity in price among competing handlers regulated under the Indiana order.

The MFI proposal was opposed by both Hoosier and NFO. Both parties argued that Class I price levels and location adjustments were considered in the national hearing proceeding held in late 1990, and should not be determined for just one market. Hoosier's brief stated that the present Class I differentials were based on the cost of transporting milk to consumption centers from areas of alternate milk supplies available at lower prices, and that the best alternate supply area for Indiana is northeast Iowa, central and western Wisconsin and southeastern Minnesota. Hoosier cited testimony by a representative of Dean Foods Company that Dean experiences no Class I price misalignment between the Indiana and surrounding order areas, and stated that price alignment between Indiana plants and Order 30 (Chicago) bottling plants located 80–100 miles from Chicago needs to be considered. The Hoosier brief concluded that adoption of the MFI proposal would create disorder and disarray in surrounding marketing areas.

A comparison of Class I price differentials effective at different locations within the Indiana and surrounding marketing areas both before and after 1985 shows that Class I differentials were increased significantly more for the Indiana Federal order area than for neighboring marketing areas. The 1985 Class I price increases were 14 cents at Chicago, 21 cents at Louisville, 19 cents in the southern part of the Southern Michigan marketing area, 29 cents in the northern portion of the Southern Illinois market adjoining Indiana, and a maximum of 41 cents under the Ohio Valley order, at Cincinnati. The price increase at Dayton, Ohio, a location closer to the population centers of the Indiana market, was 34 cents. In comparison, the Class I price increase at Indianapolis, the major population area of the Indiana marketing area, was 47 cents.

The price misalignment between markets resulting from the 1985 price increases is particularly noticeable between Chicago and Indianapolis, and between Indianapolis and Louisville, or in a north-south direction. According to the 1985 Household Goods Carriers' Bureau Mileage Guide, of which official notice is taken, the mileage between Chicago and Louisville is 286 miles, with 175 miles from Chicago to Indianapolis, and 111 miles from Indianapolis to Louisville. If the $.024483 location adjustment rate per 10 miles of distance reflected in the current Chicago-Louisville price difference of 71 cents is applied to the Chicago-Indianapolis distance and the Indianapolis-Louisville distance, the appropriate Class I price differential at Indianapolis would be $1.83, very close to the $1.82 level proposed by MFI.

The north-south price alignment in the Indiana order is significant because most of the milk supply for the Indiana market comes from northern Indiana, southern Michigan and the two northern pricing zones of Ohio, and a disproportionate amount of Class I milk is used in the southern part of the Indiana marketing area. Hoosier characterized Wisconsin and Minnesota as the primary alternative sources of supply for the Indiana market. These locations apparently serve as sources of milk for handlers importing supplies of milk that are pooled elsewhere, rather than being sources of producer milk pooled under the Indiana order. Statistics in the record indicate that during only one of the months for which milk production by state and county was published was Wisconsin milk pooled under the Indiana order, with none from Minnesota. The one month in which Wisconsin milk was shown to be pooled under the Indiana order was May 1988, when only 54 percent of the producer milk pooled under the Indiana order was used in Class I. According to the Hoosier witness' testimony, some of the milk Hoosier arranges to buy in Wisconsin for the Indiana market never moves to Indiana plants.

Another factor that must be considered is price alignment between markets from west to east. In spite of the fact that pricing between Chicago and Louisville would justify a $1.83 Class I price differential at Indianapolis, an appropriate price alignment between west central Illinois, Indianapolis, and Dayton, Ohio, establishes a minimum Class I price differential at Indianapolis of $1.90. The current price difference between Champaign, Illinois, and Dayton, Ohio is 29 cents, while the distance between these two points is 223 miles. The resulting rate per hundredweight is $.0126 per 10 miles of distance. When this rate is applied to the distance between each of these two points and Indianapolis (124 miles to Champaign and 105 miles to Dayton) and the corresponding price level at Indianapolis is computed, an Indianapolis Class I price differential of $1.90 results. In addition, an Indiana pool distributing plant located at Richmond, Indiana, is located only about 40 miles from an Ohio Valley pool distributing plant at Dayton, Ohio, where the Class I differential is $2.04. It would be difficult to justify a 20-cent price difference between these two locations (at a rate of $.0525 per 10 miles), just as it is difficult to defend the current 20-cent price difference between Chicago and Gary, Indiana, located only 28 miles apart (at a rate of § .067 per ten miles).

Comments and exceptions were filed by several of the handlers doing business in the Indiana marketing area. Hoosier and Milk Marketing, Inc. (MMI), opposed the proposed changes to the Class I differential and location adjustments. The two cooperative groups argued that the recommended decision ignored the standard of supply and demand in changing milk prices by failing to allow for the necessity of moving milk from north to south within the marketing area to assure an adequate supply of milk in the southern part of the marketing area. The exceptors stated that the proposed reduction in the Class I price differential would cause a 6-cent reduction in the uniform price paid to producers, threatening a shortage of milk for fluid use if the recommended price level is adopted. According to the comments, reduction of the Class I price at Indianapolis and narrowing the price difference from the northern part of the marketing area to the southern part will

discourage milk from moving to where it is needed for fluid use.

Both Hoosier and MMI stated that Indiana order Class I prices are not misaligned with those of other orders, and that the proposed changes would result in misalignment and competitive disruptions between locations within the Indiana marketing area. The Hoosier comments pointed out that the restructured location adjustments would add 5 and 10 cents per hundredweight to the cost advantage handlers in zones 4 and 1 currently experience over other handlers distributing milk in those zones. On the basis of this result, the co-ops argued that the recommended changes would impede zone 2, 3 and 4 handlers from moving milk to zone 1, contrary to the purpose of location adjustments.

Both exceptors argued that the national 43-day hearing decision considered proposals to change Class I differentials and price alignment between orders and found no need for doing so.

Dean Foods' comments to the recommended decision began with support for reducing the Class I differential to $1.90 because it would improve price alignment between Indianapolis and Louisville. The comments concluded that the resulting 6-cent reduction in blend prices to producers is unacceptable, and that the Class I differential should be left at $2.00, with zone differentials unchanged.

The Dean comments focused primarily on arguments that the zone designation for Fulton County, where Dean has a distributing plant, is incorrect. Dean's comments argued that 20 percent of its Rochester, Indiana, plant's sales compete with those from plants in Lake and Porter Counties in the minus 40-cent zone. At the present time, Dean states, these plants have a 20-cent competitive advantage, which will be changed to 25 cents under the recommended decision. According to Dean, Rochester is 85 miles from the order's lowest price zone, and should have a 16-cent Class I price difference with plants located there, rather than the recommended 25 cents. Dean also argued that the location of other plants with which the Rochester plant competes for sales make it necessary for the Rochester location to be in the same pricing zone (minus 20 cents) as the New Paris plant, rather than in the minus 10-cent zone.

MFI and Kroger supported the recommended Class I price differential and location adjustment changes for Order 49 as re-establishing the historical price relationships that existed between Order 49 and adjoining markets prior to the 1985 Farm Bill. MFI also stated that the recommended changes will result in more equity among competing handlers in the Indiana marketing area and contribute to more orderly and efficient marketing.

The 10-cent change in the Order 49 Class I price differential and the corresponding 6-cent estimated reduction in prices paid to producers effectuated by this decision should have no discernable impact on the supply and demand for milk in this market. The estimated 6-cent impact on the blend price paid to producers represents approximately one-half of one percent of the average Order 49 blend price for 1988. During 1988, the Minnesota-Wisconsin (M–W) price, upon which all of the prices in the market are based, changed by nearly $2.00, or over 17 percent of its average. Considering the much greater movements in the basic formula price, which reflects national supply and demand conditions for milk, any attempt to determine the effect of a 6-cent difference in blend prices on supply/demand conditions in the Indiana market would be an exercise in minutiae.

Although Class I price differentials were not changed as a result of the 43-day national hearing for which a final decision was recently issued, failure to make such changes in that proceeding does not preclude changes to Class I price differentials from being made on the basis of hearing records dealing with individual orders. According to the final decision in the national hearing, "The proposals that were considered at the hearing in this proceeding involved possible changes on at least a regional or multi-order basis, possibly even changing all orders. There was no notice given that the appropriate Class I price level for any individual market would be considered outside the context of price alignment among a group of orders."

The reduction in location adjustments between northern and southern Indiana should not impede the movement of milk from the heaviest production area of the market to the primary consumption area, or from locations north of the marketing area to Indiana distributing plants. The changes included in this decision that assure that Indiana pool milk is more likely to be priced at the location to which it is delivered rather than the location from which it is diverted will provide more incentive for milk to move to where it is needed than existed under the previous order provisions. In addition, Indiana blend prices generally exceed blend prices effective under the Southern Michigan order significantly. When the blend prices of both orders are adjusted for location to the border area between the two States, the Indiana blend price under the amended order will still exceed the Southern Michigan blend price by approximately 10 cents per hundredweight.

The zone price differentials adopted in this decision are intended to correct a Class I differential noticeably higher than in surrounding orders that was mandated by the 1985 Farm Bill. As a secondary effect, the restructured zone differentials should reinstate inter- and intra-market price relationships in effect before the 1985 Farm Bill provisions became effective. Therefore, the adopted differentials should require no more dramatic adjustments in competitive relationships than were experienced at that time.

The zone location of Fulton County should not be changed from the recommended decision. Location pricing is designed to allow milk to move from production areas to consumption centers. Therefore, the appropriate Class I price level at any given distributing plant location should be determined on the basis of its distance from available supplies of milk. Rochester, Indiana, is located at approximately the same distance from the heavy production areas of northern Indiana as are Huntington and Fort Wayne. The location of plants with which the Dean plant at Rochester chooses to compete for sales of fluid milk products has no bearing on the appropriate price for the Rochester location. In addition, the lowest-price zone in the marketing area, from which Dean proposes the Rochester price be determined, is not the area of heaviest milk production and therefore should not be used as the basis for establishing the price at Rochester.

For the foregoing reasons, the Class I price differential at Indianapolis should be reduced to $1.90. At the same time, location adjustments within the marketing area should be reduced to maintain alignment with adjoining Federal order pricing, especially in the northern portion of the Ohio Valley marketing area. The current $2.00 price differential should be maintained for a strip of counties on the southern edge of the Indiana marketing area, including Jackson, Jefferson, Jennings, Lawrence, Ripley and Switzerland counties. These counties, located about halfway between Louisville and Indianapolis, can comprise an intermediate pricing zone between the Indiana and Louisville-Lexington-Evansville marketing areas. The current minus 40-cent location adjustment zone in the northwest corner

of the marketing area should become a minus 35-cent pricing zone, to moderate the large price difference between Chicago and Gary, Indiana.

Although the MFI witness was correct in stating that intramarket location adjustments have had little effect in the Indiana market because of the provision allowing milk to be priced at the location from which diverted, this decision adopts amendments to the order that will result in more milk being priced at the location at which it is actually received. Consequently, it is important for reasons of both intermarket and intramarket price alignment to assure that the price differences between various points in the marketing area will accommodate movements of milk from where it is produced to where it is needed for fluid use. The location adjustments in the current minus 20- and minus 30-cent zones therefore should be changed to minus 10- and minus 20-cents, respectively, while the current minus 40-cent adjustment should become a minus 35-cent adjustment. These changes will assure that the current price differences between northeastern Indiana and northwestern Ohio are unchanged.

6. Accountability for .9(c) milk (Order 49)

A proposal by Hoosier to change the accountability to the pool for milk moved directly from producers' farms to pool plants by cooperative associations pursuant to Section .9(c) of the Indiana order from the receiving pool plant operator to the cooperative association handler should be adopted. The proposal, as adopted, would require .9(c) handlers to sell such milk to receiving handlers at classified prices, including component values, and equalize with the pool on the value of the milk so moved. The .9(c) handler would be responsible for the testing of individual producers' milk, and for paying its member producers on the basis of those test results. The Hoosier proposal encountered no opposition, and was supported by NFO. Adoption of the proposal will simplify reporting and accounting for milk and its components under the multiple component pricing plan adopted in this decision.

7. Payments to Producers

a. Due Dates and Late-Payment Charges (Order 49)

A proposal by NFO, joined in by Hoosier, to require timely payment by handlers for producer milk by imposing a one-percent per month late charge on payments not made by the due date required in the order should be adopted. According to the NFO witness, handler payments made under Orders 33 and 36, which require payments to be made to the market administrator, are made on a much more timely basis than payments for milk under Order 49. The witness stated that the current delay in Order 49 is 6½ days, and attributed the delay to the use of the postal service in making payments rather than using wire transfers. The witness testified that the late payment fee should be assessed by the market administrator, even on monies due to cooperatives from handlers, and paid into the administrative fund. Hoosier supported the proposal on the basis that current technology allows a requirement that payments be required to be received when due, not just mailed by the due date.

The proposal should be adopted to assure that monies due to producers is available to be paid to them when it is due. Handlers currently are able to rely on a delay in the delivery of mailed checks to enhance their own cash-flow positions at the expense of the dairy farmers from whom they obtain milk. The widespread availability of bank transfers of funds makes possible faster payment, which should be passed along to producers as soon as possible. The one-percent late-payment charge will provide an incentive for handlers to make their payments for milk in a timely manner. Payment of any late-payment charges collected into the administrative fund should cover the market administrator's cost of implementing and enforcing timely payment.

b. Seasonal Incentive Payment Plan (All Three Orders)

The Brewster Dairy proposal to provide a seasonal plan to pay dairy farmers, designed to even out monthly milk production under Orders 33, 36 and 49, should be denied. At the present time, producers supplying these three markets receive the uniform price for their monthly milk deliveries. None of the three orders provides any type of seasonal payment program.

Brewster Dairy, Inc., proposed that a unique type of "Louisville" plan be incorporated into each of the three orders. The Order 36 proprietary supply plant operator testified that seasonal pricing programs are needed in these three markets to encourage dairy farmers to level out their milk production during the year so that the amount of milk they produce each month is in better alignment with the amount of milk that fluid processors and manufacturers demand. Traditionally, more milk is produced in the spring than the fall and fluid bottling plants need more milk for processing in the fall than in the spring. To demonstrate this problem, proponent pointed out that the average daily receipts from producers in November represent only about 85 percent of the amount produced in May while daily Class I use in November is normally about 10 percent greater than in May.

In support of its proposal, Brewster's witness argued that the marketing problems associated with seasonal milk production are complicated by distributing plant operators who contract to buy only enough milk to meet their Class I needs in the spring and rely on others to furnish them with additional supplies in the fall. The Brewster witness stated that these purchasing arrangements, coupled with the seasonality of milk production, result in raising the overall marketing cost to the region's dairy industry. In the spring, he testified, the milk in excess of bottling needs that also exceeds the manufacturing capacity at local plants must be hauled to distant plants for disposal. Conversely, he stated, in the fall supplemental milk from sources beyond the normal procurement area must be transported to distributing plants to furnish the fluid requirements of such plants. According to the witness these extra transportation costs are borne primarily by cooperatives and their member producers. In addition, he said, handlers maintain plant capacity to manufacture reserve milk supplies in the spring and much of that capacity is inefficiently idled in the fall when more of the lower seasonal milk supply is needed for Class I purposes at distributing plants.

Proponent characterized its proposal as a "modest" plan that is designed to reward producers who make the extra effort to increase their milk production in the fall relative to the amount they produced in the prior spring. Brewster proposed that monetary incentives be used to encourage dairy farmers whose milk is pooled under these three orders to gear their milk production toward greater output in the fall. In this regard, the handler proposed that 5 cents per hundredweight be deducted from the pool funds due producers in computing the uniform prices for the months of February through July.

The "Louisville" plan proposed by Brewster is unique in terms of how the money deducted in the prior months of February through July would be returned to dairy farmers. As proposed, the funds would be distributed in the months of September through November, but only to dairy farmers

who qualified for incentive payments. Producers whose average daily milk deliveries in the months of September through November equal 90 percent or more of their daily deliveries in the prior months of February through July would qualify to receive incentive payments. Producers whose average daily deliveries fall below the 90-percent level would not qualify for incentive money.

NFO was supportive of the concept of tailoring milk production to more nearly coincide with the demands of the marketplace. The cooperative's witness insisted, however, that the program must be designed so that the program's costs and benefits are more appropriately aligned. In that regard, he testified that dairy farmers have to spend money to alter their seasonal production patterns, while the benefits of level milk production accrue to handlers because they are able to achieve greater plant operating efficiencies. In recognition of these cost and benefit factors, NFO suggested that Brewster's proposal be modified so that handlers, rather than all of the market's producers, would fund the program. As modified by NFO, handlers would pay a surcharge of 5 cents per hundredweight on their producer milk deliveries assigned to each class during the months of February through July. Such funds would be returned to qualified dairy farmers in the following months of September through November on the same basis proposed by Brewster.

MMI also endorsed the concept of seasonal incentive plans. A spokesman for the cooperative testified that Brewster's proposal has merit, but that MMI would prefer a handler-financed seasonal payment program, as suggested by NFO, to the one proposed by Brewster which would be funded by dairy farmers. He further testified that the dairy industry has made many attempts over the years to encourage dairy farmers to alter their production patterns and thereby increase the efficiency of the entire milk marketing system. The witness asserted that any program designed to address this issue would be welcomed by his association.

A representative of the Hoosier Milk Marketing Agency also supported the concept of seasonal pricing and NFO's modification whereby the incentive money would be derived by increasing the handler Class I prices by 5 cents per hundredweight rather than deducting that rate per hundredweight from the pool funds due producers. In addition, Hoosier testified that this issue should more appropriately be addressed at the national hearing and took the position that a seasonal payment plan should not be adopted for these three markets unless it is provided under all neighboring Federal orders. The Agency's spokesman stated that adoption of a seasonal payment plan for Orders 33, 36 and 49 and not in surrounding orders would create competitive problems similar to those now experienced by Indiana handlers who are competing with handlers regulated by the Louisville-Lexington-Evansville order, which provides a seasonal base-excess plan to pay dairy farmers.

Hoosier also asked that any seasonal payment program adopted for these markets not be mandatory each year. In that regard, the producer spokesman suggested that the amended orders include provisions that would establish procedures whereby the operation of the seasonal plan could be made inoperative for any year if a review of marketing conditions indicates that it would be unnecessary to encourage additional fall milk production in that particular year.

If Brewster's payment plan had been in effect during 1989, record data show that producers under Orders 33 and 36 would have received about $2.00 per hundredweight on their eligible milk deliveries during the months of September through November and about 40 percent of the markets' dairy farmers would have qualified for incentive payments. They also indicate that Order 49 producers would have received about $1.30 per hundredweight for their eligible milk deliveries in such months and about half of the market's dairy farmers would have qualified for incentive payments.

In addition, the record evidence indicates that an Order 36 dairy farmer producing the market's average daily delivery per farm would have had about $180 deducted from pool funds on his or her behalf through the computation of the uniform prices for February through July of 1989. If such producer marketed the same daily quantity of milk during the following months of September through November as he or she marketed in the spring, the dairy farmer would have received an additional $370 on 10 percent of his or her deliveries during the ensuing 3-month period. Proponent testified that this may not seem like a lot of money, but if producers know they will be rewarded for extra effort it will motivate them to work hard to qualify for incentive payments.

It is evident from the foregoing that the financial impact of Brewster's proposal on individual dairy farmers would not be substantial. Thus, it is questionable whether the monetary rewards would be sufficient under the proposed seasonal plans to encourage dairy farmers to make the necessary herd management decisions to gear their production patterns toward greater milk production in the fall. Also, as more producers qualify additional milk for incentive payments, the per hundredweight incentive rate of return for the participating dairy farmers would decrease.

Furthermore, the hearing testimony indicates that there are many differences of opinion among interested parties regarding the adoption of any seasonal payment program for these three markets. These programs affect dairy farmers and, with the exception of the evidence presented by Brewster, no other interested party supported adoption of the proposal as it appeared in the hearing notice.

The hearing participants who represented dairy farmers generally supported the concept of seasonal pricing but stated that Brewster's proposal should be modified in certain respects. For instance, three producer groups (MMI, Hoosier and NFO), which represent a considerable portion of the milk pooled under each of these three orders, endorsed the modification advanced by NFO whereby the incentive money would be generated through higher class prices paid by handlers rather than deducted from money due dairy farmers, as Brewster proposed. Without the support of Hoosier, MMI and NFO, the Brewster proposal lacks widespread support among dairy farmers who supply milk for these three markets.

The funding modification, which shifts the program's cost from producers to handlers, represents a major change in the proposal's impact. It would be inappropriate to adopt such a revision on the basis of this record, since the hearing notice did not alert interested parties that such a proposal would be considered at this hearing and thus provided no opportunity for hearing participants to comment on such a proposition. In view of this consideration and the aforementioned shortcomings, Brewster's proposal must be denied.

Several seasonal incentive plan proposals, including one advanced by MMI, were considered at the national hearing. Such proposals involved many of the same issues that are addressed herein regarding Brewster's three-market proposal. On the basis of the national hearing record, all of the seasonal payment plan proposals were denied.

8. Administrative Expense (Order 36)

The maximum allowable rate of assessment to be paid by handlers to cover the cost of administering the Eastern Ohio-Western Pennsylvania order (Order 36) should be increased to 4 cents per hundredweight. The assessment would continue to be applied to the same milk to which the present assessment applies.

The Act specifies that persons who are regulated shall pay the cost of operating the program through an assessment on the milk handled by regulated persons who are defined as handlers under the order. The present 3-cent per hundredweight maximum allowable rate of assessment has been provided for the administration of Order 36 since the Eastern Ohio-Western Pennsylvania order became effective on July 1, 1968.

A one-cent increase in the maximum allowable rate was proposed by MMI, a cooperative that supplies a considerable portion of the market's total milk needs. A spokesman for the producer group testified that the current maximum funding level of 3 cents per hundredweight is no longer adequate to administer Order 36 effectively.

There was no other testimony on this proposal at the hearing. In briefs, NFO supported the proposed increase and MMI reiterated its hearing position on this issue.

The one-cent increase in the Order 36 maximum rate of administrative assessment was opposed in a brief filed by the Dairy Industry Association of Western Pennsylvania. The handlers' counsel contended that there is no evidence in the record to justify a 33-percent rate increase. He argued that the record fails to adequately demonstrate how much of an increase, if any, is needed and stated that an increase of this magnitude certainly is not warranted.

The Ohio Valley and Eastern Ohio-Western Pennsylvania orders (Orders 33 and 36) are administered under the supervision of a single market administrator who, at the time of the hearing, was headquartered in Columbus, Ohio. Since 1987, consolidated Balance Sheets and Income and Expense Statements for the Administrative Fund, which combine the income and expense activities for the two markets, have been compiled by the market administrator and reported annually to regulated handlers as well as other interested parties. Also, since the market administrator conducts essentially the same verification program in connection with the administration of both orders, the handler assessment rate has been maintained at the same level in both markets.

Record data for the years 1985–89 show that the administrative expenses associated with the operation of Orders 33 and 36 exceeded the income the market administrator received from assessments by more than $900,000. They also indicate that an assessment rate of 2.4 cents per hundredweight of milk handled was effective for 1986, 1987 and 1988. It was raised to 2.8 cents for 1989 and further increased to 3 cents per hundredweight for 1990. (Official notice is taken of the market administrator's annual report to all handlers of the Income and Expense Statement for the calendar year ending December 31, 1990.) Since the Order 36 assessment for administration is at the maximum level currently allowed under the order, there is no opportunity for the market administrator to increase the rate to cover any further cost increases. Without the opportunity to increase the assessment rate, additional operating funds can be generated only if substantially greater quantities of milk are pooled under the order or if the expenses of administering the program decline significantly.

Handlers and producers serving the market have jointly asked that a new pricing program be provided to establish handlers' value of Class II and III milk and to pay dairy farmers. A program similar to that requested by the dairy farmers and processors is adopted herein. The implementation and administration of that pricing plan for Order 36 may require the purchase of some new laboratory equipment and the performance of additional administrative duties. Many of the testing expenses associated with the multiple component pricing program will be paid for with money from the marketing service fund. However, since the value of milk used by handlers in Class II and Class III will be established on the basis of the milk's butterfat, protein and somatic cell content, some of the expenses related to establishing the level of these factors in producer milk likely will be paid for with money from the administrative fund. Thus, there is no reason to expect the expenses of administering the order to decline.

The pounds of pooled milk to which the assessment rate applies under orders 33 and 36 has declined considerably during the past few years. For example, receipts of milk from dairy farmers supplying these two markets in 1989 was 14 percent less than the amount pooled in 1985. Also, producer receipts in 1990 were unchanged from 1989. (Official notice is taken of the publication Federal Milk Order Statistics for December 1990). Current milk price and production trends provide no basis to expect receipts from the market's producers to increase dramatically anytime soon.

It is evident from the foregoing that sufficient funds to cover administrative expenses in the future cannot be guaranteed by either increased milk production or reduced administrative expenses. Accordingly, the proposed one-cent increase in the maximum allowable assessment rate is adopted as the best way of assuring continued adequate funding for the effective administration of the Eastern Ohio-Western Pennsylvania order.

This one-cent increase for Order 36 will establish the same 4-cents per hundredweight maximum allowable administrative assessment rate that exists under Orders 33 and 49, as well as most other Federal milk orders. Increasing the Order 36 maximum permissible administrative assessment rate to 4 cents per hundredweight will give the market administrator the necessary flexibility to generate the financial resources needed to properly administer the order, as amended. It also should enable him to establish and maintain an appropriate financial reserve that is within the Department's guidelines.

Providing a higher maximum rate of assessment in the order does not mean that the higher rate will apply automatically when the amended order becomes effective. The amendment gives the market administrator the discretionary authority to set the rate at any level up to the maximum specified in the order. Because of that discretion, when the amended order becomes effective the market administrator may decide that no change in the effective assessment rate is necessary, or he may find that some increase is warranted, but not up to the maximum allowed.

Pennsylvania Farmers Union filed comments objecting to the proposed increase in the ceiling on administrative assessments in Federal Order 36 to the levels of Orders 33 and 49. Pennsylvania Farmers Union stated that raising fees to the levels in other orders simply because they are the levels used in those areas is not sufficient justification. However, the organization stated, an increased burden in administering a component pricing system is a reasonable cause for such an increase.

As described in the preceding paragraphs, an increase in the Order 36 maximum allowable administrative assessment is necessary to provide for

the optimum administration of the order, and not merely to raise the level of the assessment to that prevailing in Orders 33 and 49. In addition, it would be inequitable to fund the administrative costs of Order 36 at the expense of Order 33 handlers.

9. Marketing Service Assessments (All Three Orders).

The maximum rate of deduction from payments to nonmember producers for the cost of providing marketing services such as butterfat, protein and somatic cell testing and market information for nonmember producers should be increased to 7 cents per hundredweight under the three orders (Orders 33, 36 and 49) involved in this proceeding. The increase is needed to assure sufficient funding to cover the expenses incurred by the market administrators in providing such services to producers for whom the services are not provided by a cooperative association.

Currently, 6 cents per hundredweight is the maximum allowable deduction for such services under Order 33, and 5 cents is the maximum under Orders 36 and 49. These maximum rates have been effective under the individual orders for many years. For example, the 6-cent maximum has been provided in the Ohio Valley order since August 1, 1970. The 5-cent rate has been provided in the Eastern Ohio-Western Pennsylvania order since July 1, 1968, and in the Indiana order since January 1, 1969.

Milk Marketing, Inc. and the Hoosier Milk Marketing Agency proposed that the limits on the rates of deduction be raised to 7 cents per hundredweight under the three orders. These producer organizations represent a substantial portion of the milk supply pooled under each of the 3 orders. The producer spokesman testified that the cost of performing marketing services for dairy farmers has increased considerably over the years. He also testified that the market administrators have streamlined their operations to the extent possible and adopted the latest office and laboratory technology available in an attempt to provide the maximum services to dairy farmers for the lowest possible cost. He contended that the extent to which costs can be reduced before affecting the program's effectiveness is limited.

In support of their proposal, proponents argued that the maximum rates of deduction for marketing services provided under the three orders represent much smaller percentages of the markets' blend prices now than when the rates originally were provided. Proponent witness stated that over the years the market administrators have expanded their marketing services for dairy farmers and that the cost of performing these functions has increased. The witness testified that the marketing service assessment proposal is designed to complement the cooperatives' proposal to provide multiple component pricing plans for these three markets. Since the new pricing plan will require accurate measurement of the butterfat, protein and somatic cell content of producer milk, additional milk testing duties will be imposed on the market administrators.

No other interested party testified on this issue at the hearing. In briefs, NFO agreed that an increase in the maximum rates of deduction for marketing services would be needed with the implementation of component pricing plans under these three orders.

Opposition to the proposed increase in the maximum allowable marketing service assessment was expressed in a brief filed on behalf of the Dairy Industry Association of Western Pennsylvania. The brief argued that the record fails to justify rate increases of up to 40 percent for marketing services. Counsel for the handlers stated that proponents offered only vague and nonspecific reasons to support their proposal and relied primarily on the fact that the maximum rates had not been changed for several years and that inflationary pressures have resulted in increased operating costs. The brief argued that these generalities do not provide an adequate basis for increasing the rates and insisted that if higher maximum rates are justified, they certainly would not have to be raised to the 7-cent level proposed by MMI and Hoosier.

The marketing service programs for these three orders are provided under the supervision of two market administrators. The program for the Ohio Valley and Eastern Ohio-Western Pennsylvania orders (Orders 33 and 36) was, at the time of the hearing, conducted under the auspices of the market administrator who was headquartered in Columbus, Ohio. The orders are still administered by a single market administrator. Since 1987, Balance Sheets and Income and Expense Statements for the Marketing Service Fund for these two markets have been published annually on a combined basis for nonmember producers and other interested parties. Since the market administrator provides essentially the same marketing service program for producers under both orders, the rate of deduction to cover such services under Orders 33 and 36 has been maintained at the 5-cent maximum level provided in Order 36.

Similarly, the marketing service program for the Chicago Regional and Indiana orders (Orders 30 and 49) is operated under the jurisdiction of the market administrator who is located in Glen Ellyn, Illinois. Since 1987, Balance Sheets and Income and Expense Statements for the Marketing Service Fund showing combined activities for these two markets have been reported annually to nonmember producers and other interested parties. Similar services are provided by the market administrator for nonmember dairy farmers supplying both markets and 5 cents per hundredweight, which is the maximum provided under both orders, has been deducted from payments to dairy farmers to cover the expenses associated with providing these services.

Record data for Orders 33 and 36 show that for the years of 1985–1989 the marketing service program expenses exceeded the amount deducted from producer payments for such services by a net amount of almost $127,000. They also indicate that expenses exceeded deductions in 4 of the 5 years and that most of the income shortfall, $82,000, was accounted for in 1989. Marketing service expenses in these two markets for the 5-year period averaged 5.1 cents per hundredweight of nonmember milk pooled. For 1985–89, expenses represented 5.0, 4.9, 5.1, 5.1 and 5.4 cents per hundredweight respectively of such producer milk.

Record data for Orders 30 and 49 show that the expenses incurred by the market administrator in providing marketing services for nonmember dairy farmers in these two markets for the 3-year period of 1987–89 exceeded the amount deducted from producer payments to cover such expenses by almost $10,000. The 3-year net figure, however, does not demonstrate the seriousness of the income shortfall because in 1989 expenses exceeded the amount deducted by more than $38,000. The data also show that the marketing service program expenses in these two markets for the 3-year period averaged 5.1 cents per hundredweight of nonmember milk pooled. For the years of 1987–89, expenses represented 4.6, 4.8 and 5.7 cents per hundredweight, respectively, of such producer milk.

It is evident from the foregoing that the 5-cent deductions from producer payments for marketing services in these 3 markets have been inadequate to cover the expenses incurred in the performance of such duties by the market administrators. It also shows that the financial situations are becoming

progressively worse each year. In addition, the multiple component pricing plan adopted in this decision is going to require additional testing activities. Since not all handlers are equipped to make all of the determinations that will be required under the amended order, many of these extra duties will have to be performed by the market administrators responsible for the administration of these three orders.

The 7-cent maximum rate of deduction for marketing services proposed by MMI and Hoosier should be provided in the three orders involved in this proceeding. These higher rates should give the market administrators the necessary flexibility to conduct effective marketing service programs, including any additional duties relating to the implementation and administration of the new pricing program that will be incorporated in the three orders.

Provision of a 7-cent maximum rate does not mean that the 7-cent rate will become effective automatically. Maximum rather than fixed rates of deduction are specified in the orders because the relationship between income and expenses for these funds is subject to many variables. Changes in the pounds of nonmember milk marketed and the rate assessed on these marketings increase or decrease the income of the marketing services funds while changes in order requirements and the expenses of providing marketing services result in changes in total outlays. Because of such variations, an increase in maximum allowable assessments will give the market administrators the discretionary authority to set the rates of deduction for marketing services at levels necessary to cover the expense of providing marketing services. If the market administrators decide that rates below the upper limits adopted in the amended orders will provide sufficient funding to conduct an adequate program for nonmember producers they may use their discretionary authority to do so.

10. Conforming changes

The provisions specifying reporting requirements and the computation of handlers' obligations to the pool and to producers have been changed as needed to assure that the multiple component pricing plan adopted herein will be practicable. In addition, the current requirement under both the Ohio Valley and Eastern Ohio-Western Pennsylvania milk orders that handlers report each producer's days of production is removed in the accompanying order language changes.

Neither of these orders contains a base plan or any other provisions that would necessitate such a reporting requirement.

The proposed amendments to order language included with this decision are based on the amended order language published for these three orders with the final decision for the 1990 national hearing for all orders, issued in early 1993.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

(d) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency for Order 36 will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1036.85 of the aforesaid tentative marketing agreement and the order as proposed to be amended.

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.

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 Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area. The representative period for the conduct of such referendum is hereby

determined to be October 1992. The agent of the Secretary to conduct such referendum is hereby designated to be Marvin A. Baumer.

Determination of Producer Approval and Representative Period

October 1992 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Ohio Valley and Indiana marketing areas 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.

List of Subjects in 7 CFR Parts 1033, 1036 and 1049

Milk marketing orders.

Dated: June 9, 1993

Eugene Branstod,

Assistant Secretary, Marketing and Inspection Services.

Order Amending the Orders Regulating the Handling of Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. 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. 601–674), 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 orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held; and

(4) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency for the Eastern Ohio-Western Pennsylvania areas will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1036.85.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the orders contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on July 30, 1992, and published in the **Federal Register** on August 13, 1992 (57 FR 36536), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein, subject to the following modifications:

a. Changes in the treatment of somatic cell adjustments require modifications of reporting requirements in paragraphs (a)(1)(i), (a)(4), (b)(1), (b)(1)(ii) and (b)(3) of §§ 1033.30 and 1036.30. Corresponding changes in § 1049.30 are in paragraphs (a), (a)(6)(ii), and (c)(1). Modifications are also necessary in §§ 1033.32(e)(4), and 1036.32 (d) and (f).

b. Additional changes due to the treatment of the somatic cell adjustment have been made in §§ 1033.60(i), 1036.60(i) and 1049.60(i); §§ 1033.62, 1036.62 and 1049.62; §§ 1033.66, 1036.66 and 1049.66; and §§ 1033.71(b) and 1036.71(b).

c. Language has been added to §§ 1033.50(d), 1036.50(d) and 1049.50(d) to specify rounding in the computation of the butterfat price.

d. Language in §§ 1033.61(a) and 1033.62(a) is changed to allow for the manner in which milk described in § 1033.43(d) is pooled.

e. Changes in the qualification standards for pool distributing plants require changes in § 1049.7, paragraphs (a)(1), (a)(1)(ii) and (a)(1)(iii).

f. Changes in § 1049.13, paragraphs (e)(5) and (f), are made to clarify the application of the location adjustment provisions.

g. Corrections have been made in §§ 1049.32(a) and 1049.52, paragraphs (a)(6), (a)(7) and (b).

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. The authority citation for 7 CFR parts 1033, 1036 and 1049 continues to read as follows:

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

2. Section 1033.7 is amended by revising the introductory language of paragraph (b), redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4), adding a new paragraph (b)(2); and changing the words "50 percent" in the introductory text of paragraph (c) and in paragraph (c)(2) to "35 percent"; to read as follows:

§ 1033.7 Pool plant.

* * * * *

(b) A supply plant from which 35 percent or more during the months of January through November, and 30 percent in December, of the receipts at such plant from producers (including producer milk diverted from the plant but excluding milk diverted to such plant) and from handlers described in § 1033.9(c) is delivered by transfer or diversion as fluid milk products except filled milk, to pool distributing plants qualified pursuant to paragraph (a) of this section, subject to the following conditions:

(1) * * *

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants;

* * * * *

2. In § 1033.13, paragraphs (e)(2), (e)(3) and (f) are revised to read as follows:

§ 1033.13 Producer milk.

* * * * *

(e) * * *

(2) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(3) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month; and

* * * * *

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant where it is received, except that for the months of March through August the uniform price applicable to milk of producers located within the State of Ohio or the Michigan counties of Hillsdale, Lenawee, Monroe, Jackson and Washtenaw that is diverted to a plant located outside the marketing area and outside the State of Ohio shall not be adjusted downward below the uniform price for the month applicable at the location of the producer's farm, *Provided,* that 65 percent or more of such producer's milk is delivered to a plant or plants at which the same or a higher uniform price is applicable during the preceding months of September through February.

3. Section 1033.30 is amended by revising paragraphs (a)(1)(i), (a)(3)(ii), (a)(4) and (b) to read as follows:

§ 1033.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Producer milk, showing in the case of milk received directly from each producer the pounds of milk, the butterfat and milk protein contained in the milk, and the somatic cell count of the milk;

* * * * *

(3) * * *

(ii) Transfers and diversions to other plants, and the butterfat and milk protein content of such milk;

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat and milk protein, and somatic cell count, as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein, and somatic cell count contained in milk from producers for which it is the handler pursuant to § 1033.9 (b) or (c), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds of milk, butterfat and milk protein tests, and the somatic cell count;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (b)(1) of this section, except that contained in producer milk described in § 1033.13(b); and

(3) Such other information with respect to its receipts and utilization of skim milk, butterfat and protein, and somatic cell count as the market administrator may prescribe; and

* * * * *

4. Section 1033.31 is amended by revising paragraph (a)(2), the second sentence of paragraph (b), and paragraph (c), to read as follows:

§ 1033.31 Payroll reports.

(a) * * *

(2) The total pounds of milk and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

(b) * * * Such payroll shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

(c) On or before the 22nd day after the end of the month, each cooperative association with respect to the milk of producers shall submit to the market administrator the association's completed producer payroll which shall list the pounds of milk received, the average butterfat and milk protein content thereof, the somatic cell count of the milk, and the rate and net amount of the payment made to such dairy farmer, together with the amount and nature of any deductions involved.

5. Section 1033.32 is amended by revising paragraphs (e)(2), (e)(4) and (e)(5), and paragraph (f) to read as follows:

§ 1033.32 Other reports.

* * * * *

(e) * * *

(2) The total pounds of producer milk received from such producer, its average butterfat and milk protein content, and its somatic cell content;

* * * * *

(4) The total pounds of skim milk, butterfat and milk protein, and the somatic cell count of milk received from a handler described in § 1033.9(c); and

(5) The total pounds of skim milk, butterfat and protein in bulk fluid milk products received from a pool plant operated by a cooperative association.

(f) On or before the second day prior to the reporting dates specified in paragraphs (c) and (e) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to another pool plant within the time periods described in paragraphs (c) and (e) of this section shall report to each such pool plant operator and the market administrator the name and location of each transferor-plant and the total pounds, butterfat and milk protein included in the bulk fluid milk products transferred or diverted from each such plant.

* * * * *

6. Section 1033.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1033.41 Shrinkage.

* * * * *

(c) * * * 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, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

7. Section 1033.43 is amended by revising paragraph (d) to read as follows:

§ 1033.43 General classification rules.

* * * * *

(d) Bulk fluid milk products transferred or diverted from a pool plant operated by a cooperative association to another pool plant shall be classified in accordance with the rules set forth in § 1033.42(a) and the value thereof shall be used to compute the receiving handler's pool obligation for such milk pursuant to § 1033.60 (a), (b), (h), (i) and (j).

* * * * *

8. Section 1033.50 is amended by revising the section heading, revising the introductory language, and adding new paragraphs (d), (e) and (f), to read as follows:

§ 1033.50 Class and component prices.

Subject to the provisions of § 1033.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of the following steps, rounded to the nearest whole cent:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1033.73 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1033.73 times 35, and rounding the result to the nearest whole cent.

9. Section 1033.53 is revised to read as follows:

§ 1033.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month;

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1033.50 (d), (e) and (f) for the preceding month; and

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1033.50(b).

10. The undesignated center heading before § 1033.60 is revised to read "DIFFERENTIAL POOL AND HANDLER OBLIGATIONS"

11. Section 1033.60 is revised to read as follows:

§ 1033.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1033.9(a) with respect to each of such handler's pool plants, and for each handler defined in § 1033.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1033.44, and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) in Class I, both multiplied by the difference between the Class I price (adjusted pursuant to § 1033.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1033.44, and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) in Class II, both multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1033.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1033.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(14) and the corresponding step of § 1033.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1033.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1033.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1033.44(a)(14) and the corresponding step of § 1033.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1033.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1033.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1033.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1033.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1033.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(7) (i) through (iv), and the corresponding step of § 1033.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(7) (v) and (vi) and the corresponding step of § 1033.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(11) and the corresponding step of § 1033.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and

is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1033.44, and the pounds of skim milk in Class I bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the skim milk price for the month computed pursuant to § 1033.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, and the pounds of protein in Class II and Class III skim milk in bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the protein price for the month, computed pursuant to § 1033.50(e) and adjusted pursuant to § 1033.66 for the weighted average somatic cell content of the handler's receipts of milk.

(j) The pounds of butterfat in all three classes as determined pursuant to § 1033.44, and the pounds of butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the butterfat price for the month computed pursuant to § 1033.50(d).

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than 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 contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(l) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1033.76(c).

12. Section 1033.61 is revised to read as follows:

§ 1033.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1033.60, paragraphs (a) through (g) and (k) and (l), excluding the values in paragraphs (a) and (b) associated with bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), for all handlers who made reports pursuant to § 1033.30 and who made payments pursuant to § 1033.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1033.74(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1033.74(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) 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 § 1033.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price";

13. New §§ 1033.62 through 1033.66 are added under the undesignated center heading "Differential Pool and Handler Obligations", as follows:

§ 1033.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1033.60, paragraphs (h) and (i), excluding the values associated with bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), for all handlers who made reports pursuant to § 1033.30 and who made payments pursuant to § 1033.71 for the preceding month;

(b) Add all of the negative adjustments and subtract all of the positive adjustments determined for each producer's somatic cell count pursuant to § 1033.66;

(c) Divide the resulting amount by the total pounds of protein in producer milk; and

(d) Round to the nearest whole cent. The result is the "Producer protein price."

§ 1033.63 Uniform price.

A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1033.61 to the basic formula price for the month.

§ 1033.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 12th day after the end of the month the weighted average differential price computed pursuant to § 1033.61, the producer protein price computed pursuant to § 1033.62, and the uniform price computed pursuant to § 1033.63(a).

§ 1033.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1033.61 and adjusted pursuant to § 1033.74, multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1033.62 and adjusted pursuant to § 1033.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1033.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§ 1033.66 Computation of somatic cell adjustment.

(a) For each producer, an adjustment to the producer protein price for the somatic cell count of the producer's milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the table in paragraph (b) of this section by the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service. If a handler has not determined a monthly average somatic cell count, it

will be determined by the market administrator.

(b) The following table shows the factors and constants to be used in computing the somatic cell adjustment.

FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL ADJUSTMENT

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
1 to 50,000	.300	.09375
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.000000
351,000 to 400,000	.000	.000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	−.100	−.031250
601,000 to 650,000	−.125	−.0390625
651,000 to 700,000	−.150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 and above	−.250	−.078125

14. In § 1033.70, paragraph (b) is revised to read as follows:

§ 1033.70 Producer-settlement fund.

* * * * *

(b) The difference between the amount added pursuant to § 1033.61(d) and the amount resulting from the subtraction pursuant to § 1033.61(f) shall be deposited in, or withdrawn from, this fund, as the case may be.

15. Section 1033.71 is amended by revising the introductory language of paragraph (b) and paragraph (b)(1) to read as follows:

§ 1033.71 Payments to the market administrator.

* * * * *

(b) Subject to paragraph (c) of this section, each handler shall pay to the market administrator on or before the 15th day after the end of each month the value of such handler's milk pursuant to § 1033.60 (a) through (l) and the value of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) as determined pursuant to § 1033.60 (a), (b), (h), (i) and (j), less:

(1) The amount obtained from multiplying the weighted average differential price applicable at the location of the plants from which the other source milk is received (not to be less than zero) by the hundredweight of other source milk for which a value is computed pursuant to § 1033.60(g);

* * * * *

16. Section 1033.72 is amended by revising paragraphs (b) introductory text and (d)(2) to read as follows:

§ 1033.72 Payments to producers and to cooperative associations.

* * * * *

(b) On or before the 17th day after the end of the month, the market administrator shall make payment, subject to paragraphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71(b) of the amount determined pursuant to § 1033.65, less:

* * * * *

(d) * * *

(2) The total pounds and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

* * * * *

17. Section 1033.86 is amended by revising paragraph (a) to read as follows:

§ 1033.86 Deduction for marketing services.

(a) The market administrator, in making payments to each producer pursuant to § 1033.72, shall deduct 7 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk (except a handler's own farm production) of such producer for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association as determined by the Secretary.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. Section 1036.7 is amended by revising paragraph (b) to read as follows:

§ 1036.7 Pool plant.

* * * * *

(b) A supply plant from which not less than 40 percent during the months of September, October and November, not less than 35 percent during the months of January and February, and not less than 30 percent in all other months, of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received at such plant from dairy farmers (including milk diverted from the plant as producer milk pursuant to § 1036.13 but excluding milk received as diverted milk) and handlers defined in § 1036.9(c) is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at pool plants qualified under paragraph (a) of this section or disposed of as route disposition in the marketing area, subject to the following conditions:

(1) At least one tank load of Grade A fluid milk products (not less than 45,000 pounds) must be shipped from the supply plant to a pool distributing plant during one of the months of September, October and November; and

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants.

* * * * *

2. Section 1036.13 is amended by revising the reference "(e), (f) and (g)" in paragraphs (a)(3) and (b) to "(e) and (f)", revising paragraphs (e), (f) and (h) to read as follows, and removing and reserving paragraph (g):

§ 1036.13 Producer milk.

* * * * *

(e) During March through August, subject to the conditions of paragraph (f) of this section, the operator of a pool plant or a cooperative association may divert the milk of a producer without limit.

(f) Diverted to a nonpool plant for the account of a handler operating a pool plant or for the account of a handler described in § 1036.9(c), subject to the following conditions:

(1) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (f)(2) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(2) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month;

(3) During each of the months of September through November not less than one day's production of a producer must be physically received at a pool plant;

(4) Milk of a producer shall not be eligible for diversion unless the milk of such producer has been physically received at least once as producer milk at a pool plant and the dairy farmer has not been pooled on another federal order since that time;

(5) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be deemed to have been received at such pool plant and shall not be producer milk;

(6) Any milk diverted in excess of the limit set forth in paragraph (f)(1) and (f)(2) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to do so, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(7) Milk diverted to an other order plant shall be producer milk only if a Class II or Class III classification is designated for such milk pursuant to the provisions of the other order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order.

(g) [Reserved]

(h) Milk diverted pursuant to paragraphs (a)(3), (a)(4) and (b) of this section shall be deemed to have been received by the diverting handler at the location of the plant to which diverted.

3. Section 1036.30 is amended by revising paragraphs (a)(1)(i), (a)(3)(ii), (a)(4) and (b) to read as follows:

§ 1036.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Producer milk, showing in the case of milk received directly from each producer the pounds of milk, the butterfat and milk protein contained in the milk, and the somatic cell count of the milk;

* * * * *

(3) * * *

(ii) Transfers and diversions to other plants, and the butterfat and milk protein content of such milk;

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat and milk protein, and somatic cell count, as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein, and somatic cell count contained in milk from producers for which it is the handler pursuant to § 1036.9 (b) or (c), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds of milk, butterfat and milk protein tests, and the somatic cell count;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (b)(1) of this section, except that contained in producer milk described in § 1036.13(b); and

(3) Such other information with respect to its receipts and utilization of skim milk, butterfat and protein, and somatic cell count as the market administrator may prescribe; and

* * * * *

4. Section 1036.31 is amended by revising paragraph (a)(2) and paragraph (b)(3) to read as follows:

§ 1036.31 Payroll reports.

(a) * * *

(2) The total pounds of milk, and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

* * * * *

(b) * * *

(3) The average butterfat and milk protein content, and the somatic cell count, of such milk;

* * * * *

5. Section 1036.32 is amended by revising paragraph (c)(2) and paragraph (d) to read as follows:

§ 1036.32 Other reports.

* * * * *

(c) * * *

(2) The total pounds of producer milk received from such producer, its average butterfat and milk protein contents, and its average somatic count;

* * * * *

(d) On or before the second day prior to the reporting dates specified in paragraphs (a) and (c) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to pool plants of other handlers within the time periods described in paragraphs (a) and (c) of this section shall report to each such pool plant operator and the market administrator the name and location of the transferor-plant and the total pounds, butterfat and protein, and somatic cell count included in the bulk fluid milk products transferred or diverted from each such plant.

* * * * *

6. Section 1036.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1036.41 Shrinkage.

* * * * *

(c) * * * 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, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

7. Section 1036.50 is amended by revising the section heading, revising the introductory language, and adding new paragraphs (d), (e) and (f), to read as follows:

§ 1036.50 Class and component prices.

Subject to the provisions of § 1036.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of the following steps, rounded to the nearest whole cent:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1036.74 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1036.74 times 35, and rounding the result to the nearest whole cent.

8. Section 1036.53 is revised to read as follows:

§ 1036.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month; and

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1036.50 (d), (e) and (f) for the preceding month.

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1036.50(b).

9. The undesignated center heading before § 1036.60 is revised to read "DIFFERENTIAL POOL AND HANDLER OBLIGATIONS".

10. Section 1036.60 is revised to read as follows:

§ 1036.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1036.9 (a), (b), and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1036.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1036.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1036.44 multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1036.44(a)(16) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1036.44(a)(16), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(16) and the corresponding step of § 1036.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1036.44(a)(16) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1036.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1036.44(a)(16) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1036.44(a)(16) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1036.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1036.44(a)(16) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1036.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1036.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(7)(i) through (iii), and the corresponding step of § 1036.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(7) (iv) and (v) and the corresponding step of § 1036.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(12) and the corresponding step of § 1036.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers

fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1036.44 multiplied by the skim milk price for the month computed pursuant to § 1036.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to § 1036.50(e) and adjusted pursuant to § 1036.66 for the weighted average somatic cell content of the handler's receipts of milk.

(j) The pounds of butterfat in all three classes as determined pursuant to § 1036.44 multiplied by the butterfat price for the month computed pursuant to § 1036.50(d).

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than 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 contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(l) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1036.76(c).

11. Section 1036.61 is revised to read as follows: § 1036.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1036.60, paragraphs (a) through (g) and (k) and (l), for all handlers who made reports pursuant to § 1036.30 and who made payments pursuant to § 1036.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1036.75(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1036.75(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) 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 § 1036.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price".

12. Section 1036.62 is revised to read as follows:

§ 1036.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1036.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1036.30 and who made payments pursuant to § 1036.71 for the preceding month;

(b) Add all of the negative adjustments and subtract all of the positive adjustments determined for each producer's somatic cell count pursuant to § 1036.66;

(c) Divide the resulting amount by the total pounds of protein in producer milk; and

(d) Round to the nearest whole cent. The result is the "Producer protein price."

13. New §§ 1036.63 through 1036.66 are added under the undesignated center heading "Differential Pool and Handler Obligations" to read as follows:

§ 1036.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1036.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1036.65 and 1036.73.

§ 1036.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 13th day after the end of the month the weighted average differential price computed pursuant to § 1036.61, the producer protein price computed pursuant to § 1036.62, and the uniform price computed pursuant to § 1036.63(a).

§ 1036.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1036.61 and adjusted pursuant to § 1036.75, multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1036.62 and adjusted pursuant to § 1036.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1036.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§ 1036.66 Computation of somatic cell adjustment.

(a) For each producer, an adjustment to the producer protein price for the somatic cell count of the producer's milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the table in paragraph (b) of this section by the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service. If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) The following table shows the factors and constants to be used in computing the somatic cell adjustment.

FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL ADJUSTMENT

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
1 to 50,000	.300	.09375
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.000000
351,000 to 400,000	.000	.000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	−.100	−.031250
601,000 to 650,000	−.125	−.0390625
651,000 to 700,000	−.150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 and above	−.250	−.078125

14. Section 1036.71 is amended by revising the introductory language of paragraph (b), paragraph (b)(1), and paragraph (c) to read as follows:

§ 1036.71 Payments to the market administrator.

* * * * *

(b) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 17th day after the end of each month the value of such handler's milk pursuant to § 1036.60(a) through (l), less:

(1) The amount obtained from multiplying the weighted average differential price applicable at the location of the plants from which the other source milk is received (not to be less than zero) by the hundredweight of other source milk for which a value is computed pursuant to § 1036.60(g);

* * * * *

(c) Subject to paragraph (d) of this section, each handler operating a pool plant who receives bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association, or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1036.9(c) that also operates a pool plant, shall pay to the market administrator, on or before the 17th day after the end of each month, an amount determined by the sum of the following:

(1) The quantity of such receipts classified as Class I pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class I price (adjusted pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class I price at the receiving plant (adjusted pursuant to § 1036.52) and the Class III price;

(2) The quantity of such receipts classified as Class II pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class II price and the Class III price;

(3) The quantity of skim milk in such receipts classified as Class I pursuant to § 1036.44(a)(15) multiplied by the skim milk price for the month computed pursuant to § 1036.50(f);

(4) The pounds of protein in the skim milk in such receipts classified in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of skim milk from a pool plant operated by a cooperative association, or from a cooperative association in its capacity as a handler pursuant to § 1036.9(c);

(5) The pounds of butterfat in all three classes as determined pursuant to § 1036.44(b)(15) multiplied by the butterfat price for the month computed pursuant to § 1036.50(d); less

(6) Any payments made by the handler pursuant to paragraphs (a)(2) and (a)(3) of this section for such month.

* * * * *

15. Section 1036.72 is revised to read as follows:

§ 1036.72 Payments from the producer-settlement fund.

Subject to § 1036.73(c), on or before the 18th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the net pool obligation pursuant to § 1036.60 for such handler is less than the value of such handler's receipts of producer milk at the weighted average differential price adjusted pursuant for location pursuant to § 1036.75, the protein price before adjustments are made for somatic cell count, and the butterfat price.

16. Section 1036.73 is amended by revising paragraphs (a)(2) introductory text, (b)(2), (d)(2) and (d)(3) to read as follows:

§ 1036.73 Payments to producers and to cooperative associations.

(a) * * *

(2) On or before the 18th day after the end of the month, to each producer not less than the value determined pursuant to § 1036.65, less the following amounts:

* * * * *

(b) * * *

(2) On or before the 18th day after the end of each month for milk for which payment is received by the market administrator pursuant to § 1036.71. Such payment shall be in the amount determined for such milk pursuant to § 1036.65, less the payments made pursuant to paragraph (b)(1) of this section.

