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Tuesday
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The President

Presidential Determination No. 89–7 of November 18, 1988

Determination Pursuant to Section 620E(e) of the Foreign Assistance Act of 1961, as Amended

Memorandum for the Secretary of State

Pursuant to Section 620E(e) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2375(e), I hereby certify that Pakistan does not possess a nuclear explosive device and that the proposed United States assistance program will reduce significantly the risk that Pakistan will possess a nuclear explosive device.

You or your delegatee are authorized and directed to publish this determination and certification in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, November 18, 1988.

[FR Doc. 88–28164
Filed 12–2–88; 4:28 pm]
Billing code 3195–01–M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[FV-88-114]

Irish Potatoes Grown in Modoc and Siskiyou Counties, CA, and all Counties in Oregon, Except Malheur County; Amendment To Relax Requirements for High Quality Red-Skinned Varieties of Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule (with minor changes) which eliminated the minimum size requirement for high quality red-skinned potatoes (also known as round red potatoes), and relieved such potatoes from special purpose shipment requirements. Before the interim final rule became effective on August 19, 1988, high quality red-skinned potatoes at least 1½ inches in diameter could be shipped under a special purpose provision. Handlers of such potatoes were required to obtain a Certificate of Privilege from the committee, meet a 50-pound minimum pack requirement, and report the shipment, grade, and usage of such potatoes to the committee. Eliminating the minimum size and other requirements was designed to meet consumer demand for smaller, high quality round red potatoes, meet the industry's need for a smaller container, and relieve handlers from safeguard requirements that are no longer necessary.

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-5610.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 947 (7 CFR Part 947), as amended, regulating the handling of potatoes grown in Modoc and Siskiyou Counties, California, and in all counties in Oregon, except Malheur County. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to 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.

There are approximately 45 handlers of Oregon-California potatoes subject to regulation under the marketing order, and approximately 470 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Oregon-California potatoes may be classified as small entities.

Red-skinned potatoes represent less than one percent of the total potato crop in the production area. This estimate is based on red-skinned potato acreage and the national average potato yield. Red-skinned potatoes are utilized mainly in the fresh market.

While in the past consumer demand has been stronger for larger sized potatoes, there currently exists a market for small red-skinned potatoes. Potatoes produced in other areas are competing for this market. These potatoes are being merchandised as a gourmet or specialty item.

An interim final rule was issued on August 16, 1988, and was published in the **Federal Register** on August 19, 1988 (53 FR 31651). That rule amended the handling regulation for Irish potatoes grown in Modoc and Siskiyou Counties, California, and all counties in Oregon, except Malheur County set forth in § 947.340 (53 FR 2996, February 3, 1988). That rule also provided that interested persons could file written comments through September 19, 1988. One comment was received from William N. Wise, Manager of the Oregon-California Potato Committee.

Prior to the effective date of the interim final rule, red-skinned potatoes were required to be at least U.S. No. 2 grade and, if shipped within the continental United States, have a minimum diameter of 2 inches or weigh at least 4 ounces. Red-skinned potatoes for export and those shipped domestically under special purpose provisions had to have a minimum diameter of 1½ inches. For red-skinned potatoes to be shipped under the special purpose provision, they had to grade at least U.S. No. 1, except for size, and be packed in containers of at least 50 pounds. The interim final rule eliminated the minimum size requirement and deleted the special purpose shipment requirements for U.S. No. 1 round red potatoes. These changes were recommended by the Oregon-California Potato Committee on a nine to one vote.

The elimination of the size requirement afforded producers and handlers the opportunity to meet current market demand for small, high quality red-skinned potatoes. This change benefitted consumers by providing them with a product they desire, and producers and handlers by increasing sales. This relaxation has not adversely affected the market for larger potatoes.

To research markets for expansion possibilities, the committee initiated a special purpose shipment provision during the 1986-87 season. This provision allowed the shipment of high quality red-skinned potatoes that measured at least 1½ inches in diameter and that were packed in quantities of 50 pounds or more. Also, handlers of such potatoes were required to obtain a

Certificate of Privilege from the committee prior to each season and report the shipment, grading and usage of the potatoes to the committee. The certification and reporting requirements aided the committee in discerning the market for such potatoes.

The interim final rule deleted the special purpose requirements for red-skinned potatoes to allow shippers to meet the industry's need for a smaller container (e.g. one-pound bag). Furthermore, the certification and reporting requirements had served their purpose and were no longer necessary.