* * * * *

(d) * * *

(2) The total pounds and, with respect to final payments, the average butterfat and milk protein content and somatic cell count of the milk for which payment is being made;

(3) The minimum rates of payment required by the order and the rates of payment used if such rates are other than the applicable minimum rates;

* * * * *

§ 1036.85 [Amended]

17. Section 1036.85 is amended by changing the words "3 cents" in the introductory language to "4 cents".

§ 1036.86 [Amended]

18. Section 1036.86 is amended by changing the words "5 cents" in paragraph (a) to "7 cents".

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.3 is revised to read as follows:

§ 1049.3 Route disposition.

Route disposition means a delivery (including that packaged for another person, another distributing plant, disposition from a plant store or from a distribution point, and distribution by a vendor or vending machine) of any packaged fluid milk product classified as Class I milk other than a delivery in bulk form to any milk or filled milk processing plant.

2. Section 1049.6 is revised to read as follows:

§ 1049.6 Supply plant.

Supply plant means a plant in which some milk approved by any duly constituted health authority for fluid consumption in the marketing area is assembled and shipped in bulk as a fluid milk product and is physically unloaded and received into a distributing plant during the month.

3. Section 1049.7 is amended by revising paragraphs (a) and (b), redesignating present paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 1049.7 Pool plant.

* * * * *

(a) A distributing plant with:

(1) Total route disposition of not less than 40 percent during each of the months of September through February, 35 percent during each of the months of March through July, and 30 percent during the month of August, of its total receipts of fluid milk products (including milk diverted from such plant but excluding bulk fluid milk products received by transfer or diversion from other plants as Class II or Class III milk) that are approved by a duly constituted health authority for fluid consumption, subject to the following conditions:

(i) In making the percentage computations in paragraphs (a) (1) and (2) of this section, a plant's route disposition and receipts shall be exclusive of filled milk and of packaged fluid milk products received from other pool or other Federal order plants;

(ii) A plant meeting such percentage requirement for the two immediately preceding months and the requirement of paragraph (a)(2) of this section for the current month may remain qualified under this paragraph in the current month; and

(iii) A plant meeting the requirements of this paragraph in each of the months of September through May, inclusive, shall continue to have pool plant status in the months of June and July immediately following if the plant meets the requirements of paragraph (a)(2) of this section;

(2) Route disposition within the marketing area during the month of at least 10 percent of such receipts, such route disposition to be exclusive of packaged fluid milk products received from other plants and filled milk.

(b) A supply plant from which not less than 40 percent during the months of September through February and not less than 35 percent during the months of March through August, of the Grade A milk received from producers (including producer milk diverted from the plant but excluding milk diverted to such plant) and from handlers described in § 1049.9(c) at such plant during the month is shipped to plants qualifying for the month pursuant to paragraph (a) of this section. A plant qualified pursuant to this paragraph in each of the immediately preceding months of September through February shall remain so qualified for the months of April through August unless written application is filed with the market administrator on or before the first day of any such month to designate such plant as a nonpool plant for such month and for each subsequent month through August during which it would otherwise not qualify under this paragraph. Pool supply plant qualification shall be subject to the following conditions:

(1) The operator of a supply plant may include milk diverted from such plant to pool distributing plants as qualifying deliveries in meeting up to one-half of the required deliveries;

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants; and

(3) The shipping percentage requirements of this paragraph may be increased or decreased temporarily by up to 10 percentage points by the market administrator if such person finds that such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision on either such person's own initiative or at the request of interested persons. If the investigation shows that a temporary revision might be appropriate, the market administrator shall issue a notice stating that revision is being considered and invite data, views, or arguments in favor of or in opposition to the proposed temporary revision.

(c) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or by meeting the shipping percentages in paragraph (b) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood) fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

* * * * *

4. Section 1049.13 is revised to read as follows:

§ 1049.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk from producers which is:

(a) Received at a pool plant directly from a producer, excluding any such milk received by diversion from another pool plant;

(b) Received at a pool plant from a handler described in § 1049.9(c) under the conditions set forth therein;

(c) Received by a handler described in § 1049.9(c) from producers in excess of the quantity delivered to pool plants;

(d) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or

(e) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1049.9(b), subject to the following conditions:

(1) During each of the months of September through November not less than one day's production of the producer must be physically received at a pool plant;

(2) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent

during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(3) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month;

(4) Any milk diverted in excess of the limit set forth in paragraph (e)(2) or (3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant where it is received, except that the uniform price applicable to milk that is diverted to a plant located outside the areas specified in § 1049.52(a)(1) through (3) shall not be adjusted downward below the uniform price for the month applicable at the location of the producer's farm, *Provided*, that 65 percent or more of such producer's milk is delivered to a plant or plants in an area specified in § 1049.52(a)(1) through (3) or to a plant at which the same or a higher uniform price is applicable.

5. Section 1049.30 is amended by revising paragraphs (a)(1), (a)(6), and (c), to read as follows:

§ 1049.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants, showing the pounds of milk, butterfat and milk protein contained in the milk, and the somatic cell count of the milk;

* * * * *

(6) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately:

(i) Total route dispositions and route disposition in the marketing area, showing separately such disposition of filled milk inside and outside the marketing area; and

(ii) Transfers and diversions to other plants, the butterfat and milk protein content of such milk, and the somatic cell count of the milk;

(b) * * *

(c) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein, and somatic cell count contained in milk from producers for which it is the handler pursuant to § 1049.9 (b) or (c), showing:

(i) The quantities of such receipts delivered to each pool plant of other handlers; and

(ii) The classification of such receipts diverted pursuant to § 1049.13.

(2) [Reserved]

(d) * * *

6. Section 1049.31 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 1049.31 Payroll reports.

(a) * * *

(3) The average butterfat content, average milk protein content, and average somatic cell count of such milk; and

(4) The price per hundredweight, butterfat and milk protein prices and somatic cell adjustment to the producer protein price, the gross amount due, the amount and nature of any deductions, and the net amount paid.

* * * * *

7. Section 1049.32 is amended by removing paragraph (a) and the paragraph designation from paragraph (b), and deleting the words "paragraph (a) of this section and".

8. Section 1049.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1049.41 Shrinkage.

* * * * *

(c) * * * 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, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

9. Section 1049.50 is amended by revising the section heading, revising the introductory language and paragraph (a), and adding new paragraphs (d), (e) and (f), to read as follows:

§ 1049.50 Class and component prices.

Subject to the provisions of § 1049.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) The Class I price shall be the basic formula price for the second preceding month plus $1.90.

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of the following steps, rounded to the nearest whole cent:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1049.74 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1049.74 times 35, and rounding the result to the nearest whole cent.

10. Paragraphs (a) and (b) of § 1049.52 are revised to read as follows:

§ 1049.52 Plant location adjustments for handlers.

(a) For producer milk received at pool plants located in the following zones, which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1049.50(a) shall be adjusted as set forth in paragraphs (a)(1) through (a)(7), as follows, except that in no event shall the adjustment result in a price less than the Class III price for the month:

(1) *Zero adjustment zone.* Any Indiana county not specifically named in paragraphs (a)(2) through (a)(5) of this section, and not part of the Louisville-Lexington-Evansville marketing area.

(2) *Plus 10-cent adjustment zone.* The Indiana counties of Jackson, Jefferson, Jennings, Lawrence, Ripley, Scott and Switzerland.

(3) *Minus 10-cent adjustment zone.* The Indiana counties of Adams, Allen, Benton, Blackford, Carroll, Cass, Fulton, Huntington, Jay, Miami, Wabash, Wells, and White.

(4) *Minus 20-cent adjustment zone.* The Indiana counties of Dekalb, Elkhart, Jasper, Kosciusko, Lagrange, La Porte, Marshall, Newton, Noble, Pulaski, Starke, Steuben, St. Joseph, and

Whitley; and the Michigan counties of Berrien, Branch, Cass and St. Joseph.

(5) *Minus 35-cent adjustment zone.* The Indiana counties of Lake and Porter.

(6) At locations in other Federal order marketing areas, the appropriate price adjustment shall be the difference between the applicable Class I price effective at such plant location under the order for the area in which the plant is located and the Class I price specified in § 1049.50(a). For purposes of this paragraph, the locations in the Ohio counties of Defiance, Paulding, Van Wert and Williams, and the Michigan counties of Hillsdale, Lenawee and Monroe that are not part of any Federal milk order marketing area, will be considered to be in pricing zone 1 of the Ohio Valley milk marketing area.

(7) At locations outside any Federal order marketing area and north of 38 degrees latitude, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Indiana, or the main post offices of Fort Wayne, South Bend, or Valparaiso, Indiana, and shall be minus 2.0 cents for each 10 miles or fraction thereof from such point in addition to the amount of the location adjustment pursuant to paragraphs (a) (1) through (5) of this section applicable at the respective point.

(b) For the purpose of calculating adjustments pursuant to this section, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the receipts at such plant from producers and handlers pursuant to § 1049.9 (b) and (c) and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which the Class I price is not less than the Class I price at the transferee plant, and then to receipts from plants with lower Class I prices in sequence beginning with the plant having the highest Class I price.

* * * * *

11. Section 1049.53 is revised to read as follows:

§ 1049.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month; and

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1049.50(d), (e) and (f) for the preceding month.

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1049.50(b).

12. The undesignated center heading before § 1049.60 is revised to read

"Differential Pool and Handler Obligations"

13. Section 1049.60 is revised to read as follows:

§ 1049.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each pool plant of each handler, and for each handler pursuant to § 1049.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1049.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1049.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1049.44 multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1049.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1049.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(14) and the corresponding step of § 1049.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1049.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1049.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1049.44(a)(14) and the corresponding step of § 1049.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1049.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1049.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1049.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1049.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1049.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(7) (i) through (iv), and the corresponding step of § 1049.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(7) (v) and (vi) and the corresponding step of § 1049.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(11) and

the corresponding step of § 1049.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1049.44 multiplied by the skim milk price for the month computed pursuant to § 1049.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to § 1049.50(e) and adjusted pursuant to § 1049.66 for the weighted average somatic cell content of the handler's receipts of milk.

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than 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 contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1049.76(c).

14. Section 1049.61 is revised to read as follows:

§ 1049.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1049.60, paragraphs (a) through (g) and (j) and (k), for all handlers who made reports pursuant to § 1049.30 and who made payments pursuant to § 1049.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1049.75(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1049.75(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) 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 § 1049.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price";

15. Section 1049.62 is revised to read as follows:

§ 1049.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1049.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1049.30 and who made payments pursuant to § 1049.71 for the preceding month;

(b) Add all of the negative adjustments and subtract all of the positive adjustments determined for each producer's somatic cell count pursuant to § 1049.66;

(c) Divide the resulting amount by the total pounds of protein in producer milk; and

(d) Round to the nearest whole cent. The result is the "Producer protein price."

16. New §§ 1049.63 through 1049.66 are added under the undesignated center heading "DIFFERENTIAL POOL AND HANDLER OBLIGATIONS." to read as follows:

§ 1049.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1049.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1049.65 and 1049.73.

§ 1049.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 14th day after the end of the month the weighted average differential price computed pursuant to § 1049.61, the producer protein price computed pursuant to § 1049.62, and the uniform price computed pursuant to § 1049.63(a).

§ 1049.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1049.61 and adjusted pursuant to § 1049.75, multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1049.62 and adjusted pursuant to § 1049.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1049.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§ 1049.66 Computation of somatic cell adjustment.

(a) For each producer, an adjustment to the producer protein price for the somatic cell count of the producer's milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the table in paragraph (b) of this section by the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service. If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) The following table shows the factors and constants to be used in computing the somatic cell adjustment.

FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL ADJUSTMENT

Somatic cell counts	Factors	Constants for Computing the Somatic cell adjustment
1 to 50,000	.300	.09375
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.000000
351,000 to 400,000	.000	.000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	−.100	−.031250
601,000 to 650,000	−.125	−.0390625
651,000 to 700,000	−.150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 and above	−.250	−.078125

17. Section 1049.71 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 1049.71 Payments to the producer settlement fund.

(a) * * *

(1) The total obligation of the handler for such month as determined pursuant to § 1049.60.

(2) The sum of:

(i) The value of such handler's receipts of producer milk at the weighted average differential price adjusted pursuant to § 1049.75;

(ii) The value of the protein in such handler's receipts of producer milk at the producer protein price computed pursuant to § 1049.62; and

(iii) The value at the weighted average differential price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1049.60(g).

* * * * *

18. Section 1049.73 is amended by revising the first sentence of paragraph (a)(2), paragraph (c)(2)(ii), and paragraph (d)(2) to read as follows:

§ 1049.73 Payments to producers and to cooperative associations.

(a) * * *

(2) On or before the 18th day after the end of the month to each producer, not less than the value determined pursuant to § 1049.65, less any payment made pursuant to paragraph (a)(1) of this section, and less the deduction for advertising and promotion made pursuant to § 1049.107. * * *

* * * * *

(c) * * *

(2) * * *

(ii) On or before the 16th day of the following month for milk received during the month, not less than the value of milk determined pursuant to § 1049.65, less any payments made pursuant to paragraph (c)(2)(i) of this section.

(d) * * *

(2) The daily and total pounds of producer milk, its butterfat and milk protein content, and the somatic cell count of the milk;

* * * * *

19. Section 1049.75 is revised to read as follows:

§ 1049.75 Plant location adjustments for producers and on nonpool milk.

(a) The weighted average differential price for producer milk received at pool plants or diverted to nonpool plants shall be adjusted according to the location of the plants at which it was received or was deemed to have been received at the rates set forth in § 1049.52(a), except that the adjusted weighted average differential price plus the withholding rate for the Advertising and Promotion program computed in § 1049.121(e), shall be not less than zero for the month.

(b) For purposes of computations pursuant to §§ 1049.71 and 1049.72 the weighted average differential price shall be adjusted at the rates set forth in § 1049.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average differential price shall not be less than zero.

20. Section 1049.78 is revised to read as follows:

§ 1049.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to § 1049.71, § 1049.76, § 1049.77(a), § 1049.78, § 1049.85, or § 1049.86(a) shall be increased 1 percent beginning on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid. All such charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

(b) 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.

§ 1049.86 [Amended]

21. Section 1049.86 is amended by changing the words "5 cents" in paragraph (a) to "7 cents."

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ _____ [1] to _____, all inclusive, of the orders regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana marketing areas (7 CFR PARTS 1033, 1036 and 1049) which is annexed hereto; and

II. The following provisions:

[1] First and last sections of order.

§ _____ [2] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of October 1992, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____ [2] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

(Seal)
BY

(Name) (Title)

(Address)
Attest

[FR Doc. 93–14036 Filed 6–16–93; 8:45 am]
BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 32, and 35

RIN 3150–AD69

Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for the medical use of byproduct material. This action is being taken in response to a petition for rulemaking. The proposed rule is intended to provide greater flexibility by allowing properly qualified nuclear pharmacists and authorized users who are physicians greater discretion to prepare radioactive drugs containing byproduct material for medical use. The proposed rule would also allow research involving human subjects using byproduct material and the medical use of radiolabeled biologics. In addition, the proposed rule also contains other miscellaneous and conforming amendments necessary to clarify or update the current regulations.

DATES: The comment period expires October 15, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m., and 4:15 p.m. on Federal workdays.

Copies of the draft regulatory analysis and any public comments received on the proposed rule may be examined at: the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Samuel Z. Jones or Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3738 for Mr. Jones, or (301) 492–3797 for Mr. Tse.

SUPPLEMENTARY INFORMATION:

Background

The Petition for Rulemaking

In early 1989, the American College of Nuclear Physicians (ACNP) and the Society of Nuclear Medicine (SNM) approached the NRC staff with concerns that the Commission's regulations failed to accommodate the functions and responsibilities of the practice of nuclear pharmacy. At the suggestion of the NRC staff, the ACNP and SNM submitted a petition for rulemaking requesting the Commission to amend its regulations to fully recognize the role of licensed nuclear pharmacists and physicians. On September 15, 1989 (54 FR 38239), the Commission published in the **Federal Register** a notice of receipt of a petition for rulemaking for public comment (PRM–35–9).

During the development of the ACNP–SNM petition, one NRC staff member provided substantial assistance in the preparation of the petition, but has not participated in the NRC's resolution of the petition or in the development of this proposed rule. Another NRC staff member reviewed the petition prior to its formal submittal to the Commission and participated, to some extent, in the NRC's resolution of the petition and in the development of the proposed rule. The Commission, while aware of this background, considered the petition on its own merits.

The NRC reviewed the petition and identified the following issues:

A. The petitioners requested that authorized users who are physicians (physician authorized users) be given greater flexibility regarding the medical use of radiopharmaceuticals containing byproduct material. Specifically, the petitioners requested that these physicians be permitted to: (1) Use radiopharmaceuticals to treat diseases that are not listed in the U.S. Food and Drug Administration (FDA) approved package insert; (2) use methods of administration of radiopharmaceuticals for therapy that are not listed in the package insert; (3) use radiopharmaceuticals other than those for which the FDA has accepted an Investigational New Drug (IND) or an approved New Drug Application (NDA); (4) prepare radiopharmaceuticals using radionuclide generators and reagent kits in a manner other than in accordance with the manufacturer's instructions; and (5) compound radiopharmaceuticals in accordance with State law.

B. The petitioners requested that the NRC recognize the practice of nuclear pharmacy by nuclear pharmacists and the certification of nuclear pharmacists by the Board of Pharmaceutical Specialties. Specifically, the petitioners requested that nuclear pharmacists be permitted to: (1) Compound radiopharmaceuticals as described in State or FDA regulations; (2) compound radiopharmaceuticals whose manufacture and distribution are not regulated by the State or FDA; (3) prepare radiopharmaceuticals using radionuclide generators and reagent kits in a manner other than in accordance with the manufacturer's instructions; (4) produce reagent kits; and (5) distribute radiopharmaceuticals that are not regulated by the FDA.

C. Additionally, the petitioners requested that the NRC: (1) Permit categories of research using radioactive drugs that do not require an IND, such as research approved by a Radioactive Drug Research Committee (RDRC); (2) permit the use of radiolabeled biologics for which the FDA has issued a license in response to a product license application (PLA); and (3) clarify its regulations pertaining to specific licenses of broad scope.

In response to the **Federal Register** notice that announced the receipt of the petition, 466 comment letters were received. About 99 percent of the commenters supported and agreed with the petition. After consideration of the public comment letters and consultation with the FDA staff, the Commission

[2] Next consecutive section number.

determined that some issues should be addressed promptly.

On August 23, 1990 (55 FR 34513), the Commission published an Interim Final Rule to allow, for a period of 3 years, the use of therapeutic radiopharmaceuticals for indications not listed in the package insert and to allow departures from the manufacturer's instructions for preparing diagnostic radiopharmaceuticals using radionuclide generators and reagent kits. In response to the Commission's request for public comments associated with the Interim Final Rule, eight comment letters were received. Seven letters supported the intent of the rule but disagreed with the recordkeeping requirements contained in the rule. One comment letter sought clarification of the rule. The Interim Final Rule permitted specific departures only at the written direction of a physician authorized user, and it does not permit pharmacy-directed departures.

On September 20, 1990, NRC received a "Petition for Reconsideration and for Stay of Action" (Petition for Reconsideration) from Syncor International Corporation (Syncor) regarding NRC's Interim Final Rule. Among other objections, the petition asserted that the rule violates the Atomic Energy Act, the Administrative Procedure Act, and NRC's implementing regulations, and that the recordkeeping requirements of the Interim Final Rule have a direct and negative impact on nuclear pharmacies.

On October 19, 1990, Syncor also filed a "Petition for Review" with the U.S. Court of Appeals for the District of Columbia Circuit (*Syncor International Corp.* v. *NRC*, NO 90–1495). The petition asked the court to review and set aside portions of the "Interim Final Rule," especially the recordkeeping requirements in 10 CFR 30.34(i)(1)(i–ii).

Also, Syncor requested that the NRC amend its nuclear pharmacy license to permit certain pharmacy-directed departures in addition to the Interim Final Rule's physician-directed departures. Syncor and the NRC staff agreed to hold the court action in abeyance for a period of several months to give the NRC an opportunity to respond to Syncor's request. After considerable interaction among the NRC, Syncor, and the FDA, the requested license amendments for pharmacy-directed departures were granted. Because of the generic interest this licensing action might have had for other commercial nuclear pharmacy licensees, the NRC, on June 26, 1991, sent each of these licensees a letter informing them of the NRC's action in issuing Syncor's amendments. Until the amendments contemplated in this proposed rulemaking are adopted through the issuance of a final rule, the NRC stands ready to consider similar license amendment requests from other commercial nuclear pharmacies.

Meanwhile, to provide relief from the recordkeeping requirements contained in the Interim Final Rule, the Commission published a final rule entitled "Departure From Manufacturer's Instructions; Elimination of Recordkeeping Requirements" (57 FR 45566; October 2, 1992). This final rule eliminated all the recordkeeping requirements. Based on the information collected under the Interim Final Rule, both the NRC and FDA staff agreed that the major trends in departures that could be identified by the recordkeeping were already discernible. Thus, additional recordkeeping was not necessary.

In a parallel effort, the NRC continued to work on the remaining issues in the ACNP-SNM petition. On August 7, 1991, the NRC conducted a public workshop in Rosemont, Illinois, to present "strawman" language on the training and experience criteria for authorized nuclear pharmacists to representatives of the following organizations: Board of Pharmaceutical Specialties, American Board of Science in Nuclear Medicine, National Association of Boards of Pharmacy, Committee on Radionuclides and Radiopharmaceuticals of the U.S. Council for Energy Awareness, American Pharmaceutical Association, American Society of Hospital Pharmacists, and three graduate schools of pharmacy. Subsequently, the NRC also discussed the proposed resolution of these issues in meetings with the FDA, the NRC's Advisory Committee on the Medical Uses of Isotopes (ACMUI), and the Agreement States. This proposed rulemaking is the evolutionary result of numerous meetings with the aforementioned groups.

The Proposed Modifications

In a policy statement published on February 9, 1979 (44 FR 8242), entitled "Regulation of the Medical Uses of Radioisotopes; Statement of General Policy," the NRC stated:

1. The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public.

2. The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.

3. The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be a part of the practice of medicine.

In conformance with this policy, the Commission proposes to eliminate certain restrictions in the NRC regulations on the practice of medicine and pharmacy (e.g., compounding), and provide the authority for research involving human subjects and the use of radiolabeled biologics. The Commission believes that these restrictions can be eliminated without compromising the level of protection of public health and safety against radiological hazards. The Commission recognizes that physicians have the primary responsibility for the diagnosis and treatment of their patients or human research subjects and recognizes that the nuclear pharmacists have the primary responsibility for the preparation of radioactive drugs. NRC regulations are predicated on the assumption that properly trained and adequately informed physicians and pharmacists will make decisions that are in the best interest of their patients or human research subjects. Furthermore, the pharmacological aspects of radioactive drugs, including drug safety and efficacy, are regulated by the FDA or the States.

The Commission believes that the proposed amendments would provide greater discretion for physician authorized users to use byproduct material in the practice of medicine. Also, the proposed amendments would incorporate into the regulations the concept of an authorized nuclear pharmacist to allow properly qualified pharmacists greater discretion to prepare (including compound) radioactive drugs containing byproduct material for medical use. In response to the petition for rulemaking, the Commission is proposing to:

1. Allow physician authorized users to use therapeutic radioactive drugs containing byproduct material for indications or methods of administration not listed in the FDA-approved package insert;

2. Allow physician authorized users to use radioactive drugs containing byproduct material for research involving human subjects;

3. Allow physician authorized users to use radiolabeled biologics containing byproduct material;

4. Allow medical use licensees and commercial nuclear pharmacies to depart from the manufacturer's instructions for preparing radioactive drugs using radionuclide generators and reagent kits;

5. Allow medical use licensees and commercial nuclear pharmacies to compound radioactive drugs using byproduct material;

6. Delete the existing regulations related to the nonradioactive reagent kits; and

7. Clarify regulatory requirements for specific licenses of broad scope.

Table 1 summarizes the requests made in the petition and the Commission's responses.

In addition to the proposed amendments in response to the issues raised in the petition, the Commission is proposing related or miscellaneous amendments to parts 32 and 35. In general, the objective of these proposed amendments is to clarify, update, and simplify the current regulations. Specifically, these proposed amendments include:

1. In part 32, the Commission is proposing to replace the word "radiopharmaceutical" with the term "radioactive drug" in proposed § 32.72. This change is necessary to include both radiopharmaceuticals and radiolabeled biologics in part 32.

2. In part 35, whenever applicable, the Commission is proposing to use the term "unsealed byproduct material" instead of "radiopharmaceutical" or "radioactive drug." This proposed change is intended to indicate that the Commission's regulations regarding the medical use of byproduct material are focused on radiation safety and are separate from FDA's regulations regarding radioactive drugs. However, to prevent massive changes in part 35, the word "radiopharmaceutical" will continue to be used in existing sections for which no modifications are proposed and for sections in which the only modification is to replace the word "patient" with the term "patient or human research subject." Thus, the word "radiopharmaceutical" will be used as the equivalent of "unsealed byproduct material" in these sections of the proposed rule.

3. The Commission is proposing to modify the definition of "medical use" in parts 30 and 35 by replacing the term "human beings" with the term "patients or human research subjects" to include the administration of byproduct material to an individual who is participating in a research procedure. In addition, the Commission proposes to delete the language in the definition of "medical use" that the administration of byproduct material be in the practice of medicine in accordance with a license to practice medicine. The definition of other terms in part 35 (e.g., physician) include this licensing concept.

With this proposed definition, applicable requirements in part 35, such as misadministration reporting and quality management program, would also apply to human research subjects; thus, an equivalent level of protection would be provided for both patients and human research subjects.

4. In part 32, the Commission is proposing to clarify the existing regulations regarding the labeling of syringes, vials, generators, or other containers of radioactive drugs. This proposed change is necessary to avoid confusion over the types of information to be submitted.

5. In part 32, the Commission is proposing to replace the text in § 32.72(b) because it is obsolete.

6. In discussing the proposed regulations concerning transfer of radioactive drugs, the Commission has noted later in this preamble that it is sometimes necessary to transfer a dosage of a radioactive drug on a case-by-case basis from one medical use licensee to another medical use licensee. These case-specific transfers would not be considered commercial transfers by the NRC and, therefore, would not require a part 32 license.

7. In part 35, the Commission is proposing to change the lower limit for testing dose calibrators for linearity from 0.37 Megabecquerel (10 microcuries) to 1.1 Megabecquerels (30 microcuries) for consistency with 10 CFR 35.32, "Quality Management Program."

8. In regard to the accuracy, linearity, and geometry tests of dose calibrators, the Commission is proposing to replace the requirement for the Radiation Safety Officer's (RSO) signature with the requirement for the identity of the individual actually performing these tests. This proposed change is necessary to identify the individual who actually performed these tests. Furthermore, this change would provide additional time for the RSO to devote to other radiation safety issues. However, this change would not affect the responsibilities of the RSO that are defined in existing 10 CFR 35.21.

9. The Commission is proposing to update the regulations by recognizing several certification boards in the training and experience requirements.

10. The Commission is proposing that licensees may allow authorized users and authorized nuclear pharmacists who meet certain requirements to use byproduct material without the licensee first obtaining a license amendment from the NRC. Therefore, the Commission is proposing to delete the provisions in part 35 addressing visiting authorized users.

11. The Commission is proposing to modify the requirements for recentness of training of certain authorized users.

12. The Commission is proposing to add requirements regarding the preparation of byproduct material for medical use under the supervision of a physician authorized user and to provide comparable requirements regarding the supervisory responsibilities of authorized nuclear pharmacists.

TABLE 1.—SUMMARY OF REQUESTS IN THE PETITION AND THE COMMISSION'S RESPONSES

Request	Response
Permit authorized users to use radiopharmaceuticals for therapeutic uses not covered in the package insert.	Permit physician authorized users who are qualified for therapeutic administration to use radioactive drugs for therapeutic uses not covered in the package insert.
Permit authorized users to use radioactive drugs for research involving human subjects.	Permit physician authorized users to use radioactive drugs for research, provided that human research subjects are protected.
Permit authorized users to use radiolabeled biologics	Permit physician authorized users to use radiolabeled biologics, provided that dosages of alpha- or beta-emitting radionuclides are measured.
Permit medical use licensees and pharmacies to depart from package inserts when using generators and kits.	Permit physician authorized users and authorized nuclear pharmacists who meet certain training and experience criteria to depart from package inserts when using generators and kits.
Permit medical use licensees and pharmacies to use byproduct material to compound radioactive drugs.	Permit physician authorized users and authorized nuclear pharmacists who meet certain training and experience criteria to prepare (including compound) radioactive drugs.

TABLE 1.—SUMMARY OF REQUESTS IN THE PETITION AND THE COMMISSION'S RESPONSES—Continued

Request	Response
Permit nuclear pharmacists to prepare reagent kits	Delete NRC regulations on reagent kits which do not contain byproduct material. Thus, nuclear pharmacists would be able to prepare reagent kits under applicable law.
Clarify requirements on licenses of broad scope	Clarify the requirements by adding two exemptions in part 35.

13. The responsibilities of the Radiation Safety Committee would be modified to reflect the activities which the proposed changes to part 35 would authorize.

Discussion of Proposed Regulatory Text

Section 30.4. Definitions

The definition of "medical use" would be modified to conform to the corresponding definition proposed for 10 CFR 35.2. This definition would be modified by replacing "patients" with "patients or human research subjects" to include the administration of byproduct material to an individual who is participating in a research procedure.

In addition, the modifications would delete the current statement in this definition that the byproduct material be administered in the practice of medicine in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. This change would be made because: (1) This aspect of the definition is included in other existing definitions in part 35 (e.g., authorized user and physician); and (2) the definition of "medical use" would include research involving human subjects.

Section 30.34 Terms and Conditions of Licenses

Section 30.34(i) provided interim relief from the restrictions that licensees follow the manufacturer's instructions when preparing radiopharmaceuticals using radionuclide generators and reagent kits. This proposed rulemaking would eliminate these restrictions. Therefore, the Commission proposes to delete § 30.34(i) in its entirety.

Section 32.72 Manufacture, Preparation, or Transfer for Commercial Distribution of Radioactive Drugs Containing Byproduct Material for Medical Use Under 10 CFR Part 35

The Commission proposes to retitle this section to more accurately reflect the operations of licensees (i.e., manufacturers and commercial nuclear pharmacies) regulated under this section.

Section 32.72(a)

This paragraph would be modified to add the word "prepare" and the phrase "transfer for commercial distribution" to more accurately reflect the operations of licensees regulated under this section.

Section 32.72(a)(1)

The proposed amendment to this paragraph is an editorial change to replace "§ 30.33 of this chapter" with "10 CFR 30.33."

Section 32.72(a)(2)

The Commission proposes to modify this paragraph to recognize radioactive drug manufacturers holding registration by the FDA, or appropriate State agencies, as well as commercial nuclear pharmacies licensed by State Boards of Pharmacy (SBPs) and nuclear pharmacies operating in Federal facilities. The intent of this paragraph is to clarify that commercial nuclear pharmacies are covered under this section.

Radioactive drugs transferred from a commercial nuclear pharmacy to another licensee in the normal course of business are considered commercial transfers by the NRC and require a part 32 license. However, the Commission recognizes that in the course of patient care or in the conduct of research procedures, it is sometimes necessary for licensees to transfer a dosage of a radioactive drug on a case-by-case basis from one medical use licensee to another medical use licensee. These case-specific transfers would not be considered commercial transfers by the NRC and, therefore, would not require a Part 32 license.

Section 32.72(a)(3)

The Commission proposes to modify this paragraph to clarify the type of information that should be submitted to the NRC. The words "packaging" and "package" in the existing § 32.72(a)(3) could be interpreted as referring only to the external transportation package (e.g., cardboard box). In the proposed § 32.72(a)(3), the words "* * * per vial, syringe, generator, or other container * * *" would be used to clearly indicate the types of information to be submitted. In addition, the phrase "group licensees" would be replaced with the phrase "medical use licensees."

Section 32.72(a)(4)

The Commission proposes to modify § 32.72(a)(4)(i) to clarify the types of information that should be contained on the label to be affixed to each container of a radioactive drug. This action is proposed to ensure that the information on the label would include information specified in existing 10 CFR 35.60(b) and 35.61(b).

Also, the Commission proposes to replace the phrase "each package" by the phrase "labels to be applied to containers of radioactive drugs, as specified in 10 CFR 35.60(b) and 35.61(b) * * *" for the same reason as for the proposed changes in § 32.72(a)(3), discussed above.

In addition, the Commission is also proposing to delete the last sentence of § 32.72(a)(4)(i) because it is obsolete.

Furthermore, "time of assay" would be added to the existing "date of assay." This information is necessary for determining the dosage, at the time of administration, for radioactive drugs containing radionuclides with short half-lives.

The Commission also proposes to delete the provision in § 32.72(a)(4)(ii) that required FDA approval before combining labeling information. In addition, the remaining phrase of the existing § 32.72(a)(4)(ii) "the labels, leaflets or brochures required by this paragraph are in addition to the labeling required by the Food and Drug Administration (FDA)" would be replaced by "NRC's labeling requirements are independent of requirements of the U.S. Food and Drug Administration (FDA)." This proposed sentence would be moved to the existing § 32.72(a)(4)(i) which would be renamed § 32.72(a)(4). This proposed amendment would not preclude use of one label if it contains all the required information.

Section 32.72(b)

The Commission proposes to revise this paragraph because the existing text is obsolete.

The Commission proposes new text that would allow an "authorized

nuclear pharmacist" (or individual working under the supervision of the "authorized nuclear pharmacist") working in a commercial nuclear pharmacy to prepare (including compound) radioactive drugs. The NRC is using the phrase "prepare radioactive drugs" in a general sense to include: (1) Using radionuclide generators and nonradioactive reagent kits to produce radioactive drugs; and (2) using byproduct material and other basic ingredients to compound radioactive drugs.

Current regulations require that a part 32 licensee may not depart from manufacturer's instructions when preparing radioactive drugs unless: (1) A license amendment has been granted permitting the departure; or (2) the departure has been requested by a physician authorized user. This requirement restricts the ability of qualified nuclear pharmacists to practice their profession which could otherwise include, but for NRC restrictions, compounding radioactive drugs. The NRC believes that this restriction can be eliminated provided that the pharmacist meets the training and experience requirements in proposed 10 CFR 35.980.

The Commission is proposing to define the terms "medical use" and "authorized nuclear pharmacist" in part 32 by referencing the definition of these terms in proposed 10 CFR 35.2. The definition of "medical use" would be modified to add the term "human research subject" to include the administration of byproduct material to an individual who is participating in a research procedure. It is necessary to define an "authorized nuclear pharmacist" because the proposed amendments would provide pharmacists with the authority to possess and use byproduct material in the practice of nuclear pharmacy.

For purposes of part 32, an authorized nuclear pharmacist also includes those individuals who are currently licensed or registered by a state as a pharmacist and who are also designated, as of the effective date of the final rule, as an "authorized user" on a nuclear pharmacy license issued by the Commission under 10 CFR part 32 to work as an authorized nuclear pharmacist. The Commission believes that this limited "grandfathering" is justified because: (1) currently, these "authorized users" essentially meet the training and experience criteria for an authorized nuclear pharmacist as specified in proposed 10 CFR 35.980(b)(1); and (2) these "authorized users" are currently working in a nuclear pharmacy.

A part 32 "authorized user" who does not currently possess a valid state pharmacy licensure or registration would not be grandfathered as an authorized nuclear pharmacist because, under state law, this individual is not qualified to be a pharmacist. However, such an individual may work in a nuclear pharmacy under the supervision of an authorized nuclear pharmacist.

The Commission proposes to require licensees to submit a copy of the individual's board certification, the license, or the permit, and the state pharmacy licensure or registration to the NRC within 30 days of the date that the licensee permits the individual to work as an authorized nuclear pharmacist. This proposal would reduce the licensees' burden because such a notification would replace the currently required license amendment and the associated amendment fee which are currently necessary before a licensee may allow an authorized nuclear pharmacist to work in its facility. In addition, the proposed action would also eliminate the delay associated with the license amendment process. The NRC will review the notifications upon receipt to verify that the requirements of proposed § 32.72(b) have been met. During the review process, the NRC can consider an individual's character in addition to credentials in determining whether the individual should be approved as an authorized user or authorized nuclear pharmacist, such as verifying that the individual has not committed or caused others to commit any willful violations of the Commission's regulations. At the time of the next licensing action, the names of approved individuals would be listed on the license, without fee, as an authorized nuclear pharmacist.

Section 32.72(c)

The Commission proposes to add this paragraph to explicitly require part 32 licensees to measure and record each dosage of radioactive drugs before transferring these drugs to a medical use licensee. This proposed change is necessary so that the proposed relief to 10 CFR part 35 medical use licensees with respect to measurements can be granted. In proposed § 35.53, medical use licensees would not be required to measure unit dosages of alpha- and beta-emitting radioactive drugs obtained from part 32 licensees before administering these unit dosages to patients or human research subjects. Thus, it is necessary for the part 32 licensees to make these measurements.

Section 32.72(d)

This paragraph is necessary to remind part 32 licensees to comply with applicable FDA, other Federal, and State requirements in addition to applicable NRC requirements. Compliance with NRC requirements does not eliminate the need to comply with other lawful requirements. However, it is not the intent of the Commission to perform inspections to ensure compliance with FDA or State requirements nor to enforce those regulations.

Section 32.73 Manufacture and Distribution of Generators or Reagent Kits for Preparation of Radiopharmaceuticals Containing Byproduct Material

The Commission proposes to delete this section in its entirety. Because radionuclide generators would be included as a radioactive drug in proposed § 32.72, it is no longer necessary to include the generators in § 32.73. In addition, the Commission is proposing to discontinue regulating reagent kits because they do not contain byproduct material.

10 CFR Part 35 Medical Use of Byproduct Material

The Commission is proposing to replace the word "patient" with the term "patient or human research subject" as stated in the sections of part 35 which the Commission is proposing to amend. However, only those sections of part 35 which are otherwise being amended are included in the section-by-section "Discussion of Proposed Regulatory Text" which follows. The sections not included in that discussion are: §§ 35.2 (the definitions of *misadministration* and *written directive*), 35.32, 35.33, 35.60, 35.75, 35.310, 35.315, 35.404, 35.406, 35.410, 35.415, 35.610, and 35.615. The purpose of using the phrase "patient or human research subject" is to make it explicit that licensees must follow the requirements of part 35 whenever byproduct material or radiation therefrom is being administered either to a patient or to a human research subject. It is necessary to provide an equivalent level of protection for both patients and human research subjects.

Section 35.2 Definitions

Authorized nuclear pharmacist. The Commission proposes to add this new definition. It is necessary to define an authorized nuclear pharmacist because the proposed amendments would provide pharmacists the authority to possess and use byproduct material in the practice of nuclear pharmacy

independent of the supervision of a physician authorized user.

The definition would specify three groups of individuals that would be qualified as authorized nuclear pharmacists: (1) Individuals certified by the Board of Pharmaceutical Specialties (BPS) as a board certified nuclear pharmacist (BCNP), (2) individuals identified as authorized nuclear pharmacists on a Commission or Agreement State license, or (3) individuals identified as authorized nuclear pharmacists on a permit issued by a Commission or Agreement State specific licensee of broad scope. The individuals in the second and third groups must meet the training and experience requirements specified in the proposed § 35.980(b).

Authorized user. The Commission is proposing to modify the definition of "authorized user" to include those individuals who are: (1) board certified by at least one of the boards listed in paragraph (a) of §§ 35.910, 35.920, 35.930, 35.940, 35.950, or 35.960; (2) identified as an authorized user on a Commission or Agreement State license, or (3) identified as an authorized user on a permit issued by a Commission or Agreement State specific licensee of broad scope. The individuals in the second and third groups must meet the training and experience requirements specified in paragraphs (b) or (c) of §§ 35.910 or 35.920, or paragraph (b) of §§ 35.930, 35.940, 35.950, or 35.960.

Proposed § 35.13 would eliminate, under certain conditions, the requirement for a licensee to submit an amendment to list an authorized user on its license. Instead, proposed § 35.14 would require specific licensees of limited scope to provide a copy of the individual's board certification, the license, or the permit to the Commission within 30 days of the date that the licensee permits the individual to work as an authorized user.

However, before allowing a physician who does not have board certification (or is not listed on a license or a permit) to work as an authorized user, the specific licensee of limited scope must continue to submit a license amendment and obtain NRC approval. The NRC will review the notifications upon receipt to verify that the requirements of proposed § 32.72(b) have been met. During the review process, the NRC may consider character in addition to credentials in determining whether the individual should be approved as an authorized user or authorized nuclear pharmacist, such as to verify that the individual has not committed or caused others to commit any willful violations of the Commission's regulations.

Medical use. The Commission is proposing to modify the definition of "medical use" by replacing the term "human beings" with the term "patients or human research subjects" to include the administration of byproduct material to an individual who is participating in a research procedure.

Currently, the NRC allows by license condition specific medical use licensees of broad scope to perform research involving human subjects using byproduct material. Because part 35 is silent on research involving human subjects using byproduct material, part 35 specific medical use licensees of limited scope may only conduct such research if the NRC grants a license amendment to do so. The effects of the current regulatory framework are to inhibit or delay research activities by specific medical use licensees of limited scope.

Medical research involving human subjects not using radioactive material is currently conducted by large medical institutions and community hospitals through, for example, their participation in regional and national research programs. Such research may lead to a better understanding of diseases, improved diagnostic and therapeutic methods, new or better drug products or medical devices, or essential basic scientific information.

Current regulations require all medical institutions to have a Radiation Safety Committee whose responsibilities include oversight of all uses of licensed material. Other part 35 licensees are required to have a Radiation Safety Officer who has such responsibility. The Commission believes that restrictions on research can be reduced provided there are certain additional protections of human subjects as described in proposed § 35.6.

The proposed provisions include requiring a licensee who conducts research involving human subjects to: (a) Possess a part 35 license authorizing medical use, (b) implement the Federal Policy for the Protection of Human Subjects or comply with specific NRC licensing requirements, and (c) have a physician authorized user who will supervise the administration of the byproduct material.

The Commission believes that information gathered through research, although it may not benefit the individual subject of the research, has the potential to benefit the society at large. Therefore, given adequate protection of the rights and radiological safety of human research subjects, it is appropriate to permit this activity.

Furthermore, under the proposed definition of "medical use," the applicable provisions of part 35, such as requirements related to misadministrations and the quality management program, also apply to a human research subject. Thus, an equivalent level of protection would be provided for both patients and human research subjects.

The Commission is also proposing to delete the current statement in this definition that the byproduct material be administered in the practice of medicine in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. This change is being made because this aspect of the definition is included in other existing definitions in part 35 (e.g., authorized user and physician).

Pharmacist. The Commission is proposing to add this new term to define a pharmacist in part 35 to complement another new definition "authorized nuclear pharmacist."

Section 35.6 Provisions for Research Involving Human Subjects

The Commission is proposing to add this section to address the protection of the rights of human subjects who would be involved in research using byproduct material. The Commission believes that most research involving human subjects using byproduct material is currently conducted, funded, supported, or regulated by another federal agency which has implemented the Federal Policy for the Protection of Human Subjects[1] (56 FR 28002; June 18, 1991). Therefore, the rights of human subjects involved in such research activities would be protected by the other federal agency funding the research under the provisions of the Federal Policy. The Federal Policy has been implemented by 15 Federal departments or agencies (not including NRC) and includes provisions, among others, for obtaining Institutional Review Board (IRB) review and approval of the research activities and informed consent from the human subjects. The NRC understands that compliance with the Federal Policy by institutions conducting research involving human subjects is achieved through the use of letters of assurance of compliance and certain reporting requirements.

This section proposes to allow the licensees covered by the Federal Policy as adopted by another Federal agency to conduct human research without prior NRC approval. If a licensee's activities

[1] For a copy of the Federal Policy for the Protection of Human Subjects contact: Office for Protection from Research Risks, National Institute of Health, Building 31, room 5B59, Bethesda, MD 20892, telephone (301) 496–7005.

are not funded by another Federal agency which has adopted the Federal Policy, the licensee would need to apply for and obtain approval of a specific amendment to its NRC license prior to conducting research involving human subjects using byproduct material. During the review of the license amendment application, the NRC would ensure that the proposed research would receive approval of the IRB and obtain the human subject's informed consent. The Commission is soliciting public comment on the number and type of research activities which would not be funded by another Federal agency which has adopted the Federal Policy and, thus under the proposed rule, would require a license amendment.

The focus of NRC inspections would be to confirm that both types of licensees have obtained prior IRB review and approval of the research activities and informed consent of the human subjects.

The Commission is soliciting public comment on whether it should broaden or narrow its focus to require compliance with all or none of the provisions of the Federal Policy or equivalent license conditions. In making comments, consideration should be given to the fact that all the radiation safety provisions of 10 CFR part 35 are proposed to be made applicable to research involving human subjects.

Section 35.7 FDA, Other Federal, and State Requirements

This section is necessary to remind medical use licensees to comply with applicable FDA, other Federal, and State requirements. However, it is not the intent of the Commission to perform inspections to ensure compliance with FDA or State requirements nor to enforce those regulations.

Section 35.11 License Required

The Commission is proposing to add paragraph (c), in parallel with the existing paragraph (b), to this section. The new paragraph (c) would permit an individual to prepare unsealed byproduct material for medical use under the supervision of an authorized nuclear pharmacist or authorized user who is a physician. Also, the existing paragraph (a) would be revised by replacing the phrase "paragraph (b)" with "paragraphs (b) or (c)."

Section 35.12 Application for License, Amendment, or Renewal

The Commission is proposing to add paragraph (e) to this section. This paragraph would remind part 35 medical use licensees that they may apply for a Type A specific license of broad scope under 10 CFR part 33.

Section 35.13 License Amendments

The Commission proposes to modify paragraph (b) of this section to delete the term "visiting authorized user." Instead, under the proposed provisions, the licensees could allow, without a license amendment, an individual to work as an authorized user provided that the individual is: (1) Certified by a board listed in subpart J, (2) identified as an authorized user on a Commission or Agreement State license, or (3) identified as an authorized user on a permit issued by a Commission or Agreement State specific licensee of broad scope. However, the licensee would be required to provide a copy of an individual's board certification, the license, or the permit to the Commission within 30 days of the date that the licensee permits the individual to work as an authorized user (See proposed § 35.14).

The Commission also proposes to add an exception for authorized nuclear pharmacists to this section like the exception for authorized users.

Section 35.14 Notification

In addition to the existing notification requirement, the Commission proposes to amend this section to require specific licensees of limited scope to submit a copy of an individual's board certification, the license, or the permit as discussed in § 35.13. This proposal would reduce licensees' burden because this notification would replace the currently required license amendment and the associated amendment fee which are currently necessary before a specific licensee of limited scope may allow an authorized user to work in its facility. In addition, the proposed action would also eliminate the delay associated with the license amendment process. The NRC will review the notifications upon receipt to verify that the requirements of this section have been met. In addition, the NRC would verify at that time that this individual has not committed or caused another individual to commit any willful violations of the Commission's regulations. At the time of the next licensing action, the name of this individual would be listed on the license, without fee, as an authorized user. The Commission also proposes to apply this section to authorized nuclear pharmacists in the same manner as for authorized users.

Section 35.15 Exemptions Regarding Type A Specific Licenses of Broad Scope

The Commission is proposing to clarify requirements on Type A specific licenses of broad scope by adding the proposed exemptions. This proposed section would specify that an application for and receipt of a license amendment would not be necessary for the following actions: (1) Permit a new authorized user or authorized nuclear pharmacist to work under the license; and (2) permit a change of the area of use of byproduct material within the address identified in the license. Also, specific licensees of broad scope would be exempt from certain notification requirements specified in proposed § 35.14.

These changes are being made to ensure that the proposed rule conforms with the current practice regarding Type A specific licensees of broad scope. Under current practice, the other prescriptive and performance requirements of Part 35 apply to Type A specific licensees of broad scope. Because a Part 33 specific licensee of broad scope is required to establish more complete administrative procedures and controls to ensure radiation safety than a Part 35 licensee, the exemptions would not reduce protection of public health and safety.

Section 35.22 Radiation Safety Committee

The Commission is proposing to amend paragraph (b)(2) to apply this section to authorized nuclear pharmacists in the same manner as for authorized users.

The Commission also proposes to require the Radiation Safety Committee to review an individual's certification, license, or permit, and determine, based on the proposed § 35.13(b)(1) through (b)(4), whether to allow the individual to work as an authorized user or authorized nuclear pharmacist without submitting a license amendment for NRC approval.

Section 35.25 Supervision

Existing paragraph (b) would be redesignated as paragraph (c).

The Commission is proposing to add a new paragraph (b) to address the supervisory responsibilities of the licensee, the authorized nuclear pharmacist, and the physician authorized user who prepare unsealed byproduct material for medical use. Specifically, under the proposed paragraph, an authorized nuclear pharmacist or a physician authorized user would be able to permit

individuals to prepare unsealed byproduct material for medical use, provided that the individuals are adequately supervised. This section describes the level of supervision that an authorized nuclear pharmacist or a physician authorized user would be required to provide to individuals who are preparing unsealed byproduct material for medical use under their supervision.

Section 35.27 Visiting Authorized User

The Commission is proposing to delete this section which permits a visiting authorized user to work for a period of 60 days each year without a license amendment. Under proposed § 35.13(b), the concept of a visiting authorized user would no longer be necessary. Any individual who meets § 35.13(b)(1) through (b)(4) would be permitted to work in a licensee's facility either temporarily or permanently. However, under proposed § 35.14, the licensee would be required to provide a copy of the individual's board certification, the license, or the permit to the NRC.

Section 35.49 Supplier for Sealed Sources or Devices for Medical Use

The Commission is proposing to modify this section as follows:

The title of this section would be modified to indicate that this section would only apply to sealed sources or devices for medical Use

The Commission is proposing to delete the reference to §§ 32.72 and 32.73 in the proposed § 35.49(a) because, under the proposed rule, the requirements applicable to unsealed byproduct material for medical use would be incorporated into the proposed §§ 35.100, 35.200, and 35.300. Furthermore, the proposed rule would allow medical use licensees to prepare (including compound) radioactive drugs. Therefore, limiting suppliers of radioactive drugs to manufacturers or commercial nuclear pharmacies would no longer be necessary. However, the requirements applicable to sealed sources or devices as specified in § 32.74 would remain in the proposed § 35.49(a).

In addition, the Commission is proposing to delete existing § 35.49(b). Under the proposed rule, all the requirements applicable to reagent kits would be deleted because the reagent kits do not contain byproduct material. Therefore, this paragraph would no longer be necessary. The existing § 35.49(c) would be redesignated as § 35.49(b).

Section 35.50 Possession, Use, Calibration, and Checks of Dose Calibrators

The Commission is proposing the following modifications to this section.

(1) In paragraph (a), the phrase "photon-emitting" would be inserted to clarify that this section is applicable only to photon-emitting radionuclides. This modification would avoid confusion between this section and proposed § 35.52 pertaining to instruments to measure dosages of alpha- or beta-emitting radionuclides.

(2) The Commission is proposing to use the term "radionuclides" instead of the term "radiopharmaceuticals." The new term is broader and would include radiolabeled biologics as well as radiopharmaceuticals.

(3) In paragraph (b)(3) regarding the linearity test of the dose calibrator, the lower limit for the test would be changed from 0.37 megabecquerel (10 microcuries) to 1.1 megabecquerel (30 microcuries). This modification is necessary for consistency with the requirements of the Quality Management Program (§ 35.32) and proposed § 35.53(c)(3).

(4) In paragraphs (e)(2) through (e)(4) regarding records on the accuracy, linearity, and geometry tests of dose calibrators, the Commission is proposing to require the identity of the individual actually performing these tests rather than the Radiation Safety Officer's (RSO) signature. This proposed change is necessary to identify the individual who actually performed these tests. Furthermore, this change would provide additional time for the RSO to devote to other radiation safety issues.

Section 35.52 Possession, Use, Calibration, and Checks of Instrumentation to Measure Dosages of Alpha- and Beta-Emitting Radionuclides

The Commission is proposing to require medical use licensees to possess and use instrumentation to measure alpha- or beta-emitting radionuclides. New radiolabeled biologics are being developed which have potential benefits for diagnosis and treatment in medicine. Some of these biologics may contain alpha- or beta-emitting radionuclides that do not emit photons of sufficient energy or frequency to be detected or quantified in a dose calibrator. Thus, this section is proposed so that medical use licensees would be able to determine that the correct dosages will be administered to patients or human research subjects.

The measurement requirements of this section would not apply to unit dosages obtained from a manufacturer or a commercial nuclear pharmacy for the following reasons: (1) The instrumentation for measuring activity of alpha- or beta-emitters is expensive and not commonly available in a medical use licensee's facility; (2) the frequency of using alpha- or beta-emitters for most medical use licensees is very low; and (3) the manufacturer or the commercial nuclear pharmacy would be required, pursuant to proposed § 32.72(c), to measure each dosage of a radioactive drug prior to transfer for commercial distribution.

Section 35.53 Measurement of Dosages of Unsealed Byproduct Material for Medical Use

The Commission is proposing to modify this section as follows:

(1) In the title, the term "radiopharmaceutical dosages" would be replaced by the phrase "dosages of unsealed byproduct material for medical use." This is proposed to avoid the connotation that the Commission is regulating drug safety and efficacy. The word "unsealed" is proposed to emphasize that this section applies only to unsealed byproduct material for medical use. This section does not apply to sealed sources such as teletherapy or brachytherapy sources.

(2) Existing paragraphs (a) and (b) have been combined as proposed paragraph (a). However, the measurement requirements are the same.

(3) The new text of paragraph (b) would require medical use licensees to measure dosages of alpha- or beta-emitting radionuclides, except for unit dosages obtained from a manufacturer or a commercial nuclear pharmacy. Medical use licensees would be required to measure dosages that will be administered to patients or human research subjects.

The measurement requirements of this section would not apply to unit dosages of alpha- or beta-emitting radionuclides because the manufacturer or the commercial nuclear pharmacy must measure the dosage before distributing it to a medical use licensee. Also, the proposed rule would allow a licensee to use the combination of several measurements and calculations to determine the dosage because it may not be possible to measure alpha- or beta-emitting radionuclides by a single measurement.

(4) In paragraph (c)(3), 0.37 megabecquerel (10 microcuries) would be changed to 1.1 megabecquerels (30 microcuries). This modification is necessary for consistency with the requirements of the Quality

Management Program (§ 35.32). Also, because the radiological risk associated with a dosage of 1.1 megabecquerels (30 microcuries) is small, it is unnecessary to require more than just recording that the dosage is less than 1.1 megabecquerels (30 microcuries).

Section 35.100 Use of Unsealed Byproduct Material for Uptake, Dilution, and Excretion

The current § 35.100 requires medical use licensees to use only byproduct material in a radiopharmaceutical for uptake, dilution and excretion for which the FDA has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND) or approved a New Drug Application (NDA). The effect of this restriction is to prohibit a licensee from using other types of radioactive drugs such as those approved by a Radioactive Drug Research Committee (RDRC), unless a license amendment is received authorizing their use.

The Commission believes that these restrictions can be eased without compromising the level of protection of public health and safety against radiological hazards because of certain conditions which must be met (discussed below). In addition, the Commission recognizes that physicians have the primary responsibility for the diagnosis and treatment of their patients or human research subjects. Commission regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions that are in the best interest of their patients or human research subjects. Furthermore, the pharmacological aspects of radioactive drugs, including drug safety and efficacy, are regulated by the FDA.

Detailed discussions of proposed changes are presented below.

The Commission is proposing to use the term "unsealed byproduct material" instead of the term "radiopharmaceutical" in this proposed section. This is proposed to avoid the connotation that the Commission is regulating drug safety and efficacy. The word "unsealed" is proposed to emphasize that this section applies only to unsealed byproduct material for medical use and does not apply to sealed sources such as teletherapy or brachytherapy sources.

This proposed modification would provide medical use licensees with the maximum flexibility to use any byproduct material for medical use provided that the material is: (1) Obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72; or (2) prepared by an authorized nuclear pharmacist, a physician authorized user who meets the training requirements specified in § 35.920, or an individual under supervision of either, as specified in proposed § 35.25.

In addition, the Commission is proposing to modify this section as follows:

(1) The phrase "unsealed byproduct material prepared for medical use" would be used. This phrase includes "IND" and "NDA," as specified in the existing § 35.100, and other radioactive drugs containing byproduct material that are not specified in the existing § 35.100.

(2) The supplier or preparer of unsealed byproduct material for medical use would be specified under this section. A licensee may obtain byproduct material from a manufacturer or a commercial nuclear pharmacy.

(3) This proposed section would allow licensees to use unsealed byproduct material to prepare (including compound) radioactive drugs by physician authorized users who meet § 35.920, authorized nuclear pharmacists, or individuals under their supervision. The NRC is using the phrase "prepare radioactive drugs" in a general sense to include: (a) using radionuclide generators and nonradioactive reagent kits to produce radioactive drugs and (b) using byproduct material and other basic ingredients to compound radioactive drugs.

(4) This proposed section would require a physician authorized user who wants to prepare radioactive drugs to meet the requirements specified in existing § 35.920. Training and experience requirements specified in existing §§ 35.910 and 35.930, although adequate to administer byproduct material, would not be sufficient for preparing radioactive drugs. Similar training and experience requirements for authorized nuclear pharmacists are proposed in § 35.980.

(5) This proposed section would also allow an individual under the supervision of a physician authorized user or an authorized nuclear pharmacist to use byproduct material to prepare (including compound) radioactive drugs. A part 35 medical use licensee operating a nuclear pharmacy to prepare radioactive drugs for use within the licensee's facility would not be required to obtain a part 32 license, unless the nuclear pharmacy transfers radioactive drugs for commercial distribution. The proposed rule language in § 35.25 would require the supervising physician authorized user or authorized nuclear pharmacist to instruct the individual on radiation safety principles and procedures and would require the individual to follow the procedures.

(6) The Commission recognizes that, in the course of patient care or in the conduct of research procedures, it is sometimes necessary to transfer a dosage of a radioactive drug, on a case-by-case basis, from one medical use licensee to another medical use licensee. These case-specific transfers would not be considered commercial transfers by the NRC and, therefore, would not require a part 32 license. Licensees should be aware that other than infrequent transfers may require a license for commercial transfer of byproduct material.

Section 35.200 Use of Unsealed Byproduct Material for Imaging and Localization Studies

Paragraph (a) of the current § 35.200 restricts medical use licensees to use byproduct material in a radiopharmaceutical for which the FDA has accepted an IND or approved an NDA. The effect of this restriction is to prohibit a licensee from using other types of radioactive drugs such as those approved by a Radioactive Drug Research Committee (RDRC), unless a license amendment is received that authorizes such use. Furthermore, paragraphs (b) and (c) of the current section require licensees to follow the manufacturer's instructions for eluting radionuclide generators and preparing reagent kits unless a departure is directed by a physician authorized user.

The Commission believes that these restrictions can be eased without compromising the level of protection of public health and safety against radiological hazards because of certain conditions which must be met (discussed below). In addition, the Commission recognizes that physicians have the primary responsibility for the diagnosis and treatment of their patients or human research subjects and recognizes that the nuclear pharmacists have the primary responsibility for the preparation of radioactive drugs. Commission regulations are predicated on the assumption that properly trained and adequately informed physicians and pharmacists will make decisions that are in the best interest of their patients or human research subjects. Furthermore, the pharmacological aspects of radioactive drugs, including drug safety and efficacy, are regulated by the FDA.

Detailed discussions of proposed changes are presented below.

(1) The Commission is proposing to use the term "unsealed byproduct material" instead of the term "radiopharmaceutical" in this proposed

section to avoid the connotation that the Commission is regulating drug safety and efficacy. Also, this phrase includes "IND" and "NDA," as specified in the existing § 35.200, and other radioactive drugs containing byproduct material that are not specified in the existing § 35.200.

(2) This proposed modification would provide medical use licensees with the maximum flexibility to use any byproduct material for medical use provided that the material is: (a) obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or (b) prepared by an authorized nuclear pharmacist, a physician authorized user who meets the training requirements specified in § 35.920, or an individual under supervision of either, as specified in proposed § 35.25.

(3) The supplier or preparer of unsealed byproduct material for medical use would be specified under this section. A licensee may obtain byproduct material from a manufacturer or a commercial nuclear pharmacy.

(4) This proposed section would allow licensees to use unsealed byproduct material to prepare (including compound) radioactive drugs by physician authorized users who meet § 35.920, authorized nuclear pharmacists, or individuals under their supervision. The NRC is using the phrase "prepare radioactive drugs" in a general sense to include: (a) using radionuclide generators and nonradioactive reagent kits to produce radioactive drugs; and (b) using byproduct material and other basic ingredients to compound radioactive drugs.

(5) This proposed section would also allow an individual under the supervision of a physician authorized user or an authorized nuclear pharmacist to use byproduct material to prepare (including compound) radioactive drugs. The proposed rule language in § 35.25 would require the supervising physician authorized user or authorized nuclear pharmacist to instruct the individual on radiation safety principles and procedures and would require the individual to follow the procedures.

(6) The Commission recognizes that, in the course of patient care or in the conduct of research procedures, it is sometimes necessary to transfer a dosage of a radioactive drug, on a case-by-case basis, from one medical use licensee to another medical use licensee. These case-specific transfers would not be considered commercial transfers by the NRC and, therefore, would not require a part 32 license.

Section 35.300 Use of Unsealed Byproduct Material for Therapeutic Administration

Paragraph (a) of the current § 35.300 restricts medical use licensees to use byproduct material in a radiopharmaceutical for which the FDA has accepted an IND or approved an NDA. Also, this paragraph requires licensees to comply with the package insert instructions regarding indications and method of administration unless a departure is directed by a physician authorized user.

While recognizing that therapeutic dosages result in greater radiation exposure, the Commission believes that these restrictions can be eased without compromising the level of protection of public health and safety against radiological hazards because of certain conditions which must be met (discussed below). In addition, the Commission recognizes that physicians have the primary responsibility for the diagnosis and treatment of their patients or human research subjects. Commission regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions that are in the best interest of their patients or human research subjects. Furthermore, the pharmacological aspects of radioactive drugs, including drug safety and efficacy, are regulated by the FDA.

Detailed discussions of proposed changes are presented below.

(1) The Commission is proposing to use the term "unsealed byproduct material" instead of the term "radiopharmaceutical" in this proposed section to avoid the connotation that the Commission is regulating drug safety and efficacy. Also, this phrase includes "IND" and "NDA," as specified in the existing § 35.300, and other radioactive drugs containing byproduct material that are not specified in the existing § 35.300.

(2) This proposed modification would provide medical use licensees with the maximum flexibility to use any byproduct material for medical use provided that the material is: (a) obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or (b) prepared by an authorized nuclear pharmacist, a physician authorized user who meets the training requirements specified in § 35.920, or an individual under supervision of either, as specified in proposed § 35.25.

(3) The supplier or preparer of unsealed byproduct material for medical use would be specified under this section. A licensee may obtain byproduct material from a manufacturer or a commercial nuclear pharmacy.

(4) This proposed section would allow licensees to use unsealed byproduct material to prepare (including compound) radioactive drugs by physician authorized users who meet § 35.920, authorized nuclear pharmacists, or individuals under their supervision.

(5) This proposed section would also allow an individual under the supervision of a physician authorized user or an authorized nuclear pharmacist to use byproduct material to prepare (including compound) radioactive drugs. The proposed rule language in § 35.25 would require the supervising physician authorized user or authorized nuclear pharmacist to instruct the individual on radiation safety principles and procedures and would require the individual to follow the procedures.

(6) The Commission recognizes that, in the course of patient care or in the conduct of research procedures, it is sometimes necessary to transfer a dosage of a radioactive drug, on a case-by-case basis, from one medical use licensee to another medical use licensee. These case-specific transfers would not be considered commercial transfers by the NRC and, therefore, would not require a part 32 license.

Section 35.900 Radiation Safety Officer

The Commission is proposing to modify this section to recognize the certification in nuclear medicine by the Royal College of Physicians and Surgeons of Canada and in radiation oncology physics by the American Board of Medical Physics.

Section 35.910 Training for Uptake, Dilution, and Excretion Studies

The Commission is proposing, as recommended by the ACMUI, to modify this section to recognize the certification in nuclear medicine by the Royal College of Physicians and Surgeons of Canada.

Section 35.920 Training for Imaging and Localization Studies

The Commission is proposing, as recommended by the ACMUI, to modify this section to recognize the certification in nuclear medicine by the Royal College of Physicians and Surgeons of Canada.

Section 35.930 Training for Therapeutic Use of Unsealed Byproduct Material

The Commission is proposing to amend § 35.930(a)(2) to recognize the

certification in radiation oncology by the American Board of Radiology (ABR). In 1987, the ABR renamed "therapeutic radiology" as "radiation oncology" but the criteria for certification remain the same. Therefore, it is necessary to recognize both certifications.

Section 35.940 Training for Use of Brachytherapy Sources

The Commission is proposing to amend § 35.940(a)(1) to recognize the certification in radiation oncology by the American Board of Radiology (ABR).

Section 35.950 Training for Use of Sealed Sources for Diagnosis

The Commission is proposing to amend § 35.950(a)(1) to recognize the certification in radiation oncology by the American Board of Radiology (ABR) and the certification in nuclear medicine by the Royal College of Physicians and Surgeons of Canada.

Section 35.960 Training for Teletherapy

The Commission is proposing to amend § 35.960(a)(1) to recognize the certification in radiation oncology by the American Board of Radiology (ABR).

Section 35.961 Training for Teletherapy Physicist

The Commission is proposing to modify this section to recognize the certification in radiation oncology physics by the American Board of Medical Physics.

Section 35.972 Recentness of Training

Existing § 35.972 required that an individual's training must have been acquired within the last 5 years. The Board of Pharmaceutical Specialties (BPS) recertifies board certified nuclear pharmacists (BCNP) every 7 years. Based on BPS's 11 years experience with recertification, the Commission is proposing to replace 5 years with 7 years. This action is necessary to achieve consistency for recentness of training requirements among authorized users, Radiation Safety Officers, teletherapy physicists, and authorized nuclear pharmacists. The Commission is requesting public comment on which period (either 5 or 7 years) is more appropriate and the basis for any recommendation.

Section 35.980 Training for Authorized Nuclear Pharmacist

The Commission is proposing to add a new section that would contain specific training requirements for an authorized nuclear pharmacist. This action is necessary because an authorized nuclear pharmacist may be responsible for handling, preparing, and distributing radioactive drugs to multiple medical institutions. Thus, authorized nuclear pharmacists potentially impact the radiological safety of patients or human research subjects at many medical institutions. The effect of these training requirements will provide sufficient assurance that individuals satisfying these training criteria will safely prepare and distribute radioactive drugs.

In this section, the Commission is proposing two methods for an individual to qualify as an authorized nuclear pharmacist:

(1) In paragraph (a), the Commission is proposing to recognize certification by the Board of Pharmaceutical Specialties as a nuclear pharmacist as satisfying the training requirements.

(2) In paragraph (b), in lieu of board certification, an alternative method to qualify for an authorized nuclear pharmacist is proposed. A candidate would be required to: (i) Complete 700 hours in a structured educational program consisting of both didactic training and supervised experience in a nuclear pharmacy, and (ii) obtain a written certification from a preceptor that the candidate has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

Implementation Plan and Agreement State Compatibility

The effective date of this amendment would be 6 months after the publication of the final amendment in the Federal Register.

On July 15 and 16, 1992, the NRC held a workshop with representatives of 23 Agreement States to discuss the draft rule language for the proposed rulemaking. The Agreement State participants expressed a clear consensus that this proposed rulemaking be either not an item of compatibility or the lowest level of compatibility possible.

However, because this amendment has safety significance for Agreement State licensees as well as NRC licensees, this proposed amendment would be an item of compatibility for the Agreement States. All definitions contained in §§ 30.4 and 35.2 would be Division 1 items of compatibility. The definitions contained in this rulemaking must be the same for all NRC and Agreement State licensees so that consistency will be maintained.

Additionally, the Commission believes that §§ 32.72, 35.6, 35.22(b)(2), 35.25, 35.50, 35.52, 35.53, 35.920, 35.972 and 35.980 should be Division 2 items of compatibility, because these requirements are necessary to ensure adequate protection of the public health and safety. For example, §§ 35.920 and 35.980 provide the radiation safety training and experience criteria for authorized users and authorized nuclear pharmacists that are important prerequisites for ensuring that byproduct material is handled safely. It should be noted that changing § 35.920 to a Division 2 item of compatibility would impact those authorized users who want to compound radioactive drugs as well as those authorized users who only want to perform imaging procedures currently allowed under § 35.200. The Agreement States would be allowed to establish requirements that are more stringent than NRC's requirements, but not less stringent.

It would be appropriate for Agreement States to adopt the remaining sections of part 35 in this proposed rulemaking, but it is not necessary to require any degree of uniformity between NRC and the States. Therefore, a Division 3 item of compatibility would be appropriate for such sections.

The Commission is currently reevaluating its practices concerning the implementation of the provision in the Atomic Energy Act which provides that the Agreement States' regulatory programs are to be compatible with NRC's. This reevaluation will include early and significant involvement of the Agreement States. At the conclusion of this effort, the Commission will implement generic guidance on the application of compatibility.

For comparison, the existing compatibility levels are as follows: definitions in § 30.4 are Division 1 items of compatibility; § 32.72 is a Division 2 item of compatibility; the definitions associated with the quality management rule and misadministrations in § 35.2 are Division 1 items of compatibility; §§ 35.32 and 35.33 are Division 2 items of compatibility; § 35.8 is a Division 4 item of compatibility; and all other sections of part 35 are Division 3 items of compatibility.

The NRC expects Agreement States to adopt rules required to maintain compatibility within three years after NRC's rules become effective. Some Agreement States, faced with administrative and resource constraints, may find the three year goal difficult to attain and may prefer that NRC extend flexibility in such cases to allow the States to implement the requirements through license conditions. The NRC requests public comment on permitting Agreement States flexibility in this regard, and if permitted, under what conditions.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that the proposed amendments, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. The proposed amendments would provide greater flexibility for physician authorized users to use byproduct material in the practice of medicine. The proposed amendments would also incorporate into the regulations the concept of authorized nuclear pharmacists to permit properly qualified pharmacists to prepare radioactive drugs containing byproduct material in the practice of pharmacy.

The proposed amendments would allow physician authorized users greater discretion to prepare and use radioactive drugs containing byproduct material. The proposed amendments would also allow authorized nuclear pharmacists greater discretion to prepare radioactive drugs containing byproduct material. It is expected that there will be no increase in radiation exposure to the public or to the environment beyond the exposures currently resulting from delivering the byproduct material or radiation from byproduct material to patients or human research subjects. The draft environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft environmental assessment and the finding of no significant impact are available from Samuel Z. Jones or Anthony N. Tse (see **FOR FURTHER INFORMATION CONTACT** heading).

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The reduction in public burden for this collection of information is estimated to be a savings of 420 hours per year for 300 NRC licensees, or an average 1.4 hours per year per licensee, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0001, -0010, and -0120), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the benefits and impacts considered by the Commission. The draft regulatory analysis is available for inspection at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis are available from Samuel Z. Jones or Anthony N. Tse (see **FOR FURTHER INFORMATION CONTACT** heading).

The Commission requests public comments on the draft regulatory analysis. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that, if adopted, this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect medical use licensees including some private practice physicians. Some of these licensees would be considered small entities under the NRC's size standards (56 FR 56672; November 6, 1991). The proposed amendments would provide greater discretion for physician authorized users to use byproduct material in the practice of medicine. The proposed amendments would also incorporate into the regulations the concept of authorized nuclear pharmacists to allow properly qualified pharmacists greater discretion to prepare (including compound) radioactive drugs containing byproduct material for medical use. This rulemaking, if adopted, would reduce regulatory burdens on medical use licensees, including small entities.

Any small entity subject to this regulation who determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission by a letter that indicates the following:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden or whether the resources necessary to implement this amendment could be more effectively used in other ways to optimize the safety of patients or human research subjects, as compared to the economic burden on a larger licensee;

(b) How the proposed regulation could be modified to take into account the licensee's differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation were modified as suggested by the licensee;

(d) How the proposed regulation, as modified, could more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group;

(e) How the proposed regulation, as modified, would still adequately protect the public health and safety.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed amendment because this amendment does not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis is not required for this proposed amendment.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 32

Byproduct material, Labeling, Nuclear materials, Criminal penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 35

Byproduct material, Criminal penalty, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the

Commission is proposing to adopt the following amendments to 10 CFR parts 30, 32, and 35.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.4, the definition of *medical use* is revised to read as follows:

§ 30.4 Definitions.

* * * * *

Medical use means the intentional internal or external administration of byproduct material or the radiation therefrom to patients or human research subjects under the supervision of an authorized user.

* * * * *

3. In § 30.8, paragraphs (b) and (c) are revised to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.41, 30.50, 30.51, 30.55, and Appendix A.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In §§ 30.32, 30.37, and 30.38, NRC Form 313 is approved under control number 3150–0120.

(2) In § 30.36, NRC Form 314 is approved under control number 3150–0028.

§ 30.34 [Amended]

4. Section 30.34 is amended by removing paragraph (i).

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

5. The authority citation for part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

6. In § 32.8, paragraphs (b) and (c) are revised to read as follows:

§ 32.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 32.12, 32.14, 32.15, 32.16, 32.17, 32.18, 32.19, 32.20, 32.22, 32.25, 32.26, 32.29, 32.51, 32.51a, 32.52, 32.53, 32.54, 32.56, 32.57, 32.58, 32.61, 32.70, 32.71, 32.72, and 32.74.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 32.11, NRC Form 313 is approved under control number 3150–0120.

(2) [Reserved]

7. Section 32.72 is revised to read as follows:

§ 32.72 Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under part 35.

(a) An application for a specific license to manufacture, prepare, or transfer for commercial distribution radioactive drugs containing byproduct material for use by persons authorized pursuant to part 35 of this chapter will be approved if:

(1) The applicant satisfies the general requirements specified in 10 CFR 30.33;

(2) The applicant submits evidence that the applicant is at least one of the following:

(i) Registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer;

(ii) Registered or licensed with a state agency as a drug manufacturer;

(iii) Licensed as a pharmacy by a State Board of Pharmacy; or

(iv) Operating as a nuclear pharmacy within a Federal medical institution.

(3) The applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(4) A label is affixed to each container of a radioactive drug to be transferred for commercial distribution. The label must include the name of the radioactive drug or its abbreviation, quantity of radioactivity, and date and time of assay. In addition, the label for the syringe or syringe radiation shield must also contain the clinical procedure to be performed or the patient's or the human research subject's name. Furthermore, the label, or the leaflet or brochure that accompanies the radioactive drug must contain a statement that the U.S. Nuclear Regulatory Commission has approved distribution of the byproduct material to persons licensed to use byproduct material pursuant to 10 CFR 35.100, 35.200, or 35.300, as appropriate, and to persons who hold an equivalent license issued by an Agreement State. The label, or the leaflet or brochure must also note that other regulatory approvals may be required. NRC's labeling requirements are independent of requirements of the U.S. Food and Drug Administration (FDA).

(b) (1) A licensee described by paragraph (a)(2)(iii) or (iv) of this section may prepare radioactive drugs for medical use, as defined in 10 CFR 35.2, provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as defined in 10 CFR 35.2, or an individual under the supervision of an authorized nuclear pharmacist as specified in 10 CFR 35.25.

(2) In addition, for purposes of this section, an *authorized nuclear pharmacist* is a pharmacist who is currently licensed or registered by a state to practice pharmacy and designated, as of the effective date of the final rule, as an "authorized user" on a nuclear pharmacy license issued by the Commission under this part.

(3) A licensee shall provide to the Commission a copy of the individual's board certification, the license, or the permit, and the state pharmacy licensure or registration, respectively, for each individual within 30 days of the date that the licensee permits, pursuant to this section, the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity

in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(1) Perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(2) Check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in this section relieves the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs.

§32.73 [Removed]

8. Section 32.73 is removed.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

9. The authority citation for part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

10. In § 35.2, the definitions of *authorized nuclear pharmacist* and *pharmacist* are added and the definitions of *authorized user, medical use*, paragraphs (1)(i), (2)(i), (3)(i), (4)(i), (5)(i), (6)(i), and (6)(ii) of the definition of *misadministration;* and the introductory sentence of the definition of *written directive* are revised to read as follows:

§35.2 Definitions.

* * * * *

Authorized nuclear pharmacist means a pharmacist who is:

(1) Currently board certified as a nuclear pharmacist by the Board of Pharmaceutical Specialties;

(2) Identified as an authorized nuclear pharmacist on a Commission or Agreement State license that authorizes the use of byproduct material in the practice of nuclear pharmacy; or

(3) Identified as an authorized nuclear pharmacist on a permit issued by a Commission or Agreement State specific licensee of broad scope that is authorized to permit the use of byproduct material in the practice of nuclear pharmacy.

Authorized user means a physician, dentist, or podiatrist who is:

(1) Board certified by at least one of the boards listed in paragraph (a) of §§ 35.910, 35.920, 35.930, 35.940, 35.950, or 35.960;

(2) Identified as an authorized user on a Commission or Agreement State license that authorizes the medical use of byproduct material; or

(3) Identified as an authorized user on a permit issued by a Commission or Agreement State specific licensee of broad scope that is authorized to permit the medical use of byproduct material.

* * * * *

Medical use means the intentional internal or external administration of byproduct material or the radiation therefrom to patients or human research subjects under the supervision of an authorized user.

* * * * *

Misadministration means the administration of:

(1) * * *

(i) Involving the wrong patient or human research subject, or wrong radiopharmaceutical; or

* * * * *

(2) * * *

(i) Involving the wrong patient or human research subject, wrong radiopharmaceutical, or wrong route of administration; or

* * * * *

(3) * * *

(i) Involving the wrong patient or human research subject, or wrong treatment site; or

* * * * *

(4) * * *

(i) Involving the wrong patient or human research subject, wrong mode of treatment, or wrong treatment site;

* * * * *

(5) * * *

(i) Involving the wrong patient or human research subject, wrong radioisotope, or wrong treatment site (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site);

* * * * *

(6) * * *

(i) Involving the wrong patient or human research subject, wrong radiopharmaceutical, wrong route of administration, or when the administered dosage differs from the prescribed dosage; and

(ii) When the dose to the patient or human research subject exceeds 5 rems effective dose equivalent or 50 rems dose equivalent to any individual organ.

* * * * *

Pharmacist means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice pharmacy.

* * * * *

Written directive means an order in writing for a specific patient or human research subject, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph (6) of this definition, containing the following information:

* * * * *

11. Section 35.6 is added to read as follows:

§35.6 Provisions for research involving human subjects.

A licensee may conduct research involving human subjects using byproduct material provided that the research is conducted, funded, supported, or regulated by another Federal Agency which has implemented the Federal Policy for the Protection of Human Subjects. Otherwise, a licensee shall apply for and receive approval of a specific amendment to its NRC license before conducting such research. Both types of licensees shall, at a minimum, obtain informed consent from the human subjects and obtain prior review and approval of the research activities by an "Institutional Review Board."

12. Section 35.7 is added to read as follows:

§35.7 FDA, other Federal, and State requirements.

Nothing in this part relieves the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs or devices.

§35.8 [Amended]

13. In § 35.8, paragraph (b) is revised to read as follows:

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 35.6, 35.12, 35.13, 35.14, 35.21, 35.22, 35.23, 35.29, 35.31, 35.50, 35.51, 35.52, 35.53, 35.59, 35.60, 35.61, 35.70, 35.80, 35.92, 35.204, 35.205, 35.310, 35.315, 35.404, 35.406, 35.410, 35.415, 35.606, 35.615, 35.630, 35.632, 35.634, 35.636, 35.641, 35.643, 35.645, 35.647, and 35.980.

* * * * *

14. In § 35.11, paragraph (a) is revised and paragraph (c) is added to read as follows:

§35.11 License required.

(a) A person shall not manufacture, produce, acquire, receive, possess, use, or transfer byproduct material for medical use except in accordance with a specific license issued by the Commission or an Agreement State, or as allowed in paragraphs (b) or (c) of this section.

* * * * *

(c) An individual may prepare unsealed byproduct material for medical use in accordance with the regulations in this chapter under the supervision of an authorized nuclear pharmacist or authorized user as provided in § 35.25, unless prohibited by license condition.

15. In § 35.12, paragraph (e) is added to read as follows:

§ 35.12 Application for license, amendment, or renewal.

* * * * *

(e) An applicant that satisfies the requirements specified in 10 CFR 33.13 may apply for a Type A specific license of broad scope.

16. In § 35.13, paragraph (b) is revised to read as follows:

§ 35.13 License amendments.

* * * * *

(b) Before it permits anyone to work as an authorized user or authorized nuclear pharmacist under the license, except an individual who is:

(1) An authorized user certified by the organizations specified in paragraph (a) of §§ 35.910, 35.920, 35.930, 35.940, 35.950, or 35.960;

(2) An authorized nuclear pharmacist certified by the organization specified in paragraph (a) of § 35.980;

(3) Identified as an authorized user or an authorized nuclear pharmacist on a Commission or Agreement State license that authorizes the use of byproduct material in medical use or in the practice of nuclear pharmacy, respectively; or

(4) Identified as an authorized user or an authorized nuclear pharmacist on a permit issued by a Commission or Agreement State specific licensee of broad scope that is authorized to permit the use of byproduct material in medical use or in the practice of nuclear pharmacy, respectively.

* * * * *

17. Section 35.14 is revised to read as follows:

§ 35.14 Notifications.

(a) A licensee shall provide to the Commission a copy of the board certification, the license, or the permit for each individual within 30 days of the date that the licensee permits the individual to work as an authorized user or an authorized nuclear pharmacist pursuant to § 35.13(b)(1) through (b)(4).

(b) A licensee shall notify the Commission by letter within 30 days when:

(1) An authorized user, an authorized nuclear pharmacist, Radiation Safety Officer, or teletherapy physicist permanently discontinues performance of duties under the license or has a name change; or

(2) The licensee's mailing address changes.

(c) The licensee shall mail the documents required in this section to the appropriate address identified in § 30.6 of this chapter.

18. Section 35.15 is added to read as follows:

§ 35.15 Exemptions regarding Type A specific licenses of broad scope.

A licensee possessing a Type A specific license of broad scope for medical use is exempt from the following:

(a) The provisions of § 35.13(b);

(b) The provisions of § 35.13(e) regarding additions to or changes in the areas of use only at the addresses specified in the license;

(c) The provisions of § 35.14(a); and

(d) The provisions of § 35.14(b)(1) for an authorized user or an authorized nuclear pharmacist.

19. In § 35.22, paragraph (b)(2) is revised to read as follows:

§ 35.22 Radiation Safety Committee.

* * * * *

(b) * * *

(2)(i) Review, on the basis of safety and with regard to the training and experience standards in subpart J of this part, and approve or disapprove any individual who is to be listed as an authorized user, an authorized nuclear pharmacist, the Radiation Safety Officer, or a teletherapy physicist before submitting a license application or request for amendment or renewal; or

(ii) Review, pursuant to § 35.13(b)(1) through (b)(4), on the basis of the board certification, the license, or the permit identifying an individual, and approve or disapprove any individual prior to allowing that individual to work as an authorized user or authorized nuclear pharmacist;

* * * * *

20. In § 35.25, paragraph (b) is redesignated as paragraph (c) and a new paragraph (b) is added to read as follows.

§ 35.25 Supervision.

* * * * *

(b) A licensee that permits the preparation of byproduct material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by § 35.11(c), shall require the supervising authorized nuclear pharmacist or physician who is an authorized user to:

(1) Instruct the supervised individual in the preparation of byproduct material for medical use and the principles of and procedures for radiation safety and in the licensee's written quality management program, as appropriate to that individual's use of byproduct material;

(2) Require the supervised individual to follow the instructions given pursuant to paragraph (b)(1) of this section and to comply with the regulations of this chapter and license conditions; and

(3) Periodically review the work of the supervised individual as it pertains to preparing byproduct material for medical use and the records kept to reflect that work.

* * * * *

§ 35.27 [Removed]

21. Section 35.27 is removed.

22. In § 35.32, paragraphs (a)(2) and (b)(1)(i) are revised to read as follows:

§ 35.32 Quality management program.

(a) * * *

(2) That, prior to each administration, the patient's or human research subject's identity is verified by more than one method as the individual named in the written directive;

* * * * *

(b) * * *

(1) * * *

(i) A representative sample of patient and human research subject administrations,

* * * * *

23. In § 35.33, paragraphs (a)(2), (a)(3), (a)(4), (b), and (c) are revised to read as follows:

§ 35.33 Notifications, reports, and records of misadministrations.

(a) * * *

(2) The licensee shall submit a written report to the appropriate NRC Regional Office listed in 10 CFR 30.6 within 15 days after discovery of the misadministration. The written report must include the licensee's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the patient or the human research subject; what improvements are needed to prevent recurrence; actions taken to prevent recurrence; whether the licensee notified the patient or the human research subject (or either individual's responsible relative or guardian), and if not, why not, and if the patient or the human research subject (or either individual's responsible relative or guardian) was notified, what information was provided to that individual. The report must not include the patient's or the human research subject's name or other information that could lead to identification of the patient or the human research subject.

(3) The licensee shall notify both the referring physician and the patient or the human research subject (or the patient's or the human research subject's responsible relative or guardian), of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he will inform the patient or the human research subject (or either individual's responsible relative or guardian) or that, based on medical judgment, telling the patient or the human research subject (or either individual's responsible relative or guardian) would be harmful to the patient or the human research subject. The licensee is not required to notify the patient or the human research subject (or either individual's responsible relative or guardian) without first consulting the referring physician. If the referring physician or the patient or the human research subject (or the patient's or the human research subject's responsible relative or guardian) cannot be reached within 24 hours, the licensee shall notify the patient or the human research subject (or either individual's responsible relative or guardian) as soon as possible thereafter. The licensee may not delay any appropriate medical care for the patient or the human research subject, including any necessary remedial care as a result of the misadministration, because of any delay in notification.

(4) If the patient or the human research subject (or either individual's responsible relative or guardian) was notified, the licensee shall also furnish, within 15 days after discovery of the misadministration, a written report to the patient or the human research subject (or either individual's responsible relative or guardian) by sending either:

(i) A copy of the report that was submitted to the NRC; or

(ii) A brief description of both the event and the consequences as they may affect the patient or the human research subject, provided a statement is included that the report submitted to the NRC can be obtained from the licensee.

(b) Each licensee shall retain a record of each misadministration for five years. The record must contain the names of all individuals involved (including the prescribing physician, allied health personnel, the patient or the human research subject, and the patient's or human research subject's referring physician), the patient's or the human research subject's social security number or identification number if one has been assigned, a brief description of the misadministration, why it occurred, the effect on the patient or the human research subject, what improvements are needed to prevent recurrence, and the actions taken to prevent recurrence.

(c) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, patients or human research subjects (or either individual's responsible relative or guardian).

24. Section 35.49 is revised to read as follows:

§ 35.49 Suppliers for sealed sources or devices for medical use.

A licensee may use for medical use only:

(a) Sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued pursuant to 10 CFR part 30 and § 32.74 or the equivalent regulations of an Agreement State; or

(b) Teletherapy sources manufactured and distributed in accordance with a license issued pursuant to 10 CFR part 30 or the equivalent regulations of an Agreement State.

25. In § 35.50, paragraphs (a), (b)(3), and (e)(2) through (e)(4) are revised to read as follows:

§ 35.50 Possession, use, calibration, and check of dose calibrators.

(a) A licensee shall possess and use a dose calibrator to measure the activity of dosages of photon-emitting radionuclides prior to administration to each patient or human research subject.

(b) * * *

(3) Test each dose calibrator for linearity upon installation and at least quarterly thereafter over the range of its use between the highest dosage that will be administered to a patient or human research subject and 1.1 megabecquerels (30 microcuries); and

* * * * *

(e) * * *

(2) For paragraph (b)(2) of this section, the model and serial number of the dose calibrator, the model and serial number of each source used, the identity of the radionuclide contained in the source and its activity, the date of the test, the results of the test, and the identity of the individual performing the test.

(3) For paragraph (b)(3) of this section, the model and serial number of the dose calibrator, the calculated activities, the measured activities, the date of the test, and the identity of the individual performing the test.

(4) For paragraph (b)(4) of this section, the model and serial number of the dose calibrator, the configuration of the source measured, the activity measured for each volume measured, the date of the test, and the identity of the individual performing the test.

26. Section 35.52 is added to read as follows:

§ 35.52 Possession, use, calibration, and check of instruments to measure dosages of alpha- or beta-emitting radionuclides.

(a) This section does not apply to unit dosages of alpha- or beta-emitting radionuclides that are obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent Agreement State requirements.

(b) For other than unit dosages obtained pursuant to paragraph (a) of this section, a licensee shall possess and use instrumentation to measure the radioactivity of alpha- or beta-emitting radionuclides. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha- or beta-emitting radionuclides prior to administration to each patient or human research subject. In addition, the licensee shall:

(1) Perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(2) Check each instrument for constancy and proper operation at the beginning of each day of use.

27. In § 35.53, the section heading and paragraphs (a), (b), (c)(2), and (c)(3) are revised as follows:

§ 35.53 Measurement of dosages of unsealed byproduct material for medical use.

* * * * *

(a) Measure the activity of each dosage of a photon-emitting radionuclide prior to medical use.

(b) Measure, by direct measurement or by combination of measurements and calculations, the activity of each dosage of an alpha- or beta-emitting radionuclide prior to medical use, except for unit dosages obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent Agreement State requirements;

(c) * * *

(2) Patient's or human research subject's name, and identification number if one has been assigned;

(3) Prescribed dosage and activity of the dosage at the time of measurement, or a notation that the total activity is less than 1.1 megabecquerels (30 microcuries);

* * * * *

28. In § 35.60, paragraphs (b) and (c) are revised to read as follows:

§ 35.60 Syringe shields and labels.

* * * * *

(b) To identify its contents, a licensee shall conspicuously label each syringe, or syringe radiation shield that contains a syringe with a radiopharmaceutical. The label must show the radiopharmaceutical name or its abbreviation, the clinical procedure to be performed, or the patient's or the human research subject's name.

(c) A licensee shall require each individual who prepares a radiopharmaceutical kit to use a syringe radiation shield when preparing the kit and shall require each individual to use a syringe radiation shield when administering a radiopharmaceutical by injection unless the use of the shield is contraindicated for that patient or human research subject.

29. Section 35.75 is revised to read as follows:

§ 35.75 Release of patients or human research subjects containing radiopharmaceuticals or permanent implants.

(a) A licensee may not authorize release from confinement for medical care any patient or human research subject administered a radiopharmaceutical until either:

(1) The measured dose rate from the patient or the human research subject is less than 5 millirems per hour at a distance of one meter; or

(2) The activity in the patient or the human research subject is less than 30 millicuries.

(b) A licensee may not authorize release from confinement for medical care of any patient or human research subject administered a permanent implant until the measured dose rate from the patient or the human research subject is less than 5 millirems per hour at a distance of one meter.

30. Section 35.100 is revised to read as follows:

§ 35.100 Use of unsealed byproduct material for uptake, dilution, and excretion studies.

A licensee may use for uptake, dilution, or excretion studies any unsealed byproduct material prepared for medical use that is either:

(a) Obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent Agreement State requirements; or

(b) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in § 35.920, or an individual under the supervision of either as specified in § 35.25.

31. Section 35.200 is revised to read as follows:

§ 35.200 Use of unsealed byproduct material for imaging and localization studies.

A licensee may use for imaging and localization studies any unsealed byproduct material prepared for medical use that is either:

(a) Obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent Agreement State requirements; or

(b) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in § 35.920, or an individual under the supervision of either as specified in § 35.25.

32. Section 35.300 is revised to read as follows:

§ 35.300 Use of unsealed byproduct material for therapeutic administration.

A licensee may use for therapeutic administration any unsealed byproduct material prepared for medical use that is either:

(a) Obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent Agreement State requirements; or

(b) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in § 35.920, or an individual under the supervision of either as specified in § 35.25.

33. In § 35.310, the introductory text of paragraph (a), and paragraphs (a)(1) and (a)(5) are revised to read as follows:

§ 35.310 Safety instruction.

(a) A licensee shall provide radiation safety instruction for all personnel caring for the patient or the human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with § 35.75 of this chapter. To satisfy this requirement, the instruction must describe the licensee's procedures for:

(1) Patient or human research subject control;

* * * * *

(5) Notification of the Radiation Safety Officer in case of the patient's or the human research subject's death or medical emergency.

* * * * *

34. In § 35.315, the introductory text of paragraph (a), and paragraphs (a)(2), (a)(3), (a)(5), (a)(6), (a)(7), and (b) are revised to read as follows:

§ 35.315 Safety precautions.

(a) For each patient or human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with § 35.75 of this chapter, a licensee shall:

* * * * *

(2) Post the patient's or the human research subject's door with a "Radioactive Materials" sign and note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or the human research subject's room;

(3) Authorize visits by individuals under age 18 only on a case-by-case basis with the approval of the authorized user after consultation with the Radiation Safety Officer;

* * * * *

(5) Either monitor material and items removed from the patient's or the human research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle them as radioactive waste.

(6) Provide the patient or the human research subject with radiation safety guidance that will help to keep radiation dose to household members and the public as low as reasonably achievable before authorizing release of the patient or the human research subject.

(7) Survey the patient's or the human research subject's room and private sanitary facility for removable contamination with a radiation detection survey instrument before assigning another patient or human research subject to the room. The room must not be reassigned until removable contamination is less than 200 disintegrations per minute per 100 square centimeters; and

* * * * *

(b) A licensee shall notify the Radiation Safety Officer immediately if the patient or the human research subject dies or has a medical emergency.

35. Section 35.404 is revised to read as follows:

§ 35.404 Release of patients or human research subjects treated with temporary implants.

(a) Immediately after removing the last temporary implant source from a patient or a human research subject, the licensee shall make a radiation survey of the patient or the human research subject with a radiation detection survey instrument to confirm that all sources have been removed. The

licensee may not release from confinement for medical care a patient or a human research subject treated by temporary implant until all sources have been removed.

(b) A licensee shall retain a record of patient or human research subject surveys for three years. Each record must include the date of the survey, the name of the patient or the human research subject, the dose rate from the patient or the human research subject expressed as millirem per hour and measured at one meter from the patient or the human research subject, the survey instrument used, and the initials of the individual who made the survey.

36. In § 35.406, paragraphs (a), (b), and (c) are revised to read as follows:

§ 35.406 Brachytherapy sources inventory.

(a) Promptly after removing them from a patient or a human research subject, a licensee shall return brachytherapy sources to the storage area, and count the number returned to ensure that all sources taken from the storage area have been returned.

(b) A licensee shall make a record of brachytherapy source use which must include:

(1) The names of the individuals permitted to handle the sources;

(2) The number and activity of sources removed from storage, the patient's or the human research subject's name and room number, the time and date they were removed from storage, the number and activity of the sources in storage after the removal, and the initials of the individual who removed the sources from storage;

(3) The number and activity of sources returned to storage, the patient's or the human research subject's name and room number, the time and date they were returned to storage, the number and activity of sources in storage after the return, and the initials of the individual who returned the sources to storage.

(c) Immediately after implanting sources in a patient or a human research subject the licensee shall make a radiation survey of the patient or the human research subject and the area of use to confirm that no sources have been misplaced. The licensee shall make a record of each survey.

* * * * *

37. In 35.410, the introductory text of paragraph (a), and paragraphs (a)(3) and (a)(5) are revised to read as follows:

§ 35.410 Safety instruction.

(a) The licensee shall provide radiation safety instruction to all personnel caring for the patient or the human research subject undergoing implant therapy. To satisfy this requirement, the instruction must describe:

* * * * *

(3) Procedures for patient or human research subject control;

* * * * *

(5) Procedures for notification of the Radiation Safety Officer if the patient or the human research subject dies or has a medical emergency.

* * * * *

38. In § 35.415, the introductory text of paragraph (a), and paragraphs (a)(1), (a)(2), (a)(3), (a)(5) and (b) are revised to read as follows:

§ 35.415 Safety precautions.

(a) For each patient or human research subject receiving implant therapy, a licensee shall:

(1) Not quarter the patient or the human research subject in the same room with an individual who is not receiving radiation therapy unless the licensee can demonstrate compliance with the requirements of § 20.105(b) or, for licensees implementing the provisions of §§ 20.1001 through 20.2401, § 20.1301(a) of this chapter at a distance of one meter from the implant;

(2) Post the patient's or human research subject's door with a "Radioactive Materials" sign and note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room;

(3) Authorize visits by individuals under age 18 only on a case-by-case basis with the approval of the authorized user after consultation with the Radiation Safety Officer; and

* * * * *

(5) Provide the patient or the human research subject with radiation safety guidance that will help to keep radiation dose to household members and the public as low as reasonably achievable before releasing the individual if the individual was administered a permanent implant.

(b) A licensee shall notify the Radiation Safety Officer immediately if the patient or the human research subject dies or has a medical emergency.

39. In § 35.610, paragraph (a)(1) is revised to read as follows:

§ 35.610 Safety instruction.

(a) * * *

(1) The procedure to be followed to ensure that only the patient or the human research subject is in the treatment room before turning the primary beam of radiation on to begin a treatment or after a door interlock interruption;

* * * * *

40. In § 35.615, paragraphs (d)(3) and (e) are revised to read as follows:

§ 35.615 Safety precautions.

* * * * *

(d) * * *

(3) A radiation monitor must be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients or human research subjects.

* * * * *

(e) A licensee shall construct or equip each teletherapy room to permit continuous observation of the patient or the human research subject from the teletherapy unit console during irradiation.

41. In § 35.900, paragraphs (a)(6) and (a)(7) are added to read as follows:

§ 35.900 Radiation Safety Officer.

* * * * *

(a) * * *

(6) American Board of Medical Physics in radiation oncology physics; or

(7) Royal College of Physicians and Surgeons of Canada in Nuclear Medicine; or

* * * * *

42. In § 35.910, paragraph (a)(4) is added and paragraphs (b)(2)(i), (b)(2)(iii), and (b)(2)(v) are revised to read as follows:

§ 35.910 Training for uptake, dilution, and excretion studies.

* * * * *

(a) * * *

(4) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(b) * * *

(2) * * *

(i) Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

* * * * *

(iii) Administering dosages to patients or human research subjects and using syringe radiation shields;

* * * * *

(v) Patient or human research subject followup; or

* * * * *

43. In § 35.920, paragraph (a)(4) is added and paragraphs (b)(2)(iii), (b)(3)(i), (b)(3)(iii), and (b)(3)(v) are revised to read as follows:

§ 35.920 Training for imaging and localization studies.

* * * * *

(a) * * *

(4) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(b) * * *

(2) * * *

(iii) Calculating and safely preparing patient or human research subject dosages;

* * * * *

(3) * * *

(i) Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

* * * * *

(iii) Administering dosages to patients or human research subjects and using syringe radiation shields;

* * * * *

(v) Patient or human research subject followup; or

* * * * *

44. In § 35.930, the section heading and paragraph (a)(2) are revised to read as follows:

§ 35.930 Training for therapeutic use of unsealed byproduct material.

* * * * *

(a) * * *

(2) The American Board of Radiology in radiology, therapeutic radiology, or radiation oncology; or

* * * * *

45. In § 35.940, paragraph (a)(1) is revised to read as follows:

§ 35.940 Training for use of brachytherapy sources.

* * * * *

(a) * * *

(1) Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

* * * * *

46. In § 35.950, paragraph (a)(1) is revised and (a)(4) is added to read as follows:

§ 35.950 Training for use of sealed sources for diagnosis.

* * * * *

(a) * * *

(1) Radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

* * * * *

(4) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

* * * * *

47. In § 35.960, paragraphs (a)(1) and (b)(3)(iii) are revised to read as follows:

§ 35.960 Training for teletherapy.

* * * * *

(a) * * *

(1) Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(b) * * *

(3) * * *

(iii) Calculating the teletherapy doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and

* * * * *

48. In § 35.961, paragraph (b) is redesignated as paragraph (c) and a new paragraph (b) is added to read as follows:

§ 35.961 Training for teletherapy physicist.

* * * * *

(b) Is certified by the American Board of Medical Physics in radiation oncology physics; or

* * * * *

49. Section 35.972 is revised to read as follows:

§ 35.972 Recentness of training.

The training and experience specified in this subpart must have been obtained within the seven years preceding the date of application or the individual must have had related continuing education and experience since the required training and experience was completed.

50. Section 35.980 is added to subpart J to read as follows:

§ 35.980 Training for an authorized nuclear pharmacist.

The licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(a) Has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties, or

(b)(1) Has completed 700 hours in a structured educational program consisting of both:

(i) Didactic training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of byproduct material for medical use; and

(E) Radiation biology; and

(ii) Supervised experience in a nuclear pharmacy involving the following:

(A) Shipping, receiving, and performing related radiation surveys;

(B) Using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(C) Calculating, assaying, and safely preparing dosages for patients or human research subjects;

(D) Using administrative controls to avoid mistakes in the administration of byproduct material;

(E) Using procedures to prevent or minimize contamination and using proper decontamination procedures; and

(2) Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

Dated at Rockville, Maryland, this 10th day of June, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–14152 Filed 6–16–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

RIN 1010–AB83

Interest Rate Applicable to Late Payment or Underpayment of Monies Due on Solid Minerals and Geothermal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its Royalty Management Program (RMP) regulations governing the rate of interest charged to lessees and other royalty payors on late or underpayment of monies due to the Federal Government on solid minerals and geothermal leases. This amendment would provide consistency between all mineral leases since the same interest rate will be used for late or underpayment of monies due for all mineral leases. The interest rate used for solid minerals and geothermal leases is currently prescribed by the Department of the Treasury (Treasury) as the "Treasury Current Value of Funds Rate" and would be changed to reference section 6621 of the Internal Revenue Code of 1954 for the applicable interest rate.

DATES: Written comments must be received on or before August 16, 1993.

ADDRESSES: Written comments regarding the proposed rule should be mailed or delivered to the Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225–0165, Attention: David S. Guzy.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, (303) 231–3432.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rulemaking is Dennis C. Whitcomb, Audit Division, RMP, MMS.

I. Background

The rate of interest charged to lessees and payors on late or underpayment of monies due to the Federal Government on solid minerals and geothermal leases is established under regulations at 30 CFR 218.202 and 218.302. These regulations were promulgated under the Secretary of the Interior's plenary authority to establish necessary and appropriate rules pursuant to the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001, et seq.) The regulations established a uniform method for calculating late payment or underpayment charges applicable to all onshore and offshore Federal and Indian oil and gas, solid minerals, and geothermal leases. Under the existing regulations, in the absence of a lease or contract provision specifying a different interest rate, the Treasury's Current Value of Funds Rate is applied to late or underpaid royalty revenues on the simple interest method.

With enactment of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1721, on January 13, 1983, MMS implemented a new method to calculate late payment or underpayment charges for oil and gas leases. Sections 111 (a), (b), and (d) of FOGRMA provide that interest shall be "at the rate applicable" under section 6621 of the Internal Revenue Code of 1954, 26 U.S.C. 6621. Section 6621 establishes the rate of interest which must be applied to late or underpayment of taxes under 26 U.S.C. 6601(a).

The FOGRMA legislative history (H.R. Rep. No. 859, 97th Cong., 2d Sess. 36 (1982)), reprinted in 1982 U.S. Code, Congressional & Administrative News, 4268, 4290) provides the following reason for using the rate from the Internal Revenue Code:

> Imposition of such high penalties against those owing money to the United States is to remove the incentives such persons may have to hold the money owed and invest it rather than pay it on time to the MMS.

The inconsistency in late payment or underpayment charges between oil and gas leases versus solid minerals and geothermal leases was recently reported by the Department of the Interior's (Department) Office of Inspector General (OIG) to MMS. The OIG concluded that MMS:

> * * * Had not established an effective deterrent to discourage delinquent payments of royalties for solid minerals such as coal and for geothermal leases. Although MMS charges for delinquent oil and gas lease payments based on a daily compounding interest rate, MMS allows late payment charges on solid minerals and geothermal leases to be calculated using a low, noncompounding simple interest rate (the Current Value of Funds Rate). the **Code of Federal Regulations** (4 CFR 102.13 (c)) states that an agency has the authority to assess a higher rate (than the Current Value of Funds Rate) if it determines that higher rate is necessary to protect the interests of the United States. The MMS did not increase the interest charges because it did not correctly evaluate the dollar impact of charging the lower rate. As a result, MMS continues to experience a high level of delinquent payments * * * MMS adopted the Internal Revenue Service's interest rate in the Federal Oil and Gas Royalty Management Act of 1982 to deter delinquent payment of oil and gas royalties by charging an above-market daily compounding interest rate. In our opinion, the current method of calculating late charges for delinquencies on solid minerals and geothermal payments serves as an incentive for companies to underpay royalties, as well as to delay royalty payments.

The OIG report recommended that MMS amend the provisions of 30 CFR part 218 to change the method of calculating late payment and underpayment charges for solid minerals and geothermal leases by using the same rates and methodology used for oil and gas leases. The MMS believes consistency for late payment and underpayment charges for all mineral leases at the rate applicable under section 6621 of the Internal Revenue Code of 1954 is appropriate and would serve as an effective deterrent to discourage delinquent payments.

II. Discussion of Proposed Rule

As noted above, Congress intended that late and underpayment charges act and an incentive to royalty payors to make required payments timely. This intent was to be fulfilled by adopting a higher interest rate that would encourage prompt payment. The interest rate adopted in FOGRMA for oil and gas leases was based on the rate established in section 6621 of the Internal Revenue Code of 1954 and was codified in the implementing regulations at 30 CFR 218.54. The MMS believes that there should be an effective incentive to pay royalties on a timely basis for mineral leases for all products and is therefore proposing to amend 30 CFR 218.202 and 218.302 to adopt, for solid minerals and geothermal leases respectively, the language applied under 30 CFR 218.54 to oil and gas leases. Accordingly, the same interest rate in 30 CFR 218.54 pertaining to oil and gas leases is proposed for 30 CFR 218.202 and 218.302 for solid minerals and geothermal leases.

The policy of the Department is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the **ADDRESSES** section of this preamble. Comments must be received on or before the date identified in the **DATES** section of this preamble.

Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department has determined that this document is not a major rule under E.O.12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The proposed rule is necessary to provide consistency in the existing regulations in applying the same interest rate for late payment or underpayment of monies due on solid minerals, geothermal, and oil and gas mineral leases.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference With Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of

Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph (2)(C) of Section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR part 218

Coal, Continental shelf, Electronic funds transfer, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: April 12, 1993.

Michael Dombeck,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 218 is proposed to be amended as set forth below:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraphs (c) and (d) of § 218.202 under subpart E, Solid Minerals—General, are revised to read as follows:

§ 218.202 Late payment or underpayment charges:

* * * * *

(c) The interest charge on late payments shall be at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

(d) Interest will be charged only on the amount of the payment not received by the designated due date. Interest will be charged only for the number of days the payment is late.

* * * * *

3. Paragraphs (c) and (d) of § 218.302 under subpart F, Geothermal Resources, are revised to read as follows:

§ 218.302 Late payment or underpayment charges.

* * * * *

(c) The interest charge on late payments shall be at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

(d) Interest will be charged only on the amount of the payment not received by the designated due date. Interest will be charged only for the number of days the payment is late.

* * * * *

[FR Doc. 93–14288 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for Revised Program Amendment Number 60 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations. The amendment concerns the extraction of more than 250 tons of coal under an exploration permit and the commercial use or sale of coal extracted during exploration.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on July 2, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on June 28, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 24, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232. Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224. Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated January 15, 1993 (Administrative Record No. OH–1826), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment No. 60. In this amendment, Ohio proposed to revise Ohio Administrative Code (OAC) rule 1501:13–4–02 to make that rule as effective as the corresponding Federal rules in 30 CFR part 772 concerning coal exploration.

OSM announced receipt of proposed Program Amendment Number 60 in the March 26, 1993, **Federal Register** (58 FR 16388), and, in the same document, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on April 26, 1993. The public hearing scheduled for April 20, 1993, was not held because no one requested on opportunity to testify.

On April 30, 1993, representatives of OSM and Ohio met informally to discuss OSM's initial questions and comments about the proposed

amendment. In response to that meeting, Ohio submitted Revised Program Amendment Number 60 by letter dated May 27, 1993 (Administrative Record No. OH–1887). In this revised amendment, Ohio is proposing further revisions to OAC 1501:13–4–02. The substantive proposed revisions are discussed briefly below:

(1) Paragraph (C)(2): Ohio is revising this paragraph to clarify that, if the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) finds that the proposed exploration operation will substantially disturb the natural land surface, the person seeking to explore must submit an application for and be issued an exploration permit before beginning exploration. The Chief shall issue or deny the exploration permit within a reasonable period of time.

(2) Paragraph (D): Ohio is revising this paragraph to provide that any exploration under an exploration permit shall be subject to the requirements of paragraphs (E) to (L) of this rule.

(3) Paragraphs (E) and (E)(3): Ohio is revising these paragraphs to provide that applicants for exploration permits shall place an advertisement providing public notice of the filing of the application in a newspaper of general circulation in the county of the proposed exploration area. A copy of the advertisement shall be filed with the Chief and shall be made part of the complete application. Proof of publication of the advertisement must be filed with the Chief before the Chief can approve the application.

(4) Paragraph (H)(1): Ohio is revising this paragraph to provide that any person who conducts coal exploration operations that substantially disturb the natural ground surface shall comply with OAC 1501:13–4–02, OAC 1501:13–8–01, Ohio Revised Code Chapter 1513, OAC Section 1501, and any exploration permit terms or conditions imposed by the Chief.

(5) Paragraph (H)(3): Ohio is adding this new paragraph to provide that any person who conducts coal exploration operations in violation of OAC 1501:13–4–02 or of the other laws, rules, terms, or conditions referenced in paragraph (H)(1) shall be subject to the provisions of Ohio Revised Code Section 1513.99 (penalties) and OAC 1501:13–14–01 to 13–14–06 (inspections, enforcement, civil penalties, formal review, and informal conferences).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicate under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Person wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on June 24, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 9, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–14312 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 86, 88 and 600

[AMS–FRL–4668–1]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Refueling Emission Regulations for Light-Duty Vehicles and Trucks and Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of change in date for public hearing and additional request for comment on proposed onboard refueling vapor recovery regulations.