While small red-skinned potatoes are currently in high demand, this apparently does not extend to other varieties of potatoes. For this reason, the committee recommended retaining the special purpose shipment requirements for non-red-skinned potatoes. These requirements could be eliminated at some point in the future if experience indicates that there is a viable market for these small potatoes.

The interim final rule also made an editorial change that changed the term "special purpose certificate" to "Certificate of Privilege" in paragraph (b)(3) of § 947.340. The revised term is used elsewhere in the regulation, and this change was made in the interest of consistency.

During the comment period provided by the interim final rule, one comment was submitted by William N. Wise, the manager of the Oregon-California Potato Committee, on behalf of the committee. It recommended that the handling regulation be clarified by naming the form that is used to report certain special purpose shipments. This recommendation is being adopted, and the name of the form, Special Purpose Shipment Report, is being added to subparagraphs (b)(3), (h)(1) and (h)(2) of § 947.340.

Mr. Wise also recommended that the handling regulation be revised to require handlers of potatoes for processing to obtain a Certificate of Privilege from the committee and report each shipment of such potatoes to the committee. Sufficient information to enable a full assessment of the impact of such a change in the regulation has not been provided. Further, opportunity has not been provided for interested persons including those who would be affected by these new reporting requirements to participate in the rulemaking process. This proposed rule change is therefore not being adopted at this time, but may be addressed in a future rulemaking action.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area. Because the import requirements for red-skinned potatoes are based on the marketing orders covering Washington potatoes (M.O. 946) and Colorado Area No. 2 potatoes (M.O. 948), the changes made in the handling requirements for Oregon-California potatoes will have no effect on the potato import regulation.

The information collection requirements contained in the handling regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581–0112. The previously approved information collection burden has been reduced by the elimination of the reporting requirements applicable to shipments of small, high quality red-skinned potatoes.

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

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, Potatoes, Oregon, California.

For the reasons set forth in the preamble, the interim final rule amending 7 CFR Part 947 which was published at 53 FR 31650–31651 on August 19, 1988, is adopted with modification as a final rule to read as follows:

PART 947—POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

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

2. Section 947.340 is amended by revising paragraphs (b), (h)(1) and (h)(2) to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 947.340 Handling regulation.

* * * * *

(b) *Size requirements.* (1) Such potatoes shipped to points within the continental United States shall be at least 2 inches in diameter or weigh at least 4 ounces, and such potatoes shipped to export destinations shall be at least 1⅛ inches in diameter.

(2) Red-skinned varieties of potatoes may be shipped without regard to any minimum size requirement, if they otherwise grade at least U.S. No. 1.

(3) All non-red-skinned varieties of potatoes that measure less than 1⅛ inches in diameter may be shipped if such potatoes otherwise grade at least U.S. No. 1 and are packed in quantities of 50 pounds or more per container: *Provided,* That any person who desires to handle such potatoes shall each season prior to shipment apply for and obtain a Certificate of Privilege from the committee authorizing shipment of the potatoes for market expansion purposes: *Provided further,* That any person who so handles potatoes for market expansion purposes shall promptly report the shipment, grading, and usage of the potatoes to the committee on Special Purpose Shipment Report forms.

* * * * *

(h) * * *

(1) Each handler making shipments of certified seed outside the district where grown pursuant to paragraph (g) of this section shall obtain from the committee a Certificate of Privilege, and shall furnish a report of shipments to the committee on Special Purpose Shipment Report forms.

(2) Each handler making shipments of potatoes pursuant to paragraphs (g)(2), (4)(i), and (5) of this section shall obtain a Certificate of Privilege from the committee, and shall report shipments on Special Purpose Shipment Report forms at such intervals as the committee may prescribe in its administrative rules.

* * * * *

Dated: December 1, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–28069 Filed 12–5–88; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R-0653]

Reserve Requirements of Depository Institutions; Reserve Requirement Ratios

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending 12 CFR Part 204 (Regulation D—Reserve Requirements of Depository Institutions): (1) To increase the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act (12 U.S.C. 461(b)(2)(C)), from $40.5 million to $41.5 million of net transaction accounts (known as the low reserve tranche adjustment); (2) to increase the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent, as required by section 19(b)(11)(B) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(B)), from $3.2 million to $3.4 million of reservable liabilities (known as the reservable liabilities exemption adjustment); and (3) to increase the deposit cutoff level which is used in conjunction with the reservable liabilities exemption amount to determine the frequency of deposit reporting from $40.0 million to $42.1 million.