SUMMARY: On May 27, 1993 (58 FR 30731), EPA published a **Federal Register** notice reopening the comment period on its 1987 proposed rule covering onboard control of vehicle refueling emissions and the scheduling of a public hearing to receive oral comment on materials related to the proposal (August 19, 1987, 52 FR 31162), an additional notice (September 3, 1991, 56 FR 46382) and the May 27, 1993 notice. This notice announces a delay of the hearing until July 22, 1993 and an extension of the public comment period until August 22, 1993. The time of day and location of the public hearing are unchanged. Interested readers should refer to the May 27, 1993 notice for more detail on the material to be discussed at the hearing.

EPA expects to promulgate an onboard requirement by January 22, 1994, and has entered into a proposed settlement agreement to this effect. For purposes of implementing the onboard requirement, EPA believes this date to be in the 1994 model year and asks for comment on this matter as part of the reopening of the comment period and public hearing.

DATES: The public hearing will be held on July 22, 1993. It will start at 9 a.m. and will continue throughout the day. Comments will be accepted until 30 days after the hearing (August 22, 1993).

ADDRESSES: The public hearing will be held at Domino's Farms Conference Facility, 24 Frank Lloyd Wright Dr., Ann Arbor, Michigan (313) 930–4258.

FOR FURTHER INFORMATION CONTACT: Mr. James G. Bryson, U.S. Environmental Protection Agency, Regulation

Development and Support Division, 2565 Plymouth Rd., Ann Arbor, MI 48105–2425, telephone: 313/741–7828.

SUPPLEMENTARY INFORMATION:

1. Change of Hearing Date and Extension of Public Comment Period

On May 27, 1993, EPA published a notice reopening the public comment period in this proceeding and scheduling a public hearing (58 FR 30731). EPA has since decided to afford all participants in this proceeding an extra month to prepare comments, and also to change the hearing date to reflect the longer comment period. Accordingly, the new hearing date is July 22, 1993 and EPA will accept public comment on issues raised in the May 27 notice until August 22, 1993.

2. Model Year in Which Standards Are Promulgated

Onboard refueling vapor recovery standards for light-duty vehicles take effect "beginning with the fourth model year after the model year in which the standards are promulgated." EPA has recently entered into a proposed settlement agreement (subject to the section 113(g) public notice and review process) whereby the Agency has agreed to promulgate the onboard standards required by section 202(a)(6) by January 22, 1994.[1] A copy of this proposed agreement is also available in the public docket. It is the Agency's view that a requirement promulgated on that date would be deemed to have been promulgated in the 1994 model year, and hence the onboard requirement would begin to be phased in with 1998 model year vehicles. EPA solicits comment on this matter as part of the reopened comment period in this proceeding. A brief memorandum addressing the question of model year is also available in the public docket.

Dated: June 14, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–14364 Filed 6–15–93; 8:45 am]

BILLING CODE 6560–50–P

[1] Pursuant to section 113(g), EPA is accepting public comment on the proposed settlement in a separate proceeding, to be noticed soon in the **Federal Register**.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 397

[FHWA Docket No. MC–92–4]

RIN 2125–AC78

Federal Motor Carrier Safety Regulations; Transportation of Hazardous Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA proposes to amend part 397 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new Subpart B, Motor Carrier Safety Permits. This rulemaking action implements parts of sections 8 and 15 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). Section 8 requires, among other things, the establishment of a motor carrier safety permit program, at a minimum, for motor carriers transporting class A and/or B explosives (new RSPA hazard classification, Division 1.1, 1.2, and 1.3; see 49 CFR 173.2, as amended), liquefied natural gas (new RSPA hazard classification, Division 2.1; see 49 CFR 173.2, as amended), hazardous materials designated as extremely toxic by inhalation (new RSPA hazard classification, Division 2.3, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A; see 49 CFR 173.2, as amended), or highway route controlled quantity radioactive materials (new RSPA hazard classification, Class 7; see 49 CFR 173.2, as amended). Section 15 of the HMTUSA requires, in part, inspection of commercial motor vehicles transporting highway route controlled quantity radioactive materials before each trip. This requirement of section 15 would be incorporated into the proposed safety permit regulations. This proposed rule, if promulgated, would increase regulatory compliance, enhance motor carrier safety, and promote the safe transportation of the designated hazardous materials.

DATES: Comments must be received on or before August 16, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC 92–4, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk in standard or high density formats containing files compatible with word processing programs such as WordPerfect, WordStar, or Microsoft "Word" for IBM systems, or WordPerfect or Microsoft Word for Macintosh. Commenters should clearly label the submitted disk(s) with the software format used (e.g., WordPerfect 5.0 [IBM] or Microsoft Word 4.0 [Mac]). All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Jackson, Hazardous Materials Programs Division (202) 366–4415, Mr. Neill L. Thomas, Office of Motor Carrier Standards; (202) 366–2981, or Mr. Raymond W. Cuprill, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, the President signed the HMTUSA (Pub. L. 101–615, 104 Stat. 3244), which established additional requirements in the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. app. 1801 *et seq.*) to reduce the risks to life, property, and the environment posed by unintentional releases of hazardous materials. Congress recognized that approximately 4 billion tons of regulated hazardous materials are transported each year and that approximately 500,000 movements of hazardous materials occur each day. Congress also found that the movement of hazardous materials is necessary to promote economic vitality and meet consumer demands, and should be conducted in a safe and efficient manner.

To this end, section 8 of the HMTUSA amends section 106 of the HMTA (49 U.S.C. app. 1805) to prohibit a motor carrier from transporting, by motor vehicle in commerce (interstate and intrastate), certain hazardous materials designated by the Secretary of Transportation, unless the motor carrier holds a "safety permit" issued by the Secretary and maintains a copy of the permit or proof of its existence in the motor vehicle used to provide such transportation. The section provides that the Secretary may only grant safety permits to carriers that are fit, willing, and able to (1) provide the

transportation to be authorized by the permit, (2) comply with existing Federal safety regulations and any applicable minimum financial responsibility laws and regulations, and (3) comply with any safety permit regulations and requirements of this title.

The revised section 106 also requires that the Secretary issue regulations implementing the safety permit requirements and establishing the types and quantities of hazardous materials subject to the regulations. The safety permit regulations are to cover, at a minimum, the transportation by motor carrier of quantities of (1) class A and/or B explosives (new RSPA hazard classification, Division 1.1, 1.2, and 1.3; see 49 CFR 173.2, as amended), (2) liquefied natural gas (new RSPA hazard classification, Division 2.1; see 49 CFR 173.2, as amended), (3) hazardous materials designated by the Secretary as extremely toxic by inhalation (new RSPA hazard classification, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A; see 49 CFR 173.2, as amended), and (4) highway route controlled quantity radioactive materials (new RSPA hazard classification, Class 7; see 49 CFR 173.2, as amended). For purposes of this notice we will refer to these hazardous materials as designated high risk hazardous materials. The regulations must also establish procedures applicable to permit application, content, fees, amendment, suspension or revocation, and standards for permit duration, conditions or limitations. This new permit requirement would, under section 13 of the HMTUSA (49 U.S.C. app. 1811), preempt any State permit requirement dealing with transportation of the same hazardous materials if compliance with both the State and Federal permit requirements is not possible, or if the State requirement creates an obstacle to the accomplishment of the HMTA and the regulations.

Section 8 of the HMTUSA also amended the HMTA to require shippers and motor carriers of certain types and quantities of hazardous materials to file a registration statement with the Secretary of Transportation. The registration requirements have been implemented by the Research and Special Programs Administration (RSPA) in a separate rulemaking action (57 FR 30620, July 9, 1992). Motor carriers transporting hazardous materials covered by the registration requirements are advised that they will need to file a registration statement with the RSPA and also obtain a safety permit from the FHWA. The filing of a registration statement with RSPA will not constitute an application for a safety permit. A separate permit application must be filed with the FHWA.

Additionally, the HMTUSA mandates other specific motor carrier and shipper responsibilities as follows.

Shipper Responsibility

Each person who offers any hazardous material for which a permit is required for motor vehicle transportation in interstate or intrastate commerce may offer that material to a motor carrier only if the carrier has a safety permit authorizing such transportation. It is anticipated that the RSPA will subsequently initiate rulemaking which will address shipper responsibility.

Inspection Requirements

Section 15 of the HMTUSA amends section 116 of the HMTA (49 U.S.C. app. 1813) to provide that the Secretary shall require by regulation that, before each use of a motor vehicle to transport in commerce (interstate or intrastate) any highway route controlled quantity radioactive material, such vehicle shall be inspected and certified to be in compliance with the HMTA and applicable Federal motor carrier safety laws and regulations. The amended section 116 further provides that the Secretary may require that inspections be carried out by duly authorized inspectors of the United States or in accordance with appropriate State procedures. The Secretary may also permit the shipper or transporter of any highway route controlled quantity radioactive material to inspect the vehicle if the individuals conducting the inspections meet the inspector qualification requirements issued by the Secretary.

The definition of "highway route controlled quantity" radioactive materials is found at 49 CFR 173.403. *Highway route controlled quantity* radioactive materials are generally quantities of materials that emit high levels of radioactivity. The regulatory and packaging requirements which apply to these materials are designed both to adequately identify the presence of these materials and to ensure that the packaging can withstand normal transportation conditions and foreseeable accidents, without a breach of containment integrity.

In considering development of inspection requirements for commercial motor vehicles transporting these materials and trying to determine what type of inspection criteria is needed, the FHWA examined the procedures contained in current inspection methods. This examination included a review of (1) the North American Uniform Driver/Vehicle Inspection Manual, published by the FHWA in September 1989, (2) a draft of a Commercial Vehicle Safety Alliance document entitled, "Recommended National Procedures for the Safety Inspection of Commercial Highway Vehicles Transporting Spent Fuel/Transuranic and High Level Radioactive Wastes" (March 1991), (3) "A Guide for the Inspection of Spent Nuclear Fuel Shipments by Motor Vehicle" (RSPA, November 1988), and (4) "A Guide for the Inspection of Radioactive Material Shipments by Motor Vehicle or at Freight Facilities" (RSPA, November 1988). Copies of these documents have been placed in the docket and are available for public review.

The FHWA is proposing the use of the general inspection requirements contained in part 396, "Inspection, Repair, and Maintenance," and the more detailed inspection standards found in appendix G to subchapter B, "Minimum Periodic Inspection Standards," to meet the requirement that a vehicle be inspected before each trip. Further, the FHWA believes that a Level 1 North American Uniform Driver/Vehicle Inspection can be used to satisfy the vehicle inspection requirement for the transportation of highway route controlled quantity radioactive materials, if the inspection is conducted by a qualified inspector. Accordingly, the FHWA proposes to apply the inspector qualification requirements specified in § 396.19, "Inspector qualifications," to ensure that any inspector performing these vehicle inspections is qualified. We specifically invite comments concerning the inspection criteria proposed herein and whether radiological monitoring should be included.

FHWA Proposed Rulemaking Action

Discussion of Proposed Requirements

I. Purpose and Scope

The purposes of this proposed rule are to enhance motor carrier safety and promote the safe transportation of designated high risk hazardous materials in both interstate and intrastate commerce. Subpart B of part 397 would require that Federal safety permits be issued to a motor carrier before engaging in the transportation of designated high risk hazardous materials. The conditions for obtaining and retaining the permit should provide motor carriers with additional incentives to safely operate their commercial motor vehicles.

The HMTUSA provides that the Secretary shall designate the types and quantities of hazardous materials

subject to permit requirements. The statute, however, requires that the safety permit regulations apply, at a minimum, to "all transportation by a motor carrier" of the four classes of high risk hazardous materials, discussed earlier in this document. The FHWA is aware that this requirement might be interpreted as requiring a safety permit for the transportation of any quantity of these four classes of high risk hazardous materials. However, administrative expedience dictates that the coverage of the safety permit program be phased-in based on the quantity of hazardous material being transported. Accordingly, we are proposing to limit the safety permit regulations to the transportation of the specific classes of hazardous materials set forth in the HMTUSA of 1990, subject to the quantities and phase-in periods discussed herein and defined in § 397.39 of this proposal. After the program is fully implemented and some experience is gained, the FHWA will decide whether to propose expanding the safety permit regulations to include other hazardous materials.

The HMTUSA requires that the safety permit regulations apply, at a minimum, to motor carriers transporting four specific types of hazardous materials. One of the types of designated high risk hazardous materials is class A and/or B explosives (new RSPA hazard classification, Division 1.1, 1.2, and 1.3; see 49 CFR 173.2, as amended). Different quantities of class A and/or B explosives are transported daily by a vast number of motor carriers, primarily private motor carriers of property. These carriers include operators from a diversity of industry groups, such as explosives magazine operators, quarry operators, farmers, and persons involved in fireworks displays. Immediate application of the safety permit requirements to these motor carriers might present an undue economic burden for these industries, especially when many are solely intrastate operations which have never been subject to the FHWA's regulations. Many of these motor carriers would be required to obtain financial responsibility coverage in the amount of $5 million. In addition, the large number of motor carriers applying for safety permits could result in administrative burdens which may adversely affect the successful implementation of the proposed program. The proposed regulations, therefore, would phase-in, over a 3-year period, the applicability of the safety permit requirement to motor carriers transporting class A and/or B explosives based on the quantities of these explosives being transported. The phase-in would be implemented as follows:

Effective date	Covered quantities of class A and/or B explosives
Nov. 16, 1993	454 kilograms (1,000 pounds) or more.
Nov. 16, 1994	227 kilograms (500 pounds) or more.
Nov. 16, 1995	25 kilograms (55 pounds) or more.

Motor carriers transporting 1,000 pounds or more of class A and/or B explosives on a single commercial motor vehicle would be required to obtain a safety permit by November 16, 1993. A year later (November 16, 1994) motor carriers transporting 500 pounds or more of class A and/or B explosives would be required to obtain a safety permit. On November 16, 1995, the transported quantity of class A and/or B explosives for which a safety permit is required would decrease to 55 pounds or more.

There will be no phase-in period, however, for the other three specific types of hazardous materials (liquified natural gas, hazardous materials designated as extremely toxic by inhalation, and highway route controlled radioactive materials). Unlike Class A and/or B explosives, the FHWA does not believe that immediate application of the safety permit requirements to carriers of these materials would present an undue economic burden on the motor carrier industry. There are far fewer carriers of these types of hazardous materials, as well as far fewer movements of these materials in interstate and intrastate commerce. Further, carriers of these three types of hazardous materials typically have greater financial responsibility coverage than would be required under this NPRM.

Carriers of these types of hazardous materials are currently subject to some form of Federal regulation (e.g., intrastate carriers of these materials must comply with the packaging requirements of the Federal Hazardous Materials Regulations, 49 CFR 171–180). Therefore, due to their greater familiarity with the Federal regulatory system, it would be easier for them to obtain information on the proposed requirements and to comply with a new regulatory program.

The quantity provisions established and set forth in the definition of the term *designated high risk hazardous materials* are being coordinated with the efforts currently ongoing to implement the registration and routing requirements of the HMTUSA. This coordination will ensure that motor carriers requesting a safety permit are registered, have been issued a DOT identification number, are in the FHWA Motor Carrier Census File, and are aware of the Agency's routing requirements.

As stated above, a hazardous material designated as extremely toxic by inhalation is another type of designated high risk hazardous material covered by the safety permit provisions of the HMTUSA. The FHWA is proposing that safety permits be required for the transportation of hazardous materials extremely toxic by inhalation that meet the criteria of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A (see 49 CFR 173.115 and 173.132), if transported in quantities of more than 1 liter (1.06 quarts). The FHWA is not considering the inclusion of Hazard Zone B hazardous materials that are extremely toxic by inhalation in the proposed permit program. Such action is consistent with the proposed registration requirements imposed by the RSPA (57 FR 30620, July 9, 1992). Hazard Zone B hazardous materials include such widely distributed chemicals as chlorine, hydrogen sulfide, ethylene oxide, and nitric oxide, to name a few. This transportation mostly involves quantities that are less than "in bulk" (a containment system that has a capacity in excess of 3,500 water gallons or 468 cubic feet). The FHWA is interested in obtaining information from the public and affected industries concerning the transportation of Hazard Zone B hazardous materials that are extremely toxic by inhalation. Specifically, should the safety permit program be expanded to include the transportation of Hazard Zone B hazardous materials?

II. Applicability

This proposal would establish safety permit requirements applicable to motor carriers which transport designated high risk hazardous materials in interstate or intrastate commerce. These requirements would apply to a motor carrier's officers, drivers, agents, representatives, and employees.

Section 8 of the HMTUSA applies to both interstate and intrastate hazardous materials motor carrier operations. Accordingly, the FHWA proposes to amend part 397 by adding a compliance section to ensure that interstate and intrastate motor carriers subject to part 397 are also subject to all applicable parts of the FMCSRs (49 CFR parts 350–399). This action is necessary since the FHWA intends to use the provisions of part 385, "Safety Fitness Procedures,"

in making determinations whether to issue, or deny, a request for a safety permit for either interstate or intrastate motor carriers. This determination will ensure that motor carriers engaged in the transportation of designated high risk hazardous materials in interstate or intrastate commerce meet the "fit, willing, and able" requirement of the HMTUSA.

Once these proposed rules have been promulgated and fully implemented, data will be collected and analyzed to assess the effectiveness of the safety permit program. Based upon its analysis of data collected, the FHWA will determine whether to propose to extend the applicability of the safety permit program to other classes and quantities of hazardous materials. Any subsequent action would be taken after notice and opportunity to comment have been provided.

III. Transportation Without a Safety Permit Prohibited

The HMTUSA provides that no motor carrier shall transport or cause to be transported any hazardous material for which a permit is required in interstate or intrastate commerce unless the motor carrier has obtained a safety permit which authorizes such transportation. Violation of that prohibition could result in civil penalties up to $25,000 per violation, per day, as provided for in the HMTA.

IV. Definitions

The FHWA believes it is important to define new terms which would be used in this proposed rule. Accordingly, definitions of the terms designated high risk hazardous materials, extremely toxic by inhalation materials, and in bulk are provided. The FHWA, in issuing a final rule, will ensure that the definitions used are consistent with the definitions used in the Hazardous Materials Regulations.

V. Application Procedures

A motor carrier would have to apply to the FHWA for a permit to transport the designated high risk hazardous materials. A motor carrier would be required, at a minimum, to submit a Motor Carrier Identification Report, Form MCS–150, to obtain a motor carrier safety permit from the FHWA.

A revised Form MCS–150 would be used by motor carriers as an application for a safety permit. The application would have to be signed by an official of the motor carrier and notarized, to comply with the provisions of the HMTUSA that require the permit application to be submitted under oath [49 U.S.C. app. 1805(d)(7)].

The application for a permit would be submitted to the Regional Director, Office of Motor Carriers, for the region in which the motor carrier has its principal place of business. See 49 CFR 390.27, Locations of regional motor carrier safety offices, for domestic and foreign motor carriers. This will help expedite the safety permit procedure since the in-depth compliance reviews used to gather safety fitness and other information are completed by the FHWA's field offices. Renewals would be handled similarly.

The safety rating notification letter currently being sent to a motor carrier would be modified to serve as the safety permit and would authorize the motor carrier to transport designated high risk hazardous materials. The letter would bear a safety permit number, which would be the motor carrier's DOT identification number required by § 390.21 of the FMCSRs. Motor carriers which have already been assigned DOT identification numbers would have to apply for a safety permit by submitting another Form MCS–150. Motor carriers which have never applied for a DOT identification number would be allowed to apply for an identification number and a safety permit simultaneously using a single Form MCS–150.

The HMTUSA requires that permit application procedures also provide for the assessment of fees necessary to recover the full costs of administering the motor carrier safety permit requirements. As discussed above, we are proposing to make extensive use of existing FHWA programs, forms, and procedures, and the program applicability would be initially limited to four specific groups of hazardous materials, therefore, reducing the number of motor carriers covered. Enforcement of the proposed safety permit requirements would be accomplished within the framework of existing programs (i.e., compliance reviews and roadside inspections). As a result, the FHWA has determined that no measurable cost would be attributable to the administration of the proposed motor carrier safety permit program. In addition, the collection of fees for the issuance of a permit would, in itself, add to the government's cost of administration. Accordingly, the FHWA proposes not to assess fees at this time, but will review the necessity to do so in the future as the program is fully implemented and expanded to include other motor carriers of hazardous materials. This will allow the FHWA to gain more information and experience, which would assist us in establishing an appropriate and correct fee structure. The FHWA welcomes public comment pertaining to the assessment of permit fees.

VI. Safety Permit Application Determinations

Determinations on safety permit applications would be based upon a safety fitness finding made pursuant to 49 CFR part 385. A "satisfactory" safety rating would be a prerequisite to the granting of a safety permit. A less than "satisfactory" safety rating would result in a denial of the permit application. The FHWA would have the discretion to issue a temporary safety permit to an unrated motor carrier pending a safety fitness determination. A temporary safety permit would remain in effect for up to 120 days from the date of issuance or until a "satisfactory" safety rating is assigned, whichever occurs first. Once the motor carrier is assigned a "satisfactory" safety rating, the temporary safety permit would be converted to a 3-year permit. If the motor carrier fails to achieve a "satisfactory" safety rating within 120 days, the temporary permit would expire. No safety permit would then be issued until a "satisfactory" safety rating is achieved.

Intrastate motor carriers (for-hire and private) and those motor carriers of foreign domicile conducting operations in the United States, which currently are not required to obtain a U.S. DOT identification number, would be required to submit a Form MCS–150 to apply for a safety permit. As this regulation would affect motor carriers in Canada and Mexico, we have completed a preliminary analysis of the United States-Canada Free-Trade Agreement (FTA) (19 U.S.C. 2112) and the U.S. obligations under the General Agreement on Tariffs and Trade (GATT). The FHWA believes that this proposed rulemaking would not violate either the FTA or the GATT. It is this agency's interpretation that the FTA does not constitute an impediment nor prohibit the implementation of this proposed regulation. The most relevant provision of the GATT is article III which addresses the National Treatment on Internal Taxation and Regulation. To violate article III of the GATT, there must be some degree of differentiation between the treatment of the products of a contracting party and either the products of another contracting party or the domestic party. This proposed rulemaking would not distinguish between U.S. and Canadian products, and the proposed permit requirement would treat all U.S. and foreign motor carriers and shippers transporting hazardous materials in the same manner.

A motor carrier which has not been assigned a safety rating or has not been subject to these Federal rules would be required to certify, in writing, that the motor carrier is operating in full compliance with the FMCSRs or comparable State regulations, including financial responsibility required by 49 CFR part 387 or by State regulation, whichever is applicable. It should be understood that during the 120-day temporary permit period, the motor carrier would have to bring its operation into full compliance with the Federal hazardous materials regulations, the Federal motor carrier safety regulations, and any applicable minimum financial responsibility laws and regulations. An official with authority to bind the motor carrier would be required to execute the certification. Motor carriers which have not been assigned a safety rating may, upon filing a properly executed Form MCS–150 and certification, obtain a temporary safety permit which would allow the motor carrier's operation to continue for the interim period of up to 120 days.

The FHWA's Motor Carrier Management Information System (MCMIS) would be modified to identify motor carriers that have been issued safety permits. Safety fitness and permit information would be available to Federal, State and local agencies and the public upon written, oral, or electronic request.

VII. Review of Safety Permit Denials

A safety permit application would be denied on the basis of a safety fitness determination and rating issued in accordance with 49 CFR part 385, Safety Fitness Procedures. Accordingly, any party whose safety permit application is denied would be able to obtain a review of FHWA's determination by requesting a change in the safety rating, pursuant to § 385.15 or § 385.17, whichever is applicable.

VIII. Failure to Report

Failure to file a Form MCS–150, Motor Carrier Identification Report (which would serve as the safety permit application), or furnishing false or misleading information in a Form MCS–150 or any document filed during a safety permit proceeding, would result in the denial or revocation of the safety permit and may subject the motor carrier to civil or criminal penalties.

IX. Conditions for Safety Permit

The FHWA has included in this proposal conditions which would apply to each safety permit issued. Motor carriers would have to clearly display the assigned safety permit numbers on the shipping paper or on the appropriate transportation document which contains the description of the hazardous materials being transported and for which a safety permit is required. A motor carrier holding a safety permit would also be required to display, on each commercial motor vehicle used to transport such hazardous materials, its name, city and State location, and its DOT identification number as required by 49 CFR 390.21. This would fulfill the requirement in the HMTUSA that a safety permit or proof of the existence of such a permit (permit number), issued by the FHWA, is maintained in the motor vehicle [49 U.S.C. app. 1805(d)(1)]. Also, 49 CFR 177.817, "Shipping papers," requires that the shipping paper be available on the motor vehicle for information purposes in the event of an accident or vehicle inspection. Since the shipping document is already required to be carried on the motor vehicle during transportation, the proposed requirement would minimize any additional paperwork burden placed upon the industry. The FHWA intends to establish an information system to provide immediate permit verification by enforcement officials at roadside, or by a shipper or the public. This will be done by adding a "permit" data base to the agency's existing information systems. Such action would require simple adjustments to existing programs with minimal costs involved.

Additional conditions specific to the transportation of highway route controlled quantity radioactive materials or class A and/or B explosives are also proposed. For example, safety permits issued for the transportation of highway route controlled quantity radioactive materials would require that each commercial motor vehicle be inspected before each trip. In addition, motor carriers would be required to maintain a written certification of each inspection, as performed by a qualified inspector meeting the requirements specified in § 396.19, Inspector qualifications, of the FMCSRs. This proposed requirement would satisfy the inspection and certification requirement of section 15(d)(1) of the HMTUSA.

X. Renewal of Safety Permits

Procedures would be provided for renewing a safety permit. The renewal process would continue to purge the system of motor carriers not currently operating under a permit, aid compliance and enforcement efforts, and serve as a timetable for routine monitoring of motor carrier operations continuing under a safety permit. Motor carriers would be required to renew their safety permits every 3 years. As part of its review of applications for permit renewals, the FHWA will check its motor carrier management information data base, State records, complaint registers, and other compliance information sources before a final decision concerning permit renewal is made. A decision to renew a permit will be made utilizing the factors considered in determining a safety rating set forth in 49 CFR 385.7. A safety compliance review may not be necessary or practical when reviewing applications for renewal. A compliance review will be conducted, however, wherever there is an indication of a compliance problem.

The Form MCS–150 would be used to initiate the renewal process. Where appropriate, supplementary information regarding current operations may be necessary to further process the safety permit renewal request. Depending upon the number of renewal applications received at any given time, the issuance of renewals may be delayed for a short period of time. Therefore, if a motor carrier files for renewal at least 90 days, but no more than 180 days, prior to the permit's expiration date, the safety permit would remain in force until the renewal process is completed and a determination is made. Accordingly, failure to file for renewal at least 90 days in advance of expiration may result in temporary loss of the permit.

XI. Penalties

The regulation proposed herein would be issued pursuant to the authority granted by the HMTA, as amended by the HMTUSA, and consequently any violation of its provisions would be subject to the civil and criminal penalties set forth in 49 U.S.C. 1809 (1991).

Rulemaking Analyses and Notices

Regulatory Impact

The proposals contained in this document would implement the congressional mandate of the HMTUSA which restricts the transportation of certain designated high risk hazardous materials in interstate and intrastate commerce to motor carriers that hold safety permits, issued by the FHWA, authorizing the transport of those hazardous materials. Further, transportation of highway route controlled quantity radioactive materials would be prohibited unless the commercial motor vehicle was inspected and certified to be in compliance with all applicable

regulations before each trip. The HMTUSA requires that regulations implementing its provisions must be issued by November 16, 1991, and that the permit requirements be effective November 16, 1992.

The permit and inspection requirements proposed herein would be merged into existing FHWA program areas (e.g., Safety Fitness Procedures, Selective Compliance and Enforcement Program) and would produce minimal additional burden on the regulated industry.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291, but is a significant regulation under the DOT regulatory policies and procedures because of substantial congressional and public interest. This interest is due to the potential for some motor carriers failing to obtain the required permit to transport certain designated high risk hazardous materials. A draft regulatory evaluation has been prepared and placed in the docket. As discussed in the draft regulatory evaluation, the anticipated economic impact of this proposed rulemaking on the interstate motor carrier industry will be minimal. At this time, the FHWA is unable to determine the precise impact of this proposed rulemaking on intrastate motor carrier operations because the agency has had no regulatory authority over intrastate carriage. The FHWA requests information identifying the intrastate motor carrier population to be affected by this proposed rule. This information will assist the agency in determining the economic impact on this portion of the motor carrier industry and any additional impact which may result from also having to come into compliance with the rest of the FMCSRs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this proposed rulemaking on small entities. Some small entities would be economically impacted by this rulemaking, if promulgated, and would not be allowed to transport certain designated high risk hazardous materials if they cannot obtain the required permit from the FHWA. However, the FHWA believes that relatively few small motor carriers will fail to obtain the required permit. Moreover, this rule will serve as a powerful incentive to gain compliance with the FMCSRs by such motor carriers who wish to avoid these adverse consequences. Thus, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. While the congressional mandates required by the HMTUSA will require changes to be made to the FMCSRs, no changes will be required to the regulations governing the Motor Carrier Safety Assistance Program (MCSAP). Accordingly, the impact on the various States by the changes being proposed will be minimal. This new permit requirement would preempt only a State permit requirement dealing with transportation of the same hazardous materials and only to the extent such a State permit is based upon a demonstration of safety fitness. The various States are requested to submit comments on this proposal and advise the FHWA of the effect, if any, on their participation in the MCSAP.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, the reporting and recordkeeping provisions that are included in this proposed regulation are being submitted to the Office of Management and Budget for approval.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have an adverse effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 397

Hazardous materials transportation, Highways and roads, Motor carrier safety permits.

Issued on: June 9, 1993.

Rodney E. Slater,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 397, as follows:

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS

1. The authority citation for part 397 is revised to read as follows:

Authority: 49 U.S.C. app. 1801–1813.

2. Part 397 is amended by revising the heading to read "Transportation of hazardous materials," by adding a heading to subpart A (§§ 397.1 through 397.19) to read "Driving and parking rules," and by adding a new Subpart B to read as follows:

Subpart B—Motor Carrier Safety Permits

Sec.

397.31 Purpose and scope.
397.33 Applicability.
397.35 Compliance with Federal Motor Carrier Safety Regulations.
397.37 Transportation without a safety permit prohibited.
397.39 Definitions.
397.41 Application procedures.
397.43 Safety permit determinations.
397.45 Review of safety permit determinations.
397.47 Failure to file report.
397.49 Conditions for safety permit.
397.51 Renewal of safety permit application.
397.53 Penalties.

Subpart B—Motor Carrier Safety Permits

§ 397.31 Purpose and scope.

(a) The purpose of this subpart is to enhance motor carrier safety and to promote the safe transportation of designated high risk hazardous materials in interstate and intrastate commerce by requiring motor carriers to obtain a safety permit from the FHWA, authorizing such transportation.

(b) This subpart prescribes minimum requirements for motor carriers to apply for and obtain safety permits to transport designated high risk hazardous materials, as defined in § 397.39.

§ 397.33 Applicability.

The provisions of this subpart shall apply to any motor carrier that transports or causes to be transported in interstate or intrastate commerce any designated high risk hazardous material,

as defined in § 397.39. Officers, drivers, agents, representatives, and employees of the motor carriers subject to this subpart shall comply with the provisions of this subpart and be knowledgeable of its requirements.

§ 397.35 Compliance with Federal Motor Carrier Safety Regulations.

Any motor carrier that transports or causes to be transported in interstate or intrastate commerce any designated high risk hazardous materials, as defined in § 397.39, shall comply with all applicable parts 350 through 399 of this subchapter.

§ 397.37 Transportation without a safety permit prohibited.

No motor carrier shall transport or cause to be transported any designated high risk hazardous material, as defined in § 397.39 in interstate or intrastate commerce, unless the motor carrier has obtained a safety permit, issued under this subpart, which authorizes such transportation.

§ 397.39 Definitions.

For the purposes of this subpart—

Designated high risk hazardous materials means highway route controlled quantity radioactive materials (new RSPA hazard classification, Class 7; see 49 CFR 173.2, as amended), liquefied natural gas in bulk (new RSPA hazard classification, Division 2.1; see 49 CFR 173.2, as amended), more than one liter (1.06 quarts) per package of a hazardous material extremely toxic by inhalation (new RSPA hazard classification, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A; see 49 CFR 173.2, as amended), and the following quantities of class A and/or B explosives, including packaging (new RSPA hazard classification, Division 1.1, 1.2, and 1.3; see 49 CFR 173.2, as amended):

(a) Effective on November 16, 1993, 454 kilograms (1,000 pounds);

(b) Effective on November 16, 1994, 227 kilograms (500 pounds); and

(c) Effective on November 16, 1995, 25 kilograms (55 pounds).

Extremely toxic by inhalation materials means those hazardous materials transported in quantities which exceed one liter (1.06 quarts) per package and meet the criteria of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A (see 49 CFR 173.115 and 173.132).

In bulk means a containment system that has a capacity in excess of 3,500 water gallons or 468 cubic feet.

§ 397.41 Application procedures.

(a) A motor carrier shall submit a completed Motor Carrier Identification Report, Form MCS–150, to obtain a motor carrier safety permit authorizing the transportation of designated high risk hazardous materials. The Form MCS–150 (application form) shall be signed by an official of the motor carrier and notarized.

(b) The MCS–150 (application form) shall be submitted to the Regional Director, Office of Motor Carriers, Federal Highway Administration, in the region where the motor carrier's principal place of business is located. (See 49 CFR 390.27, Locations of regional motor carrier safety offices, for domestic and foreign motor carriers.)

(c) Application forms may be obtained by contacting any of the Federal Highway Administration's regional motor carrier safety offices.

§ 397.43 Safety permit determinations.

(a) Determinations concerning the granting, denial, suspension, or revocation of a safety permit shall be made pursuant to the Safety Fitness Procedures of part 385 of this subchapter and the provisions of this subpart. A "satisfactory" safety rating is a prerequisite to the granting of a safety permit. A less than "satisfactory" safety rating will result in a denial of the permit application, or revocation or suspension of a safety permit previously issued.

(b) A written notification of a "satisfactory" safety rating issued pursuant to § 385.11 of this subchapter shall serve as the safety permit and shall include the safety permit number assigned.

(c) A temporary safety permit may be issued to an unrated motor carrier pending a safety fitness determination, provided the motor carrier has certified in the permit application that it is operating in full compliance with the FMCSRs or comparable State regulations, including financial responsibility required by part 387 of this subchapter or by State regulation, whichever is applicable.

(d) A temporary safety permit shall remain in effect for no more than 120 days from the date of issuance or until a safety rating is assigned, whichever occurs first. If a motor carrier is assigned a "satisfactory" safety rating, a safety permit shall be issued in accordance with paragraph (b) of this section. If the motor carrier fails to obtain a "satisfactory" safety rating within 120 days, no safety permit shall be issued until a "satisfactory" safety rating is assigned.

§ 397.45 Review of safety permit determinations.

In obtaining a review of a safety permit determination made pursuant to § 397.43, the motor carrier shall follow the procedures established in § 385.15 or § 385.17 of this subchapter.

§ 397.47 Failure to file report.

Failure by a motor carrier to file a Motor Carrier Identification Report, Form MCS–150, pursuant to the provisions of § 385.23 of this subchapter, furnishing misleading information, or making false statements in the Form MCS–150 or any other document that may be required pursuant to this subpart will subject the motor carrier to the penalties prescribed in 49 U.S.C. 1809.

§ 397.49 Conditions for safety permit.

(a) Safety permits shall be issued for a period of 3 years.

(b) Safety permit numbers shall be clearly displayed on shipping papers or the appropriate transportation document which contains the description of the designated high risk hazardous materials which require a safety permit.

(c) All motor carriers must comply with the Federal hazardous materials regulations, the Federal motor carrier safety regulations, and any applicable minimum financial responsibility laws and regulations.

(d) Motor carriers must have and maintain a "satisfactory" safety rating issued by the FHWA, as prescribed in part 385 of this subchapter.

(e) Motor carriers transporting highway route controlled quantity radioactive materials shall be subject to the following additional conditions:

(1) The vehicle shall be inspected in accordance with Appendix G to subchapter B of this chapter before each trip;

(2) Inspections of the vehicle must be performed by a qualified inspector who meets the requirements specified in § 396.19 of this subchapter;

(3) Written certifications that each vehicle has been inspected in accordance with this paragraph must be prepared and retained for a period of one year;

(4) The certification statement shall include:

(i) The vehicle identification number;

(ii) Date of inspection;

(iii) Certification statement;

(iv) The qualified inspector's name;

(v) Signature of a motor carrier official; and

(5) The routing and training requirements of § 177.825 of this title must be complied with by both the carrier and the driver.

(f) Motor carriers transporting explosives for which a safety permit is required pursuant to this subpart shall be subject to the following conditions:

(1) The motor carrier shall comply with the requirements of § 397.9 of this part concerning written route plans; and

(2) The motor carrier shall comply with the attendance requirements of § 397.5 of this part.

§ 397.51 Renewal of safety permit application.

(a) A motor carrier shall submit a completed motor carrier safety permit application, Form MCS–150, Motor Carrier Identification Report, in order to renew a motor carrier safety permit authorizing the transportation of designated high risk hazardous materials.

(b) The Form MCS–150 (application form) used for renewal shall be submitted to the Regional Director, Office of Motor Carriers, in the region where the motor carrier's designated principal place of business is located. (See 49 CFR 390.27, Locations of regional motor carrier safety offices, for domestic and foreign motor carriers.)

(c) To permit timely consideration, an application for renewal should be submitted at least 90 days, but not more than 180 days, before the expiration date of the safety permit to be renewed.

(d) If a motor carrier files an application for renewal in accordance with paragraph (c) of this section which is complete and conforms with the requirements of this section, the existing safety permit will not be considered to have expired until the application for renewal has been approved, modified, or disapproved.

(e) If a motor carrier fails to file for a renewal of a safety permit at least 90 days prior to expiration, a temporary loss of the permit may result.

§ 397.53 Penalties.

Violations of any of the requirements imposed by this subpart are subject to penalties provided in 49 U.S.C. 1809 (1990), i.e., civil penalties of not more than $25,000 or less than $250 per violation, and criminal penalties for willful violations of up to $50,000 per violation or five (5) years, imprisonment, or both.

[FR Doc. 93–14255 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

[Docket No. 930233–3033]

RIN 0648–AD25

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to issue regulations authorizing and governing the taking of bottlenose and spotted dolphins incidental to the removal of oil and gas drilling and production structures in state waters and on the Outer Continental Shelf in the Gulf of Mexico from 1993 through 1997. The incidental taking of small numbers of marine mammals is allowed under section 101(a)(5) of the Marine Mammal Protection Act (MMPA) if certain findings are made and regulations are issued that include requirements for monitoring and reporting.

DATES: Comments should be received by August 16, 1993.

ADDRESSES: Director, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910. Send comments on the collection-of-information burden estimate to the Office of Information and Regulatory Affairs, Project 0648–0151, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas C. Eagle, Office of Protected Resources, NMFS, (301) 713–2319.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the MMPA directs the Secretary of Commerce (Secretary) to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, and regulations are issued.

Permission may be granted for periods of up to 5 years if the Secretary finds that the taking will have a "negligible impact" on the species or stock and will not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence uses. On September 29, 1989, (54 FR 40339) NMFS and the U.S. Fish and Wildlife Service published a final rule implementing amendments made to the MMPA in 1986 that allow a take of depleted, as well as non-depleted, marine mammals and also changed the conditions under which incidental takings are allowed.

Summary of Request

On October 30, 1989, NMFS received a request from the American Petroleum Institute (API) for an incidental take of bottlenose dolphins (*Tursiops truncatus*) and spotted dolphins (*Stenella frontalis*). API is representing operators who remove oil and gas drilling and production structures and related facilities in the Gulf of Mexico in state and Federal waters adjacent to the coasts of Texas, Louisiana, Mississippi, Alabama, and Florida. After an initial public comment period, API amended their request to address the comments. The amended request was received December 13, 1990.

API estimates that 670 structures will be removed in the Gulf of Mexico over the next 5 years. Most of the structures are in water less than 30.5m (100 ft.) deep. A longer range plan estimates that about 5,500 structures will be removed in a 35-year period. Some structures have already been removed using the methods described by the petitioners. The most frequently used procedure is to wash the soil from inside the piling, lower an explosive charge to 4.6m (15 ft.) below the mudline, and detonate the charge, which cuts the piling.

Under section 7 of the Endangered Species Act (ESA), NMFS has consulted on the effects upon endangered and threatened sea turtles of the removal of over 525 oil and gas structures in the Gulf of Mexico. As a result of these consultations NMFS required the Minerals Management Service (MMS) and the U.S. Army Corps of Engineers (Corps) to employ the following measures to minimize adverse impacts to listed species: The use of qualified observers; conduct 30-minute aerial surveys within 1 hour before and after detonation; if sea turtles are observed within 914m (1,000 yds.) of the blast site, delay of blast(s) until successful attempts remove the turtles at least 914m (1,000 yds.) from the site; detonation of explosives will occur no sooner than 1 hour following sunrise and no later than 1 hour prior to sunset; and charges are staggered by 0.9 seconds to minimize the cumulative effects of the blasts.

Bottlenose and spotted dolphins are not listed as threatened or endangered, but are under the authority of the MMPA; therefore, the applicants must receive an authorization under the

MMPA before a take is allowed. Similar to the case for sea turtles, impacts to dolphins would come from exposure to sound and pressure waves associated with detonating the explosives. API states that the most likely form of incidental take as a result of structure removals is harassment from low level sound and pressure waves. However, animals close enough to the detonation could be injured or killed as a result of tissue destruction. In recognition of this, removal operators have been employing the mitigation measures for sea turtles to protect dolphins as well, and API has filed the subject petition for the incidental taking of small numbers of bottlenose and spotted dolphins under the MMPA.

Summary of Proposed Rule

The proposed rule would authorize the incidental taking of bottlenose dolphins and spotted dolphins by U.S. citizens engaged in removing oil and gas drilling and production structures in state and Federal waters in the Gulf of Mexico adjacent to the coasts of Texas, Louisiana, Mississippi, Alabama, and Florida over the next 5 years.

The proposed rule would require that all activities be conducted in a manner that minimizes adverse effects on bottlenose dolphins and spotted dolphins and their habitat. Safeguards, monitoring, and reporting requirements would be consistent with those in place at the time of this proposal for the incidental take of endangered and threatened sea turtles authorized for the same activities under the ESA.

Description of Removal Activities

The technology most commonly used in the dismantling of platforms includes: Bulk explosives, shaped explosive charges, mechanical and abrasive cutters, and underwater arc cutters. The use of bulk explosives has become the industry's standard procedure for severing pilings, well conductors and related supporting structures. When using bulk charges, the inside of the structure can be washed out to at least 4.6 m (15 ft.) below the sediment floor to allow placement of explosives inside of the structure. Such placement results in a decrease in the impulse and pressure forces released into the water column upon detonation. The sizes of the explosive charges are generally 22.7 kg (50 lbs.) or less, but can be as much as 90.8 kg (200 lbs.) when necessary. The use of high velocity shaped charges is reported to have some advantages over bulk explosives and has been used in combination with smaller bulk charges. The cutting action obtained by a shaped charge is accomplished by focusing the explosive energy with a conical metallic liner. A major advantage associated with use of high velocity shaped charges is that a smaller amount of explosive charge is required to sever the structure, which also results in reductions in the impulse and pressure forces released into the water column. Use of mechanical cutters and underwater arc cutters is successful in some circumstances and does not produce the impulse and pressure forces associated with detonation of explosives; however, these methods are, in most instances, more time-consuming, costly and hazardous to divers. Furthermore, if the use of mechanical or arc cutters were to fail before the structure was completely severed, a larger charge may be necessary to remove the structure.

Bottlenose Dolphins in the Gulf of Mexico

Bottlenose dolphins are commonly found in nearshore waters throughout temperature and tropical waters of the world. It is the most common species of cetacean in coastal waters of the southeastern United States. Within the U.S. waters of the Gulf of Mexico, aerial survey data indicate that bottlenose dolphins number 35,000–45,000 and occur from backwater bays to offshore locations to depths of at least 200 m (660 ft.). Seasonal changes in distribution of bottlenose dolphins in the Gulf are not clear; however, some geographically localized populations show seasonally cyclical patterns in abundance, suggesting migration into and out of embayments.

Female bottlenose dolphins in Florida waters reach sexual maturity at 5–12 years and a length of 220–235 cm (7.2–7.7 ft.). Males reach sexual maturity at 10–13 years at lengths of 245-260 cm (8.0–8.5 ft.).

Little is known about life history parameters of bottlenose dolphins in the Gulf of Mexico. However, values consistent among populations occupying other waters may be true for those occupying the Gulf of Mexico as well. The minimum annual mortality rate of bottlenose dolphins along the Atlantic coast of central Florida has been estimated at 6.9 percent (9.2 percent if population size is adjusted for transient individuals). Transient individuals may have been included among the stranded dolphins on which the estimate was based, and inclusion of these individuals would increase the estimate of mortality. The mean annual survival rate of captive bottlenose dolphins was estimated to be 0.93, which is consistent with the lower mortality estimate for central Florida.

Stock or population structure of bottlenose dolphins in the Gulf of Mexico is not completely known. In the Atlantic Ocean and Gulf of Mexico, there appear to be two populations, nearshore and offshore; body size of the nearshore form is smaller than that of the offshore form. A model for stock structure in the Gulf of Mexico can be based on local, resident stocks in certain embayments and transient individuals (including offshore animals) that migrate to and from these embayments on a seasonal basis.

Generalized anatomy, catholic food habits, variable time budgets, intelligence, and flexible social structures contribute to the behavioral flexibility of bottlenose dolphins. This behavioral flexibility likely accounts for the wide distribution of bottlenose dolphins throughout most of the world's oceans. One of the most striking aspects of bottlenose dolphin behavioral flexibility is the species' adaptability to human activities in the environment (e.g., fishing activities for food and ships for bowriding).

Interactions between humans and bottlenose dolphins occur in many parts of the dolphins' range. The most commonly witnessed association involves dolphin attraction to the pressure waves created at the bows or the stern wake of vessels (the method used to remove dolphins from platform removal sites). Interactions with fisheries, especially shrimp fisheries, result in dolphins feeding behind actively trawling boats, on discarded fish after a trawl, or around non-working, anchored boats. Interactions with humans may result in injury or mortality of dolphins. Dolphins have been struck by propellers on occasion. In some areas, bottlenose dolphin populations may have declined as a result of human activities, including shipping.

Habitat degradation, including pollution, has also been suggested as a cause of decline, but has not been thoroughly investigated. High levels of toxic chemicals, including DDT and chlorinated hydrocarbons, have been found in the blubber of dolphins, thus indicating the presence of these chemicals in dolphin habitat.

Spotted Dolphins in the Gulf of Mexico

Alantic spotted dolphins are distributed in the western North Atlantic from southern New England, through the Gulf of Mexico, and into the Caribbean to Venezuela. Spotted dolphins have been found in all areas of the Gulf of Mexico surveyed, with most sightings off the west coast of Florida. Spotted dolphins are usually found

more than 5–12 miles (8–19 km) offshore. No abundance estimates are available for spotted dolphins within the Gulf, but they have been sighted commonly in offshore locations. Relatively frequent sightings suggest spotted dolphins are common offshore and may be the most common cetacean in offshore areas of the Gulf of Mexico.

Because spotted dolphins are found offshore rather than in coastal areas, little is available concerning their natural history. Sexual behavior has been observed in spotted dolphins from May to July, and a newly captured female gave birth in August. Surveys for marine turtles, birds, and mammals in 1980 and 1981 in the Gulf of Mexico yielded 810 observations of spotted dolphins, including 13 calves; however, these data should not be used to estimate reproductive rates because young dolphins are hard to spot during surveys, which may cause a downward bias in the estimate.

Potential Impact of Removal Activities on Bottlenose and Spotted Dolphins

The potential for injury to marine mammals in the vicinity of underwater explosions is associated with gas-containing internal organs, such as the lungs and intestines. The extent of potential injury decreases as: (1) Distance of the marine mammal from the explosion increases; (2) size of the marine mammal increases; (3) depth of the explosion and the affected marine mammal decreases; and (4) size of the explosive charge decreases. In addition, explosive charges confined in structure pilings below the mudline produce shock waves of lower pressure (at a given distance from the explosion) than free-water explosions.

A computer model, developed to predict the distances from which marine mammals would suffer only slight injury from underwater explosions, estimated that a bottlenose dolphin calf would receive only slight injury about 1,200 m (4,000 ft.) from a 544-kg (1,200-lb.) charge of TNT detonated in open water at 38 m (125 ft.). Most structures scheduled for removal are located in water less than 38 m deep. In most cases, charges are limited to 22.7 kg (50 lbs.) and are to be confined in the structure piles about 4.6 m (15 ft.) below the mudline. Therefore, it may be assumed that marine mammals more than 910 m (1,000 yds.) from structures to be removed would avoid serious injury caused by the explosions.

An increase in strandings of bottlenose dolphins in the northwestern Gulf of Mexico occurred in March and April 1986 following the explosive removal of oil and gas structures in the area. However, there is no evidence linking the strandings to the removal of the structures. Furthermore, observers at removals of more than 525 structures in the Gulf of Mexico reported no indication of injury or death to bottlenose or spotted dolphins, or any other marine mammal related to these structure removals.

For the reasons discussed above and in an environmental assessment (EA) prepared for this rulemaking, NMFS finds that the proposed activity would result in the taking of only small numbers of bottlenose and spotted dolphins; the total of such taking during a five-year period will have negligible impact on these species; and the takings will not have an unmitigable adverse impact on the availability of bottlenose and spotted dolphins for subsistence uses.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The regulations are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Only about 10 small businesses are active in removing oil and gas structures in the Gulf of Mexico. These small businesses work under contract to major petroleum companies, which bear the costs of mitigation measures. Moreover, the mitigation measures required by this rule are identical to those already being followed by these small businesses during removal of oil and gas structures to protect endangered and threatened sea turtles. Accordingly, a regulatory flexibility analysis is not required.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. These requirements have been approved by the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act issued under OMB Control Number 0648–0151. Public reporting burden for this collection of information is estimated to average 27.5 hours per response, including the time to review instructions, search existing data sources, gather and maintain the data needed and complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator has determined that the proposed rule is consistent to the maximum extent practicable with the approved Coastal Zone Management Program of the States of Florida, Alabama, Mississippi, and Louisiana. This determination has been submitted for review by the responsible State agency under section 3.7 of the Coastal Zone Management Act.

NMFS prepared an EA for this rulemaking and concluded that there would be no significant impact on the human environment as a result of the proposed rule. Copies of the EA are available on request (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 228

Marine mammals, Reporting and recordkeeping requirements.

Dated: June 10, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

For the reasons set forth in the preamble, 50 CFR part 228 is proposed to be amended as follows:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. A new subpart E is added to read as follows:

Subpart E—Taking of Bottlenose Dolphins and Spotted Dolphins Incidental to Oil and Gas Structure Removal Activities

Sec.

228.41 Specified activity and specified geographical region.
228.42 Effective dates.
228.43 Permissible means; mitigation.
228.44 Requirements for monitoring and reporting.
228.45 Letters of Authorization.

Subpart E—Taking of Bottlenose Dolphins and Spotted Dolphins Incidental to Oil and Gas Structure Removal Activities

§ 228.41 Specific activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of bottlenose dolphins and spotted dolphins by U.S. citizens engaged in removing oil and gas drilling and production structures in state waters and on the Outer Continental Shelf in the Gulf of Mexico adjacent to the coasts of Texas, Louisiana, Alabama, Mississippi, and Florida. The incidental, but not intentional, taking of bottlenose dolphins and spotted dolphins by U.S. citizens holding a Letter of Authorization is permitted during the course of severing pilings, well conductors, and related supporting structures, and other related activities.

§ 228.42 Effective Dates.

Regulation in this subpart are effective from [*insert date of publication of the final in the* Federal Register] through [*insert date 5 years from date of publication of the final rule in the* Federal Register].

§ 228.43 Permissible means; mitigation.

(a) The use of any of the following means in conducting the activities identified in § 228.41 is permissible: Bulk explosives, shaped explosive charges, mechanical or abrasive cutters, and underwater arc cutters.

(b) All activities identified in § 228.41 of this section must be conducted in a manner that minimizes, to the greatest extent practicable, adverse effects on bottlenose dolphins, spotted dolphins, and their habitat. When using explosive means, the following mitigation measures must be utilized:

(1) If bottlenose or spotted dolphins are observed in the vicinity of the platform (within 910 m (1,000 yds.) of the site) prior to detonating charges, detonation must be delayed until attempts (e.g., operating a vessel in the vicinity of the dolphins to stimulate bow riding, then steering the vessel away from the structure to be removed) are successful in removing them at least 910 m from the detonation site;

(2) Detonation of explosives must occur no earlier than 1 hour after sunrise and no later than 1 hour before sunset unless authorized by an on-site representative of the National Marine Fisheries Service; and

(3) Detonations must be staggered by 0.9 seconds for each group of charges;

§ 228.44 Requirements for monitoring and reporting.

(a) Observer(s) approved by NMFS in a Letter of Authorization must be used to monitor the area around the site prior to, during, and after donation of charges.

(b) Both before and after each detonation episode, 30-minute aerial surveys by NMFS-approved observers must be conducted within 1 hour of the detonation episode.

(c) During all diving operations (working dives as required in the course of the removals), divers must be instructed to scan the subsurface areas surrounding the platform (detonation) sites for bottlenose or spotted dolphins.

(d) A report summarizing the results of structure removal activities, mitigation measures, monitoring efforts, and other information as required by a Letter of Authorization, must be submitted to the appropriate U.S. Army Corps of Engineers District or the Minerals Management Service Gulf of Mexico Region within 15 working days of the removal. A copy of the report must be forwarded to NMFS, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

§ 228.45 Letters of Authorization.

(a) To incidentally take bottlenose and spotted dolphins pursuant to these regulations, each company operating or which operated an oil or gas structure in the geographical area described in § 228.41, and which is responsible for abandonment or removal of the platform, must apply for and obtain a Letter of Authorization in accordance with § 228.6.

(b) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of bottlenose and spotted dolphins.

[FR Doc. 93–14297 Filed 6–16–93; 8:45 am]
BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 115
Thursday, June 17, 1993

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

Forms Under Review by Office of Management and Budget

June 11, 1993.

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

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

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

• Food and Nutrition Service
Status of Claims Against Households
FNS–209
On occasion; Quarterly
State or local governments; 212 responses; 742 hours
Paul E. Jones (703) 305–2385
• Economic Research Service
Cotton Ginning Charges and Related Information
Annually
Business or other for-profit; 1,350 responses; 225 hours
Edward H. Glade, Jr.

Reinstatement

• Food and Nutrition Service
Monthly Report of Meal Counts for Title III: Nutrition Program for the Elderly—Quarterly Report of Monthly Meal Counts for Title IV: Nutrition Program for the Elderly
FNS–586A and FNS–586B
Recordkeeping; Monthly; Quarterly
State or local governments; 1,132 responses; 1,457 hours
Robert DeLorenzo (703) 305–2660

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 93–14278 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Exemption of Portal Creek Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to recover bug-killed timber is exempted from appeals under the provisions of 36 CFR part 217.

SUMMARY: A mountain pine beetle epidemic has killed more than 14 million trees in the Gallatin Canyon area, of which Portal Creek is a part. This area is on the Bozeman Ranger District, Gallatin National Forest. The Gallatin National Forest Supervisor proposes a salvage timber sale to recover lodgepole pine killed in this epidemic. The Forest Supervisor has determined, through an environmental analysis documented in the Portal Creek Helicoptor Salvage Environmental assessment, that there is good cause to expedite this action to recover insect-killed timber and rehabilitate National Forest System lands. Salvage of the timber must be accomplished quickly to avoid loss of merchantable timber, reforest areas and minimize the accumulation of fuel in an area which already has a high danger of wildfire.

EFFECTIVE DATE: Effective on June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Rita Beard, Project Coordinator; Gallatin National Forest; P.O. Box 130; Bozeman, MT 50771; Telephone 406–587–6748.

SUPPLEMENTARY INFORMATION: As early as 1979, expansion of the mountain pine beetle populations was observed in the lodgepole pine stands south of Bozeman reaching epidemic proportions by the late 1970's. Mature stands of lodgepole pine, like those in Portal Creek, are vulnerable to periodic outbreaks of mountain pine beetles. Most of the beetle-killed trees remain unharvested, and decay and rot are rapidly reducing their merchantability. Surveys in Portal Creek indicate that only 20 to 40 percent of the timber is still salvageable. It is estimated that these stands will lose commercial viability within the next 5 years. This proposal was designed to meet the following needs: (a) Reforest to diversify species composition to make stands more resistant to insect and disease, (b) rehabilitate timber stands through site preparation and planting, (c) reduce wildfire hazard by reducing fuel loading, and (d) salvage merchantable timber products and contribute to a continuous supply of timber before the timber deteriorates in value.

In June 1992, an interdisciplinary team was assembled to analyze the feasibility of salvaging the remaining beetle-killed trees in the Portal Creek area. The project was designed to harvest some of the remaining dead and dying lodgepole pine without constructing additional roads in an area which already has an extensive road system. The proposal was further designed to test the feasibility of salvaging dead trees using helicopter logging techniques. Sites would be planted to a mixture of conifer species to expedite regeneration of cover for wildlife and promote a more disease-resistant forest.

The ID Team, analyzed four separate alternatives, a no action and three different salvage alternatives. The selected alternative will harvest approximately 4.8 MMBF of timber from 1,173 acres. The majority of timber will be harvested by helicopter and no new roads will be constructed.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, * * *

when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Portal Creek Helicopter Salvage Environmental Assessment and the Forest Supervisor's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: June 10, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–14134 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Haystack Salvage Timber Sale From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to rehabilitate the timber resource and contribute to watershed recovery is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: During routine forest surveys conducted in 1992, insect and disease mortality of commercial sawtimber was identified on 63 acres in the Haystack Salvage Planning Area. In 1992, the Wallace District Ranger, Idaho Panhandle National Forests, proposed rehabilitation action designed to salvage insect- and disease-killed sawtimber and contribute to watershed recovery in the affected area. The District Ranger has determined, through resource reports in the Haystack Salvage Timber Sale project file, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished in 1993 to avoid further deterioration of sawtimber and to initiate the planting of tree species less susceptible to root disease and blister rust.

Management actions are also necessary to minimize the risk of potential damage to the stream channel due to peak flows and sediment delivery in the planning area. Immediate action is necessary to initiate watershed recovery. The use of Special Provision C6.604# in the timber sale contract is available in FY 1993 to contribute to watershed recovery.

EFFECTIVE DATE: Effective on June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Steve E. Williams, District Ranger, Wallace Ranger District, Idaho Panhandle National Forests, Box 14, Silverton, Idaho 83867, Telephone 208–752–1221.

SUPPLEMENTARY INFORMATION: Routine forest surveys of insect and disease infestations conducted during 1992 on the Wallace Ranger District resulted in the identification of approximately 63 acres of salvageable commercial sawtimber in the Haystack and Falls Creek drainages. Root disease, bark beetles, and blister rust have been and will continue to cause mortality in the area.

The analysis of the watershed indicated that presently Haystack and Falls Creek stream channels are not in equilibrium. The analysis also indicated that the selected alternative will move the watershed and stream channel toward a more stable condition by decreasing peak flows and removing potential sediment sources. The affected area was designated as Management Area 1 by the Idaho Panhandle National Forests' Plan (IPNF Plan, 1987).

This proposal action was designed to meet the following needs: (a) salvage merchantable timber products; (b) protect against insect and disease; (c) improve the net growth and yield of timber resources; (d) rehabilitate timber stands that are understocked through site preparation and planting; (e) contribute to watershed recovery through application of management practices designed to minimize the potential damage to the channel due to peak flows; and (f) manage big-game habitat to achieve the goals of the IPNF Plan.

An interdisciplinary team (IDT) was convened, and scoping began in January 1993. In addition to the six extraordinary circumstances listed in 1909.15 (30.3), eight potential site-specific extraordinary circumstances were identified through the scoping process. These 14 extraordinary circumstances were the basis for the IDT analysis of environmental effects which were documented and included in the project file. Three alternatives were developed. Alternative 1 was No Action. Alternative 2 was the Proposed Action which described a need to treat 104 acres based on IPNF Plan objectives and common issues and concerns. Alternative 3 was the Modified Proposed Action and was the selected alternative. This alternative was developed to treat 63 acres to achieve the IPNF Plan and site-specific objectives. The analysis determined that the modified Proposed Action Alternative had no extraordinary circumstances. This allows it to be categorically excluded from documentation in an Environmental Impact Statement or Environmental Assessment, FSH 1909.15, 31.2(4).

The selected alternative will salvage approximately 169 MBF of individually marked dead and dying timber on 63 acres from existing roads with the exception of Unit #1. A 300-foot, non-system road will be constructed to two step-down landings to allow the unit to be skyline logged. No other roads will be constructed for this sale. Conifer species, less susceptible to root disease and/or blister rust, will be planted where openings are created.

The sale and accompanying rehabilitation work are designed to accomplish the objectives as quickly as possible. These objectives are (a) facilitate the prompt reforestation of openings requiring restocking, (b) minimize the risk of potential damage to the stream channel due to peak flows, and (c) maintain the existing road access restrictions. Prompt implementation of the salvage sale is necessary to recover potential volume while commercial value remains, put suitable timber sites back into production, initiate actions to contribute to future watershed recovery, and provide security for elk. Implementation of this proposed timber sale using Special Provision C6.604# Watershed Improvement (1/93) would contribute to the watershed improvement objective. This special authority was given to the IPNF to accomplish watershed improvement in conjunction with timber harvest operations of sales sold in FY 1993.

To expedite implementation of this decision, procedures outlined in 36 CFR part 217.4(a)(11) are being followed. Under this regulation the following may be exempt from appeal:

"Decisions related to rehabilitation of National Forest System lands and recovery of forest resources from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part."

Based on the environmental consequences documented in the Haystack Salvage Timber Sale project file and the District Ranger's Decision Memo for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under CFR 217.4.

Dated: June 11, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–14293 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Dodge Creek Helicopter Lodgepole Pine Salvage Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to recover insect-killed timber is exempt from appeal under provisions of 36 CFR part 217.

SUMMARY: Mountain pine beetle activity has caused mortality of lodgepole pine trees in the Dodge Creek area on the Rexford Ranger District, Kootenai National Forest. The Rexford District Ranger proposed a salvage timber sale to recover dead timber, suitable as houselogs, scattered across 287 acres.

The District Ranger has determined, through the Environmental Assessment (EA) and supporting information, that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. The selective salvage harvest must be accomplished quickly to avoid further deterioration of the dead timber precluding its marketability as houselogs and to reduce existing and future accumulations of fuel thereby reducing the risk of catastrophic wildfire.

EFFECTIVE DATE: Effective on June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Drew Bellon, Rexford District Ranger, Kootenai National Forest, 1299 Hwy. 93 North, Eureka, MT 59917, Telephone: 406–296–2536.

SUPPLEMENTARY INFORMATION: Mountain pine beetle activity has killed lodgepole pine trees across the Rexford Ranger District of the Kootenai National Forest. The identified dead timber is located within lands designated as suitable for timber management and assigned to Management Area 12 (Kootenai Forest Plan, August 1987).

In December 1991, the Rexford District Ranger proposed the salvage of this dead timber. This proposal was designed to salvage dead lodgepole pine trees for houselogs prior to loss of value and minimizing effects on big game and the watershed. An Interdisciplinary Team was convened, and scoping began in December 1991. Environmental issues were identified and were the basis of environmental analysis disclosed in the EA. Four alternatives including the "Proposed Action" and "No Action" were analyzed in detail.

The select alternative would salvage, through selective harvests, approximately 10–40 dead lodgepole pine trees per acre by helicopter logging. Access would be from existing roads; no new road construction or reconstruction would occur.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to recover a high value product, to improve big game habitat, to improve watershed values, and to reduce the accumulation of dead fuel. To expedite implementation of this decision, procedures outlined in 36 CFR part 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the information presented in the EA for Dodge Creek Helicopter Lodgepole Pine Salvage and District Ranger's Decision Notice, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: June 9, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–14012 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–11–M

Bronco Beauty Resource Area; Idaho Panhandle National Forests, Kootenai County, ID; Intent To Prepare an Environmental Impact Statement

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The notice is hereby given that the Forest Service is gathering information in order to prepare an EIS (Environmental Impact Statement) for a proposal to harvest timber in a portion of the Bronco Beauty Resource Area. The area is located approximately 8 miles southeast of Coeur d'Alene, Idaho, and is approximately 8,000 acres in size. There would be approximately 25 timber harvest units, treating 446 acres. In an additional 15 units, rehabilitation would occur on approximately one-third of the unit's acres, for a total of approximately 200 acres of rehabilitation. No timber harvest would occur in those units.

A landscape-level approach would be utilized on the majority of the treated acres, with emphasis on rehabilitation of watersheds and timber stands. Of the 19 harvest units, approximately 202 acres (11 units) would be harvested under a seed tree prescription, with 131 acres (4 units) under a shelterwood prescription; 66 acres (1 unit) under a group shelterwood prescription; 34 acres (2 units) under a overstory removal prescription; and 13 acres (1 unit) under a clearcut prescription. There are no new roads proposed to access the harvest units. Approximately 5 miles of road would be reconditioned, with limited reconstruction.

Management activities would be administered by the Fernan Ranger District of the Idaho Panhandle National Forests in Kootenai County, Idaho. This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area. The purpose and need for the proposed action encompasses a landscape-level approach to ecosystem management. Emphasis is on improving the condition of the watershed both in the short term by reducing the impact of mining and road construction, and over the long term, by improving the health and vigor of the timber stands. The proposed action would allow recovery of a portion of the timber that would be lost to root disease and other mortality if no action is taken, and would reduce the perceived visual impact of the existing units located on the north face of Mount Coeur d'Alene.

The Forest Service serves notice that the agency is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Draft EIS. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

Preparation of an Environmental Assessment was initiated in February, 1992, to examine potential timber harvest in this area. Substantial public involvement and data collection activities have occurred. The level of concern expressed by the public indicated a high sensitivity level concerning water and wildlife resources, existing road density, and recreation opportunities. The work that occurred in preparation for the Environmental Assessment will be used as a basis for the Environmental Impact Statement. Many suggestions from the public helped to shape the preliminary alternatives under consideration. Those alternatives will not be disregarded in the EIS; they will be fully analyzed along with any additional alternatives, based on all significant issues identified during the EIS scoping process. The purpose of preparing the Environmental Impact Statement is not to circumvent the scoping, alternative development and analysis that has already occurred; the purpose is to provide the public with additional time to comment, to ensure that no significant concerns or suggestions are missed.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. For most effective use, comments should be sent to the agency within 45 days from the date of publication in the **Federal Register**. Written comments concerning the scope of the analysis must be received within 45 days from the date of publication in the **Federal Register**.

ADDRESSES: Send written comments to District Ranger, Fernan Ranger District, 2502 E. Sherman Avenue, Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Sherri Lionberger, Acting Planning Staff Officer, Fernan Ranger District, Idaho Panhandle National Forests, 2502 East Sherman Avenue, Coeur d'Alene, ID 83814. Phone: (208) 769–3000.

SUPPLEMENTARY INFORMATION: The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Objectives, Standards and Guidelines, and Management Area direction. The potentially affected area is within the following Management Areas:

Management Area 1: Consists of lands designated primarily for timber production, while providing for soil and water protection, wildlife habitat, dispersed recreation opportunities and visual quality.

Management Area 4: Consists of lands designated for timber production within big-game winter range.

Management Area 9: Consists of non-forest lands or lands not capable of timber production. Management goals are to maintain and protect existing improvements and resource productive potentials.

Management Area 16: Consists primarily of riparian areas. The goal is to manage riparian areas to feature riparian dependent resources (fish, water quality, maintenance of natural channels, and certain vegetation and wildlife communities) while producing other resource outputs.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which current management of the area would continue, and timber harvest and associated road building would be deferred. Other alternatives will examine the effects of timber harvest, varying in the volume harvested and silvicultural systems. The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives.

Public participation will be important during the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision, however, two periods of time are specifically identified for the receipt of comments: During the scoping process, and in the review of the Draft EIS (October, 1993).

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. Meetings with area residents, organizations, and other agencies will be scheduled as needed.

The draft environmental impact statement (DEIS) is expected to be available for public review in September, 1993. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by January, 1994. The Forest Service will respond to the comments received in the FEIS. The District Ranger is the responsible official for this EIS, and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: June 8, 1993.

Donald J. Bright,

District Ranger, Fernan Ranger District, Idaho Panhandle National Forests.

[FR Doc. 93–14339 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–11–M

North Lightning Analysis Area, Idaho Panhandle National Forests, Bonner County, ID; Cancellation of Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: On July 2, 1992, notice was published in the **Federal Register** [57 FR 29463] that an environmental impact statement would be prepared to document the analysis and disclose the environmental effects of proposed actions to harvest timber, build roads, improve existing stands of trees, and regenerate new stands of trees in Trout Creek, Kirby Creek, Trestle Creek, and Strong Creek drainages, which flow directly into the northern portion of Lake Pend Oreille. The analysis area is located on the Standpoint Ranger District, Idaho Panhandle National Forests.

That notice is hereby cancelled.

DATES: This action is effective upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Anthony Erba, NEPA Coordinator, Sandpoint Ranger District, 1500 Highway 2, Sandpoint, ID 83864–9509, (208) 263–5111.

Dated: June 8, 1993.

Claire Lavendel,

District Ranger, Sandpoint Ranger District, Idaho Panhandle National Forests.

[FR Doc. 93–14338 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–11–M

Tailholt Administrative Research Study; Payette National Forest, Valley County, ID; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to study the impacts on water quality and fish habitat resulting from timber harvest and helicopter logging on sensitive soils in the South Fork Salmon River drainage.

DATES: Comments concerning the scope of the analysis should be received in writing by July 16, 1993.

ADDRESSES: Send written comments to Tailholt Administrative Study Team, Payette National Forest, P.O. Box 1026, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Rudy Verschoor, Environmental Coordinator, McCall Ranger District, (208) 634–0400.

SUPPLEMENTARY INFORMATION: The Tailholt Administrative Research Study is designed to analyze the impacts of timber harvesting without road construction and using helicopter logging methods on sensitive soils. The study proposes to harvest timber using various harvest methods on different slopes and aspects to determine what management practices can be used to reduce sediment production on sensitive soils to the point that timber harvest can be re-introduced into the South Fork Salmon River Drainage.

This Notice of intent initiates the formal scoping process as defined in the Council On Environmental Quality Regulations implementing the National Environmental Policy Act. Additional mailings will be sent to the project EIS mailing list. Articles announcing the beginning of scoping will be printed in local newspapers.

Preliminary issues already identified include potential impacts to watershed values, chinook salmon (a Threatened species), the Secesh roadless area, wildlife, and biodiversity. Alternatives being considered include the No Action alternative.

The Lead Agency will be the USDA Forest Service, Payette National Forest, cooperating with the Intermountain Research Station (USDA Forest Service).

Comments or suggestions are invited. Please contact those individuals identified above in this notice. The Responsible Official is David F. Alexander, Forest Supervisor, Payette National Forest. The draft EIS is scheduled for release to the public by October 1993, and the final EIS by February 1994.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. (See The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.)

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 [1978].) Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. (*City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. [980]). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: June 9, 1993.

Ralph H. Geibel, II,

Branch Chief, Engineering & Lands.

[FR Doc. 93–14340 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: Quarterly Report on the Loan or Sale of Aircraft Equipment Parts, Accessories, and Components by Airlines.

Agency Form Number: None but requirements are found at Section 776.8 of the Export Administration Regulations.

OMB Approval Number: 0694–0035.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 819 reporting/recordkeeping hours.

Number of Respondents: 191 respondents/recordkeepers.

Avg Hours Per Response: Avg hours per respondent is 30 minutes. Avg hours per recordkeeper is 4.3 hours.

Needs and Uses: This collection of information is primarily a recordkeeping requirement for airlines operating abroad that provide U.S. commodities for maintenance, repair, or operation of aircraft. In the event that the airline is prohibited by foreign government regulation or statute from permitting a U.S. Government representative to inspect these records, the airline must submit a report of such transactions at the end of each calendar quarter.

Affected Public: Businesses or other for–profit institutions; small businesses or organizations.

Frequency: On occasion; quarterly.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Agency: Bureau of Export Administration.

Title: Foreign Availability Procedures and Criteria.

Agency Form Number: None but requirements are found at Section 791.5 of the Export Administration Regulations.

OMB Approval Number: 0694–0004.

Burden: 1,050 reporting/recordkeeping hours.

Number of Respondents: 10.

Avg Hours Per Response: 105 hours.

Needs and Uses: This information is collected in order to respond to requests by Congress and industry to make foreign availability determinations. Exporters are urged to submit data regarding the foreign product's technical characteristics and the availability of these products in foreign markets to determine if similar U.S. products should not be subject to export restrictions.

Affected Public: Businesses or other for–profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 14, 1993

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–14337 Filed 6–16–93; 8:45 am]

BILLING CODE: 3510–CW–F

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

An agenda for a public meeting of the North Pacific Fishery Management Council (Council) and its Advisory Committees, which are scheduled to meet on June 20, 1993, was published in the **Federal Register** at 58 FR 31509 on June 3, 1993. A new agenda item has been added; the agenda item to be added is listed below. All other information originally published at 58 FR 31509, remains unchanged.

Add Agenda Item

Discussion of whether to pursue consideration of exclusive registration proposals for the Gulf of Alaska.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, (907) 271–2809.

Dated: June 11, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–14276 Filed 6–16–93; 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Pelagics Plan Team (Team) will hold a public meeting on June 28–29, 1993, beginning at 8:30 a.m. on each day. On June 28 the Team will meet in room 135 of the Hawaii Institute of Geophysics, University of Hawaii, 2525 Correa Road, Honolulu, HI. On June 29 it will meet in room 315 of the Marine Science Building, University of Hawaii, 1000 Pope Road, Honolulu, HI.

The Team will discuss, and possibly make recommendations to, the Council on the following: (1) The 1992 annual report; (2) The Council's preferred alternative for Amendment #7 (management alternatives to replace the current longline moratorium); (3) Amending the Fishery Management Plan to collect data from all user groups; (4) Program planning for pelagic issues; and (5) Other business.

For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: June 11, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–14277 Filed 6–16–93; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic And Atmospheric Administration

Endangered Species; Permits

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

ACTION: Issuance of Permits and an Amendment to a Permit.

On December 7, 1992 (57 FR 57823), September 22, 1992 (57 FR 43707), September 15, 1992 (57 FR 42552), April 12, 1993 (58 FR 19089), and February 9, 1993 (58 FR 7769) notice was published that applications had been filed by the Shoshone-Bannock Tribes (P510), the Idaho Power Company (P514), the NMFS Northwest Fisheries Science Center (P770 63), NMGS Northwest Fisheries Science Center (P770 65), and the Columbia River Inter-tribal Fish Commission (CRITFC) (P513), respectively, to take listed Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*).

On March 23, 1993 (58 FR 17383), CRITFC was issued Permit 825, under the authority of the Endangered Species Act of 1973 (ESA) (U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227), authorizing two of five projects proposed in their application.

The above applications were submitted for the purposes of scientific research, as authorized by the ESA and the NMFS regulations governing listed fish and wildlife permits.

Notice is hereby given that on June 9, 1993, as authorized by the provisions of the ESA, NMFS issued four permits and an amendment to Permit No. 825 for the above taking subject to certain conditions set forth therein.

Issuance of these permits, as required by the ESA, was based on a finding that such permits: (1) Were applied for a good faith; (2) will not operate to the disadvantage of the listed species which are the subject of these permits; (3) are consistent with the purposes and policies set forth in Section 2 of the ESA. These permits were also issued in accordance with and are subject to the NMFS regulations governing listed species permits.

The applications, permits, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: June 9, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14237 Filed 6–16–93; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration

Marine Mammals

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

ACTION: Receipt of application for Scientific Research Permit (P552A).

SUMMARY: Notice is hereby given that the following applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act (16 U.S.C. 1151–1175), and the Fur Seal regulations at 50 CFR part 215.

(P552A) Michael T. Williams, University of Alaska Fairbanks, Department of Biology and Wildlife, 417 Irving Building, Fairbanks, AK 99775, requests a scientific research permit to tag and observe up to 100 breeding female fur seals (*Callorhinus ursinus*) during 1993 (50 each from North and South Rookeries on St. George Island, AK). Up to 500 seals of various ages and sexes, (200 from South Rookery and 300 from North Rookery on St. George Island, AK), will potentially be harassed during tagging and observational activities.

ADDRESSES: Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries,

NMFS, U.S. Department of Commerce, 1335 East-West Highway, room 7234, Silver Spring, MD 20910, within 30 days of the publication of this notice.

Documents submitted in connection with the above application are available for review by writing to, or by appointment, in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910, (301/713–2289); and,

Director, Alaska Region, NMFS, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802, (907/586–7221).

Dated: June 10, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14296 Filed 6–16–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service NMFS, NOAA Commerce.

ACTION: Issuance of Scientific Research Permit No. 845 (P394C).

On April 28, 1993, notice was published in the **Federal Register** (58 FR 25812) that an application had been filed by Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, AK 99826–0140, for a scientific research permit to conduct observational/photo-identification studies on humpback whales (*Megaptera novaeangliae*), minke whales (*Balaenoptera acutorostrata*), and killer whales (*Orcinus orca*) in Alaskan waters.

Notice is hereby given that on June 9, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543), and the regulations governing endangered species permits (50 CFR parts 217–222), the NMFS issued the requested Permit for the above activities subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973.

The Permit and other related documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1335 East West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, Federal Annex, 9109 Mendenhall Mall Rd. suite 6, Juneau, AK 99802 (907/586–7221).

Dated: June 9, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14294 Filed 6–16–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

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

ACTION: Receipt of application for a Scientific Research Permit (P551).

Notice is hereby given that Ms. Daniela M. Feinholz, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039 and Dennis L. Kelly, Ph.D., Coastal Dolphin Research Project, Orange Coast College, Costa Mesa, CA 92628, request authorization to approach and inadvertently harass up to 125 bottlenose dolphins (*Tursiops truncatus*) annually, up to 4 times per week from March through October over a 4-year period during the course of observational/photo-identification studies. Activities will be carried out in California coastal waters.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources, NMFS, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, NOAA, 501 S. Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

Dated: June 10, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14295 Filed 6–16–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0010]

Clearance Request for Progress Payments, SF 1443

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0010).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Progress Payments, SF 1443.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Certain Federal contracts provide for progress payments to be made to the contractor during performance of the contract. The requirement for certification and supporting information are necessary for the administration of statutory and regulatory limitation on the amount of progress payments under a contract. The submission of supporting cost schedules is an optional procedure that, when the contractor elects to have a group of individual orders treated as a single contract for progress payments purposes, is necessary for the administration of

statutory and regulatory requirements concerning progress payments.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .55 hours per response, including the time for reviewing instructions, searching exiting data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 27,000; responses per respondent, 32; total annual responses, 864,000; preparation hours per response, .55; and total response burden hours, 475,200.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0010, Progress Payments, SF 1443, in all correspondence.

Dated: June 9, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–14343 Filed 6–16–93; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0080]

Clearance Request for Integrity of Unit Prices

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0080).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulations (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Integrity of Unit Prices.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 15.182–1(c) and the clause at FAR 52.215–26, Integrity of Unit Prices, require offerors and contractors under Federal contracts to identify in their proposals those supplies which they will not manufacture or to which they will not contribute significant value. The policies included in the FAR are required by section 501 of Public Law 98–577 (for the civilian agencies) and section 927 of Public Law 99–500 (for DOD and NASA). The rule eliminates reporting requirements on contracts with civilian agencies for commercial items.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 5 minutes per line item, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 7,822; responses per respondent, 95; total annual responses, 743,090; preparation hours per response, .084; and total response burden hours, 62,420.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20745, telephone (202) 501–4755. Please cite OMB Control No. 9000–0080, Integrity of Unit Prices, in all correspondence.

Dated: June 9, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–14344 Filed 6–16–93; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Supplemental Draft Environmental Impact Statement Relevant to an Application for a Section 404 Permit

AGENCY: U.S. Army Corps of Engineers, Sacramento District, DOD.

ACTION: Notice of intent.

SUMMARY: The Corps of Engineers, Sacramento District, will prepare a supplemental draft Environmental Impact Statement (sdEIS) relevant to an application for a section 404 permit to place fill material into wetlands adjacent to East Brush Creek in Eagle County, Colorado, for the construction of commercial/residential development attendant to a four-season resort. The applicant, Adam's Rib Recreation Area, has applied for a permit to fill approximately 25 acres of montane wetlands pursuant to the development which would include skiing for 9,000 skiers-at-one-time on Adam Mountain and Mount Eve, golfing, 250,000 square feet of commercial space, 4,281 residential units and 1,440 lodging rooms and employee housing.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and sdEIS should be directed to Larry Vinzant at U.S. Army Corps of Engineers, Regulatory Section-Room 1444, 1325 J Street, Sacramento, California 95814–2922, telephone (916) 557–5263.

SUPPLEMENTARY INFORMATION: The applicant proposes to fill approximately 25 acres of montane wetlands dominated by various species of willow, sedge and rush. Nearly all wetland fill would be located in Vassar Meadow; additional development would occur in Joe Goode Meadow, Woodrun, No Name drainage, adjacent to Brush Creek (i.e., golf course and residences) and on the ski mountains. The U.S. Forest Service issued a special use permit for the ski mountains in 1982. On March 3, 1987, the U.S. Army Corps of Engineers published a Notice of Intent in the **Federal Register** to prepare a draft EIS. A draft EIS titled "Adam's Rib Recreation Area, Eagle, Colorado" was published in October 1989. A notice of availability for this document was published in the **Federal Register** on November 3, 1989. The applicant's preferred alternative resulted in a request for a permit to fill approximately 50 acres of wetlands in the project area. This permit was subsequently denied in February 1993.

The applicant has since modified the proposal to reduce wetland fill and this sdEIS will supplement and supplant information currently available in the draft EIS.

Alternatives

Alternatives that will be considered for evaluation will include:

(1) Base area development near the confluence of East and West Brush Creeks.

(2) Base area development in the Woodrun area.

(3) Base area development in Vassar Meadow (applicant's preferred alternative).

(4) Reasonable variations to the applicant's preferred alternative that would reduce adverse impacts to wetlands.

Scoping

The Corps issued a scoping notice in conjunction with the Notice of intent to prepare the draft EIS in 1987. Additionally, the Corps accepted comments on the draft EIS, conducted a Public Hearing in February of 1990 in Gypsum, Colorado and has coordinated closely with resource agencies, cooperating agencies and the interested public. It is believed that additional scoping is unnecessary at this time. However, any additional substantive and new issues arising from comments to the sdEIS shall be thoroughly addressed in the final EIS.

Significant Issues

(1) Impacts to wetlands.

(2) Impacts to water quality.

(3) Impacts on fish and wildlife resources.

(4) Socio-economic effects.

(5) Cumulative impacts of developing a new ski area.

(6) Impacts on outdoor recreation.

(7) Visual impacts.

Other Environmental Review and Consultation

Required review and consultation which will be conducted during this National Environmental Policy Act process include sections 401 and 404 of the Clean Water Act, Fish and Wildlife Coordinating Act, National Historic Preservation Act and Executive Order 11988 (Flood Plain Management). Other statutes and regulations, as applicable, will also be complied with during the sdEIS process.

Availability of sdEIS

It is estimated that the sdEIS will be made available to the public in October of 1993.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–14341 Filed 6–16–93; 8:45 am]

BILLING CODE 3710–EH–M

Department of the Navy

CNO Executive Panel; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel National Security Task Force will meet June 21, 1993, from 8:30 a.m. to 11:30 a.m. at 2805 Woodstock Road, Los Angeles, California, and June 22, 1993, from 9 a.m. to 5 p.m.; June 23, 1993, from 9 a.m. to 12 p.m. at Commander, U.S. Pacific Fleet, Pearl Harbor, Hawaii; and June 24, 1993, from 8 a.m. to 11:30 a.m. at the Hoover Institute of War, Revolution, and Peace, Stanford, California. The June 22-23, 1993, sessions will be closed to the public. The June 21, 1993; and June 24, 1993, sessions will remain open to the public.

The purpose of this meeting is to evaluate the role of the U.S. military in the Asian security environment. The entire agenda for the meeting will consist of discussion of key issues relating to naval capabilities, employment, and structure in the Pacific. Some of these matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the June 22-23, 1993, meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary to the Executive Panel, 4401 Ford Avenue, suite 601, Alexandria, VA 22302-0268, Phone (703) 756-120.

Dated: June 4, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–14342 Filed 6–16–93; 8:45 am]

BILLING CODE 3810–AE–F

Naval Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Defense Conversion will meet on June 21, 22, and 23, 1993. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:30 a.m. and terminate at 5 p.m. on June 21, 22, and 23, 1993. The meeting will be open to the public.

The purpose of the meeting is to provide the Department of the Navy with an assessment of the current capability of the defense industry to economically move into the commercial sector, and assess the actions necessary on the part of the Department of the Navy and industry to carry out the provisions of the Defense Conversion, Reinvestment, and Transition Act of 1992.

The meeting will include briefings and discussions relating to Congressional national policy perspectives on defense conversion, technology deployment, Department of Commerce initiatives, and industry, Federal and local government, and Department of Defense perspectives and execution.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the Federal Register at least 15 days before the date of the meeting.

For further information concerning this meeting contact:Commander R. C. Lewis, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: June 15, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-14433 Filed 6-16-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board.

ACTION: Amendment to published notice of Executive Committee meeting.

SUMMARY: Notice is hereby given of an amendment to the notice of a

teleconference meeting of the Executive Committee of the National Assessment Governing Board scheduled for June 19, 1993 published on June 10, 1993, 58 FR, page 32525. The meeting date is changed; the time and agenda are unchanged. The Committee will meet, in open session, on July 19, 1993 from 11 a.m. to 1 p.m., to determine the plans for the August meeting of the full Board.

Dated: June 14, 1993.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 93–14309 Filed 6–16–93; 8:45 am]

BILLING CODE 4000–01–M

Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of closed meeting; teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Achievement Levels Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

Date: June 28, 1993.

Time: 10 a.m. to 12 noon.

Location: 800 North Capitol Street, NW, Suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Achievement Levels Committee of the National Assessment Governing Board will hold a closed meeting on June 28, 1993 from 10 a.m. until 12 noon. The meeting will include review of the cut points for the Writing Achievement Levels and the formulation of a recommendation for Board action. The discussion will include references to specific items for the assessment, the disclosure of which may significantly frustrate implementation of the NAEP. This meeting must be closed to the public because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of this data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

A summary of the activities of this closed meeting and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: June 14, 1993.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 93–14310 Filed 6–16–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5797–002 Idaho]

B&C Energy, Inc.; Availability of Environmental Assessment

June 11, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Star Falls Hydroelectric Project, located on the Snake River in Twin Falls and Jerome Counties, Idaho, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, even with appropriate mitigative measures, would constitute a major federal action significantly affecting the quality of the human environment. The Commission's staff recommends the no-action alternative.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14265 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES93–39–000]

Citizens Utilities Co.; Application

June 11, 1993.

Take notice that on June 7, 1993, Citizens Utilities Company filed an application under section 204 of the Federal Power Act requesting authorization to effectuate a two-for-one stock split of its outstanding shares of Common Stock Series A and Common Stock Series B to be carried out by the issuance of a 100% stock dividend on all outstanding shares of Common Stock or in the alternative for an order from the Commission declining jurisdiction over such stock split under section 204 of the Federal Power Act.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14264 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–138–000]

Granite State Gas Transmission, Inc.; Petition for Temporary Waiver of Purchased Gas Cost Regulations

June 11, 1993.

Take notice that on June 8, 1993, Granite State Gas Transmission, Inc., 300 Friberg Parkway, Westborough, Massachusetts 01581 filed a Petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure for a Temporary Waiver of §§ 154.301 through 154.310 of the Regulations relating to purchased gas cost adjustment procedures.

Granite State states that it is a "downstream" pipeline and its principal upstream suppliers, Tennessee Gas Pipeline Company (Tennessee) and Algonquin Gas Transmission Company (Algonquin) are rapidly transitioning their services and operations under Order No. 636 compliance filings. According to Granite State, Tennessee in Docket No. RS92–23–000 and Algonquin in Docket No. RS92–28–000 have restructured tariffs and rates on file with Commission approval, effectively changing their former bundled sales services for Granite State into firm transportation services.

According to Granite State, its restructuring filing in Docket No. RS93–1–000 is still pending review by the Commission. It is further stated that, during the next several months, until its restructuring process has been completed, Granite State will encounter a series of changes in the rates for the services from its upstream suppliers as they convert from bundled sales transactions to transportation services for Granite State's account. During the interim period pending completion of its restructuring process, Granite State requests a Temporary Waiver of the Commission's purchased gas cost regulations to permit it to reflect in its purchased gas accounts and its purchased gas cost adjustment filings the transportation costs of its upstream suppliers that are in compliance with Order No. 636 as well as its projected gas costs.

Granite State further states that its Petition was served on its jurisdictional customers, Bay State Gas Company and Northern Utilities, Inc. and on the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 18, 1993. 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 to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14259 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–13–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

June 11, 1993.

Take notice that on June 9, 1993, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581 filed Seventh Revised Sheet No. 24 in its FERC Gas Tariff, Second Revised Volume No. 1, proposing changes in rates for effectiveness on July 10, 1993.

According to Granite State, its filing is submitted to passthrough to its customers the take-or-pay buydown and buyout costs directly billed to Granite State by Tennessee Gas Pipeline Company (Tennessee).

Granite State states that, on May 28, 1993, Tennessee filed revised tariff sheets to recover additional transition costs in Docket No. RP93–132–000. According to Granite State, its tariff sheet reflects the changes in Tennessee's allocation of take-or-pay costs to Granite State and also complies with the requirements of the reallocation of costs to small customers pursuant to Order No. 528–A.

According to Granite State the proposed rate changes are applicable to its jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. and to a sale to a direct customer, Pease Air Force Base. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 18, 1993. 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 to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14260 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–410–000]

K N Energy, Inc.; Request Under Blanket Authorization

June 11, 1993.

Take notice that on June 2, 1993, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood Colorado, 80228–8304, filed in Docket No. CP93–410–000 a request pursuant to §§ 157.205 and 157.211 of the Regulations under the Natural Gas Act for authorization to construct and operate sales taps for the delivery of gas to end users under the certificate issued in Docket No. CP83–140–000, et al., pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N requests authorization to construct and operate sales taps to various end users located along its jurisdictional pipelines. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on its peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time

allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14261 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–432–000]

Panhandle Eastern Pipe Line Company Trunkline Gas Co.; Application

June 11, 1993.

Take notice that on June 7, 1993, Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline) referred to herein as "Applicants", P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–432–000, a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon service under five individually certificated transportation and exchange agreements with Central Illinois Light Company (CILCO), United Gas Pipe Line Company (United), Central Illinois Public Service Company (CIPSCO), Mid-Louisiana Gas Company (Mid-Louisiana) and Columbia Gas Transportation Corporation (Columbia), all as more full set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicants state that they propose to abandon Panhandle's Rate Schedules TE–5, TE–8, T–14, T–40 and T–54; and Trunkline's Rate Schedules TE–9, TE–11, T–14, T–62 and T–85, respectively, contained in their FERC Gas Tariffs, Original Volume No. 2. Applicants further state that proper notices were given for the termination of the services under these rate schedules and none of the customers requested to convert to Panhandle's new restructured services.

No facilities are proposed to be abandoned herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 2, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 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 taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14263 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT93–48–000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

June 11, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on May 25, 1993 certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2. The tariff sheets, included in appendix A attached to the filing, are proposed to be effective June 1, 1993.

As background to the filing, TGPL stated that it currently provides incremental firm transportation service on the Leidy Line to Algonquin Gas Transmission Company (Algonquin) under TGPL's Rate Schedule X–284 pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations. In accordance with § 284.242 of the Commission's Regulations, Algonquin has assigned its Rate Schedule X–284 firm transportation capacity to its F–3 customers. Set forth in appendix B attached to the filing is a list of shippers who have been assigned such capacity and their respective daily contract demand entitlements. TGPL will render firm transportation service to such shippers pursuant to TGPL's Rate Schedule FT and part 284 of the Commission's regulations.

TGPL states that the purpose of the instant filing is to set forth in TGPL's Volume No. 1 Tariff the rates applicable to incremental Leidy Line annual firm transportation service which is assigned or converted from section 7(c) service to transportation under Part 284 and to terminate Rate Schedule X–284. The rates included therein reflect, in addition to the generally applicable charges under Rate Schedule FT (including fuel), a reservation rate surcharge. In that regard, TGPL believes that the rates filed therein are consistent with the Commission's policy that the rate for such assignments or conversions be the Rate Schedule FT rate which shall include a surcharge if the part 157 rate is higher than the FT rate.

TGPL states that it is serving copies of the filing to Algonquin and the shippers listed on appendix B attached to the filing who have been assigned Algonquin's X–284 capacity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14258 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP91–1794–001]

Trunkline Gas Co. and United Gas Pipe Line Co.; Application

June 11, 1993.

Take notice that on June 10, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642 and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251, referred to herein as "Applicants", filed in Docket No. CP91–1794–001, a joint application pursuant to sections 7(b) and 7(c) of the

Natural Gas Act for an order (a) authorizing the amendment of existing capacity lease authorization wherein United, under the terms of an operating lease, will replace Tennessee Gas Pipeline Company (Tennessee) as lessor of pipeline capacity and to the extent required the abandonment of the capacity lease authorization between Trunkline and Tennessee; and (b) authorizing United to abandon, by lease, capacity to Trunkline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicants request authorization for the following:

(1) Authority to amend the authorization previously granted in Docket No. CP91–1794–000 in order to replace Tennessee as lessor with United pursuant to Trunkline's and United's new agreement, the United Lease;

(2) Authority for United to abandon by lease to Trunkline, 125,000 MMBtu per day of firm capacity upon the date of Commission approval through September 30, 1994, then increasing to 525,000 MMBtu of capacity, effective October 1, 1994, pursuant to the United Lease;

(3) Authority as may be required for the abandonment by Trunkline of the contractually terminated firm capacity lease agreement with Tennessee, effective September 30, 1994; and

(4) Such other authority as may be deemed necessary to implement these arrangements, including authority to treat these leases as "operating leases" pursuant to the Uniform System of Accounts for Natural Gas Companies, by which Trunkline shall record monthly lease payments to Account No. 858, and United shall record the monthly lease receipts to Account No. 489.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 28, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14266 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–439–000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

June 11, 1993.

Take notice that on June 8, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–439–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a delivery tap for service to Shell Oil Company (Shell), in Nueces County, Texas, under United's blanket certificate issued in Docket No. CP82–430–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to construct and operate the 12-inch meter station and associated facilities on its 14-inch Agua Dulce-Perryville Line for delivery on behalf of Shell to Corpus Christi Transmission Company's Banquet Station in Nueces County. The cost of installing the facilities, including the tap, 7,500 feet of 12-inch diameter pipeline, and a meter and regulator station, is estimated at $604,463. It is stated that United is authorized to transport up to 62,880 MMBtu equivalent of gas per day to Shell on an interruptible basis under United's Rate Schedule ITS. It is asserted that the tap would be used for deliveries made under a transportation agreement between United and Shell dated February 18, 1991. It is further asserted that the quantities delivered through the new tap would not exceed currently authorized total quantities for delivery by United to Shell. It is stated that United has sufficient capacity to deliver the volumes to Shell at this location.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14262 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4667–2]

Preliminary Findings of the Hydrogen Fluoride Study Required Under Section 112(n)(6) of the Clean Air Act as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is holding a public meeting to present and discuss the preliminary findings of a study of the uses and hazards of hydrogen fluoride. Under section 112(n)(6) of the Clean Air Act as amended in 1990, the Agency is required to complete a study of the commercial and industrial uses of hydrogen fluoride and the hazards it may present to public health and the environment. The study is to consider a range of events including worst case accidental releases and, when finalized, will include recommendations for the reduction of hazards if appropriate. EPA will not obtain consensus advice or recommendations during this meeting but rather seeks comments from individual attendees.

DATES: EPA will hold a public meeting on this study on July 12, 1993, from 8:30 a.m. to 4:30 p.m. EDT. Seating for the meeting is limited, and registration for the meeting is required. Individuals who wish to register for the meeting must call (703) 934–3422 by 4:30 p.m. EDT on July 7, 1993. Attendees will be admitted on a first-come first-served basis.

ADDRESSES: The public meeting will be held at the EPA Headquarters Auditorium, 401 M St., SW., Washington, DC 20460. Written meeting materials, including directions and the preliminary findings, are available from the Emergency Planning and Community Right-to-Know Information Hotline at (800) 535–0202.

Those who wish to provide written comments or who cannot attend the meeting but wish to comment on the preliminary findings can send their comments to Edward L. Freedman, Chemical Emergency Preparedness and Prevention Office, OS–120, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Written comments must be received by 4:30 p.m. EDT on July 12, 1993, and will also be accepted at the meeting.

FOR FURTHER INFORMATION CONTACT: Edward L. Freedman, (202) 260–7934, Chemical Emergency Preparedness and Prevention Office, OS–120, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Information Hotline at (800) 535–0202.

Jim Makris,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 93–14315 Filed 6–16–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4667–6]

Public Water System Supervision Program; Program Revision for the State of Hawaii

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of decision and opportunity for hearing.

SUMMARY: Notice is hereby given that the State of Hawaii is revising its approved State Public Water System Supervision Program. Hawaii has adopted a revised drinking water regulation for total coliform bacteria. The state regulation corresponds to a revised National Primary Drinking Water Regulation promulgated by EPA on June 29, 1989 (54 FR 27544). EPA has determined that the state program revision is no less stringent than the corresponding federal rule. Therefore, EPA has tentatively decided to approve the state program revision.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by July 19, 1993 to the Regional Administrator at the address shown below. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become effective July 19, 1993.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, at the following offices: Hawaii Department of Health, Safe Drinking Water Program, Five Waterfront Plaza, suite 250, 500 Ala Moana Blvd., Honolulu, Hawaii 96813; and EPA, Region IX, Water Management Division, Water Supply Section (W–6–1), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Corine Li, EPA, Region IX, at the San Francisco address given above or by telephone at (415) 744–1858.

(Sec. 1413 of the Safe Drinking Water Act as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: June 8, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–14317 Filed 6–16–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Clearinghouse on Election Administration; Meeting

This Notice of Meeting is submitted due to the wide interest of State and local election officials, advocates, Federal officials and other persons interested in the role of the FEC in assistance in implementing the National Voter Registration Act of 1993 (NVRA). This notice is not mandated by the Federal Advisory Committee Act (FACA) because this discussion group is not an advisory committee.

Name: FEC's discussion group.
Date: 25–26 June 1993.
Place: Hotel Washington, Pennsylvania Ave at 15th Street Washington, DC.
Time: 0900–1700 on 25 June 1993. 0900–1300 on 26 June 1993.

Summary of Topics

General Requirements of the National Voter Registration Act (NVRA); Comments and Concerns Relating to the Role of the Federal Election Commission; Requirements and Options Regarding:

—Motor Voter Provisions
—State and National Mail Registration
—Agency-Based Registration
—Registration List Verification and Confirmation
—Reporting Requirements.

If further information is needed, call for a detailed agenda on 202/219–3670 or 800–424–9530.

Purpose of Meeting

This session will be the first in a series of steps taken by the Commission pursuant to carrying out its responsibilities under the Act. The meeting will involve a detailed discussion of the Act in order to review its requirements, pinpoint what roles various Federal agencies will have in its administration and implementation and describe the range of options available to the States.

All communications regarding the NVRA discussion group should be addressed to Penelope Bonsall, National Clearinghouse on Election Administration, Federal Election Commission, 999 E Street NW, Washington DC 20463.

Dated: June 14, 1993.

Marjorie W. Emmons,

Secretary to the Commission.

[FR Doc. 93–14318 Filed 6–16–93; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; U.S. Atlantic/Brazil et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission,

Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–009847–031.
Title: U.S. Atlantic Coast/Brazil Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar
Companhia Maritima Nacional
Crowley American Transport, Inc.

Synopsis: The proposed amendment increases the carrying rate from 98 to 100 percent, thus suspends the future pooling of revenue under the Agreement.

Agreement No.: 212–009848–030.
Title: U.S. Gulf Ports/Brazil Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
Crowley American Transport, Inc.

Synopsis: The proposed amendment increases the carrying rate from 98 to 100 percent, thus suspends the future pooling of revenue under the Agreement.

Agreement No.: 232–011417.
Title: Thompson/CIS Agreement.
Parties:
Thompson Shipping Co., Ltd.
Cayman Islands Shipping, Ltd.

Synopsis: The proposed Agreement permits the parties to charter vessels and space from one another, exchange equipment, agree on sailings and mutually agree on terminal operations in the trade between ports and points in Florida and ports and points in the Cayman Islands.

Dated: June 11, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14267 Filed 6–16–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P25–93 and P26–93]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; Finn Container Cargo Services, Inc. and Transamericas T.I.S., Inc.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the June 4, 1993, electronic filing deadline for petitioners and/or petitioners' carrier clients. Petitioners state they are unable to comply with the June 4, 1993, deadline for filing of World Wide/Asian and South Pacific tariffs for a variety of reasons.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than June 23, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on petitioners or their representatives as follows:

P25–93—Carl Mikael Forsten, Finn Container Cargo Services, Inc., 2020 Southwest Freeway, suite 200, Houston, Texas 77098
P26–93—Gerard P. Wardell, President, TransAmericas T.I.S., Inc., 900 South Washington Street, suite 205, Falls Church, Virginia 22046

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14257 Filed 6–16–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Banc One Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 12, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio; to acquire Croghan & Associates, Inc., Boulder, Colorado, and thereby engage in providing data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to acquire up to 15 percent of the voting shares of Southeast Switch, Inc., Maitland, Florida, and thereby engage in providing data processing and transmission services to federally insured depository institutions who participate in its neutral shared electronic funds transfer network and providing related services, including the administration and promotion of the network and providing data processing transmission and related services to other EFT networks pursuant to § 225.25(b)(7); and providing bank management consulting advice to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14284 Filed 6–16–93; 8:45 am]

BILLING CODE 6210–01–F

Bankers Trust New York Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 7, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Bankers Trust New York Corporation, New York, New York; to engage *de novo* through its subsidiaries, BT Value Investors, Inc., New York, New York, and Liberty Street Management, Inc., New York, New York, in acting as an investment or financial adviser to a closed-end investment fund, such activity to include sponsoring, organizing and managing such fund pursuant to §§ 225.25(b)(4) and (b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14285 Filed 6–16–93; 8:45 am]

BILLING CODE 6210–01–F

Robert J. O'Halloran; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 7, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Robert J. O'Halloran, Trustee, Overland, Park, Kansas; to acquire an additional 7.63 percent of the voting shares of International Bancshares, Inc., Gladstone, Missouri, and thereby indirectly acquire First Bank of Gladstone, Gladstone, Missouri; The Bank of Saint Joseph, Saint Joseph, Missouri; and Citizens Bank and Trust Co., Smithville, Missouri.

Board of Governors of the Federal Reserve System, June 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14286 Filed 6–16–93; 8:45 am]

BILLING CODE 6210–01–F

Union Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 12, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Union Bancorp, Inc., Pottsville, Pennsylvania; to acquire 8.46 percent of the voting shares of The Peoples State Bank, East Berlin, Pennsylvania.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Charter Bancorp, M.H.C., Sparta, Illinois; to become a bank holding company by acquiring 51 percent of the voting shares of Charter Bank, S.B., Sparta, Illinois.

2. The National Bank of Indianapolis Corporation, Indianapolis, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Indianapolis, Indianapolis, Indiana, a *de novo* bank.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to merge with Ralston Bancshares, Inc., Omaha, Nebraska, and thereby indirectly acquire Ralston Bank, Ralston, Nebraska.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Citizens Holding Corp. and Bank ESOP, Keenesburg, Colorado; to acquire 30.3 percent of the voting shares of Citizens Holding Corporation, Keenesburg, Colorado, and thereby

indirectly acquire Citizens State Bank, Keenesburg, Colorado.

Board of Governors of the Federal Reserve System, June 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14287 Filed 6–16–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Asphalt Fume Fractionation and Identification of Genotoxic Components: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Asphalt Fume Fractionation and Identification of Genotoxic Components.

Time and Date: 1 p.m.–5 p.m., June 28, 1993.

Place: Alice Hamilton Laboratory, Conference Room C, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of the meeting is to review a NIOSH project entitled, "Asphalt Fume Fractionation and Identification of Genotoxic Components." This project concerns the laboratory investigation to fractionate and identify specific compounds or classes of compounds that are genotoxic and may be associated with the observed carcinogenicity of the asphalt fumes used in previous NIOSH investigations. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Persons for Additional Information: Larry D. Olsen, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R–7, Cincinnati, Ohio 45226, telephone 513/841–4269.

Dated: June 10, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–14290 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–19–M

Workshop on Engineering Controls for Preventing Airborne Infections in Workers in Health Care and Related Facilities: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Workshop on Engineering Controls for Preventing Airborne Infections in Workers in Health Care and Related Facilities.

Times and Dates: 8 a.m.–5 p.m., July 14, 1993; 9 a.m.–5 p.m., July 15, 1993; 9 a.m.–12 noon, July 16, 1993.

Place: Omni Netherland Plaza, Hall of Mirrors, 35 West Fifth Street, Cincinnati, Ohio 45202.

Status: Open to the public, limited only by the space available. The meeting room accommodates 400 people.

Purpose: The purpose of the meeting is to review the nature and extent of airborne transmission of infections in workers in health care and related facilities; review current data and new findings regarding the engineering control of airborne infections that may have relevance to occupational exposures in health care and other institutions; and identify knowledge gaps that might be filled by directed research. The workshop will emphasize aerosol characterization, source characterization and control, and building and ventilation designs. Two keynote papers will be presented. One will give an overview of the extent and types of airborne infections and mechanisms of transmission of airborne infectious organisms in health care and related facilities; the other will give an historical overview of ventilation and other methods of engineering controls for preventing transmission of airborne infectious organisms in health care and related facilities. Four plenary papers will be presented: Emphasizing aerosol characterization; source characterization and control; building designs; and ventilation designs. Four panels, each consisting of six to ten technical experts, will react to the keynote and plenary papers. Individual recommendations by these experts will be utilized by NIOSH in developing a national research agenda which, if implemented, would close the gaps and permit reliable recommendations for protecting workers.

Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Registration forms are available from the contact person shown below.

Contact Person for Additional Information: Rosalynd J. Kendall, NIOSH, CDC, 4576 Columbia Parkway, Mailstop R–2, Cincinnati, Ohio 45226, telephone 513/841–4321.

Dated: June 10, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–14291 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–19–M

Prevention Centers Grant Review Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Prevention Centers Grant Review Committee.

Times and Dates: 8:30 a.m.–5 p.m., July 14, 1993; 8:30 a.m.–5 p.m., July 15, 1993; 8:30 a.m.–12 noon, July 16, 1993.

Place: Swissotel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: Open 8:30 a.m.–9:30 a.m., July 14, 1993; Closed 9:30 a.m., July 14, through 12 noon, July 16, 1993.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of health promotion and disease prevention centers.

Matters to be Discussed: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of cooperative agreement applications. Beginning at 9:30 a.m., July 14, through 12 noon, July 16, the committee will conduct its review of cooperative agreement applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S. Code, and the determination of the Director, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Diane H. Jones, Ph.D., Project Officer, Office of the Director, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K–41, Atlanta, Georgia 30341–3724, telephone 404/488–5395.

Dated: June 10, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–14292 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 93N–0158]

Shulcon Industries, Inc.; Proposal to Withdraw Approval of a New Animal Drug Application; Opportunity for Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing an opportunity for hearing on a proposal to withdraw approval of a new animal drug application (NADA) for pregelatinized starch, held by Shulcon Industries, Inc., because the applicant has failed to submit the required annual reports.

DATES: Requests for hearing, including data, information, and analyses relied

on to justify a hearing, are to be submitted by July 19, 1993.

ADDRESSES: Requests for hearing, supporting data, and other comments in response to this notice should be identified with Docket No. 93N–0158 and sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William C. Keller, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8722.

SUPPLEMENTARY INFORMATION: In accordance with § 510.300 (21 CFR 510.300), an applicant for a new animal drug is required to submit periodic reports to FDA concerning each of its approved NADA's. Shulcon Industries, Inc., 4351 East Sarnac Dr., Tucson, AZ 86718, the holder of approved NADA 111–068 for the use of pregelatinized starch as an antidiarrheal in newborn calves, has not submitted the required annual reports for this NADA. In a letter dated March 15, 1989, to FDA, the Vice President of Shulcon Industries, Inc., stated that the firm no longer produces or markets the product.

Therefore, notice is given to Shulcon Industries, Inc., and to all other interested persons that the Director, Center for Veterinary Medicine, proposes to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)) withdrawing approval of NADA 111–068 and all amendments and supplements thereto on the ground that the applicant has failed to submit the reports required under § 510.300. Upon withdrawal of approval of the application, the corresponding regulation (21 CFR 520.2155) will be revoked.

In accordance with section 512 of the act and the regulations promulgated under it (21 CFR parts 510 and 514), the applicant is hereby given an opportunity for a hearing to show why approval of NADA 111–068 should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug product named above.

An applicant who decides to seek a hearing shall file on or before July 19, 1993, a written notice of appearance, request for hearing, and the data, information, and analyses relied on to justify a hearing, as specified in § 514.200 (21 CFR 514.200).

The failure of an applicant to file a timely written notice of appearance and request for hearing as required by § 514.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the action proposed for the drug product and a waiver of any contentions about the legal status of the drug product. The drug product may not thereafter lawfully be marketed, and FDA will begin appropriate regulatory action to remove it from the market. Any new animal drug product marketed without an approved NADA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that justifies a hearing. Reports submitted to remedy the deficiencies must be complete in all respects in accordance with § 510.300. If the submission is not complete or if a request for hearing is not made in the required format or with the required reports, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests a hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice must be filed in two copies. Except for information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512(e) (21 U.S.C. 360b(e))) and under authority delegated to the Director, Center for Veterinary Medicine (21 CFR 5.84).

Dated: June 4, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93–14307 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92N–0425]

Steven F. Colton; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) denies Dr. Steven F. Colton's request for a hearing and issues a final order permanently debarring Dr. Steven F. Colton, 6942 East Briarwood Dr., Englewood, CO 80112, under section 306(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)). FDA bases this order on a finding that Dr. Colton was convicted of a Federal felony for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product; and (2) relating to the regulation of a drug product under the act.

EFFECTIVE DATE: June 17, 1993.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Megan L. Foster, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

SUPPLEMENTARY INFORMATION:

I. Background

Dr. Steven F. Colton, a former Vice President and Director of Research and Development for Vitarine Pharmaceuticals, Inc. (Vitarine), pled guilty and was sentenced on September 6, 1991, for three counts of making a false statement in a matter within the jurisdiction of a Federal agency, a Federal felony offense under 18 U.S.C. 1001. The basis for this conviction was the finding that Dr. Colton made and caused to be made intentional fraudulent statements to FDA concerning bioequivalence studies of some of Vitarine's generic drug products. These studies purported to compare bioequivalency test results of Vitarine's product to the innovator product. However, the drug purporting to be Vitarine's product was, in fact, the disguised innovator product.

In a certified letter received by Dr. Steven F. Colton on January 8, 1993, FDA offered Dr. Colton an opportunity for a hearing on the agency's proposal to issue an order under section 306(a) of the act debarring Dr. Colton from providing services in any capacity to a person that has an approved or pending drug product application. FDA based the proposal to debar on its finding that Dr. Colton was convicted of a felony under Federal law for conduct relating to the development and approval, and the regulation of Vitarine's drug products.

The certified letter also informed Dr. Colton that his request for a hearing could not rest upon mere allegations or denials but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also noted that if it conclusively appeared from the face of the information and factual analyses in

his request for a hearing that there was no genuine and substantial issue of fact which precluded the order of debarment, FDA would enter summary judgment against him, making findings and conclusions, and denying his request for a hearing.

In a letter dated January 22, 1993, Dr. Colton responded to the certified letter by requesting a hearing.

II. Denial of Hearing

In his request for a hearing, Dr. Colton failed to present any arguments or information to show why he should not be debarred. Therefore, FDA finds that Dr. Colton has failed to identify any genuine and substantial issue of fact requiring a hearing. Accordingly, pursuant to 21 CFR 12.28, the agency denies Dr. Colton's request for a hearing.

III. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Dr. Steven F. Colton has been convicted of a felony under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Dr. Steven F. Colton is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective June 17, 1993, (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Colton in any capacity, during his period of debarment, will be subject to civil money penalties. If Dr. Colton, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application from Dr. Colton during his period of debarment.

Any application by Dr. Colton for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 92N–0425 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 2, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–14306 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0167]

DSM Engineering Plastics; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that DSM Engineering Plastics has filed a petition proposing that the food additive regulations be amended to provide for the safe use of Nylon 46 resins, which are manufactured by the condensation of 1,4-butanediamine and adipic acid, in membrane filters intended to contact alcoholic beverages.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4374) has been filed by DSM Engineering Plastics, 501 Crescent Ave., Reading, PA 19512–5051. The petition proposes to amend the food additive regulations in § 177.1500 *Nylon resins* (21 CFR 177.1500) to provide for the safe use of Nylon 46 resins, which are manufactured by the condensation of 1,4-butanediamine and adipic acid, in membrane filters intended to contact alcoholic beverages.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 9, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–14305 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Clean Vessel Act: Waste Treatment and Pumpout Stations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public review of technical guidelines.

SUMMARY: These technical guidelines are being published in response to section 5605. Guidance and Notification, of the Clean Vessel Act of 1992 (Pub. L. 102–587, Subtitle F), which requires the issuance of draft technical guidelines for public comment within 3 months after the date of the enactment of this Act, and the issuance of final technical guidelines within 6 months after the date of enactment. The technical guidelines should be used by States to survey and develop plans for pumpout stations/waste treatment facilities, to develop education/information plans, and to construct stations/facilities.

DATES: The Fish and Wildlife Service is requesting comments on these proposed technical guidelines. Comments must be received on or before August 2, 1993.

ADDRESSES: Comments may be mailed to the Division of Federal Aid, Fish and Wildlife Service, U.S. Department of the Interior, 1849 C Street, NW (Mailstop 322 ARLSQ), Washington, D.C. 20240, or delivered to room 322, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Columbus Brown, Chief, Division of Federal Aid, (703) 358–2156.

SUPPLEMENTARY INFORMATION:

Background

Findings

The Congress found that there is currently an inadequate number of pumpout stations for Type III marine sanitation devices (MSD) (holding tanks) where recreational vessels normally operate; and, sewage discharged by recreational vessels, because of an inadequate number of pumpout stations, may be a substantial contributor to localized degradation of water quality in the United States.

Purpose of the Act

The purpose of this Act "is to provide funds to States for the construction,

renovation, operation, and maintenance of pumpout stations and waste reception facilities."

Purpose of the Technical Guidelines

The purpose of these guidelines to provide States with technical information on adequacy of and appropriate types and location of pumpout stations and waste reception facilities, disposal of sewage from these facilities, and waters most likely to be affected by the discharge of sewage from vessels. They also provide information to the States in completing the surveys, developing plans, and developing an education/information program. The guidelines will let States know what options are available and provide them with basic information upon which to base their choices. EPA regional offices, regulatory agencies, equipment suppliers and other marina operators are another valuable source of information. The guidelines, however, are not to be used as a design manual or a substitute for the preparation of a design for a specific facility.

Definitions

For the purposes of these technical guidelines the term:

(1) *Type III marine sanitation device (holding tank)* means any equipment for installation on board a vessel which is specifically designed to receive, retain, and discharge human body wastes;

(2) *Pumpout station* means a facility that pumps or receives human body wastes out of Type III marine sanitation devices installed on board vessels;

(3) *Recreational vessel* means a vessel (a) manufactured for operation, or operated, primarily for pleasure; or (b) leased, rented, or chartered to another for the latter's pleasure;

(4) *Waste reception facility* means an upland or floating facility specifically designed to receive wastes from portable toilets carried on vessels, and does not include restroom facilities;

(5) *Marina,* means a facility with ten or more wet slips and/or dry land storage;

(6) *Parking lot harbor* means harbor which is home port to many boats kept on swing moorings or in marina docks. Most of the time, most of the boats are unoccupied and unused;

(7) *Transient harbor* means "destination" harbor where boaters go during day trips or berth overnight;

(8) *Portable toilet* means toilets that are not installed toilets. They are designed to be removed from a vessel and their contents emptied into shoreside receptacles;

(9) *Coastal zone* has the same meaning that term has in Section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453 (1).

Consultation

As required in section 5605 of the Act, the Secretary of the Interior (Interior) has consulted with the Administrator of the Environmental Protection Agency, the Under Secretary of Commerce for Oceans and Atmosphere, and the Commandant of the Coast Guard, in the development of these guidelines. In addition, Interior has consulted with Coastal States, local municipalities, boat users, manufacturers of pumpout equipment, marina operators, conservation groups, and others in obtaining information necessary to develop these guidelines. Three scoping meetings were held in January, 1993, with various constituents. A scoping document was sent to nearly 100 people, and 45 comment letters were received.

Relationship to the grant process

The technical guidelines are interim guidelines that will be later codified. They should be used by coastal States in doing surveys, developing plans and education/information programs, and constructing stations/facilities. However, grant guidelines will be needed for States to properly apply for funds under this grant program. The grant guidelines will provide criteria for the Service to use in prioritizing grant proposals for funding. Such information as priorities, national logos symbols and other signs, fee restrictions, and monitoring success of projects, will be placed in the grant guidelines. Grant guidelines are being developed separately, and will be published shortly in the Federal Register. Funds will then be made available through a competitive process to coastal States to complete the surveys, develop plans, and, for all States, to apply for construction grants and education funds.

Technical Guidelines

The Fish and Wildlife Service will administer the Clean Vessel Act grant program through State agencies only. Both public and private marinas are eligible to participate in this program and should conform to these technical guidelines. Other marinas would not have to conform. These technical guidelines should be followed when doing surveys, developing a plan and education program, and constructing pumpout stations and waste reception facilities. Technical guidelines are presented here by Section. At the end of these guidelines, an information packet is presented, which contains a general discussion of each section, and defines terms in more detail.

Section 1. Waters Most Likely To Be Affected by the Discharge of Sewage From Vessels

Guidelines for States to use in identifying waters most likely to be affected by the discharge of sewage from vessels are those waters frequented by large numbers of boaters and include: (1) Sheltered waters that are generally poorly flushed systems; (2) Waters identified to be of National Significance; (3) Waters of significant recreational value; (4) Waters supporting designated shellfish harvest areas; (5) Nursery areas of indigenous aquatic life; (6) Waters designated by the EPA as "No Discharge Areas" under § 312(f)(3) and (4)(A) & (B) of the Clean Water Act, and, (7) Waters that do not meet State designated usage.

Section 2. Surveys of Pumpout Stations and Waste Reception Facilities

Only coastal States are required to do a survey. States should submit surveys to the Fish and Wildlife Service, same address as above.

Pumpout/waste reception facility survey: The survey should include the following for each facility: (1) Name and address of marina, moorage, dock, etc., telephone number and location of marina, etc., by county, water body and specific coordinates. Coordinates, i.e., latitude and longitude, should be reported in North American Datum 1983 (NAD 83) standard. Other alternatives include (a) State Plane Coordinate Values, and (b) A portion of a NOAA nautical chart identified by chart number, edition, and edition date that marks clearly the pumpout station/waste reception facility; (2) Whether the marina has pumpout stations, waste reception facilities, or both; how many; and, whether they are operational.

Boat survey: The survey should include the following: (1) Total number of boats by water body and county; (2) How many boats have Type III MSD holding tanks; (3) How many boats have portable toilets.

A complete survey of all boaters is not necessary. States should obtain only as much information as is necessary to determine, within reasonable confidence limits, numbers of boats, how many boats have Type III MSD holding tanks or portable toilets, and where boaters are most likely to congregate by water body and county. Sample surveys are acceptable. Recent surveys are acceptable if they answer all the questions needed.

Section 3. What Constitutes Adequate and Reasonably Available Pumpout Stations and Waste Reception Facilities in Boating Areas

As a general guide, at least one pumpout station and waste reception facility should be provided for every 300 to 600 boats (not considering length or toilets). It is recommended that every marina accommodating over 50 boats with toilets should have access to a pumpout station and waste reception facility. Where marinas are adjacent (within two miles of each other), pumpout stations can be shared. However, such factors as boat size, boating use patterns, coastal water characteristics, sensitive areas, flushing capacity, etc., should play a large role in establishing needs for facilities. Due to the variability in each State, States must have the flexibility to provide criteria that addresses their specific needs. See the discussion below on this section for alternative approaches to determining need.

Waste reception facilities should be sited in conjunction with pumpout stations, but should also be located where boats with portable toilets congregate or are used, such as launching ramps.

Section 4. Plans for Constructing Pumpout Stations and Waste Reception Facilities

Only coastal States are required to develop a plan. States should work with the recreational marina industry and others in developing the plan. States should submit the plan to the Fish and Wildlife Service, same address as above. Following is an outline which should be used by States when developing the plan:

(1) Need. This section should establish the justification for the proposed work based on (a) the results of the surveys of existing pumpout stations and waste reception facilities and the number of recreational vessels; (b) that part of the guidance relating to determining the adequacy and reasonable availability of pumpout stations and waste reception facilities and, (c) that part of the Guidance describing the waters most likely to be affected by the discharge of sewage from vessels.

(2) Goals and Objectives. The purpose of the plan should be ensure the availability of adequate and reasonably available pumpout stations and waste reception facilities to the boating public throughout the coastal zone of a State.

(3) Expected Results or Benefits. This section should describe in general how water will be improved by making pumpouts and waste reception facilities available.

(4) Approach. In this section, describe the following: (a) How the plan addresses all coastal zone waters of the State, and gives priority to waters most likely affected; (b) How the plan complements plans of adjacent States for shared waters; (c) The strategy for locating and constructing, renovating and maintaining pumpouts and waste reception facilities. Include the general location and priority of projects; (d) How States will ensure that (i) waste will be disposed of properly, and (ii) that municipal waste treatment plants will accept waste; (e) The public/private partnerships that may be developed for siting, constructing and operating pumpout stations and waste reception facilities, and any issues/problems, such as legislative/regulatory barriers; (f) Innovative techniques to increase the availability and use of pumpout stations/waste reception facilities; (g) Approaches to educate and inform the public and the boating industry on the use of, and need for, disposal of vessel waste; and, (h) Total estimated cost of the Statewide plan.

Section 5. Education/Information

Guidelines for States to consider when developing an education/information plan include:

Audience: Consider six audiences when developing your education/information program regarding vessel sewage disposal, handling, and treatment, as follows: (1) Boat owners and operators; (2) Marina owners and operators; (3) Sewage treatment plant owners and operators; (4) Federal (where applicable), State and local governmental authorities and organizations; (5) Boating supply and retailers; (6) The general public.

Communication media: There are a variety of media that States may use for disseminating this information. Common methods to consider are; brochures, workshops/symposiums, educational videos, TV/radio, signs, boat shows, etc. Innovative methods are encouraged.

Distribution: States have options for distribution of educational information related to boating and pumpout issues. Options include magazines, radio public interest spots, environmental groups, association and federation newsletters, National Estuary Program forums, State and local education programs, local citizens groups, and student groups. New and innovative ways of educating the boating community and the general public are encouraged.

Section 6. Appropriate Methods for Disposal of Vessel Sewage From Pumpout Stations and Waste Reception Facilities

Disposal methods will vary among States depending on a number of factors, including: State and local sanitation codes; the number of recreational vessels and where the vessels are concentrated; the availability and geographic proximity of existing treatment facilities to boating centers; and hydrogeologic characteristics, including soil types and groundwater flows towards drinking water sources and these coastal waters. Depending on these factors, States may consider the following methods: (1) Off-site treatment: (a) Discharge to a public wastewater collection system and treatment facility; (b) discharge to a holding tank with removal and transport by a licensed septage hauler to a municipal septage receiving/treatment facility; (2) On-site treatment at marinas: (a) Discharge to a package treatment plant; (b) discharge to a septic system.

Section 7. Types of Marine Boat Sewage Pumpout Stations and Waste Reception Facilities That May Be Appropriate for Construction, Renovation, Operation, or Maintenance, and Appropriate Location of the Stations and Facilities Within a Marina or Boatyard

Pumpout stations and waste reception facilities should provide an efficient means of removing sewage from boats and a means of disposing of that sewage in a safe and sanitary manner. These facilities should include all the equipment, structures, and disposal facilities necessary to ultimately discharge or dispose of boat sewage in an efficient, safe and sanitary manner without causing an actual or potential public health hazard. Pumpout stations should include equipment for rinsing boat holding tanks. Pumpout stations and waste reception facilities should be adequate to meet the peak use demand for such services. Facilities should be operated and maintained to provide adequate service, and to be maintained to function as intended.

Pumpout stations and waste reception facilities should be reliable, corrosion resistant, easy to use, neat and tidy to clean and use, conveniently located, with low maintenance. Pumps should be specifically designed for handling sewage. Land-based restrooms are not an acceptable option for emptying portable toilets.

All pumps should be safe, functional and efficient. Pumps should be able to pump against the maximum head developed by elevation change and line

losses. In addition, the suction connection to the boat should be a tight fit and adjustable by adapters to service boat discharge connections. Pumps should be able to transport flows out of the holding tank. Pumps exceeding 45 gallons per minute may cause tanks to collapse.

Factors in determining pumpout station holding tank capacity include boat size and use patterns. Sizing should be done on a case-by-case basis using documented demand, if possible. Holding tanks should be designed and installed to meet local regulations.

For all vessels manufactured after December 31, 1994, a standard deck fitting for removal of sewage should be constructed to the "International standard ISO 4567 Shipbuilding—Yachts—Waste water fittings" for holding tanks, which is a female 38.1 mm (1½") pipe size with 11 threads per 25.4 mm (inch). These threads could utilize a quick-disconnect or cam lock fitting. For existing vessels, an adapter, such as a tapered cone, should be used for non-standard deck fittings. All pumpout connectors should fit the standard deck fitting.

For all vessels manufactured after December 31, 1994, because of possible confusion between waste, fuel and water deck fittings, the deck fittings should be identified with the words "WASTE", "GAS", "DIESEL", and "WATER", and color code the fittings with black caps for waste, red caps for gas and diesel, and blue caps for water.

The ultimate location for the station should be based on the unique conditions of the marina, boatyard, mooring field or other anchorage. Stationary pumpout stations should be located for the convenience of, and to encourage boaters to use the facility. Mobile pumpout stations should have reasonable access to boaters.

Section 8. Other Information (No Technical Guidelines)

Dated: March 19, 1993.

Bruce Blanchard,

Deputy Director, Fish & Wildlife Service.

Information Packet

This information packet is not technical guidelines. It has been recommended to provide additional information to States, and to marinas and others who may participate in this program. The information packet presents general information on surveys, plans, education/information, pumpout facilities and other information helpful in promoting establishment of facilities. It provides a more detailed discussion of the technical guidelines, with examples and explanations. This information packet is also by section, which corresponds to the sections in the technical guidelines.

Section 1. Waters Most Likely To Be Affected by the Discharge of Sewage From Vessels

The following coastal waters, including the Territorial Seas, estuaries, bays, and sounds, and then U.S. lakes and rivers as defined below, are considered waters most likely to be affected by the discharge of sewage from vessels. These definitions are not ranked in priority order.

(1) Sheltered waters that are generally poorly flushed systems.

(2) Waters of National significance: Waters identified by the Environmental Protection Agency under the National Estuary Program, waters identified by the National Oceanic and Atmospheric Administration under the Estuarine Reserve program, and Marine Sanctuaries programs where appropriate.

(3) Waters of significant recreational value: A water body with unusual value as a resource for outdoor recreation activities, e.g., fishing, boating, canoeing, water skiing, swimming, scuba diving, or nature observation. The significance may be in the intensity of present usage, in an unusual quality of recreational experience, or in the potential for unusual future recreational use or experience.

(4) Shellfish harvest waters: Waters designated as shellfish producing and harvesting areas.

(5) Nursery areas of indigenous aquatic life: Significant aquatic plant beds, wetlands, or any area used by the early-life stages of aquatic life during the period of rapid growth and development into the juvenile states.

(6) Waters designated by the EPA as "No Discharge Areas" under § 312(f)(3) and (4) (A) & (B) of the Clean Water Act.

(7) Waters that do not meet State designated usage.

Discussion of the effects of vessel sewage on these waters.

Waters previously designated by the EPA under the Clean Water Act as "No Discharge Areas" are eligible for renovation, maintenance and further construction funds under this program. The discharge of sewage from boats may degrade water quality by (1) Introducing microbial pathogens into the environment and (2) Locally increasing biological oxygen demand (U.S. EPA, 1985). While vessel sewage discharges represent only one of several sources of point and non-point pollution, the number of boats using coastal waters has increased substantially during the past decade. The contribution of boat sewage to total pathogen loadings and local biological oxygen demand has grown proportionately.

A potentially serious problem resulting from vessel sewage discharges is the introduction of disease-carrying microorganisms from fecal matter into the coastal aquatic environment. Humans are put at risk by eating contaminated shellfish and by swimming in contaminated waters. The major disease-carrying agents are bacteria and viruses, and the most common serious ailment is acute gastroenteritis. Other waterborne diseases include hepatitis, typhoid, and cholera (Milliken and Lee, 1990). The indicators used to detect sewage pollution are not the pathogens themselves, but, rather, coliform bacteria. These bacteria are always present in the human intestinal tract and are thus considered reliable indicators of the presence of human waste (U.S. EPA, 1985). Studies conducted in Puget Sound, Long Island Sound, Narragansett Bay, and Chesapeake Bay have demonstrated that boats can be a significant source of fecal coliform bacteria in coastal waters, particularly in areas with high boat densities and low hydrologic flushing (Milliken and Lee, 1990; JRB Associates, 1980). If coliform levels exceed allowable thresholds, shellfish beds and swimming beaches may be closed to minimize the threat of public health problems. In addition, shellfish beds and swimming beaches in the immediate vicinity of marinas are often closed because of the potential of contamination from vessel sewage discharges.

These organic-rich wastes also have the potential to depress oxygen levels as they decay in the marine environment. Biological oxygen demand (BOD) is a measure of the dissolved oxygen required to decompose the organic matter in the water by aerobic processes. When the loading of organic matter increases, the BOD increases, and there is a consequent reduction in the dissolved oxygen available for respiration by aquatic organisms (U.S. EPA, 1985). Although the volume of wastewater discharged from boats is relatively small, the organics in the wastewater are concentrated, and therefore the BOD (1700–3500 mg/l) is much higher than that of raw municipal sewage (110–400 mg/l) or treated municipal sewage (5–100 mg/l) (JRB Associates, 1981). Sewage discharged from holding tanks will thus increase the BOD in the vicinity of boats. When this occurs in poorly flushed waterbodies, the dissolved oxygen

concentrations of the water may decrease (Milliken and Lee, 1990).

Additional problems associated with boat sewage arise from the use of chemical additives such as chlorine, formaldehyde and zinc compounds to disinfect or control odors of on-board sewage. Of the two major disinfectant chemicals used—chlorine and formaldehyde—only chlorine has been shown to be toxic in the aquatic environment. While formaldehyde is considered a toxic substance, it is completely miscible in water and is readily degradable. Zinc salts are frequently used as bacteriostatic agents in holding tanks. Zinc has been reported to be lethal to fish and many aquatic plants, and is known to bioaccumulate. While a direct link between MSD holding tank disinfectants and effects on the environment has not been documented, the presence of these chemicals in sufficient concentrations may be of concern (JRB Associates, 1981). In addition, since the amounts of chemicals added are controlled by the boat owner or operator, excess use may occur.

Section 2. Surveys of Pumpout Stations and Waste Reception Facilities

The Clean Vessel Act of 1992 calls for surveys by coastal States within three months of notification to the States of the final technical guidelines to determine: (1) The number and location of all operational pumpout stations and waste reception facilities at public and private marinas, mooring areas, docks, and other boating facilities within the coastal zone of a State; and (2) The number of recreational vessels in the coastal waters of the State with type III marine sanitation devices (holding tanks) or portable toilets and the areas where those vessels congregate.

Survey information may be obtainable from the boat registration process or files; contacts with trade associations or boating organizations; from national surveys if available; or from mail or telephone surveys of boaters or marina/mooring field facility operators. Some States have surveyed boaters at marinas on high concentration days. The U.S. Coast Guard, telephone 202/267–1497, can provide the following information regarding Documented Vessels (5 net tons and larger): the vessel's port of documentation, vessel length, beam, net tonnage, and whether or not the vessel is equipped with mechanical propulsion.

Section 3. What Constitutes Adequate and Reasonably Available Pumpout Stations and Waste Reception Facilities in Boating Areas

Factors affecting pumpout use: Potential demand for pumpouts and/or waste reception facilities is a function of several variables. First is the number of boats of a size that use sewage holding tanks or portable toilets and where they are stored. Second, accessibility of pumpouts and waste reception facilities affects their use. Distance from routes of travel or from the home port as well as the likely waiting time once at the facility can affect the willingness of boaters to use pumpouts and waste reception facilities. A third factor to consider is boat use. High use at moorages is related to transient versus "parking lot" customers, year-round versus seasonal users, and the frequency of overnight use of boats. High boat use is seasonal, correlated with good weather, weekends and holidays. Fourth is the fee charged, with higher use related to lower fees.

High use of pumpouts and waste reception facilities has also been related to aggressive management practices, active enforcement of "No Discharge Areas", perception of need by the public (related to the environmental sensitivity of the area and educational efforts), and good maintenance.

Determining adequate and reasonably available station/facility needs: Boat numbers, boat size, boating use patterns, numbers and distribution of existing facilities, and where boats are kept during boating season (i.e., in a marina, yacht club, private dock, mooring, home or a trailer, etc.), determine the need for pumpout stations and waste reception facilities. Moorages that receive high transient use, have mooring fields for large boats, are visited by large numbers of boats for refueling, and/or have a large number of people sleeping overnight or living in their boats should have high priority. Yacht clubs, boatyards and large capacity private docks should also be considered for priority installation of pumpouts and waste reception facilities. Other situations that might be considered for the installation of facilities include marinas that provide fuel or service vessels equipped with MSD holding tanks. In addition to distributing stations/facilities in the above types of boating moorages, additional stations/facilities may be warranted where boat use impacts poorly flushed bays, coves, or sloughs and environmentally sensitive sites. After new facilities have been installed, subsequent patterns of use will indicate where and if additional pumpouts are needed. Periodic surveys should be conducted to ensure adequate numbers of pumpout stations and waste reception facilities exist for boaters in the future.

Requirements for pumpout and waste reception facilities vary by State and harbor. Some examples are as follows: Delaware requires a pumpout for marinas harboring 100 or more boats with marinas of 25–100 sharing a pumpout and those with less than 25 not required to install facilities. For New England, EPA Region I guidelines suggest a pumpout for 300–600 boats with toilets. A minimum of one pumpout per 300 boats with toilets is recommended in transient harbors with a high percentage of large vessels, while one pumpout per 600 boats with toilets should be provided in "parking lot" harbors where most boats are less than 25 feet long. In California's Richardson Bay, the pumpout guideline is one station for every 300 boats. Some States require installation of pumpouts for all new marinas or the expansion of existing marinas. Launching ramps, marinas, etc., that cater to small craft (under 26 feet) or are too shallow for larger vessels may not need pumpouts, but may still require waste reception facilities to receive portable toilet waste.

EPA's assessment (EPA, 1981) estimated that 20% of the boats between 16 and 26 feet, 50% of the boats between 26 and 40 feet, and all of the vessels over 40 feet had installed toilets with some type of marine sanitation device. So, if exact data are not available, an estimate could be calculated. The following is a method for estimating Statewide need for pumpout stations and waste reception facilities (McKiernan, pers. comm.). It is not intended as a guide for determining requirements for a specific marina or harbor. The following assumptions underlie this method and can be adjusted where statistically valid information is available relating to a State's unique boating population characteristics.

1. Given the availability of boat length information gathered during boat registration, assumptions can be made regarding the type of on-board sanitation equipment.

Boat length	Number with toilets (percent)	Type of system
16'–26'	20	Portable toilets.
26'–40'	50	Holding tanks.
40'+	100	Holding tanks.

2. It is assumed every boat which is occupied will require service once a

weekend and that the occupancy rate during peak periods is 45%.

3. This method also assumes facilities will be in operation for twelve hours per day during weekends and that the average time to service a boat's system will be 15 minutes for holding tanks and 5 minutes for portable toilets. Therefore:

Calculation for Estimating Need for Waste Reception Facilities:

$$\frac{\text{No. of Boats } 16'-26' \times \text{No. With Portable Toilets (20\%)} \times \text{Peak Occupancy Rate (45\%)} = \text{BOATS REQUIRING WASTE RECEPTION FACILITIES}}{\text{Boats Served Per Hour} \times \text{No. of Hours Of Operation Per Weekend} = \text{BOATS SERVED PER FACILITY}} = \text{WASTE RECEPTION FACILITIES REQUIRED}$$

$$\frac{\text{No. of Boats } 16'-26' \times \text{No. With Portable Toilets (20\%)} \times \text{Peak Occupancy Rate (45\%)} = \text{BOATS REQUIRING WASTE RECEPTION FACILITIES}}{\text{Boats Served Per Hour} \times \text{No. of Hours Of Operation Per Weekend} = \text{BOATS SERVED PER FACILITY}} = \text{WASTE RECEPTION FACILITIES REQUIRED}$$

$$\frac{(12) \times (24) = (288)}{}$$

Calculation for Estimating Need for Pumpout Stations:

$$\frac{\text{No. of Boats } 26'-40' \times \text{No. With Holding Tanks (50\%)} + \text{No. of Boats } 40'+ \times \text{Peak Occupancy Rate (45\%)} = \text{BOATS REQUIRING PUMPOUT FACILITIES}}{\text{Boats Served Per Hour} \times \text{Number of Hours Of Operation Per Weekend} = \text{BOATS SERVED PER PUMPOUT}} = \text{PUMPOUT STATIONS REQUIRED}$$

$$\frac{(4) \times (24) = (96)}{}$$

Section 4. Plans for Constructing Pumpout Stations and Waste Reception Facilities

The Clean Vessel Act calls for coastal States, within six months after notification of the final technical guidelines, to develop a plan for any construction or renovation of pumpout stations and waste reception facilities. For efficiency of review and approval by the Fish and Wildlife Service, coastal States should complete the plan in the standardized format identified in the technical guidelines.

Section 5. Education/Information

A clearly defined education/information program that will support the timely implementation of a State plan should be presented by the State as a part of that plan. This guidance provides States with some ideas and information useful in developing an education/information program effective at informing the public, the boating community, the boating industry, local government officials, public interest groups, and other audiences the State identifies. Ultimately, the State education/information program should provide information and understanding that will encourage the use of and installation of pumpout and waste reception facilities.

Education of the boating, marina owner, and vessel sewage handling and treatment communities is important to the potential success of this program. An effective education/information program will help to realize both short term and long term goals of the Act. The goals of education are as broad as the audiences they should be targeted to reach, yet, these goals can be achieved with increased dialogue between the information to these groups.

Six audiences should be considered when developing your education/information program regarding vessel sewage disposal, handling, and treatment, as follows: (1) Boat owners and operators; (2) Marina owners and operators; (3) Sewage treatment plan owners and operators; (4) Federal (where applicable), State and local governmental authorities and organizations; (5) Boating supply and retailers; (6) The general public.

There are a variety of media that States may have available for disseminating this information. Common methods to consider are; brochures, workshops/symposiums, educational videos, TV/radio, signs, boat shows, etc. Innovative methods are encouraged.

Issues to consider when developing education/information material targeted to a specific audience:

Issues on which education/information programs for boat owners and operators as well as, boating supply and retailers might focus would include: (1) Environmental impacts of boater sewage and the benefits of pumping out at a pumpout station and using a waste reception facility; (2) How a pumpout station operates; (3) Pumpout hose connections/adapters; (4) Pumpout locations and fees; (5) "Green" boat toilet chemicals, i.e., short term biodegradable or less environmentally-damaging treatment chemicals. Encourage manufacturers through demand to market only environmentally responsible products; (6) Proper operation and maintenance of boat toilets; (7) The value of responding to boater surveys and requests for information.

Marina owners and operators are important participants in the implementation of this program. This group is making a commitment for the long term by agreeing to install, maintain, and operate pumpout and waste reception facilities. Issues States should consider (where applicable) when developing education/information programs for marina owner and operators include: (1) Benefits to marinas under this program; (2) The application process for receiving funds to construct, renovate, maintain, and operate pumpout and waste reception facilities; (3) What are adequate and reasonably available pumpout facilities; (4) Reasonable fees; (5) Environmental benefits of providing pumpout stations and waste reception facilities; (6) How to obtain a permit for a municipal hookup and options for disposal of

pumpout waste; (7)(Where to locate pumpout and waste reception facilities; (8) Methods of encouraging boater compliance with pumpout requirements; (9) Types of pumpouts and waste reception facilities currently on the market; (10) Encourage manufacturers to provide demonstrations for and training of marina personnel responsible for operating these devices; (11) Highlighting those marinas who have done an excellent job in installing and maintaining facilities.

Wastewater collected from pumpout facilities must be discharged from the marina to an appropriate treatment facility. Waste treatment plant owners and operators should be made aware of the options available to them for receiving and treating waste from boat holding tanks and portable toilets. Issues for States to consider when developing education/information programs for wastewater treatment facility owners and operators include: (1) Effects of this waste stream on waste treatment plant's normal operations and how to mitigate any negative effects; (2) Volume of waste from boats in proportion to normal "house hold" loading standard; (3) Experience of waste system operators in areas designated "No Discharge".

The State may find it necessary to develop education/information programs that address issues related to Federal, State and local government agencies. Issues to consider for education/information programs for this audience include: (1) Awareness of environmental requirements and enforcement options for vessel sewage disposal and treatment (particularly for incoming harbor masters); (2) Encouraging the development of technical guidelines for design, installation, and use of pumpout facilities; (3) Encouraging the appropriate Federal agencies to support a national standard on pumpout and boat fittings; (4) Environmental benefits of reducing the amount of waste water discharged from boats in localized areas, i.e. shellfish beds; (5) Encouraging vessel manufacturers to include procedures for proper operation of vessel holding tanks and shoreside pumpout facilities in new owners manuals; (6) The value of enforcement in implementing this program; (7) Value of educating the public; (8) Informing Federal, State and local governments on how to access Federal informational sources, and encouraging them to do so; (9) Working with State and local governments to mandate, after a reasonable period of time, the installation of pumpout facilities at marina, as a condition of marina licensure or operation.

Education of the general public has an important role to play. Issues to consider for education/information of this audience include: (1) The environmental impacts of boater waste; (2) Importance of the coastal resource; (3) Efforts by the boating community to reduce waste discharges.

States have options for distribution of educational information related to boating and pumpout issues. Options include magazines, radio public interest spots, environmental groups, association and federation newsletters, National Estuary Program forums, State and local education programs, local citizens groups, and student groups. New and innovative ways of educating the boating community and the general public are encouraged.

Representatives of the various groups could meet together at the State/local level to determine what information and education materials and strategies are needed to accomplish the objective. Private conservation and education groups could provide suggestions and materials once the needs are defined.

Section 6. Appropriate Methods for Disposal or Vessel Sewage From Pumpout Stations and Waste Reception Facilities

Introduction: The safe and sanitary disposal of vessel sewage waste must be provided for when constructing and operating pumpout stations and waste reception facilities. Boaters will not want to spend time and money pumping out unless they can be assured that their effort will help improve water quality.

Vessel Sewage Characterization

Vessel sewage is more concentrated than domestic sewage for almost all the standard parameters used to measure the quality of wastewater, including suspended solids, biological oxygen demand (BOD), and total nitrogen. For example, the typical concentration of BOD in vessels is between 1700–3500 mg/l, while typical sanitary wastewater ranges from 110–400 mg/l for raw sewage and 5–100 mg/l for treated sewage. Raw municipal sewage has a lower concentration because people on land use more water for sanitary purposes than do people on boats. In addition, the proportion of gray water (defined as water from baths, showers and kitchens) is greater in municipal sewage, and municipal collection systems are subject to inflow and infiltration of storm water.

Another characteristic of vessel holding tank waste is the presence of chemical additives used to disinfect and deodorize the waste. These same additives are used to treat sanitary wastes in recreational vehicles (RVs), trains, and aircraft. Ideally, the odor-control chemicals should be biodegradable when diluted. These chemical additives commonly contain an active disinfectant along with dyes and perfumes. Some of the more common disinfectants include formaldehyde, paraformaldehyde, quaternary ammonium chloride, and zinc sulfate; formaldehyde is the most popular because of its effectiveness.

There is some concern from operators of small municipal and package sewage treatment plants and some marina operators with septic systems that vessel sewage holding tank waste may adversely affect performance of their sewage treatment systems by destroying the bacterial population, thereby reducing plant efficiency. A second concern, particularly of operators of municipal treatment plants operating at or near capacity, is that the additional volume of waste will cause the plant to exceed its capacity to treat wastewater effectively.

Research into the effects of chemical additives on sewage treatment processes indicates that these problems have been greatly overstated, and that, in general, most municipal sewage treatment plants can handle vessel holding tank waste without difficulty. In addition to relatively low volumes generated by sewage pumpout stations, the weekly and seasonal usage of marina facilities protects treatment systems from failing or exceeding capacity. Marinas receive their largest pumpout volumes on weekends and, in many parts of the country, only during the summer season. Therefore, treatment plants generally are able to assimilate such intermittent waste loading and no serious operational problem occurs.

Despite the negligible effects of holding tank additives on sewage treatment processes, general concern about toxic contaminants in the environment has led to the development of non-toxic, environmentally benign holding tank deodorants and disinfectants. States should encourage the use of these products through education and, if necessary, regulation.

Disposal Methods

Disposal methods will vary depending on a number of factors, including: State and local sanitation codes; the number of recreational vessels and where the vessels are concentrated; the availability and geographic proximity of existing treatment facilities to boating centers; and hydrogeologic characteristics,

including soil types and groundwater flows. Depending on these factors, States may consider the following methods:

(1) Off-site treatment: (a) Discharge to a public wastewater collection system and treatment facility; (b) discharge to a holding tank with removal and transport by a licensed septage hauler to a municipal septage receiving/treatment facility.

(2) On-site treatment at marinas: (a) Discharge to a package treatment plant with subsequent discharge back into coastal waters (an NPDES permit would be required); (b) discharge to a septic system, where no other alternative is available.

The following is a description of the relative merits of each of these methods. It should be noted that each State has its own regulations and policies regarding what it considers "appropriate" disposal methods. What one State considers appropriate or even desirable, another may prohibit.

Off-Site Treatment

There are hundreds of existing municipal wastewater treatment facilities serving coastal areas throughout the country. Most provide at least secondary treatment utilizing an activated sludge process, but they vary greatly in size and details of treatment structures, sludge handling capability, and success in meeting current permit terms and conditions. In addition, many also incorporate septage receiving and treatment facilities into the overall treatment system.

Septage receiving/treatment facilities are designed specifically to pretreat these wastes before introducing them to the wastewater treatment system. Because vessel holding tank and portable toilet waste is similar in nature to domestic septage, although more concentrated with variable amounts of organic chemicals, a properly operating municipal treatment plant with septage receiving/treatment facilities should not be adversely affected by the introduction of holding tank waste.

Modifications to Wastewater/Septage Treatment Facilities: Some wastewater treatment plants and septage receiving/treatment facilities may require modification to accommodate vessel sewage. These modifications may include increased capacity, construction of adequate septage receiving/treatment facilities, holding and bleed-in facilities, pretreatment facilities, and additional analytical capability. To determine which plants have the capability to effectively process holding tank waste, and whether additional facilities (or modifications to existing ones) are required, States may need to conduct a survey of the existing capabilities and limitations of their existing sewage treatment plants. A matrix to determine these capabilities might include the following elements, for which many States have available data as file information: (1) List all sewage treatment plants; (2) Eliminate plants that are over capacity, have operational problems, or violate permit conditions regularly; (3) Evaluate the balance for existing capacity and treatment methodology; (4) Estimate the available capacity; (5) Develop a short list of candidates for vessel sewage treatment; (6) Develop list of potential needs for modifications to those plants, including: (a) receiving stations; (b) holding/bleed-in tanks, and associated piping; (c) pretreatment needs; (d) associated sludge handling needs; and (e) additional staff and analytical capabilities.

On-Site Treatment

On-site treatment at a marina may be a viable alternative when the marina is not located near sewer lines, when transport of waste is prohibitively expensive, when the local sewage treatment plant is unable to accept additional discharges, and when groundwater and coastal waters can be protected. On-site treatment eliminates the need to transport waste. However, the proliferation of small, potentially troublesome treatment systems often creates more water quality problems than the collection of vessel sewage is intended to solve, including coastal and groundwater contamination.

Package Treatment Plants: Package treatment plants offer an alternative for the treatment of both vessel sewage and waste generated by marina restrooms and other shoreside sanitary facilities. Package treatment plants are usually small, prefabricated sewage treatment plants that provide secondary treatment, generally utilizing the extended air mode of operation. In this process, treatment is accomplished by introducing air into the wastewater to encourage the growth of aerobic bacteria which digest the sewage, providing a high degree of treatment.

Discharging vessel sewage to a package treatment plant should only be considered by boating facilities with large treatment systems that can handle the increased shock loading and chemical additives present in this type of waste. The typical problems with such systems are exacerbated by the nature of holding tank waste. Like septic systems, package plants are designed to deal with sewage with a low solids content, and the treatment process itself is highly dependent on an environment that is not toxic to the treatment bacteria. Holding tank waste is concentrated, which may raise treatment and sludge handling issues. Normal difficulties with treatment variability would be worsened by the slug flow nature of the discharges to a package treatment plant, though they can be eliminated by "bleeding" the influent into the plant. In addition, the waste may contain metals and hydrocarbons which can destroy the treatment process in a small plant.

Based on these concerns, States may not want to encourage the development of a multiplicity of small sewage treatment plants, due to the variability of effluent quality as well as substantial difficulty in ensuring proper operation and maintenance of the mechanical components of such systems.

Septic Systems: Septic systems are the conventional on-site sewage treatment systems throughout the United States. They consist of a septic tank where primary treatment (physical operations) predominate. These operations are floatation, settling, and the digestion of the sludge that accumulates in the bottom of the tank. Effluent from the tank is directed to a subsurface leaching system which provides additional treatment by establishment of a biological crust; its resultant permeability is a direct function of the biological oxygen demand (BOD) and suspended solids in the effluent stream. Once effluent leaves the crust zone it enters a soil environment where, if the septic system has been properly sited, a number of treatment processes will result in a high quality final effluent. The size and location of the leaching system (or drainfield) is extremely important because the quality of the final treatment is highly dependent on the type and quantity of the soil through which the effluent will pass.

In general, septic systems are not a favorable option for the disposal of vessel sewage, because they are not designed to treat the high solids content, high strength, and possibly toxic content of these wastes. They are not very effective at removing trace organic chemicals, and are ineffective at removing nutrients. The chemical additives used to disinfect and deodorize holding tank waste may kill the bacteria that aerobically digest the sewage, allowing solids to pass through the septic tank and causing the drainfield to clog and overflow. Nutrients leaching from the drainfield may stimulate algal growth in receiving waters, which can reduce the amount of sunlight necessary for submerged aquatic vegetation to grow and use up

oxygen needed for fish and other aquatic life. In marine waters nitrogen is the nutrient most likely to cause these adverse effects, while phosphorous is the problem in fresh water.

Vessel sewage should be discharged to a septic system only if no other options exist and the system is specifically designed and sited to receive such waste. This design includes: Using large tanks to manage and "bleed" in increased flows from pumpout stations; combining flows from ordinary bathroom facilities on-shore and the pumpout stations to dilute pumpout wastes; providing two septic tanks in series to help segregate solids in the first tank and increase retention time in the system; a large single drainfield or use of alternating drainfields, and proper siting to assure the leach field does not drain into the coastal waters or contaminate groundwater. In addition to following specific design criteria, septic systems should be inspected regularly and properly maintained.

Section 7. Types of Marine Boat Sewage Pumpout Stations and Waste Reception Facilities That May Be Appropriate for Construction, Renovation, Operation, or Maintenance, and Appropriate Location of the Stations and Facilities Within a Marina or Boatyard

There are four basic types of pumpout stations on the market. Each one has its advantages and disadvantages. Since every marina is unique, there is no one solution that will work in all cases. Therefore, each case should be examined individually, and the pumpout that will work best in any particular situation should be selected. Costs for equipment and installation can vary greatly, depending on need for sewage lift stations to accommodate widely fluctuating tides, need for special onshore holding tanks to hold concentrated waste, cost of connection to a sewer system, and other factors. Stationary or portable dockside pumps cost in the range of $2,000 to $10,000, and typical complete installations may be as high as $20,000. Following is a list of pumpout station types with a discussion of advantages and disadvantages.

(1) Stationary pumpout unit: Stationary units include a connector hose and pump, and are connected directly to a local or municipal sewage treatment facility or a holding tank. The unit is usually located at the end of a pier or floating dock, often near the fueling facilities. Vessels access the pumpout station by approaching and securing to the dock or pier. Advantages are convenience and efficiency. Principal disadvantage is that the unit restricts pumpout service to a single area of the marina, which may cause congestion.

(2) Portable pumpout unit on wheels: This unit may be a wheeled device, consisting of a holding tank, hose and mechanical or hand pump, that is pushed along a dock to the vessel's location to pump out vessel sewage. The advantage is the unit is brought to the boat rather than the boat to the station. When full of sewage, however, the unit can be heavy and cumbersome. Since it must be moved from boat to boat, the time required to complete the pumpout operation can be somewhat greater than that of fixed units. The unit is also limited by its storage capacity.

(3) Portable pumpout unit on a vessel: This unit is a boat with the pumpout station on board, consisting of a pump and holding tank, that may be radio-dispatched or respond to a signal flag, to pump vessel holding tanks. The advantage is the convenience of having the pumpout station come directly to the boat. Range of operation can be a problem.

(4) Remote operated multi-station system: This system has a pump which transports wastes via a main sewer to central collection and treatment. This unit can provide pumpout capabilities at any number of locations throughout the marina. This system, which provides wastewater collection anytime, combines the convenience and efficiency of fixed units with the versatility offered by portables. This system must be specifically designed to individual project requirements. In northern climates, freezing can be a problem.

There are five basic types of pumps used in pumpout systems. Following is a description of each.

(1) Centrifugal pump (rotary or impeller types): This pump works when sewage in its impeller is spun to the outside of the impeller by centrifugal force, which creates a low pressure area at the impeller as it pumps. Most centrifugal pumps require priming. This pump is usually employed in lift station situations.

(2) Reciprocating pump (diaphragm and piston types): This pump, mechanical or hand operated, creates suction by mechanically lifting a diaphragm up and pushing it down in a pump body. The diaphragm works in conjunction with two or four check valves. As the diaphragm lifts, the low pressure area under it causes sewage to be sucked into the body through the inlet check valve; when it is pushed down the pressure under the diaphragm closes the inlet check valve and forces sewage out the outlet check valve. This pump is self-priming.

(3) Vacuum pump: This pump does not directly contact sewage, but draws air out of a tank which creates the necessary low pressure area or vacuum to cause the sewage to flow in. When the accumulator tank is full, pressurized air enters the accumulator tank and the pressure pushes the sewage out to a sewer or holding tank. This pump allows pumping over longer distances.

(4) Flexible vein impeller pump: This pump has suction lift. It is easy to repair and needs no priming. A switch device is needed to prevent the pump from running dry and damaging the impeller.

(5) Progressive cavity pump: This pump consists of stainless steel rotor or screw surrounded by a tight fitting rubber sleeve. As the rotor turns the sewage is progressively moved to the discharge line. The pump is self-priming.

Equipment failure can occur with any of the above equipment. Most common causes are mechanical failure, followed by clogging of hose and/or pump, loss of hose prime, and hose failure.

In addition to pumpout stations, there are facilities to receive sewage waste from portable toilets. A waste reception facility consists of a receiving receptacle for sewage from portable toilets, and includes associated equipment and storage tank or sewer line connection. This facility is not a land-based or floating restroom, but can be made a part of such. Floating waste reception facilities should be considered at mooring fields and other strategic locations. The device typically includes a receiving basin, which should be a minimum of 12 inches in diameter, and with a lid that completely covers the receiving unit (to control odors and insect access), with provisions for rinsing the portable toilet following emptying of the contents. If the unit is designed to drain, the drain should be a minimum of 3 inches in diameter and equipped with an insect-tight cover. Waste reception facilities should be equipped with a washdown system to allow cleaning of the portable toilet. The washdown system should be clearly marked as unfit for drinking water. Wand attachments may be connected to a pumpout station to empty portable toilets, rather than building a separate facility.

Following is a description of other equipment that is part of the pumpout station.

Pumpout station holding tanks: Holding tanks should be sized appropriately for the volume of sewage generated and the frequency of removal of material from the holding tank. State

and local requirements may govern the size of holding tanks. Generally, a 1,500-gallon holding tank can serve up to 100 boats with holding tanks. In terms of the number of boats serviced with a normal removal schedule, the following minimum sizes are suggested:

Total number of boats serviced with holding tanks	Recommended holding tank volume (gallons)
1–20	300
21–40	600
41–60	900
61–80	1,200
81–100	1,500
100+	2,000

Pipes/hoses: Discharge piping should be rigid or noncollapsing flexible, with locking connections. Corrugated or ribbed hoses are not recommended. The line should be watertight and appropriately fastened or secured to the dock or pier. Local building codes should be checked for specific piping requirements, but the following materials are generally accepted for pumpout station service: Polyvinyl chloride (pvc), and polyethylene. Expansion joints should be included where appropriate. Force main systems may require "thrust blocks" and other security fastenings.

Fittings: Deck fitting (sewage removal fitting) is defined as: a flanged fitting permanently mounted on the vessel and connecting to the onboard holding tank. A connector is defined as: A nozzle or coupling permanently attached to the suction hose of a pumpout station. An adapter is defined as: a fitting designed to facilitate adapting a pumpout connector to a vessel deck fitting.

When the requirement for vessels with an installed toilet to have a certified marine sanitation device went into effect under 33 CFR 159 on January 30, 1975, there was a requirement for sewage removal fittings or adapters to be 1½" for boats less than 65 feet in length. The expected types of acceptable fittings included threaded, flanged, or quick disconnect fittings. However, 33 CFR 159 was amended on January 3, 1977 to allow holding tanks to be certified by definition if they store sewage and flushwater only at ambient air pressure and temperature. As a result, boats have been put on the market with many sizes of sewage removal connector fittings, requiring the use of adaptors in order to assure a clean, tight connection when a pumpout occurs.

There are several adapters on the market today. A black rubber nozzle is used by most boaters. Another adapter, the fuel hose fitting or cam-activated connector, consists of a male portion which fits into the connector, and a female portion which locks onto the male portion.

A suction nozzle or fitting such as a friction nozzle (right angle preferred) or cam-activated quick connector positive locking attachment should be provided on the end of the suction hose. Adapters should be provided to fit the 1.5 inch discharge connector. A valve should be provided on the suction hose at the nozzle. A valve should be provided on the pump end of the suction line if the line is to be installed in a manner such that sewage would discharge from the line when the pump is removed for service. Positive locking connections on the end of the discharge line should be provided to prevent it from coming loose during discharge. The discharge line should be protected from freezing, and prevented from leaking into the water. Suction hoses should be equipped with a clear tubing or a sight glass on the suction end of the hose to allow the pumpout station operator to determine when the pumping is complete.

Other factors that should be considered when installing pumpout stations/waste reception facilities include the following.

Convenient location enhances use. Stationary pumpout stations should generally be located as close to a boat off-loading point as possible and/or where boats need to maneuver the least. The end of a dock is a good location because it is accessible. Many facilities are located at the fuel dock, so boaters only have to go to one location for both of these activities. Water level changes should be considered when installing pumpout stations.

Operation and maintenance: Proper operation and maintenance of pumpout stations and waste reception facilities is critical to provide adequate and reasonable service. An individual should be assigned responsibility for operation and maintenance of pumpout and waste reception facilities. Consider appropriate protective clothing, such as gloves, and hand washing, to protect the operator. Washing facilities should be readily available.

Convenience for boaters and operators is a major factor. Hours of operation for pumpout stations should be keyed to general operating hours for vessels in the area. Specific maintenance and winter storage requirements depend on the system and the location. However, the following minimum maintenance is suggested to maintain sanitary conditions: flush hoses; pump clean water through the system, and empty into disposal area, never onto the ground or into the water; and disinfect suction connection.

An event or hour meter could be installed on the pump to monitor its use. Monitoring of pumpouts should be an integral part of a marina management program to ensure that the facilities are operating effectively. EPA has found the following to be representative of the types of practices that can be applied successfully to maintain pumpout facilities: Arrange maintenance contracts with contractors competent in the repair and servicing of pumpout facilities; develop regular inspection schedules; maintain a dedicated fund for the repair and maintenance of facilities.

Section 8. Other Information That Is Considered Necessary To Promote the Establishment of Pumpout Facilities To Reduce Sewage Discharge From Vessels and To Protect United States Waters

Public/private partnerships: Since approximately 80 per cent of the marinas in the United States are privately owned, States are encouraged to develop partnerships, within State laws and regulations, with private marinas to construct pumpout stations at these facilities.

"No Discharge Areas": Section 312 (f) (3) and (4)(A) (B) of the Clean Water Act of 1987 enables States to apply to the EPA for designation of certain water bodies as "No Discharge Areas". In doing so, States must meet specific criteria outlined in title 40, part 140, section 4, including, a State must demonstrate to the EPA Administrator that adequate and reasonably available facilities exist for the safe and sanitary removal of boat sewage. States should not consider "adequate and reasonably available" under the Clean Vessel Act to satisfy all requirements for determining "No Discharge Areas" under the Clean Water Act. A separate review and determination would have to be made by the EPA for Clean Water Act designation of a "No Discharge Area".

Holding tank bypass: Discharge of raw sewage from a vessel in U.S. Territorial Seas (within the three mile limit) is illegal. Holding tanks are frequently bypassed with the use of valves, commonly called Y-values. A valve may be installed on any marine sanitation device holding tank to provide for the direct discharge of raw sewage when the vessel is beyond the baseline of the Territorial Seas, which is more than three miles from shore. The valve must be secured in the closed position while operating in Territorial Seas. Use of a padlock, non-releasable wire-tie, or removal of the valve handle would be considered adequate securing of the

device. The method chosen must be one that presents a physical barrier to the use of the valve or the toilet. All Y-valves should be standardized, so that the handle points in the direction that the sewage flows and/or indicates the open and closed position. The Y-valve should be placed after the holding tank rather than between the toilet and holding tank.

Upland and floating restrooms: Clean, well-maintained restrooms are very desirable for boaters. Many boaters would rather use these when available than use holding tanks. Restrooms should be constructed at marinas and other strategic locations.

Rental Contracts: Marinas could add language in rental contracts to: (1) prohibit discharge of sewage into the marina; and, (2) require that all vessels be equipped with a holding tank.

Disinfectants, perfumes: Industry should produce only products which will not harm waste treatment plants or septic tanks. A symbol should be placed on the label of these products indicating they may be discharged into treatment plants or septic tanks if correctly used in a properly designed treatment system.

Additional information: For additional information on pumpout stations, refer to: (1) "A Guidebook For Marina Owners and Operators On the Installation and Operation of Sewage Pumpout Stations", Maryland Department of Natural Resources Boating Administration, Coastal Technology, Inc., February 1990; (2) "Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings", State Department of Health, Richmond, VA, 1990; (3) "Guidance for States and Municipalities Seeking "No Discharge Area" Designation for New England Coastal Waters", Rev. 4/92, U.S. Environmental Protection Agency, Region 1, Boston, MA; (4) "State of the Art Assessment of Boat Sewage Pumpout Program in Washington State", 12/91, Howard Edde, Inc., Bellevue, WA, for Washington State Parks and Recreation Commission, Olympia, WA. For further information on pumpout stations and waste reception facilities, consult "Marina Pump Out Facilities", Joseph Wettemann, 1/89, and "Types of Pump Out Facilities", Natchez, 7/92.

[FR Doc. 93–14281 Filed 6–16–93; 8:45 am]
BILLING CODE 4310–55–M

Availability of a Draft Addendum to the Pacific Coast and Rocky Mountain/Southwest American Peregrine Falcon Recovery Plans for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Addendum to the Pacific Coast and Rocky Mountain/Southwest Recovery Plans for the endangered American Peregrine falcon (*Falco peregrinus anatum*) in the 17 Western States. The Service solicits review and comment from the public on this draft Addendum, which complements the two original Recovery Plans.

DATES: Comments on the draft Addendum must be received on or before August 16, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Addendum may obtain a copy by contacting the Field Supervisor, Nevada Ecological Services Field Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C–125, Reno, Nevada 89502. Written comments and materials regarding the plan should be addressed to Mr. David L. Harlow, Field Supervisor, at the above Reno, Nevada address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Reno, Nevada address.

FOR FURTHER INFORMATION CONTACT: Dr. Patricia Zenone at the above Reno, Nevada address (telephone number 702–784–5227).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This draft Addendum is intended to complement and revise, with consideration of recent data, the original two Recovery Plans for American peregrine falcons in the Western States finalized in the early 1980's. It affects the population of American peregrine falcons found in Arizona, California, Colorado, Idaho, Kansas, Montana, North Dakota, Nebraska, New Mexico, Nevada, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. This subspecies is presently listed under the Act as endangered throughout its range, which encompasses much of North America, from the subarctic boreal forest south into Mexico.

The principle cause of peregrine falcon decline was reproductive failure due to severe egg shell-thinning induced by widespread environmental application of dichloro diphenyl trichloroethane (DDT). Recovery efforts have focused on (1) restricting the use of DDT in the United States and Canada, (2) reestablishing peregrines in historic habitats, and (3) protection of existing peregrines under the Act. Since about 1985, the population of American peregrine falcons in the West has steadily increased. In 1991, approximately 560 pairs were known and 720 were estimated by State agencies, up from the 30 to 35 nests known in the West in 1975. This draft Addendum reviews recent (1991) data on American peregrine falcons in the West and submits revised criteria for reclassification of populations.

Public Comments Solicited

The Service solicits written comments on the draft Addendum described. All comments received by the date specified will be considered prior to approval of the Addendum.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 10, 1993.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 93–14298 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–779800

Applicant: Joseph M. Noto, Marlboro, NY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by the government of Ciskei, Tsolwana Game Reserve, Tarkastad, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–779825

Applicant: Stephen C. Slack, Chanhassen, MN.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by L. Kock, "Verborgenfontein", Merriman, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–779822

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import multiple shipments of blood samples and skin biopsies from free-ranging black rhinoceros (*Diceros bicornis*) obtained opportunistically during dehorning programs conducted by the Department of National Parks and Wildlife Management, Zimbabwe, for the purpose of scientific research (genetic analysis and determination of virus seroprevalence).

PRT–776608

Applicant: Monk & Associates, Walnut Creek, CA.

The applicant requests a permit to live-trap and release salt marsh harvest mice (*Reithrodontomys raviventris*) in the San Francisco Bay Area, California, to determine their presence or absence proposed development sites.

PRT–778597

Applicant: Francis S. Carnes, Stevensville, MD.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Namibia to enhance the propagation and survival of the species.

PRT–777277

Applicant: Robert L. Killett, Sykesville, MD.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by L. Kock, "Verborgenfontein", Richmond, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–779834

Applicant: Gerald C. Wrobel, Fort Myers, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by M.G. Wienand, "Long Wood Farms", Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–777801

Applicant: Paul Bench-Layton, New York, NY.

The applicant requests a permit to import four captive hatched Indian pythons (*Python molurus molurus*) from the United Kingdom for the purpose of enhancement of propagation and survival of the species.

PRT–778844

Applicant: Richard Elliott, Grayville, IL.

The applicant requests a permit to import the sport-hunted trophy of one male leopard (*Panthera pardus*) from Ethiopia for the purpose of enhancement of survival of the species.

PRT–778668

Applicant: Bryan Mori, Watsonville, CA.

The applicant requests a permit to live-trap and release the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) in Northern Monterey County and Southern Santa Cruz County, CA, for biological survey purposes.

PRT–779674

Applicant: SWCA, Inc., Flagstaff, AZ.

The applicant requests a permit to harass the Least Bell's Vireo (*Vireo bellii bellii*) along Tijuana River in San Diego County, CA, for biological survey purposes.

PRT–690286

Applicant: Eddie Schmitt, Bradenton, FL.

The applicant requests a permit to export and reimport captive-bred tigers (*Panthera tigris*) and leopards (*Panthera pardus*) for circus performances, during which the applicant intends to inform the public of the tiger's and leopard's ecological role and conservation needs.

PRT–779710

Applicant: International Crane Foundation, Baraboo, WI.

The applicant requests a permit to import up to 10 blood/serum samples of the Hooded Crane (*Grus monachus*) from Daurski Nature Reserve, Russia, for enhancement of propagation or survival of the species.

PRT–779712

Applicant: International Crane Foundation, Baraboo, WI.

The applicant requests a permit to import up to 10 blood/serum samples of the White-naped crane (*Grus vipio*) from Daurski Nature Reserve, Russia, for enhancement of propagation or survival of the species.

PRT–779711

Applicant: International Crane Foundation, Baraboo, WI.

The applicant requests a permit to import up to 5 blood/serum samples of the Siberian crane (*Grus leucogeranus*) from Daurski Nature Reserve, Russia, for enhancement of propagation or survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281)

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–14282 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[ES–020–03–4110–05]

Extension of Public Comment Period on a Draft Environmental Impact Statement (DEIS) on a Proposed Exploratory Well, Broward County, FL

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of Public Comment Period on a Draft Environmental Impact Statement (DEIS) on a proposed exploratory well in Broward County, Florida.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, a DEIS has been prepared under the direction of the Bureau of Land Management (BLM), Jackson District and the Bureau of Indian Affairs (BIA), Eastern Area Office analyzing a proposed exploratory well on the Federal Miccosukee Indian Reservation in Broward County, Florida. A Notice of Availability (NOA) of the DEIS was published in the **Federal Register**, Vol. 58, No. 50, March 17, 1993. The NOA announced a public comment period that was open until May 18, 1993. This Notice extends the comment period to August 18, 1993. A copy of the DEIS summary is available upon request to the BLM, Jackson District Office. Public reading copies of the DEIS are available at the following locations:

Bureau of Land Management, Office of Public Affairs, Main Interior Building, room 5600, 18th & C Streets, NW., Washington DC 20240

Bureau of Land Management, 411 Briarwood Drive, suite 404, Jackson, Mississippi 39206

Bureau of Land Affairs, 3701 N. Fairfax Drive, suite 260, Arlington, Virginia 22203

Broward County Public Library, Government Documents Division, 100 South Andrews Avenue, Ft. Lauderdale, Florida 33301

Leon County Library, 200 West Park Avenue, Tallahassee, Florida 32301

Palm Beach County Library, 3650 West Summit Blvd., West Palm Beach, Florida 33406

State Library of Florida, Document Section, R.A. Gray Building, Tallahassee, Florida 32399

DATES: Written comments should be sent by August 18, 1993.

ADDRESSES: Requests for a copy of the DEIS summary and/or written comments on the document should be sent to the District Manager, Bureau of Land Management, 411 Briarwood Drive, suite 404, Jackson, Mississippi 39206; ATTN: Robert V. Abbey.

FOR FURTHER INFORMATION CONTACT:

Robert V. Abbey (BLM), (601) 977–5400 or Jim Harriman (BIA), (703) 235–3177.

Dated: June 10, 1993.

Sammy St. Clair,

Acting Jackson District Manager, BLM

[FR Doc. 93–14347 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–GJ–M

[CO–070–0–4410–13–241A]

Grand Junction District Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Grand Junction District Advisory Council will meet on Tuesday, July 13, 1993. The meeting will convene at 9:00 a.m. in Conference Room of the Grand Junction District Office, 2815 H Road, Grand Junction, Colorado.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include (1) Opening Remarks, (2) Public Comment, (3) Departure for Rabbit Valley Field Tour, (4) Update on land exchanges, (5) RS2477 briefing, (6) Update from the Travel Management subcommittee, (7) Development of next agenda and new topics.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:30 and 2:45 p.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado, 81506 by July 1, 1993. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the meeting are available at the Grand Junction District Office thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Tim Hartzell, District Manager, Grand Junction District Office, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506, phone (303) 244–3000.

Tim Hartzell,

District Manager.

[FR Doc. 93–14245 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–84–M

[ID–943–03–4210–04; IDI–22688, IDI–25636]

Exchanges and Order Providing for Opening of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange and opening order.

SUMMARY: The United States has issued two exchange conveyance documents as shown below under Section 206 of the Federal Land Policy and Management Act. In addition to providing official public notice of the exchanges, this document contains an order which opens lands received by the United States to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384–3163.

1. In two exchanges made under the provisions of Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States:

Boise Meridian

IDI–22688 (Conveyed to Salmon River Properties, Inc.)
T. 19 N., R. 21 E.,
Sec. 32, W½NE¼SE¼;
Sec. 33, W½SW¼SW¼ and SE¼SW¼SW¼.
IDI–25636 (Conveyed to Edward A. and Marsha A. DeSano)
T. 7 S., R. 35 E.,
Sec. 29, W½SE¼;
Sec. 32, N½NW¼.
Comprising 210.00 acres of public lands.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

(Acquired from Salmon River Properties, Inc.)
T. 18 N., R. 21 E.,
Sec. 4, S½ of lot 4;
Sec. 5, S½ of lot 1;
More particularly described as follows:
Commencing at the north quarter corner of said section 5, a distance of 1,318.98 ft. on a bearing of S. 89°41′07″ E., to the northwest corner of said lot 1;
S. 0°02′45″ E., 650.89 ft. to the real point of beginning;
S. 0°02′45″ E., 650.89 ft. to the southwest corner of said lot 1;
S. 89°57′21″ E., 1,318.30 ft. to the southeast corner of said lot 1;
S. 89°59′39″ E., 1,318.28 ft. to the southeast corner of said lot 4;
N. 0°01′44″ E., 643.28 ft.;
N. 89°47′55″ W., 1,318.80 ft.;
N. 89°49′14″ W., 1,318.64 ft. to the real point of beginning.
T. 18 N., R. 21 E.,
Sec. 5, NW¼ of lot 1, more particularly described as follows:
Commencing at the northeast corner of said section 5, a distance of 659.48 ft. N. 89°41′08″ W., to the real point of beginning;
S. 0°01′53″ E., 648.89 ft.;
N. 89°49′34″ W., 659.31 ft.;
N. 0°02′45″ W., 650.50 ft.;
S. 89°41′08″ E., 659.48 ft. to the real point of beginning.
T. 19 N., R. 21 E.,
Sec. 32, SW¼SW¼SE¼.
(Acquired from Edward A. and Marsha A. DeSano)
T. 7 S., R. 35 E.,
Sec. 33, N½SE¼;
Sec. 34, W½SW¼.
Comprising 219. 03 acres of private lands.

The purpose of the exchanges was to acquire non-Federal lands which have high public values for wildlife and riparian habitat and rangeland. The public interest was well served through completion of each exchange. The values of the Federal and private lands involved in the Salmon River Properties exchange were each appraised at $6,500.00. The values of the Federal and private lands involved in the DeSano Exchange were each appraised at $52,000.

3. At 9 a.m. on July 19, 1993, the reconveyed private lands described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 19, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on July 19, 1993, the reconveyed private lands described in paragraph 2 will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in paragraph 2 under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: June 9, 1993.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 93–14348 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–GG–M

[AZ–020–03–5410–11–A007; AZA–25360]

Realty Action, Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document 91–28625 appearing on page 61045 in the issue of Friday, November 29, 1991, in the second column, make the following corrections: in the land description, under Sec. 33, "All" should read "E½" and on line 46, "from the date of application, June 27, 1991", should read "from the date of publication of this notice, November 29, 1991".

Dated: June 10, 1993.

William T. Childress,

Acting District Manager.

[FR Doc. 93–14346 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–32–M

[NM–038–4210–05; NMNM 83797]

Sale of Public Land in Socorro County, NM

AGENCY: Bureau of Land Management (BLM) Interior.

ACTION: Notice of realty action termination of classification.

SUMMARY: The following described public land has been examined and determined to be suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register.**

New Mexico Principal Meridian

T. 5 S., R. 1 E.
Sec. 6, lot 31.
Containing 1.20 acres.

DATES: Interested parties may submit comments to the District Manager, BLM Las Cruces District, 1800 Marquess, Las Cruces, New Mexico 88005, on or before August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Jon Hertz, Realty Specialist, at the Socorro Resource Area Office, 198 Neel Avenue, Socorro, New Mexico 87801, or (505) 835–0412.

SUPPLEMENTARY INFORMATION: This land will be offered by direct sale to Socorro County for their use as a refuse transfer station.

The parcel is isolated, difficult, and uneconomical to manage as part of the public land and is not suitable for management by another Federal department or agency. The sale is consistent with the Bureau's planning efforts, and the public interest will be served by offering this land for sale.

The land will be conveyed with the following exceptions and reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral resources together with the right to prospect for, mine and remove the same.

Upon publication of this notice in the **Federal Register,** the lands described above will be segregated from appropriation under the public land laws, including the mining laws, except for sale under the provisions of FLPMA. The segregation will end upon issuance of patent or 270 days from the date of publication of this notice, whichever occurs first. Objections will be reviewed by the State Director who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. Publication of this notice also terminates the existing Recreation and Public Purposes classification on a portion of the land within T. 5 S., R. 1 E., sec. 6, lot 31, New Mexico Principal Meridian.

Dated: June 8, 1993.

Stephanie Hargrove,

Associate District Manager.

[FR Doc. 93–14349 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–FB–M

[UT–040–02–4212–14; UTU–68593]

Private Land Exchange

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management is proposing to exchange, under section 206 of the Federal Land Policy and Management Act of 1976, public land described as Salt Lake Meridian, T. 33 S., R. 8 W., sec. 1 lot 4, SW¼NW¼, NW¼SW¼, W½SW¼SW¼; sec. 3 lots 1, 5, and 11, SE¼NE¼; sec. 11 E½NE¼; SW¼NE¼, NW¼SE¼, containing 422.96 acres located in Iron County, Utah. The private land that would be acquired is described as T. 32 S., R. 8 W., sec. 36 NE¼, N½NW¼, SW¼, NW¼SE¼, containing 440.0 acres in Iron County, Utah. This exchange is between the United States Government and Robin K. Bradshaw, et al. The exchange would benefit the public by improving public land ownership patterns, by acquiring private land with valuable big game habitat and by providing legal access to public lands. The environmental assessment identifies no significant impacts.

DATES: Comments must be submitted on or before August 2, 1993. The exchange will be conducted no sooner than August 16, 1993.

ADDRESSES: All comments concerning this proposed exchange should be addressed to Gordon R. Staker, District Manager, Cedar City District, 176 East D.L. Sargent Drive, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Arthur L. Tait, Area Manager, at 365 South Main, Cedar City, Utah 84720 (801) 586–2458.

SUPPLEMENTARY INFORMATION: The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action or on March 14, 1994, whichever occurs first. Only the surface estate will be exchanged. The patent, when issued, will contain a reservation for all minerals to the United States, together with the right to prospect for, mine and remove the minerals. There will also be reserved to the United States, a right-of-way for ditches or canals constructed by the authority of the United States. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: June 7, 1993.

Gordon R. Staker,

District Manager.

[FR Doc. 93–14240 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–068–02–7123–54–6532]

Prohibition of Use of Glass Beverage Containers and Discharge of Firearms Within the Boundaries of the El Mirage Cooperative Management Area, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the implementation of a supplementary rule banning the use of glass beverage and food containers and banning the discharge of firearms upon the public lands within the El Mirage Cooperative Management Area, San Bernardino County, California.

SUMMARY: Order: A supplementary rule will take effect that will ban the use of glass containers and the discharge of firearms in the El Mirage Project Area. The supplementary rule will be cited under 43 CFR 8365.1–6, Visitors Services, Rules of Conduct, Supplementary Rules. The text of these rules follows:

1. Ban on Glass Containers Within the El Mirage Cooperative Management Area.

(a) Due to an ongoing problem with broken glass from beverage containers causing damage to vehicles and a safety problem for the visitors to the El Mirage Cooperative Management Area, there is a demonstrated need for the removal of glass containers and elimination of their use within the management area.

(b) Upon the Public Lands within the established boundaries of the El Mirage Cooperative Management Area, no person shall bring in, dispose of or possess any glass beverage or food container."

2. "Ban on The Discharge of Any Firearm Within the Boundaries of the El Mirage Cooperative Management Area (Supplementary Rule as Per 43 CFR 8365.1–6).

Recreational shooting, including rifles, pistols, shotguns, paint guns, pellet and BB guns, bows and arrows, and/or any other firearm, is prohibited upon the Public Lands within the El Mirage Cooperative Management Area.

(a) Because a hazardous condition exists from the discharge of firearms in the El Mirage Area, there is an evident need to exclude the use of all firearms upon the Public Lands within the management area.

(b) Upon the Public Lands within the established boundaries of the El Mirage Cooperative Management Area, no person shall discharge a firearm for recreational shooting or hunting."

Background

The purpose of this supplemental rule is to protect visitors to the El Mirage Cooperative Management Area from serious injury to themselves as well as damage to their vehicles as a result of discharge from firearms and discarded and broken glass containers.

At this time, broken glass is evident in areas of concentrated use and around high traffic areas. This regularly results in tire damage to visitor's vehicles and to Bureau patrol vehicles. Falling or stepping on broken glass continues to be a hazard to campers who prefer to set up in well used camping areas.

EFFECTIVE DATE: These rules will take effect on the date of June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Mike Moore, Chief Area Ranger, Barstow Resource Area, 150 Coolwater Lane, Barstow, California 92311, (619) 256–2729.

SUPPLEMENTARY INFORMATION: An area map, an El Mirage Cooperative Management Area brochure and copies of the Management Plan are available by contacting the above personnel.

Authority for this supplemental rule is found in 43 CFR 8365.1–6. Violation of this rule is punishable by a fine not to exceed $100,000/or imprisonment not to exceed 12 months.

Dated: June 4, 1993.

Lucia Kuizon,

Acting District Manager.

[FR Doc. 93–14239 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–40–M

[NM–010–4210–06/G3–0043; NMNM 90102]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw approximately 770.00 acres of National Forest System lands for the Sipapu Ski Area expansion. This notice closes the lands for up to 2 years from location and entry under the United States mining laws, subject to valid existing rights. The lands will remain open to all other uses which may be made of National Forest System lands.

DATE: Comments and requests for a public meeting should be received on or before September 15, 1993.

ADDRESSES: Comments and meeting requests should be sent to the Albuquerque District Manager, BLM, 435 Montano Road NE., Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Margie Martinez, BLM Albuquerque District Office, (505) 761–8907.

SUPPLEMENTARY INFORMATION: On May 10, 1993, the United States Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian

Carson National Forest

T. 22 N., R. 13 E.,

Sec. 8, E½SE¼NE¼ and E½NE¼SE¼, unsurveyed and within the Santa Barbara Grant Survey;

Sec. 9, S½S½N½N½, S½N½, SW¼, and N½SE¼, unsurveyed and within the Santa Barbara Grant Survey;

Sec. 10, lots 2 and 3, and approximately 23.01 acres in the SW¼NW¼ partly unsurveyed and within the Santa Barbara Grant Survey (excluding SHC Patent No. 883043), and approximately 5.01 acres of the NW¼SE¼ partly unsurveyed and within the Santa Barbara Grant Survey, and SW¼NE¼;

Sec. 15, SE¼NW¼ and N½SW¼, unsurveyed and within the Santa Barbara Grant Survey;
Sec. 16, NE¼NW¼ unsurveyed and within the Santa Barbara Grant Survey.

The areas described aggregate approximately 770.00 acres in Taos County.

The purpose of the proposed withdrawal is to protect the area and future investment in the proposed ski area expansion project.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Albuquerque District Manager of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Albuquerque District Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied, canceled, or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are land uses permitted by the Forest Service under existing laws and regulations, including, but not limited to construction and operation of the proposed ski area improvements.

Dated: June 9, 1993.

Michael R. Ford,

District Manager.

[FR Doc. 93–14351 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–FB–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee' Poehls, (202) 736–4743, FA/AS/ISS/RM, room B930 NS, Washington, DC 20523.

Date Submitted: June 1, 1993

Submitting Agency: Agency for International Development

OMB Number: 0412–0017

Form Number: AID 1440–3

Type of Submission: Renewal

Title: Contractor's Certificate and Agreement with A.I.D.—Contractor's Invoice and Contract Abstract

Purpose: When A.I.D. is not a party to a contract which it finances, this form provides the means to collect information and to take appropriate action in the event contractors do not comply with A.I.D. requirements. The Invoice-and-Contract Abstract identifies the transaction being financed, provides information on the location of the contractor, and participation by small and minority-owned businesses. The information is used by the Agency to identify transactions in order to assure that statutory and regulatory requirements are met, and to provide a basis for requesting appropriate refund if requirements have not been met.

Annual Reporting Burden: Respondents: 60, annual responses: 12; average hours per response: .50; annual burden hours: 360

Reviewer: Jeffery Hill (202) 395–7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: June 2, 1993.

Elizabeth Baltimore,

Information Support Services Division.

[FR Doc. 93–14250 Filed 6–16–93; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis B. Arnold, on (202) 514–4305.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis B. Arnold, DOJ Clearance Officer, SPS/JMD, WCTR suite 850, Department of Justice, Washington, DC 20530.

This notice contains a collection for which an expedited review has been requested from the Office of Management and Budget (INS Form I–485). In an effort to fully inform the reporting public, this entry is printed in full, including instructions, at the end of this notice. Written comments concerning this form should be sent to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street NW., room 5304, Washington, DC 20536, Attention: Form I–751, within 15 days after the date of publication of this notice in the Federal Register.

Revision of Currently Approved Collection

An expedited review has been requested for this entry.

(1) Application to Register Permanent Residence or Adjust Status
(2) I–485, Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. This application and information will be used to request and determine eligibility for adjustment to permanent residence status or other granting of permanent residence to an alien already in the United States.
(5) 160,000 annual responses at 5.25 hours per response, 112,000 annual responses at 4.5 hours per response
(6) 1,316,000 annual burden hours
(7) Not applicable under 3504(h).

The instructions provided herein are a supplement to INS Form 485 and will be used in connection with the provisions of the Chinese Student Protection Act of 1992 (CSPA).

Public comment on these items is encouraged.

Dated: June 11, 1993.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

BILLING CODE 4410–10–M

ADDITIONAL INSTRUCTIONS FOR THE FORM I-485

The Chinese Student Protection Act of 1992 (CSPA) allows certain persons to apply to adjust status regardless of whether a visa petition has been filed or an immigrant visa number is immediately available.

Who May File.
You may apply for adjustment of status under the CSPA if you were inspected and admitted or paroled into the United States and you:

- are a national of the People's Republic of China (PRC) described in section 1 of Executive Order No. 12711, as in effect on April 11, 1990;

- was in the United States at some time between June 5, 1989, and April 11, 1990, inclusive, or would have been in the United States during this time period except for a brief, casual, and innocent departure from this country;

- has resided continuously in the United States since April 11, 1990 (other than brief, casual and innocent absences);

- was not physically present in the PRC for longer than 90 days after April 11, 1990 and before October 9, 1992;

- is admissible to the United States as an immigrant, unless the basis for excludability has been waived;

- establishes eligibility for adjustment of status under all provisions of section 245 of the Act, unless the basis for ineligibility has been waived; and

- properly files an application for adjustment of status under section 245 of the Act.

If you are a PRC national who meets these requirements, you may apply for CSPA adjustment regardless of your age or marital status.

Please note that CSPA adjustment applicants are not required to have applied for benefits under Executive Order No. 12711.

Non-PRC Family Members.
A non-PRC spouse or non-PRC child of an eligible PRC national may also qualify for CSPA adjustment. If your relationship to the PRC national is based on a marriage, the marriage must have taken place before April 12, 1990, and must not have been terminated. You must also:

- meet the requirements of section 1 of Executive Order 12711;

- meet the continuous residence and physical presence requirements listed above; and

- have been unmarried and under the age of 21 on April 11, 1990, if you are applying as the child of an eligible PRC national.

Persons Who Are Ineligible.
Special rules apply to CSPA adjustments. You will not be eligible for CSPA adjustment if:

- you were not admitted or paroled following inspection by an immigration officer;

- you have A, E or G nonimmigrant status, or have an occupation which would allow you to have this status, unless you submit a completed Form I-508 to waive diplomatic rights, privileges and immunities;

- if you have A or G nonimmigrant status, unless you submit a completed Form I-566;

- you are already a conditional permanent resident; or

- you were admitted as a K-1 or K-2 fiance(e).

General Filing Instructions.

Read the **General Filing Instructions on Form I-485**, which provide more information about forms and evidence.

If required evidence is unavailable, you may submit secondary evidence. Due to the difficulties some CSPA applicants may encounter when attempting to obtain documents from the PRC, you may submit secondary evidence of your birth or marriage in the PRC even though you do not have evidence that you unsuccessfully tried to obtain a birth or marriage record from the appropriate authorities in the PRC.

All CSPA applicants should check "block **h** other" in Part 2 of Form I-485. PRC national applicants should write "CSPA-Principal" next to "block **h** other". Non-PRC national applicants should write "CSPA-Qualified Family Member" next to "block **h**".

Your Form I-485 must be accompanied by:

- a copy of your birth certificate or other record of your birth;

- evidence of your relationship to an eligible PRC national, if you are a non-PRC family member (see Form I-485 Instructions under "Initial Evidence - Evidence of eligibility based on your being the spouse or child of another adjustment applicant...");

- two (2) ADIT-style photographs (see Form I-485 Instructions under "General Filing Instructions");

- one (1) complete set of fingerprints on Form FD-258 (if you are between 14 and 75 years of age);

- a completed Form G-325A, Biographic Information Sheet (if you are between 14 and 79 years of age);

- an original medical examination report on Form I-693 completed by a physician authorized by your local INS office;

- a copy of your Form I-94, Arrival-Departure Record, or other evidence of inspection and admission or parole into the U.S.;

- an original letter of employment, a completed Affidavit of Support on Form I-134, or other evidence that you will not be likely to be a public charge in the U.S.;

- a photocopy of evidence that you have previously been found eligible for benefits under Executive Order 12711 such as deferred enforced departure (DED), employment authorization, and/or waiver of the two-year foreign residence requirement, if applicable;

- a photocopy of all pages of your most recent passport or an explanation of why you do not have a passport; and

- an attachment on a **plain piece of paper** showing:

  - the date you arrived in the U.S. (must be before April 11, 1990);

  - the date of each departure you made from the U.S. since that arrival,

  - the reason for each trip, and

  - the date you returned to the U.S. after each trip;

  - if you did not depart the U.S. after your intial date of arrival, write "I was in the United States on April 11, 1990, and I have not departed the United States since April 11, 1990; and

- an attachment on a **plain piece of paper** showing:

  - the date you arrived in the PRC; and

  - the date you left the PRC for each trip you made to the PRC between April 11, 1990 and October 9, 1992;

- if you did not go to the PRC, write "I was not in the PRC between April 11, 1990 and October 9, 1992".

Fee. CSPA adjustment of status applications must be submitted with the fee required by Form I-485.

When to File.
If the President of the United States determines and certifies to Congress before July 1, 1993, that conditions have changed so as to permit safe return to the PRC, **no applications for CSPA adjustments will be granted.**

You must file your CSPA adjustment application before July 1, 1994.

Where to File.
File your application for CSPA adjustment of status with the Service Center having jurisdiction over your place of residence.

• If you live in: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands or West Virginia, **mail your application to:**

USINS Eastern Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001

• If you live in: Arizona, California, Guam, Hawaii or Nevada, **mail your application to:**

USINS Western Service Center
P.O. Box 10485
Laguna Niguel, CA 92607-0485

• If you live in: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, N. Carolina, Oklahoma, S. Carolina, Tennessee or Texas, **mail your application to:**

USINS Southern Service Center
P.O. Box 152122, Department A
Irving, TX 75015-2122

• If you live elsewhere in the U.S., **mail your application to:**

Northern Service Center
P.O. 82521
Lincoln, NE 68501-2521

Processing.
You must mail your application directly to the Service Center. A receipt will be mailed to you after your application is received. This receipt may ask you to go to the local INS office, where the

fingerprint and signature needed for your alien registration card will be recorded on Form I-89. Take the receipt and your passport or other photo identification with you to the local INS office.

Applications may be approved without an interview. However, if you receive a notice requiring you to appear at a local INS office for an interview concerning your CSPA application, your application will not be approved until the interview has been completed.

Decision. After processing is completed, a notice of the decision will be mailed to you. Keep the decision notice for your records. If your application is approved, an alien registration card will be mailed to you within several months.

Travel Outside the U.S. If you plan to leave the U.S. to go to any other country, including Canada or Mexico, before a decision is made on your application, contact your local INS office. Leaving the U.S. without advance written permission may result in automatic termination of your application. You may also experience difficulty upon returning to the U.S. if you do not have written permission to reenter.

[FR Doc. 93-14269 Filed 6-16-93; 8:45 am]
BILLING CODE 4410-10-C

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Estate of Nancy Miller, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Estate of Nancy Miller, et al.*, Civil Action No. C–89–886–S, was lodged on June 7, 1993, with the United States District Court for the Middle District of North Carolina. That action was brought against defendants pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for payment of past costs incurred by the United States at the JMC Furniture Site in Lexington, North Carolina. The decree requires three settlors to pay $446,000 towards the United States' past costs. It is estimated that the United States has incurred costs in excess of $1.2 million in connection with a removal action at the JMC Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Estate of Nancy Miller*, DOJ Ref. #90–11–3–505.

The proposed consent decree may be examined at the Office of the United States Attorney, 324 West Market Street, Greensboro, North Carolina 27402; at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–14246 Filed 6–16–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Minnesota Mining and Manufacturing Co.

Notice is hereby given that, on May 10, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Minnesota Mining and Manufacturing Company ("3M") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a research and development project in furtherance of a cooperative agreement issued by the Department of Commerce, National Institute of Standards and Technology (NIST) (Agreement No. 7ONANB3H1377) under NIST's Advanced Technology Program (ATP). The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are 3M, St. Paul, MN; and Sun Active Glass Electrochromics, Inc. ("SAGE"), Piscataway, NJ.

The nature and objectives of the research program are the development of electrochromic technologies for application to plastic and glass substrates. Plastic electrochromic devices and glass electrochromic devices are both designed for use in windows, such as architectural windows, to control the transmission of light and the radiation of heat through windows.

Under the proposed agreement, 3M would generally have exclusive rights under the technologies developed to commercialize plastic electrochromic devices and SAGE would generally have exclusive rights to commercialize glass electrochromic devices.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14247 Filed 6–16–93; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological and Critical Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following two meetings:

Name: Special Emphasis Panel in Biological and Critical Systems.

Date and Time: July 8–9, 1993; 8:30 a.m. to 5 p.m.

Place: Room 523, National Science Foundation, 1800 G Street NW., Washington, DC.

Contact Person: Dr. Karen Mudry, Program Director, Division of Biological and Critical Systems, National Science Foundation, 1800 G St. NW., room 1132, Washington, DC 20550. Telephone: (202) 357–7955.

Agenda: To review and evaluate Cost Effective Health Care Technologies-Systems and Information proposals as part of the selection process for awards.

Name: Special Emphasis Panel in Biological and Critical Systems.

Date and Time: July 12–13, 1993; 8:30 a.m. to 5 p.m.

Place: Room 523, National Science Foundation, 1800 G Street NW., Washington, DC.

Contact Person: Dr. Karen Mudry, Program Director, Division of Biological and Critical Systems, National Science Foundation, 1800 G St. NW., room 1132, Washington, DC 20550. Telephone: (202) 357–7955.

Agenda: To review and evaluate Cost Effective Health Care Technologies-Devices proposals as part of the selection process for awards.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

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

Dated: June 14, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–14301 Filed 6–16–93; 8:45 am]

BILLING CODE 7555–01–M

Committee of Visitors of the Advisory Committee for Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: July 7, 1993 (9 a.m. to 5 p.m.); July 8, 1993 (9 a.m. to 3 p.m.).

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Andrew Molnar, Program Director, Division of Research, Evaluation and Dissemination, room 1227, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) (357–7064).

Purpose of Meeting: To carry out Committee of Visitors (COV) review,

including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Applications of Advanced Technologies Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 14, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–14303 Filed 6–16–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: July 7–8, 1993, 8:30 a.m.–5 p.m.

Place: National Science Foundation, Division of Materials Research, (room 411), 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Robert J. Reynik, Head, Office of Special Programs in Materials, Division of Materials Research, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–9791.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support in the area of Cost Effective Health Care Technologies.

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

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

Dated: June 14, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–14302 Filed 6–16–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following two meetings:

Name: Special Emphasis Panel in Mechanical and Structural Systems.

Date and Time: July 7–8, 1993; 8:30 a.m. to 5 p.m.

Place: St. James Hotel, the Embassy Conference Room, 950 24th Street, NW., Washington, DC.

Contact Person: Drs. Jerome L. Sackman and Huseyin Sehitoglu, Program Directors, Division of Mechanical and Structural Systems, National Science Foundation, 1800 G St. NW., room 1108, Washington, DC 20550. Telephone: (202) 357–9542.

Name: Special Emphasis Panel in Mechanical and Structural Systems.

Date and Time: August 3–4, 1993; 8:30 a.m. to 5 p.m.

Place: National Science Foundation Annex, Conference Rooms A & B, 1110 Vermont Avenue, NW., Washington, DC.

Contact Person: Dr. Devendra P. Garg, Program Director, Division of Mechanical and Structural Systems, room 1108, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9542.

Purpose of Meetings: To provide advice and recommendations concerning unsolicited proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division of Mechanical and Structural Systems as part of the selection process for awards.

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

Dated: June 14, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–14304 Filed 6–16–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 54th meeting on Friday, June 25, 1993, 8:30 a.m. until the conclusion of business room P–110, 7920 Norfolk Avenue, Bethesda, MD.

PURPOSE: The Advisory Committee on Nuclear Waste (ACNW) will meet to discuss a strategy for preparing a position response to recent direction from the Commission on the ACNW Charter and the renewal of appointments of members.

JUSTIFICATION OF CLOSURE: This meeting will be closed to the extent that it discusses organizational and personnel matters that relate solely to the personnel rules and practices of this advisory committee and the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c) (2) and (6).

JUSTIFICATION FOR LESS THAN 15-DAYS NOTICE: It is necessary to hold this meeting on an expedited bases in order to provide a timely response to recent direction from the Commission.

FOR FURTHER INFORMATION CONTACT: Dr. John T. Larkins, Executive Director, ACNW (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m.

Dated: June 11, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–14299 Filed 6–16–93; 8:45 am]

BILLING CODE 7590–01–M

Ratification of the Revised Procedural Agreement Between the Nuclear Regulatory Commission and the U.S. Department of Energy

"Identifying Guiding Principals for Interface During Geologic Site Investigation and Site Characterization" and the "Agreement Between the U.S. Department of Energy Office of Civilian Radioactive Waste Management and the Nuclear Regulatory Commission Division of High-Level Waste Management During Site Characterization Programs and Prior to the Submittal of an Application for Authorization to Construct a Repository."

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability of the ratification of the revised Procedural Agreement and Repository Project-Specific Agreement between NRC and the U.S. Department of Energy (DOE).

SUMMARY: On August 25, 1993, NRC published a **Federal Register** notice (Vol. 48, No. 166, pp. 38701–38702) regarding the ratification of the original Procedural Agreement between NRC and DOE. The Repository Project-Specific Agreement was subsequently ratified by both agencies in 1984. The purpose of these documents was to outline the procedures for staff consultation and exchange of information which NRC and DOE and its designated contractors would observe in connection with the characterization of sites for a geologic repository under the Nuclear Waste Policy Act of 1982, as amended. The purpose of this **Federal Register** notice is to announce the availability of the ratification of the revised Procedural

Agreement and the Repository Project-Specific Agreement that includes all changes to the original agreements concerning NRC and DOE staff interactions.

FOR FURTHER INFORMATION CONTACT: Robert Carlson, Project Manager, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–2435.

FOR COPIES CONTACT: Anne Garcia, Licensing Assistant Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–2438.

Dated at Rockville, Maryland, this 9th day of June, 1993

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–14300 Filed 6–16–93; 8:45 am]

BILLING CODE 7590–01–M

PEACE CORPS

Information Collection Request Under OMB Review

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*] this notice announces that the information collection request abstracted below has been forwarded to the Office of Management and Budget for review and is available for public review and comment. A copy of the information collection may be obtained from Ms. Laurie James, Office of World Wise Schools, Peace Corps of the United States, 1990 K Street, NW., Washington, DC 20526. Ms. James may be called at 202–606–3294. Comments on this information collection should be addressed to Mr. Jeff Hill, Desk Officer, Office of Management and Budget, Washington, DC 20503.

Information Collection Abstract

Title: World Wise Schools Enrollment Form.

Need for and Use of the Information: Peace Corps needs this information in order to enroll classrooms in the World Wise Schools Program.

Respondents: Teachers.

Burden on the Public

a. Annual reporting burden: 167 hours.

b. Annual recordkeeping burden: 100 hours.

c. Estimated average burden per response: 02 mins.

d. Frequency of response: on occasion.

e. Estimated number of likely respondents: 5,000.

This notice is issued in Washington, DC on June 14, 1993.

Joan Ambre,

Acting Associate Director for Management.

[FR Doc. 93–14332 Filed 6–17–93; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32451; File No. SR–CBOE–93–21]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing and Trading of European-Style, Cash-Settled Options Based on the Yields of Specified Treasury Bonds and Notes

June 11, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 26, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to provide for the listing and trading of European-style, cash-settled, yield-based options on individual issues of long-term Treasury bonds and notes. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enable the CBOE to list European-style, yield-based, cash-settled options on long-term Treasury bonds and notes of specified maturities. Currently, all of CBOE's cash-settled Treasury options are based on composite yields for a mix of Treasury securities. Although such options have attracted trading interest, according to the CBOE they are less suitable for investors who wish to establish options positions that closely track the yield on a particular Treasury issue. Through this rule change, investors will be able to trade cash-settled options based on yields that correlate directly with particular Treasury issues.

At the present time, the CBOE expects to list yield-based options on the 30-year Treasury bond and on the 10-year and 5-year Treasury notes. For each such yield-based option, the underlying reference instrument will be the note or bond of the given maturity that has the longest remaining time to maturity. On the valid exercise at expiration of any of these new options, the holder would receive a cash settlement payment that equals the closing value of the reported spot yield on the underlying reference instrument times a factor of ten and the relevant multiplier. For purposes of establishing exercise settlement amounts,[1] the CBOE will use the spot yield for each underlying issue as calculated daily by the Federal Reserve Bank of New York ("FRBNY").[2] In the

[1] For purposes of daily pricing, it is anticipated that the Exchange will appoint a designated reporting authority to calculate and update the current value of the options as frequently throughout the CBOE trading day as the information used by the reporting authority to calculate the value changes. Telephone conversation among Richard G. DuFour, Executive Vice President, CBOE, Richard L. Zack, Branch Chief, Division of Market Regulation, Commission, and Bradley S. Ritter, Staff Attorney, Division of Market Regulation, June 11, 1993.

[2] The spot yield is determined each business day by reference to the price and interest rate of the underlying reference instrument. Customarily, each time the Treasury issues a new note or bond, the new note or bond will become the reference instrument within its issue type. Substitution of the new issue as the reference instrument takes effect on the day following the Treasury's new issue

Continued

event the FRBNY does not generate a calculation for a particular trading day, the CBOE will poll five randomly-selected primary government securities dealers and average their spot yield calculations for the given Treasury security.

To accommodate the introduction of these new options, a number of changes to Chapter 23 of CBOE's Rules must be made. Most of the changes involve new definitions and revisions to existing definitions. In particular, the term "Interest Rate Measure" is defined to clarify the method used to derive yields to maturity. Similarly, the terms "Yield to Maturity," "Aggregate Settlement Value," "Treasury Security," "Short-Term Treasury Security" and "Long-Term Treasury Security" have been added to clarify specific characteristics and features of interest rate and yield-based options. The term "European Option" in Chapter 23 has been redefined to conform to the definition of that term in Chapter 1, Rule 1.1(uu).

In addition to new definitions, the proposed rule change includes new hedge exemption provisions in the position limit rule applicable to interest rate options on long-term Treasury securities. These new provisions track the hedge exemption provisions applicable to Standard & Poor's ("S&P") 500 Index Option positions under Rule 24.4, with three exceptions. First, the exempted contract limits applicable to interest rate options are 75,000 contracts for a single customer and 125,000 for a single money manager holding interest rate option positions in an aggregated account. These limits are lower than the exempted contract limits applicable to S&P 500 Index options. Second, a "qualified securities portfolio," for purposes of this hedge exemption, may contain Treasury securities of any maturity, not simply securities that correspond to the particular issues underlying the option. Also, unlike the provisions of Rule 24.4 that include concentration limits for portfolios hedged with S&P 500 Index options, no concentration limitations apply to Treasury securities in a qualified portfolio. Given the liquidity and price continuity of Treasury securities, the Exchange believes that a qualified Treasury securities portfolio may consist of a position in only one (or more) particular issue of Treasury securities. Third, yield-based options trade and settle with reference to a yield on, rather than the price of, the reference instrument. As a result, the hedge relationship between the option and the portfolio is inverted in comparison to, for example, index options and the underlying equity securities. The new provisions therefore invert the terms "put" and "call" as those terms appear in Rule 24.4.

Finally, new sections in Rule 23.5 make it clear that the CBOE has authority to list yield-based, cash-settled options on various individual Treasury securities as well as on a mix of Treasury securities.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular by providing rules applicable to yield-based options on Treasury securities that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–21 and should be submitted by July 8, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14323 Filed 6–16–93; 8:45 am]

BILLING CODE 8010–01–M

auction. Occasionally, the most recently auctioned issue will not be the longest to maturity, and in that circumstance no substitution will occur.

[Release No. 34–32454; File No. SR–OCC–93–01]

Self-Regulatory Organization; the Options Clearing Corp.; Order Approving a Proposed Rule Change Relating to Scheduling of Board Meetings

June 11, 1993.

On February 8, 1993, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–93–01) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to allow OCC's Board of Directors ("Board") greater flexibility in scheduling regular Board meetings. Notice of the proposal was published in the **Federal Register** on March 11, 1993.[2] No comment letters were received. This order approves OCC's proposal.

I. Description

OCC's current By-Laws require the Board of Directors to hold regular meetings on a monthly basis. The By-Laws further require that unless the Board by resolution provides otherwise with respect to a particular meeting, regular meetings in even-numbered months are to be held at OCC's offices

[3] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 31981 (March 11, 1993), 58 FR 14459.

in Chicago, Illinois, and regular meetings in odd-numbered months are to be held at OCC's offices in New York, New York.

OCC has found that it is difficult to convene all of the Directors on a monthly basis. Moreover, it is costly and time consuming for OCC to prepare for and hold such frequent meetings of the Board. OCC has determined that the Board can fulfill its duties of managing the business and affairs of OCC with less frequent meetings. Accordingly, the proposed By-Law change eliminates the monthly meeting requirement and allows the Board to schedule regular meetings at such time as the Board shall provide by resolution.[3]

The proposed By-Law change also allows for more flexibility with respect to the site of the Board's regular meetings. The practice of alternating between New York and Chicago was originally adopted in order to make it more convenient for Member Directors who resided in New York to attend meetings. However, OCC's Member Directors now reside in all parts of the country. Accordingly, OCC believes that the Board should have the authority to select an appropriate site for each meeting. The proposed By-Law change grants that authority by allowing the Board to meet at such places as it shall provide by resolution.[4]

II. Discussion

Section 19(b)(2)(A) of the Act[5] requires that the Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the applicable rules and regulations thereunder. Section 17A(b)(3)(A) of the Act[6] requires that a clearing agency shall not be registered unless the Commission determines that such clearing agency is so organized and has the capacity to be able to comply with the provisions of section 17A of the Act and the rules and regulations thereunder. The Commission believes that because the proposed rule change will enable OCC to schedule regular Board meetings at times and places as needed to conduct the business affairs of OCC, it should enable OCC to function more efficiently without diminishing its ability to perform its statutory obligations as a registered clearing agency under section 17A of the Act.

III. Conclusion

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–OCC–93–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14324 Filed 6–16–93; 8:45 am]

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[3] OCC plans to hold regular Board meetings every other month. Telephone conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Peter R. Geraghty, Attorney, Division of Market Regulation, Commission (April 19, 1993).

[4] All Board meetings are expected to be held in Chicago except for one meeting each year to be held in Washington, DC, and one meeting each year to be held at a site to be determined. *Id.*

[5] 15 U.S.C. 78s(b)(2)(A).

[6] 15 U.S.C. 78q–1(b)(3)(A).

[Release No. 34–32452; International Series Release No. 552; File No. SR–PHLX–93–02]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Friday Expirations for Foreign Currency Options

June 11, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 19, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the PHLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX hereby proposes to amend Exchange Rule 1000(b)(21) in order to change the expiration date for foreign currency options ("FCOs")[1] so that they expire each month on the relevant Friday at 11:59 p.m. Eastern Standard Time ("E.S.T.") instead of Saturday at that time. The amendment will add subsections (i) and (ii) in order to address newly listed options which will expire on Friday as opposed to existing listed options which will still expire on Saturday. The text of the proposed rule change is available at the Office of the Secretary, the PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Foreign currency options presently expire at 11:59 p.m. e.s.t. on the Saturday night preceding the third Wednesday of the expiration month. Month-end FCOs expire at 11:59 p.m. e.s.t. on the Saturday following the last Friday of the expiration month. The proposed amendment would allow both types of FCOs to expire 24 hours earlier each month.

The spot market price of a specific currency underlies an FCO. Although the PHLX currency options market closes for trading on an expiration Friday at 2:30 p.m. e.s.t., the spot market for the underlying currencies remains open for trading at different locations around the globe 24 hours a day. Because the options do not expire until 11:59 p.m. e.s.t. the next day, the writer of an option on a foreign currency bears the risk of assignment for more than 30 additional hours after the market for those options has closed.

The PHLX believes that price changes in the underlying spot market after 2:30 p.m. e.s.t. on Friday could significantly alter the option holder's exercise decision. Although the option writer must bear the risk of these potential price changes until 11:59 p.m. e.s.t. on Saturday, according to the Exchange, he/she has a very limited mechanism to hedge this risk since the PHLX options market is closed. According to the PHLX, users and potential users of FCO's have expressed concern that this risk is too great and have stated that it

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] This proposal would include all foreign currency options traded on the Exchange, including cross-rate option contracts. Currently, the PHLX trades FCOs on eight currencies (Australian dollar, British pound, Canadian dollar, Deutsche mark, French franc, Japanese yen, Swiss franc, and European currency unit) and two cross-rate options (Deutsche mark/Japanese yen, and British pound/Deutsche mark). As discussed below, the PHLX trades options on these foreign currencies that expire both mid-month and end-of-month, in addition to long-term options on these currencies.

often hinders or curtails their interest in trading the product. The Exchange believes that by shortening the time period between the time when the market for the option closes and when the option expires, the option writers' risk will be more manageable.

If the proposed rule change is adopted, the first Friday expiration will occur at the October mid-month expiration. Although there will still be a few Saturday expirations occurring mid-month between October 1993 and December 1994, all month-end expirations beginning in October 1993 will occur on Friday.[2] After the December 1994 expiration, all subsequent expirations will occur on Fridays.

One limited exception to the rule is provided. Currently, a June 1994 and December 1994 long-term option is listed solely with a European-style expiration.[3] When those options convert to regular 12-month options in June and December 1993 respectively, a corresponding American-style option contract will be listed.[4] Because the European-style contract was listed with a Saturday expiration, the Exchange believes it is necessary to also list the comparable American-style contracts with a Saturday expiration in order to alleviate investor confusion. The Options Clearing Corporation ("OCC") has submitted a rule change explaining what relevant rules and processes will be changed in order to effect this new rule.[5] The Exchange will develop and distribute a calendar showing which expirations will occur on Friday and which will occur on Saturday through December 1994 for easy reference.[6] Additionally, the Exchange's Market Surveillance Department will distribute an informational memorandum each month during the week of expiration reminding members/participants on which day that month's options contracts will expire and explaining that the option that will be listed to replace the expiring one will have a Friday expiration. The informational memorandum will also show the expiration date for each month for which contracts are listed currently. Also, any time a new series is added to an existing option, a memorandum will be distributed reminding the public which expiration day is applicable.

The PHLX believes that the proposed rule change is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act. The basis for the request is so the Exchange can list its long-term FCOs, which would expire June 1995 ("June 1995 FCOs"), with Friday expirations.[7] The PHLX argues that this would eliminate customer confusion when these options expire since, assuming this rule change is approved, all FCOs will have Friday expirations in 1995.

The commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of section 6(b)(5) thereunder.[8] Specifically, the Commission finds that the proposal will foster just and equitable principles of trade by allowing option holders to limit their risk of assignment as a result of foreign currency fluctuations occurring after the close of the FCO market but prior to the actual expiration of the options. The Commission recognizes, however, that since the sole basis for the request for acceleration is to avoid customer confusion with respect to the June 1995 FCOs, this concern can be adequately addressed by granting partial accelerated approval of the proposed rule change by allowing the Exchange to list its June 1995 FCOs with Friday expirations.[9]

The Commission finds good cause for partially approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** to avoid customer confusion in the expiration of the June 1995 FCOs should the proposal be fully approved.

With respect to that portion of the proposed rule for which accelerated approval is not being granted, within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copy in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–93–02 and should be submitted by July 8, 1993.

[2] In the event the last Friday of the expiration month is December 25 or December 31, the options expiring on those dates shall expire on the Friday immediately preceding December 24.

[3] European-style options may be exercised only during a specified period immediately prior to the expiration of the option.

[4] American-style options may be exercised by the holder at any time prior to expiration of the option.

[5] See File No. SR–OCC–93–9.

[6] See Information Circular: 086–93, from the PHLX Market Surveillance Department to Members, dated May 19, 1993.

[7] These long-term FCOs are expected to be listed by the PHLX on June 14, 1993.

[8] 15 U.S.C. 78f(6)(5) (1982).

[9] The Commission also recognizes that the possibility of customer confusion exists in any event if this rule change is approved since until the expiration of the December 1994 FCOs, there will be some FCOs with Friday expirations and some with Saturday expirations. The Commission believes, however, that this risk will be substantially reduced as a result of the agreement by the Exchange to distribute during expiration week and informational memorandum to its members describing the expiration day for each option. See supra note 5 and accompanying text.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that for the sole purpose of allowing the Exchange to list long-term foreign currency options, which would expire in June 1995, with Friday expirations, the proposed rule change (SR–PHLX–93–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14322 Filed 6–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19523; 811–562]

Pine Street Fund, Inc.; Application for Deregistration

June 11, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Pine Street Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 30, 1993 and amended on June 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 140 Broadway, 42nd Floor, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, At (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company that was organized as a corporation under the laws of New York. On August 29, 1949, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective and applicant's initial public offering commenced on September 19, 1949.

2. On February 27, 1992, applicant's board of directors approved an agreement and plan of reorganization made with Winthrop Focus Funds ("Winthrop") on behalf of one of its series, the Growth and Income Fund (the "Agreement of Reorganization"). Wood, Struthers & Winthrop Management Corp. is investment adviser to both applicant and Winthrop. The board of directors determined and recorded in the minutes of its February 27, 1992 meeting the findings required by rule 17a–8 under the Act, which provides an exemption from the prohibitions of section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers. The board of directors also approved a plan of liquidation and dissolution (the "Plan of Liquidation") for the applicant at the same meeting.

3. On April 29, 1992, applicant mailed proxy materials to its shareholders. At a meeting held on June 15, 1992, applicant's shareholders approved the Agreement of Reorganization and the Plan of Liquidation.

4. Pursuant to the Agreement of Reorganization, on July 10, 1992, applicant transferred all of its assets to the Growth and Income fund in exchange for shares of the Growth and Income Fund having a net asset value equal to the assets and liabilities of applicant so transferred. Following the transfer, in order to effect a distribution of Growth and Income Fund shares to applicant's shareholders, Winthrop registered the *pro rata* interest in the Growth and Income Fund shares for each of applicant's shareholders. On the date of the reorganization, applicant had 3,834,332 shares outstanding, having an aggregate net asset value of $45,961,069 and a per share net asset value of $11.99.

5. All expenses incurred in connection with the reorganization will be borne by Wood, Struthers & Winthrop Management Corp.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant has filed a certificate of dissolution on March 19, 1993 with the Secretary of State of New York and, as of June 8, 1993, was awaiting the consent of the state tax commission.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14325 Filed 6–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25824]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 11, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 6, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing,

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[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3 (1993)

if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s) as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc., et al. (70–8207)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and American Electric Power Service Corporation ("AEPSC"), AEP's subsidiary service company, both located at One Riverside Plaza, Columbus, Ohio 43215, have filed an application-declaration under sections 6(a), 7 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

AEPSC proposes to issue and sell, from time to time through December 31, 1996, up to $25 million principal amount of unsecured promissory notes with a maturity of not less than nine months nor more than ten years ("Long-Term Notes") to commercial banks, financial institutions or other institutional investors pursuant to certain term loan agreements. In addition, AEPSC proposes to issue and sell, during such period, short-term notes with a maturity of not more than 270 days (but no later than June 30, 1997) to banks ("Short-Term Notes") in an aggregate amount not to exceed $15 million outstanding at any one time; provided that the total of such Short-Term Notes and Long-Term notes will not exceed $25 million outstanding at any one time. In order to induce a lender to purchase the Short-Term or Long-Term Notes from AEPSC, AEP proposes to unconditionally guarantee to pay any lender the amounts due and unpaid by AEPSC.

The Long-Term Notes would bear interest at a fixed rate, fluctuating rate, or some combination of fixed and fluctuating rates. The actual rate of interest of the Long-Term Notes will be subject to negotiation between AEPSC and the lender. Any fixed rate of interest of the Long-Term Notes will not be greater than 250 basis points above the yield at the time of issuance of the Long-Term Notes to maturity of United States Treasury obligations that mature on or about the date of maturity of the Long-Term Notes. Any fluctuating rate will not be greater than 200 basis points above the rate of interest announced publicly by a major United States bank from time to time as the base or prime rate.

No compensating balances shall be maintained with, or fees in the form of substitute interest paid to, a lender under the proposed term loan agreement. However, in the event a bank or financial institution arranges for a borrowing from a third party, such institution may charge AEPSC a placement fee, not to exceed 7/8% of the principal amount of such borrowing.[1]

In the event a Long-Term Note bearing interest at a fixed rate is paid prior to maturity in whole or in part and the fixed rate at that time exceeds the yield to maturity of certain United States Treasury securities maturing on or close to such Long-Term Note, AEPSC will be obligated to pay to the lender an amount based upon the present value of such prepaid amounts discounted at such treasury yield. The proposed term loan agreement may contain certain restrictive covenants.

Credit arrangements with the banks with respect to the Short-Term Notes generally do not require the maintenance of balances as compensation for the line of credit made available by the bank. Borrowings under the lines of credit would generally bear interest at an annual rate not greater than a bank's prime or base commercial rate in effect from time to time. Credit arrangements with the banks generally require the payment of a commitment fee that is equal to up to 1/5% per annum of the size of the line of credit. It is anticipated that AEPSC will participate in lines of credit shared by AEP and its subsidiaries. Commitment fees for shared lines of credit are generally borne by AEP and participating subsidiaries in proportion to their respective projected maximum need for such credit facilities.

The total annual cost of borrowings under all such bank lines is estimated to be not greater than the effective rate for borrowings bearing interest at the prime or base commercial rate with compensating balances of up to 10% of the line of credit. Although existing financial conditions do not necessitate the maintenance of such compensating balances, because of the volatility of the financial markets in the recent past, the maintenance of such compensating balances may be required during the time period for which authorization is sought herein. The effective annual interest cost under any of the above arrangements, assuming full use of the line of credit, will not exceed 125% of the prime commercial rate in effect from time to time.

[1] In such event, AEPSC requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5)

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14321 Filed 6–16–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Amistad DOT Venture Capital, Inc.; License Surrender

[License #02/02–5358]

Notice is hereby given that Amistad DOT Venture Capital, Inc. ("Amistad"), a Delaware corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Amistad was licensed by the Small Business Administration on February 26, 1979.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 21, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 11, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–14335 Filed 6–16–93; 8:45 am]

BILLING CODE 8025–01–M

[License #09/09–0314]

Ivanhoe Venture Capital Limited; License Surrender

Notice is hereby given that Ivanhoe Venture Capital Limited ("Ivanhoe"), a California limited partnership, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Ivanhoe was licensed by the Small Business Administration on December 29, 1982.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 5, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 11, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–14336 Filed 6–16–93; 8:45 am]

BILLING CODE 8025–01–M

Kansas City District Advisory Council; Public Meeting

The U.S. Small Business Administration Kansas City District Advisory Council and its Springfield Branch Office will hold a public meeting from 10 a.m. to 1 p.m. on Thursday, July 8, 1993 in the Kansas City District Office Training Room, 323 West 8th, suite 501, Kansas City, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Kurt Mueller, Acting Advisory Council Chairperson at (816) 474–5200, or Mr. Richard L. Osbourn, District Director, U.S. Small Business Administration, 323 West 8th, suite 501, Kansas City, Missouri 64105, (816) 374–6760.

Dated: June 11, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–14236 Filed 6–16–93; 8:45 am]

BILLING CODE 8025–01–M

Oklahoma City District Advisory Council; Public Meeting

The U.S. Small Business Administration Oklahoma City District Advisory Council will hold a public meeting from 9 a.m. to 12 noon on Tuesday, July 13, 1993, at the Granny Had One Restaurant, 113 W., Harrison, Guthrie, Oklahoma, to discuss such matters may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. W. Bruce Robinson, District Director, U.S. Small Business Administration, 200 NW. 5th Street, suite 670, Oklahoma City, Oklahoma 73102, (405) 231–5237.

Dated: June 11, 1993.

Dorothy A. Overal,

Acting Assistant Administrator Office of Advisory Councils.

[FR Doc. 93–14334 Filed 6–16–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Notice No. 93–1]

Halon Replacement Performance Testing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces a proposed research program to develop performance test methodologies which would lead to recommended airworthiness criteria for the evaluation of non halon fire suppression agents/systems to be used aboard airplanes and rotorcraft, and solicits alternate approaches, test methodologies and criteria.

DATES: Comments must be received on or before August 16, 1993.

ADDRESSES: Comments on this notice should be mailed to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Analysis Branch, AIR–120, 800 Independence Avenue SW, Washington, DC 20591. Comments may be examined in room 806 weekdays, between 8:30 a.m. and 5 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John J. Petrakis, Aircraft Engineering Division (AIR–120), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267–9274.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this research and development program by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the test procedures in this notice are also invited. Substantive comments can include cost estimates. Comments should identify the notice number and should be submitted to the address above. All comments received on or before the closing date will be considered by the Administrator before proceeding. The research program outlined in this notice may be changed in light of comments received. All comments will be available, both before and after the closing date for comments in the Technical Analysis Branch, for examination by interested persons. A report summarizing each substantive public comment concerning this notice will be filed in the Technical Analysis Branch. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Notice No. 93–1".

The postcard will be date stamped and mailed to the commenter.

Availability of Notice

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Ave. SW., Washington, DC 20591, or by calling (202) 267–3484. communications must identify the notice number.

Background

The FAA participated in the "International Symposium on Halon Replacement in Aviation" on February 9 and 10, 1993. The symposium held in Reston, Virginia was sponsored by the Aerospace Industry Association (AIA) and the Halon Alternatives Research Corporation (HARC), and was well attended by industry, particularly airframe and powerplant manufacturers. The symposium focused on the aviation industries concerns over the eventual discontinuance of the production of halon. The terms of the recent Copenhagen amendment to the United Nations 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, agreed to by the United States and other developed countries, were to cease the global production of Halons in January 1994. The affect the termination of halon production would have on the aviation industry was discussed by five working groups: certification requirements, research and development of alternate systems, implementation of alternate systems, collecting halon data, and recycling systems.

The symposium's preliminary conclusions regarding alternate agents/systems were as follows: The Federal Aviation Regulations (FARs)/Joint Airworthiness Regulations (JARs) do not specify the use of halon for fire suppression, except for hand fire extinguishers in the cabin; no regulatory action will be necessary for the certification of new fire suppression systems; fire hazards and test protocols defining the performance criteria for fire suppression systems must be developed by FAA/United States Air Force (USAF) research and development (R&D) programs; and guidance material for

approving non halon systems will be developed from the R&D performance criteria. Furthermore, alternate agents must be evaluated for their effectiveness, toxicity, corrosion and ozone depletion potential.

In addition, the symposium recommended that the FAA issue a public notice soliciting input from all segments of the industry, on the specifics of defining performance criteria for halon alternate agents/systems, and to invite international industry and JAA participation.

Discussion of FAA Halon Alternative Program

The objective of the FAA's technical program would be to develop acceptable performance test criteria to facilitate the approval of non halon fire extinguishment/suppression agents and systems.

To date, all required fixed fire suppression systems aboard transport category aircraft have employed Halon 1301 (CBrF3) extinguishing agent. System applications include engine nacelles/auxiliary power units (APU's), cargo compartments and lavatory trash receptacles. The FAA also requires these aircraft to carry a minimum of two Halon 1211 (CBrClF2) hand fire extinguishers.

Thus far, the replacement agents developed by industry carry a weight and volume penalty of a factor of two or three times that of halon. Because of the weight penalty and increased cost, the airlines and airframe manufacturers are concentrating their efforts on the use of reclaimed Halon 1301 for as long as possible. However, the eventual unavailability of reclaimed Halon 1301 and the possibility of future regulations that may forbid its use amplify the importance of developing credible alternative agents/systems and reasonable certification criteria.

The FAA program would concentrate on the four application areas, engine nacelles/APU's, cargo compartments, lavatory trash receptacles, and hand fire extinguishers. The basic approach would be to use full-scale evaluation fire tests to study the impact of various parameters on the level of protection provided by alternative agents/systems. Subsequently, a minimum acceptable level of performance would be defined with the research results. Standard performance tests would be developed and validated for each application and ultimately used as the basis for approval.

Promising new agents and systems would be evaluated to determine their relative effectiveness, as compared to halons, and acceptability in specific fire protection applications. The approach and level of effort for each of the application areas is relatively distinct and independent because the fire threat and environmental conditions are different. Finally, based on the research, acceptable compliance performance criteria would be established and recommended for the approval of non-halon agents and systems in the four aforementioned application areas.

This program will be coordinated with an aviation authorities management team to oversee the technical requirements for the airworthiness regulatory authorities and to ensure coordination and harmonization of alternative agent/system certification compliance criteria.

The major tasks of the program would be as follows:

- Develop Test Articles
- Conduct Evaluation Tests
- Develop Minimum Acceptable Levels of Performance
- Develop Standard Performance Tests
- Develop and Issue Certification Compliance Guidance

Develop Test Articles

The building and instrumenting of full-scale test articles is necessary to perform proper evaluation fire tests. The full-scale evaluation fire test results would be used to form the basis for defining agent/system performance criteria. The full-scale performance criteria would be critical to deriving more simplified compliance criteria.

Engine Nacelles: An engine nacelle simulator would be designed and constructed at the FAATC. The simulator would be capable of varying the nacelle volume in order to approximate the range of volumes of engines used on narrow and wide body airplanes. A large fan would provide a variable nacelle air flow rate. In addition, the simulator would be designed for heating the engine casing in order to examine hot surface ignition. Obstructions would be mounted in the nacelle area to simulate the effect of line and equipment "clutter" on agent penetration and extinguishing effectiveness. To validate the new engine simulator and gain confidence in the data collected, comparison, tests, using B–737 parameters, would be made with the Aircraft Engine Nacelle (AEN) Facility at Wright Paterson Air Force Base (WPAFB).

Cargo Compartment: Existing wide body (TC–10) and narrow body (B–707) fuselages in the FAATC Full-Scale Fire Test Facility would be utilized as cargo compartment test articles. Standard cargo containers and test containers also would be available. Thus, test articles would be available to examine the range of sizes and shapes of present cargo compartments.

Lavatory Trash Receptacles: Trash receptacles representative of the current transport fleet would be used as test articles. These receptacles are available in lavatories which were used during the "hidden fire program" (ref. FAA Report DOT/FAA/CT 91/2). The receptacles would be from narrow and wide body aircraft and would include surrounding hardware and materials such as the trash entrance chute.

Hand Extinguishers: A test article would be developed to evaluate the effectiveness of alternate agents used in hand extinguishers as compared to Halon 1211. The fire hazard against which the hand extinguisher must protect would be a hidden in-flight fire. It is envisioned that the hidden fire hazard would be patterned after the in-flight fire which occurred on a trans-Atlantic Delta L–1011 flight on March 17, 1991. In this incident, Halon extinguishers were blindly discharged into air return grills, successfully extinguishing a severe electrical fire beneath the floor that was spreading into the cabin, and likely saving the airplane and its 231 occupants. Although Halon 1211 extinguishers were originally required by the FAA for fighting a seat fire accelerated by spilled gasoline (a hijacking scenario), it is anticipated that a hidden fire hazard criterium would be recommended and the extinguishment capabilities of Halon 1211 would be maintained as the performance standard for hand fire extinguishers.

The hand extinguisher test article would use a symmetrical half of a fuselage cross section or a modified existing fuselage barrel section. A test article also would be required to examine the toxicity associated with an agents use on in-flight fires. A series of tests are envisioned similar to previous Halon 1211 FAATC tests that demonstrated the non-toxic affects during typical in-flight fire extinguishment (reference FAA Report DOT/FAA/CT–82/111).

Evaluation Tests

As previously mentioned, full-scale evaluation fire tests would provide the data that would be the primary basis for the development of performance criteria for agents and systems. Therefore, the design of the various test series, as well as the agreed-to minimum acceptable levels of performance, would dictate the severity of the performance criteria. Most critical to the performance criteria will be the nature of the fire tests or fire

hazard scenarios these agents/systems would be required to protect against. The crucial task would be to define these hazards/scenarios. The question to be resolved would be whether the fire hazard/scenario should be a worst case condition or a more typical situation which may have a greater probability of occurrence. Designing to the worst case scenarios would lead to more expensive replacement systems.

Engine Nacelles: Engine nacelle evaluation tests must cover the range of nacelle design and operational parameters as well as potential accidental fire conditions. Nacelle volume directly relates to the total quantity of agent required. Therefore, typical narrow body and wide nacelle volumes would be examined. Air velocity in the nacelle is an important parameter, since it impacts both the peak agent concentration and the length of time the agent remains present. The minimum concentration over a one-half second is specified in Advisory Circular (AC) 20–100, "General Guidelines for Measuring Fire-Extinguishing Agent Concentration in Powerplant Compartments", dated September 21, 1977. Therefore, maximum air velocities through the nacelle should be created in the simulator during evaluation tests. As with any fire test, realistic and repeatable conditions are necessary. Jet fuel, hydraulic fluid and lubricants, as appropriate, would be utilized as fuel sources at maximum leakage rates and critical failure points. From previous experimental studies, it is known that the preburn time and the amount of obstructions, i.e. "clutter", are also important parameters. Actual engine casing temperatures also would be considered and simulated as potential ignition sources.

Selected alternate agents/systems would be evaluated with respect to their ability to extinguish engine fires and prevent reignition. The test results would identify those agents and/or systems best suited as Halon 1301 replacements. Critical design parameters would also be identified.

Cargo Compartments: It is envisioned that cargo compartment evaluation tests would be conducted on three configurations: narrow body (Class C), wide body (Class C) and wide body-combi (Class B). This should bracket the applicable Halon 1301 fire suppression systems used in cargo compartments. At least, three general types of alternate agents/systems would be used and their effectiveness and characteristics against cargo fires evaluated. The types would include a low boiling point gaseous total flooding agent, water fog and dry powder. The latter is a recent development with total flooding characteristics. System designers have claimed the powder remains suspended in the air for long periods of time. Candidate alternate agent/systems would be determined from these evaluation tests. Another potential solution is a hybrid system comprised of water spray for initial fire knockdown and nitrogen, generated from gas separation membranes, for prolonged inerting. However, this approach will require significant development.

Multiple fire scenarios would be employed to cover the spectrum of potential fire conditions. Cargo fires in loaded standard cargo containers would be compared with pallet cargo fires. The location of the fire amongst cargo stacked on a pallet is very important. Whether the fire begins on the periphery, on the top or bottom, or deep within the center of the cargo, affects the characteristics of the fire, and possibly compromises the effectiveness of the suppression system. Ignition of peripheral cargo tends to produce early flaming whereas ignition of buried cargo is smokier and takes longer to produce open flaming.

The type of detector(s) used has a bearing on the effectiveness of a particular agent/system. Also, for some gaseous agents, it may be more difficult to suppress a fire that originates at the top of cargo near the ceiling of the cargo compartment. These agents will settle to the bottom of the compartment with time.

Another important parameter would be the volume of air surrounding the cargo. Currently approved Halon 1301 systems are required to measure agent concentrations inside an empty compartment. Systems with concentrations that exceed prescribed minimum levels have been approved. However, the addition of cargo raises the peak Halon concentration level following agent discharge because of the reduced volume of air. With higher agent concentrations and reduced air volumes, the rate of agent loss increases because the volumetric leakage rate is constant and is a greater fraction of the reduced air volume. Because of these factors, it is conceivable that the duration of protection in a fully loaded cargo compartment could be less than indicated by agent concentration measurements made inside empty cargo compartments. At least, two cargo volumetric loading configurations would be studied at 50 and 90 percent capacity. Furthermore, the more highly loaded configurations would make it more difficult to provide complete coverage with agents that may not behave the same as a true total flooding agent, e.g. water fog and dry powder.

Lavatory Trash Receptacles: Testing of alternate agents/systems for use in lavatory trash receptacles would be conducted to determine the minimum quantity of agent necessary to completely extinguish a known fire hazard. The standard fire scenario would be a paper towel fire in a typical trash receptacle. Because it is important to develop a realistic and repeatable standard fire scenario, a fixed quantity of paper towels filling a typical size trash receptacle would be used. The ignition source would be located at the bottom of the container to simulate a deep-seated fire challenge for the alternate agent/system.

Hand Extinguishers: Alternate agents for hand extinguishers would be expected to be equivalent to Halon 1211 in terms of their effectiveness against hidden fires. A full-scale test article, as described earlier, would be used to evaluate alternate agents/extinguishers. Full-scale test results would be used to develop a small-scale performance test for appraising agent/extinguisher effectiveness against hidden fires. The performance test would form the basis for certification approvals.

A crucial and challenging aspect of the full-scale test article is the development of a realistic and repeatable fire hazard. In the previously mentioned L–1011 incident, insulation batting, electrical wiring, flooring, and sidewall paneling were heavily involved in the fire, and the accumulation of debris and contamination from years of service contributed to the fire spread. It is very difficult to attain consistent burns, or even sustained burning in some cases, with such an array of complex, fire resistant materials.

In order for an agent/extinguisher to be effective against a hidden fire, it must possess properties that promote agent expansion and penetration into voids and throughout empty spaces. Gaseous or low boiling point agents such as the halons, are highly effective against this type of fire scenario. Unfortunately, some alternate agents are more toxic than Halon 1211. Therefore, agents that are found to be effective against hidden fires would be evaluated under full-scale conditions for their potential toxic threat during inflight firefighting. Virgin agent and agent decomposition products would be measured and their toxic threat to humans would be calculated based on available data and models. A worst case fire scenario that maximizes the agent's toxicity would be utilized.

Minimum Acceptable Levels of Performance

Before or concurrent with evaluation tests, the minimum acceptable levels of performance would be established. Consideration of how this would be accomplished is discussed below.

Engine Nacelles: For Halon 1301 engine fire extinguishing systems, the FAA certification basis has been a flight test demonstration that shows a specified halon concentration level has been attained at all measurement locations over a specific time. Within this level of performance is a safety factor for the quantity of halon needed to extinguish engine fires. However, it is recognized that smaller quantities of halon will extinguish engine fires. Therefore, the issue to be resolved is whether the minimum acceptable level of performance of alternative agents maintain the same safety factor, which will need to be determined for the particular alternative agent used, or should the quantity of alternate agent produce the minimum concentration levels necessary to extinguish typical engine test fires.

Cargo Compartments: The level of protection provided by cargo compartment fire suppression systems using alternate agents/systems also would be expected to be equivalent to current Halon 1301 systems. Unlike engine systems, the goal in cargo compartments is to suppress the fire, because it is virtually impossible to extinguish a deep-seated cargo fire with a fixed system. What constitutes suppression is open to interpretation and would be defined. Does suppression mean the extinguishment of any initial flames with no evidence of open flaming over the duration of protection, or does suppression require that the allowable thermal exposure of cargo liners and protected flight-critical components be set at some minimum level, irrespective of the incidence of open flames?

Lavatory Trash Receptacles: The level of protection required of a trash receptacle extinguishing system would be the complete extinguishment of a deep-seated paper towel fire. The need for complete extinguishment, as opposed to suppression, is justifiable based on the possibility, probability, and past experience of passengers illegally smoking in lavatories and disposing their smoking materials into the trash chute. Before the ban on lavatory smoking, a survey revealed that the trash receptacles were being improperly used for disposal of smoking materials. At least one aircraft accident was caused by a lavatory trash receptacle fire believed to have been started by a cigarette (Varig, Boeing 707, Paris, France, 1973, 123 fatalities).

Hand Extinguishers: Of the four application areas for alternative agents/systems, the issue of toxicity of Halon 1211 hand extinguishers is of paramount concern. The level of toxicity allowed during the discharge of alternate agent hand extinguishers when fighting an in-flight fire would be established. The toxicity associated with the discharge of halon hand extinguishers originally was determined with seat/gasoline fire extinguishment tests conducted by the FAA. These tests demonstrated that the effects of human exposure to the virgin agent and its decomposition products were insignificant. Consequently, what this program would resolve is whether to require the negligible toxic threat to be maintained by alternate agents or to allow an increase in toxicity, but below a harmful level, to assure the usage of an as effective alternate agent as Halon 1211 in hand extinguishers.

Standard Performance Tests

Engine Nacelles and Cargo Compartments: A standard performance test for gaseous alternate agent suppression systems for engine nacelles and cargo compartments is considered to be impractical. As in the past, flight test measurement of gaseous agent concentrations would be required for each aircraft and engine model to assess the effect of variations in the protected volume, airflow rates (engine nacelles) and leakage rates (cargo compartments), as well as any other model-to-model variables. Although not a standard performance test, a cargo compartment or engine nacelle mockup of a particular model may be acceptable if the applicant plans to use a non-gaseous agent (dry powder or water) and is fearful of the possibility of agent damage to the aircraft or costly cleanup, especially if successive tests are a distinct possibility.

Lavatory Trash Receptacles: A test method for lavatory trash receptacles would be developed using the test article typical of a trash receptacle and the standard paper towel fire source mentioned above. The pass/fail criteria would be the complete extinguishment of the fire source.

Hand Extinguishers: A standard small-scale performance test for hidden fire extinguishment using hand extinguishers would be developed.

The test being considered would define the essential elements which are a controlled fire source, a port or grille into which the extinguisher is discharged, and a convoluted enclosed path between the discharge point and fire source. The design of the performance test would be patterned after the full-scale hidden fire test article. A correlation of test data with the two devices would be established. Once a prototype performance test has been developed the next step would be its standardization.

In general, performance test criteria standardization would be accomplished with public participation. If need be, round robin testing would be used to assure conformity of results.

Certification Requirement Guidance

The final product would be the development and issuance of specific certification requirement guidance for the approval of alternate agents/systems. In each application area, the goal would be to develop a basis for approving methodologies that are similar to what is currently being used for approving halon systems. For example, approval of gaseous agent systems in cargo compartments and engine nacelles/APU's would be based on measured agent concentration profiles and whether prescribed minimum values are exceeded during flight tests (non-fire conditions). The prescribed values would be largely based on the full-scale evaluation test results. Hand extinguisher approval would follow current practices with the additional requirement of passing a hidden fire performance test. The approach that would be used for the approval of non-gaseous agents, such as water and dry powder, is unknown and open for consideration.

Monitor Developments

The number of halon replacement agent activities outside the civil transport arena requires a concerted effort to monitor new agent/system development and evaluation. FAATC personnel will continue to participate in National Fire Protection Association (NFPA) committees developing standards for Halon replacements. In addition, the activities of other government agencies, including Department of Defense (DOD), the Coast Guard and National Institute of Science and Technology (NIST) will be closely monitored and, if advantageous, cooperative programs will be established. Also, laboratory tests will be conducted to screen prospective new agents before consideration of full-scale fire test evaluations. Agent toxicity, corrosiveness, and other potential problems will be addressed. It may become necessary to develop a test article and test method for surge tank explosion suppression systems.

Issued in Washington, DC, on June 11, 1993.

David W. Ostrowski,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 93–14329 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee; GNSS Technology Subcommittee; Meeting

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the GNSS Technology Subcommittee of the Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Advisory Committee to be held Tuesday, July 6, 1993, at 1 p.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, in the MacCracken room (round room) on the tenth floor.

The agenda for this meeting will include: Review and discussion of the proposed task statement; organization of the effort to develop a report and recommendations; overview of current FAA technology plans and schedules associated with the U.S. global positioning system. This subcommittee will attempt to ensure that the FAA's program addresses all the right technology issues.

Attendance is open to the interested public but limited to space available. With the approval of the Subcommittee Co-Chairmen, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or plan to access the building to attend the meeting should contact Ms. Jan Peters in the Office of the Associate Administrator for System Engineering and Development, FAA/ASD–6, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 287–8543.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on June 11, 1993.

Martin T. Pozesky,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 93–14328 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Johnson County, KS

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 (EIS) will be prepared for a proposed highway project in Johnson County, Kansas.

FOR FURTHER INFORMATION CONTACT: Johnny R. Dahl, Field Operations Engineer, FHWA, 3300 South Topeka Boulevard, suite 1, Topeka, Kansas 66611–2237, Telephone: (913) 267–7284; Warren Sick, P.E., Chief of Bureau of Design, Kansas Department of Transportation, Docking State Office Building, Topeka, Kansas 66612, Telephone: (913) 296–3525; James F. Pilley, P.E., Box 401, Courthouse, Olathe, Kansas 66061, Telephone: (913) 782–2640.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kansas Department of Transportation, and Johnson County will prepare an Environmental Impact Statement for a proposed highway project known as the 21st Century Parkway. If constructed, the project would be primarily on new location and developed initially as a two-lane road (ultimately as a four-lane roadway). The study corridor begins at the existing K–7/Shawnee Mission Parkway interchange, passes to the east side of DeSoto, extends southerly along the west side of the Cedar Creek development and the Johnson County Industrial Airport, extends southeasterly to U.S. 169 north of Spring Hill, and then extends easterly across the southern part of Johnson County passing south of Stilwell and intersecting the State Line in the vicinity of 195th Street; a distance of approximately 57.9 kilometers (36 miles).

The project is intended to provide relief for projected traffic demands in western and southern Johnson County, Kansas. Several alternatives will be considered including the no build. Also incorporated into the study will be various alignments within the corridor.

One public information and two *Citizen's Group* meetings have been held to keep the local citizens informed of the study. These meetings have provided early coordination with appropriate Federal, State, local agencies and private organizations who have expressed interest in this proposed project.

Public hearing(s) will be held during the development of the Environmental Impact Statement. Public notice will be given for the time and place of the hearing(s) and where the Draft Environmental Impact Statement will be available for review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA, Johnson County, or the Kansas Department of Transportation at the addresses provided.

Johnny R. Dahl,

Division Administrator, Kansas Division.

[FR Doc. 93–14171 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[Docket No. RSAD–91–3]

Proposed Test Program to Evaluate Random Drug Testing Rate

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of second extension of test program.

SUMMARY: FRA will extend, for an additional 12 months, an experimental program designed to evaluate the extent to which the rate of random drug testing affects general deterrence. On July 1, 1991, three Class I freight railroads and one commuter railroad were allowed to begin testing at a 25 percent rate rather than the 50 percent rate required by FRA's alcohol and drug regulation. Three additional Class I freight railroads and one additional commuter railroad constituted a control group that continued to test at 50 percent. In the program's first year, positive test rates did not vary appreciably between the experimental and control groups. After extending the program for a second year, FRA has to date obtained an additional three quarters of data which continue to show no marked difference in deterrence between the two groups.

FRA believes that another program extension is necessary because the Department of Transportation is considering lowering the testing rate for its random drug testing programs for transportation employees. Extending FRA's experimental program for a third year would provide additional data for departmental study and could support future rulemaking activity.

DATES: (1) FRA intends to extend the current conditional waivers for one year effective July 1, 1993.

(2) Written comments should be received by August 1, 1993. Late filed comments will be considered to the extent practicable.

ADDRESSES: Comments shall be sent to Docket Clerk, Docket No. RSAD–91–3, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street SW., room 8201, Washington, DC, 20590. Persons wishing the FRA to acknowledge receipt of their comments should submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. RSAD–91–3." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons, between 8:30 a.m. and 6 p.m. Monday through Friday. To schedule an appointment to examine the docket, please contact Patricia McLaughlin, Docket Clerk (RCC–30) (Telephone: (202) 366–0635).

FOR FURTHER INFORMATION CONTACT: Walter C. Rockey, Executive Assistant (RRS–3), Office of Safety, FRA, Washington, D.C. 20590 (Telephone: (202) 366–0897) or Patricia V. Sun, Trial Attorney (RCC–30), Office of Chief Counsel, FRA, Washington, D.C. 20590 (Telephone: (202) 366–4002).

SUPPLEMENTARY INFORMATION:

Background

In February of 1991, the Association of American Railroads (AAR) filed a petition in accordance with 49 CFR 211.51, requesting that FRA implement a test program that would temporarily suspend compliance with 49 CFR 219.601(b)(2)(ii). This section, first published on November 21, 1988 [53 FR 47103], requires each railroad, in the second year of that railroad's random testing program, to conduct a sufficient number of random tests during the year to equal at least 50 percent of the number of its covered service employees. (Subsequent amendments to the alcohol and drug regulations, which did not affect Section 219.601(b)(2)(ii), were published on December 27, 1989 [54 FR 53238] and June 4, 1990 [55 FR 22791]). AAR proposed that FRA permit an experimental group of railroads to test at a 25 percent rate for one year, for comparison against a group of control railroads that would continue to test at a 50 percent rate. Data from the two groups of railroads would then be analyzed to determine the effect of different testing rates on deterrence.

FRA agreed with the AAR that an experimental program would be useful in evaluating the testing rate. FRA granted the four test railroads a waiver from the 50 percent testing requirements effective July 1, 1991. The four test railroads and the four control railroads were required to submit quarterly test data throughout the test year for monitoring by the FRA.

In the first year of the program, the test railroads conducted 10,629 random tests, with 89 positive for a rate of 0.90 percent. The control railroads conducted 17,152 tests and had 154 positive for a rate of 0.90 percent. The railroad industry, in calendar year 1991, conducted 50,436 tests and had 477 positive for a rate of 0.89 percent.

On June 15, 1992, the AAR requested that FRA continue the experimental program for another year, and the request was granted. In the first three quarters of the program's second year, the test railroads conducted 7,007 random tests, with 66 positive for a rate of 0.94 percent. The control railroads conducted 12,687 tests and had 107 positive for a rate of 0.84 percent. The railroad industry, in calendar year 1992, conducted 42,599 tests and had 336 positive for a rate of 0.79 percent.

FRA and the AAR agree that the difference in deterrent effect between those random testing programs conducted at the 50 percent level and those conducted at the 25 percent level shown by the above test results is not large enough to be significant. On May 20, 1993, the AAR submitted a request for an additional extension. Accumulation of additional data is especially desirable at this time because of a recent departmental initiative considering modification of DOT random drug testing programs. On December 15, 1992, FRA, along with the Office of the Secretary and the four other operating administrations that currently require random drug testing, published an Advance Notice of Proposed Rulemaking seeking public comment and data on whether other, less costly alternatives to the current 50 percent random testing program could maintain an adequate level of deterrence and detection of illegal drug use [57 FR 59778]. DOT has studied, and will continue to study, data from FRA's experimental program in its consideration of possible alternatives to the current DOT program.

Implementation

FRA will continue to require all participating railroads to comply with its previously established protocols covering test conditions and reporting requirements. FRA does not believe that further opportunity for oral presentation is necessary for this second program extension, but is providing an additional opportunity for written comments.

By letter granting an extension of the test program, FRA will extend the current conditional waivers for an additional year. FRA intends for the third year of this experiment to begin on July 1, 1993, and continue for at least four calendar quarters. FRA continues to reserve the right to terminate or modify the test program on 10 days notice if any party fails to comply with any conditions specified in the protocols, or if quarterly reports indicate a particularly serious degrading of performance by one or more of the experimental railroads (as reflected by the random testing positive rate and/or other information available to FRA). FRA also continues to reserve the right to terminate if FRA review of railroad alcohol/drug program administration indicates material deficiencies.

Authority: 45 U.S.C. 431(c), 437; 49 CFR 1.49(m), 211.43, 211.51.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 93–13949 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 93–43; Notice 1]

Report on NHTSA's Cost Estimating Methodology

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of availability.

SUMMARY: NHTSA has prepared a detailed report explaining how the agency estimates the costs that arise from its safety standards and other regulations. This notice announces that this report is available to all interested parties.

ADDRESSES: Interested persons may examine this report and/or obtain a copy of it from: NHTSA Docket Section, room 5109, 400 Seventh Street SW., Washington, DC 20590. Requests for this report must refer to Docket No. 93–43; Notice 1. The NHTSA Docket Section is open to the public from 9:30 am through 4 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Rutland, Office of Vehicle Safety Standards, Engineering Systems Staff (NRM–13), room 5320, 400 Seventh Street SW., Washington, DC 20590. Mr. Rutland can be reached by telephone at (202) 366–6565.

SUPPLEMENTARY INFORMATION: NHTSA has prepared a report that describes in

detail the methodology the agency follows in estimating the costs that arise from this agency's safety standards and other regulations. The agency wants the public to be aware of this report and have the opportunity to review it.

Interested persons can examine this report and obtain a copy of it by going to the NHTSA Docket Section at the address shown in the **ADDRESSES** section of this notice. Copies can also be obtained by writing to the Docket Section and requesting a copy of the report. All requests for this report should refer to Docket No. 93–43; Notice 1.

Authority: 15 U.S.C. 1392, 1401, and 1402; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: June 11, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–14320 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 19, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11006–N	The Pathacura Company, New Haven, CT.	49 CFR 171.8, 172.101 Col. 8c, 173.197.	To authorize the transportation of regulated medical waste in red bags placed in DOT exempt containers overpacked in a refuse type leak/vermin proof locked container. (Mode 1.)
11020–N	HCl Advance Chemical Distributors, Inc., Catoosa, OK.	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain attached during unloading without the physical presence of an unloader. (Mode 2.)
11021–N	Union Pacific RR Co. and Missouri Pacific RR Co., Omaha, NE.	49 CFR 173.318	To authorize the transportation of methane, classed in Division 2.1, in DOT–113C120W tank cars. (Mode 2.)
11022–N	A.B. Chance Co., Centralia, MO.	49 CFR 173.302	To authorize use of a non-DOT specification seamless moldedbiphenolic epoxy cylinder, for shipment of sulfur hexafluoride, classed in Division 2.2. (Modes 1, 3.)
11023–N	City of Houston, Houston, TX ..	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain attached during unloading without the physical presence of an unloader. (Mode 2.)
11024–N	CITGO Petroleum Corporation, Lake Charles, LA.	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain attached during unloading without the physical presence of an unloader. (Mode 2.)
11025–N	Mass Systems, Inc., Baldwin Park, CA.	49 CFR 173.302(a)(2), 175.3, 178.44.	To authorize the manufacture, mark and sell of non-DOT specification welded stainless steel cylinders having 200 cubic inches maximum water capacity and 3800 psi maximum service pressure for transporting various Division 2.2 commodities. (Modes 1, 2, 4, 5.)
11026–N	Elf Atochem North America Inc., Philadelphia, PA.	49 CFR 173.29(a)(c)(2)	To authorize a one-time shipment of a DOT specification ACFX19034 tank car, containing a chlorine residue, which is overdue for inspection. (Mode 2.)
11027–N	Hoechst Celanese Corporation, Charlotte, NC.	49 CFR 172.102 SPB14	To authorize the use of non-insulated MC330 and MC331 cargo tanks for transportation of sulfur dioxide, classed as Division 2.3. (Mode 1.)
11029–N	Olin Ordnance, St. Marks, FL ..	49 CFR 173.62(a)(b)+(c)	To authorize shipment of propellant explosives in water, classed as Division 1.3, in DOT MC–307, DOT–407, MC312 or DOT 412 cargo tanks having a minimum design pressure of 25 psig. (Mode 1.)
11031–N	Amfuel, Magnolia, AR	49 CFR Part 173, Subpart F ...	To authorize the manufacture, mark and sell of specially designed truck mounted cargo tank for use in transporting Class 9 material. (Mode 1.)
11032–N	L'Air Liquide—D.T.A., Sassenage, France.	49 CFR Part 173, Part 178	To authorize the manufacture, mark and sell of non-DOT specification ring shaped steel cylinder in emergency breathing equipment for use in transporting compressed oxygen classed in Division 2.2. (Modes 1, 2, 3, 4, 5.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11033–N	Witco Corporation, Houston, TX.	49 CFR 173.302(a)(3)	To authorize the transport of compressed gas, flammable, n.o.s., classed in Division 2.1 in DOT specification 3AAX tube trailers. (Mode 1.)
11034–N	Arsynco, Inc., Carlstadt, NJ	49 CFR 173.34(e)(10)	To authorize the transport of propylene imine, inhibited, classed as Division 6.1, in DOT Specification 4B240 and 4BW240 cylinders. (Modes 1, 2, 3.)
11036–N	Miles, Inc., Pittsburgh, PA	49 CFR 172.103, Subpart B14 and B32.	To authorize the bulk transportation of thionyl chloride, classed in Division 8.6, UN 1836 in bulk cargo tank. (Mode 1.)
11037–N	Rohm & Haas Company, Bristol, PA.	49 CFR 172.101	To authorize maneb stabilized or maneb preparations, stabilized, Division 4.3, UN 2968 to be shipped as essentially nonregulated for domestic transportation. (Modes 1, 2, 3, 4, 5.)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 11, 1993.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–14326 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before July 2, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
9997–X	Hodgdon Powder Company, Inc., Shawnee Mission, KS (see footnote 1).	9997
10695–X	3M Company, St. Paul, MN (see footnote 2).	10695
10917–X	AEG Corporation, Basking Ridge, NJ (see footnote 3).	10917
11000–X	Aeropres Corporation, Shreveport, LA (see footnote 4).	11000
11010–X	Hickson Timber Products Ltd., Murrysville, PA (see footnote 5).	11010

[1] To modify exemption to provide for rail freight and cargo vessel as additional modes of transportation.

[2] To modify exemption to provide for cargo vessel as an additional mode of transportation for shipment of ethylene oxide in an aluminum cartridge overpacked in a 4G box.

[3] To authorize cargo vessel as an additional mode of transportation for the shipment of cells and batteries containing sodium Division 4.3 (UN3292).

[4] To reissue an exemption originally issued on an emergency basis is to authorize shipment of Dimethyl ether Division 2.1 in DOT Specification 112J340W and 112T340W tank car tanks.

[5] To reissue exemption originally issued on an emergency basis to authorize shipment of arsenical compounds liquid, n.o.s. in DOT specification 57 portable tanks which meets UN criteria for a "protected" 31A metal intermediate bulk containers.

Application No.	Applicant	Parties to exemption
5206–P	Vet's Explosives, Inc., Torrington, CT.	5206
6530–P	Gulf States Airgas, Inc., Mobile, AL.	6530
7951–P	Rich Products Corporation, Buffalo, NY.	7951
8451–P	Pacific Scientific, Energy Dynamics Division, Chandler, AZ.	8451
8554–P	Vet's Explosives, Inc., Torrington, CT.	8554
9275–P	Custom Essence, Inc., Somerset, NJ.	9275
9723–P	Northeast Environmental Services, Inc., Canastota, NY.	9723
10101–P	North East Welding Supply Corp., Auburn, MA.	10101
10277–P	Worthington Cylinder Corporation, Columbus, OH.	10277
10933–P	Clean Harbors Environmental Services, Inc., Quincy, MA.	10933
11033–P	Engineering Resources, Inc. (ERI), Fayetteville, AR.	11033

Application No.	Applicant	Parties to exemption
11037–P	E.I. Dupont de Nemours & Co., Inc. (Du Pont), Wilmington, DE.	11037
11037–P	Elf Atochem North America, Inc., Philadelphia, PA.	11037

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 11, 1993.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–14327 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES INFORMATION AGENCY

Edmund S. Muskie Fellowship Program Washington Workshop

AGENCY: United States Information Agency.

ACTION: Request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from non-profit organizations with key staff based in the Washington, DC metropolitan area to assist in the administration of the Edmund S. Muskie Fellowship Program Washington Workshop to be held in Washington, DC. The grant recipient in conjunction with other organizations shall plan and implement a three- to five-day conference for approximately 150 Muskie Fellows in late January or early February 1994. The Workshop is subject to the availability of funds.

The overall goal of the Workshop is to provide the Fellows with a better understanding of democratic institutions in the U.S. Support is offered for a series of intensive seminars that will enhance Fellows' understanding of social, cultural, and political institutions and provide insight on such topics as the U.S. political system, U.S. economic policy, U.S. foreign policy, international trade and U.S. domestic policies.

In addition, the Workshop is intended to provide the following:

1. Opportunities for interaction among Fellows;
2. Opportunities for professional networking;
3. An introduction to the organizations responsible for implementing the Muskie Fellowship Program;
4. An opportunity to visit the nation's capital;
5. Opportunities to interact with the Members of Congress who made their U.S. experience possible.

DATES: Deadline for proposals: One original and 14 copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Wednesday, August 11, 1993. Faxed documents will not be accepted nor will documents postmarked on August 11, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the above deadline.

The grant awarded to an organization through this competition may extend through March 15, 1994.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Reference: Edmund S. Muskie Fellowship Program Workshop, Office of Grants Management, E/XE, room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION: Interested U.S. organizations should write or call: Mr. Ted Kniker or Ms. Gina Lemley at the U.S. Information Agency, 301 4th Street SW., Academic Exchanges Division, European Branch, E/AEE, room 208, Washington, DC 20547; telephone (202) 619–5341, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs' authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

The Edmund S. Muskie Fellowship Program was established in 1991 to provide opportunities for qualified citizens of Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan to study business administration, economics, law or public administration in the United States. The Program's overall goal is to encourage economic and democratic development in these countries. The program includes enrollment in one- or two-year degree programs at the master's level or professional development programs designed for individuals with two to five years of prior work experience in the field of study. Fellowships are granted through an open, merit-based competition on the basis of academic excellence, knowledge of the field of specialization, leadership potential and financial need.

Overview

The Edmund S. Muskie Workshop was established to bring together Muskie Fellows from across the United States for an intensive workshop in Washington, DC. The Workshop is intended to serve as an important supplement to the Fellows' on-going program of academic work and professional development. The Workshop is expected to provide the Fellows with a substantive look at the social, cultural, economic and political institutions in the U.S., and illustrate how these institutions functionally relate to the subject disciplines studied by the Fellows. Activities for the Workshop should include interactive panel discussions on various economic and democratic issues, an opportunity for the Fellows to meet the Members of Congress who made the Edmund S. Muskie Fellowship Program possible, opportunities for professional networking, an introduction to the organizations responsible for administering the Muskie Fellowship, and other activities that will reflect the local and national culture and history of the U.S. At the end of the Workshop, it is expected that the Fellows will have an enhanced understanding of U.S. democratic and economic systems so that they may better serve as the leaders

of economic development and democratic institution building in their home countries. In addition, it is anticipated that the Fellows will be able to establish long-lasting professional and personal contacts to lay the foundation for home country and regional support networks, professional associations, and ties to U.S. counterparts.

Guidelines

Eligibility

Non-profit organizations with key staff based in the Washington, DC metropolitan area and available for frequent meetings with Washington DC-based Agency staff are invited to submit proposals for a cooperative agreement award from the Agency. Organizations should also have experience in conference management, professional exchanges, and/or international exchanges.

Proposed Budget

Funding anticipated for the Workshop is estimated at $75,000, which includes all program and administrative costs. Funds for the Fellows' travel to Washington and per diem expenses have already been allocated. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. The Agency also reserves the right to revise programmatic and administrative functions without additional funding.

All organizations must submit a comprehensive line-item budget, the details and format of which are contained in the application packet. Budget requests should be presented in the format indicated in the application packet.

Allowable Costs

Grant-funded items of expenditure may include but are not limited to the following categories:

I. Administrative Expenses
- —Administration (salaries, benefits, communications, staff transportation), including administration of tax withholding and reporting as required by federal, state and local authorities;
- —Direct Costs (office supplies, postage and delivery, telephone and facsimile, equipment rental);
- —Indirect Costs.

II. Program Expenses
- —Accommodations (such as meeting rooms, breakout rooms and dining facilities) during Workshop;
- —Local transportation (including taxis, charter buses and charter vans);
- —Opening and closing events;
- —Coffee breaks, continental breakfasts, working lunches;
- —Keynote and Seminar at the Department of State;
- —Printing;
- —Speakers' expenses and honoraria;
- —Photographer.

The application should demonstrate cost-sharing (dollar and in-kind) in both program and administrative expenses.

No grants funded under this program will include profit or fee.

Gifts, gratuities, entertainment, or alcoholic beverages are unallowable.

Fellows' per diem will be reduced accordingly for any meals provided during the Workshop.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet, including the Guidelines for Preparing Proposals for the Edmund S. Muskie Fellowship Program Workshop and the Statement of Work. It is the responsibility of the applicant to ensure it has a copy of these Guidelines.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of program plan—The quality of the Workshop plan and adherence to criteria and conditions described in the application packet. Proposals should clearly demonstrate how the organization will meet the Workshop's objectives.

b. Institutional capacity—Proposed staffing levels and experience, as well as the quality and quantity of all institutional resources, should be adequate and appropriate for achieving the Workshop's goals.

c. Track record/potential—Proposal should describe the experience of the applicant organization. The Agency will consider the performance of previous and current USIA grant recipients in addition to the potential of new applicants. Demonstration of the organization's ability to achieve program goals will be evaluated.

d. Cost effectiveness—greatest return on each grant dollar. A key measure of cost-effectiveness is the unit cost to the Agency. This is the total request of USIA monies divided by the number of Fellows. The Agency also reviews the ratio of cost-sharing exhibited. Cost-sharing as well as institutional direct and in-kind funding contributions are strongly encouraged.

e. Adherence of proposed activities to the criteria and conditions described above.

f. Institutional commitment as demonstrated by financial and other support to the program.

g. Evaluation plan—proposals should provide a sound plan for evaluation to be undertaken by the selected organization.

Options for Renewal

Subject to the availability of funding for FY 1994 and the satisfactory performance of grant programs, USIA may invite grantees to submit proposals for renewals of awarded grants.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this request for proposals does not constitute an award commitment on the part of the government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified in writing of the results of the review process on or about October 15, 1993. All funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: June 10, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–14228 Filed 6–16–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 115
Thursday, June 17, 1993

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).

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

TIME AND DATE: Friday, June 25, 1993, from 9:30 a.m. to 4:30 p.m.

PLACE: The Green Room of the Golden Gate NCO Club at the Presidio in San Francisco, California.

STATUS: The meeting will be open to the public with the exception of the 11:30 a.m.–12:30 p.m. session, which will be closed to the public for the purpose of conducting deliberations on grant applications.

MATTERS TO BE CONSIDERED: The Board of Directors of the Commission on National and Community Service will meet on June 25, 1993 to discuss: (1) old business, (2) reports of the Executive Director and Executive Committee, (3) the National Service Trust Act of 1993, (4) the Community Works Progress Act, (5) funding decisions (closed meeting), (6) strategic planning, and (7) Summer of Service.

CONTACT PERSON FOR MORE INFORMATION: Terry Russell, General Counsel, Commission on National and Community Service, 529 14th Street, NW., Suite 452, Washington, DC 20045, (202) 724–0600.

Catherine Milton,

Executive Director, Commission on National and Community Service.

[FR Doc. 93–14415 Filed 6–15–93; 11:49 am]

BILLING CODE 6820–BA–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 93–13827.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 17, 1993, 10:00 a.m. Meeting Open to the Public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Compliance Regulations—Notice of Proposed Rulemaking (continued from the meeting of June 9, 1993).

DATE AND TIME: Tuesday, June 22, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, June 24, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Report from FEC Administrative Division.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–14418 Filed 6–15–93; 1:05 pm]

BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 58, No. 115
Thursday, June 17, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4625-7]

Protection of Stratospheric Ozone

Correction

In proposed rule document 93-10422 beginning on page 28094 in the issue of Wednesday, May 12, 1993, make the following correction:

On page 28094, in the first column, under **DATES**, in the third line, "June 21, 1993" should read "June 28, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984 Petroleum Environmental Research Forum

Correction

In notice document 93-12855 beginning on page 31416 in the issue of Wednesday, June 2, 1993, on page 31416, in the third column, in the first paragraph, beginning in the first line, "April 12, 1993" should read "April 21, 1993".

BILLING CODE 1505-01-D

federal register

Thursday
June 17, 1993

Part II

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Report

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 1993.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of one rescission proposal and 12 deferrals contained in five special messages for FY 1993. These messages were transmitted to Congress on October 1, and December 30, 1992, and on February 26, March 16, and April 20, 1993.

Rescissions (Attachments A and C)

As of June 1, 1993, one rescission proposal totaling $180.0 million is pending before Congress. Attachment C shows the status of this FY 1993 rescission proposal.

Deferrals (Attachments B and D)

As of June 1, 1993, $3,437.2 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1993.

Information From Special Messages

The special messages containing information on the rescission proposal and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

57 FR 46730, Friday, October 9, 1992
58 FR 3368, Friday, January 8, 1993
58 FR 16324, Thursday, March 25, 1993
58 FR 17298, Thursday, April 1, 1993
58 FR 27192, Thursday, May 6, 1993

Leon E. Panetta,

Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1993 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	180.0
Rejected by the Congress.....	---
Funding never withheld.....	---
Currently before the Congress.....	180.0

ATTACHMENT B

STATUS OF FY 1993 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	4,467.5
Routine Executive releases through June 1, 1993....	-1,030.3
Overturned by the Congress.....	---
Currently before the Congress.....	3,437.2

ATTACHMENT C
Status of FY 1993 Rescission Proposals – As of June 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
INDEPENDENT AGENCIES:								
Board for International Broadcasting Israel relay station	R93–1	180,000 1/		4–20–93				
TOTAL RESCISSIONS		180,000	0		0		0	

1/ Funds have not been withheld from obligation.

ATTACHMENT D
Status of FY 1993 Deferrals – As of June 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 6–1–93
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D93–1	492,736		10–1–92					
	D93–1A		1,492,774	12–30–92	730,354				1,255,157
Foreign military financing grants	D93–8	1,487,000		12–30–92	43,000				1,444,000
Foreign military financing program	D93–9	149,200		12–30–92	138,997				10,203
Agency for International Development									
Demobilization and transition fund	D93–2	13,750		10–1–92	5,750				8,000
International disaster assistance, executive	D93–10	63,823		2–26–93	7,068				56,755
Sub–Saharan Africa assistance, executive	D93–11	67,188		2–26–93	14,000				53,188
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D93–3	364,582		10–1–92	33,151				331,431
Expenses, brush disposal	D93–4	40,241		10–1–92					
	D93–4A		5,835	12–30–92					
	D93–4B		8	3–16–93					46,084
Timber salvage sales	D93–12	222,994		2–26–93	20,000				202,994
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D93–5	2,175		10–1–92	955				1,220

ATTACHMENT D
Status of FY 1993 Deferrals – As of June 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 6–1–93
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D93–6	7,267		10–1–92					
	D93–6A		50	4–20–93					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D93–7	10,123		10–1–92					
	D93–7A		47,761	12–30–92	37,000				20,884
TOTAL, DEFERRALS		2,921,080	1,546,428		1,030,275	0		0	3,437,233

[FR Doc. 93–14352 Filed 6–16–93; 8:45 am]
BILLING CODE 3110–01–C

federal register

Thursday
June 17, 1993

Part III

Environmental Protection Agency

Memorandum of Understanding; Open Meeting; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00359; FRL–4630–9]

Memorandum of Understanding; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a meeting of the Environmental Protection Agency, the Food and Drug Administration, and interested parties to review and discuss the Memorandum of Understanding between the Food and Drug Administration, Public Health Service, Department of Health and Human Services and the Environmental Protection Agency regarding the regulation of liquid chemical germicides intended for use on medical devices. The meeting will be open to the public.

DATES: The meeting will take place on Wednesday, June 23, 1993, from 2 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the: Environmental Protection Agency, Office of Pesticide Programs, Rm. 1126, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Juanita Wills (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 250, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (301) 305–6661.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document, along with the Memorandum of Understanding, is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial 202–512–1387 or call 202–512–1530 for disks or paper copies. This file is also available in Postscript, Wordperfect, and ASCII. The Memorandum of Understanding is available in Wordperfect and ASCII.

Dated: June 14, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division.

[FR Doc. 93–14419 Filed 6–16–93; 8:45 am]

BILLING CODE 6560–50–F

Reader Aids

Federal Register

Vol. 58, No. 115

Thursday, June 17, 1993

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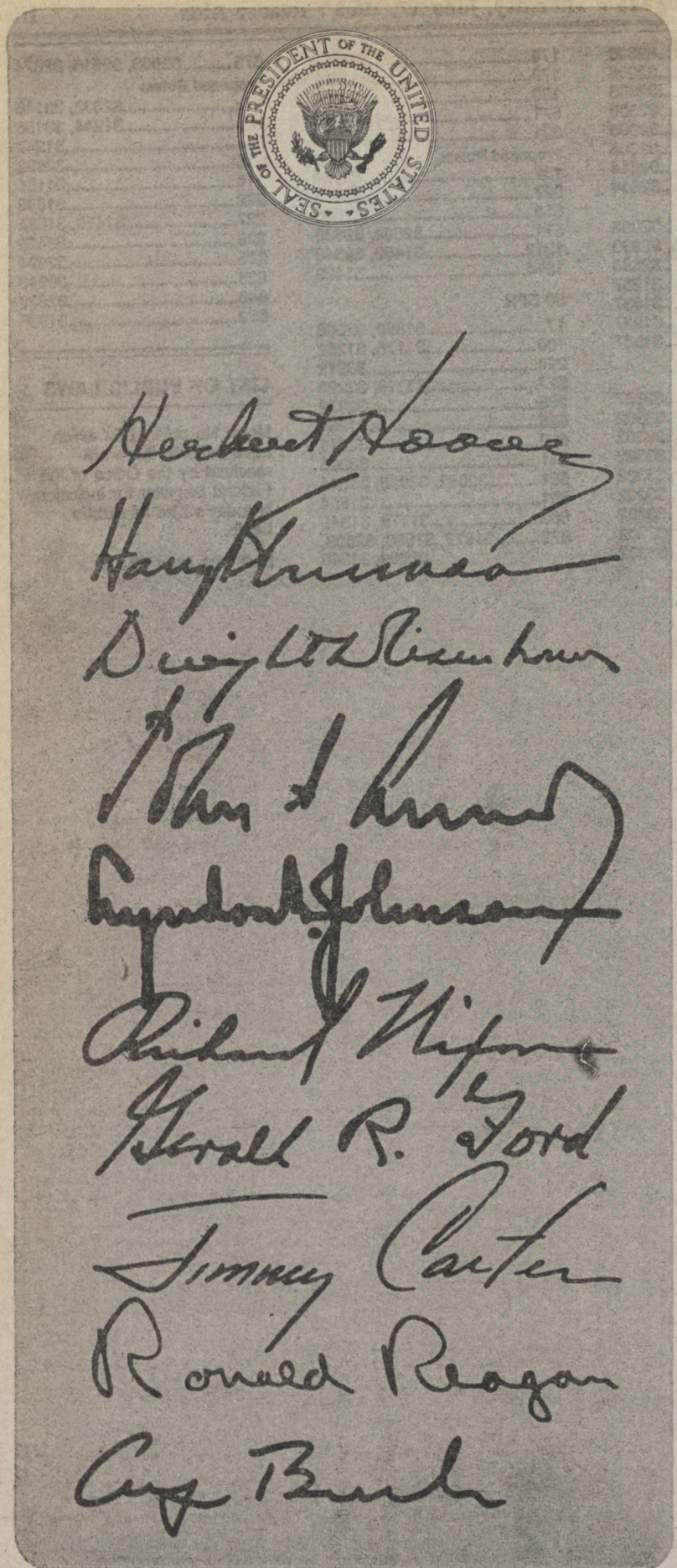
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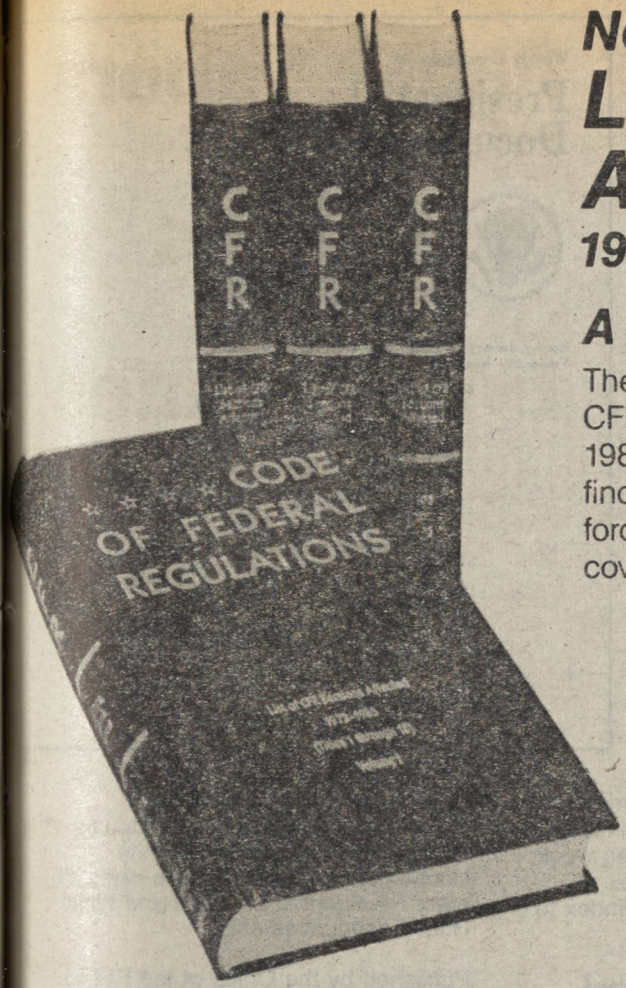
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