EFFECTIVE DATE: December 6, 1988. For depository institutions that report weekly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will be effective starting with the reserve computation period beginning on Tuesday, December 27, 1988, and with the corresponding reserve maintenance periods beginning Thursday, December 29, 1988, for net transaction accounts, and on Thursday, January 26, 1989, for other reservable liabilities. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will be effective with the computation period beginning on Tuesday, December 20, 1988, and with the reserve maintenance period beginning Thursday, January 19, 1989. For all depository institutions, the increase in the deposit cutoff level will be used to screen institutions in the second quarter of 1989 to determine reporting frequency beginning September 1989.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452-3778), Legal Division, or Patrick Mahoney, Economist (202/452-3827), Division of Monetary Affairs; for users of the Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act requires each depository institution to maintain with the Federal Reserve System reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for each depository institution's total transaction accounts of $25 million or less and at 12 percent on total transaction accounts above $25 million. Section 19(b)(2) further provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the total dollar amount of the transaction account tranche against which reserves must be maintained at a ratio of three percent. The adjustment in the tranche is to be 80 percent of the percentage change in total transaction accounts for all depository institutions determined as of June 30 of each year.

Currently, the amount of the low reserve tranche on transaction accounts is $40.5 million. The growth in the total net transaction accounts of all depository institutions from June 30, 1987, to June 30, 1988, was 3.0 percent (from $586.6 billion to $604.1 billion). In accordance with section 19(b)(2), the Board is amending Regulation D to increase the amount of the low reserve tranche for transaction accounts for 1986 by $1.0 million to $41.5 million.

Section 19(b)(11)(A) of the Federal Reserve Act provides that $2 million of reservable liabilities [1] of each depository institution shall be subject to a zero percent reserve requirement. Section 19(b)(11)(A) permits each depository institution, in accordance with the rules and regulations of the Board, to designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (*i.e.*, transaction accounts within the low reserve requirement tranche) may be so designated.

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. The change in the amount is to be made only if the total reservable liabilities held at all depository institutions increases from one year to the next. The percentage increase in the exemption is to be 80 percent of the percentage increase in total reservable liabilities of all depository institutions determined as of June 30 each year. The growth in total reservable liabilities of all depository institutions from June 30, 1987, to June 30, 1988, was 6.5 percent (from $1,184.6 billion to $1,261.7 billion). In accordance with section 19(b)(11), the Board is amending Regulation D to increase the amount of the reserve requirement exemption from 1989 by $0.2 million to $3.4 million.

As a result, the effect of these amendments is to raise the low reserve tranche to $41.5 million and to apply a zero percent reserve requirement on the first $3.4 million of transaction accounts and a three percent reserve requirement on the remainder of the low reserve tranche. Any amount of this zero percent reserve requirement tranche remaining after applying it to transaction accounts will then be applied to nonpersonal time deposits with maturities of less than 1½ years or to Eurocurrency liabilities, both of which are subject to a reserve requirement ratio of three percent.

The tranche adjustment and the reservable liabilities exemption adjustment for weekly reporting institutions will be effective starting with the reserve computation period beginning on Tuesday, December 27, 1988, and with the corresponding reserve maintenance periods beginning Thursday, December 29, 1988, for net transaction accounts, and on Thursday, January 26, 1989, for other reservable liabilities. For institutions that report quarterly, the tranche adjustment and the exemption will be effective with the computation period beginning on Tuesday, December 20, 1988, and with the reserve maintenance period beginning Thursday, January 19, 1989. In addition, all entities currently submitting Form FR 2900 will continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board in 1981 established a deposit reporting cutoff level of $25 million to determine deposit reporting frequency. Institutions

are screened during the second quarter of each year to determine reporting frequency beginning the following September. In March of 1985, the Board decided to index this reporting cutoff level equal to 80 percent of the annual rate of increase of total deposits.[2] In July of 1988, in conjunction with approval of the extension of the deposit reporting system, the Board increased the cutoff to $40 million, effective in September 1988, from the $30 million cutoff that would have become effective in September 1988.

From June 30, 1987, to June 30, 1988, total deposits grew 6.5 percent, from $3,296.9 billion to $3,511.4 billion. This results in an increase of $2.1 million in the deposit cutoff level which determines frequency of reporting from the current $40.0 million to $42.1 million. Based on the indexation of the reserve requirement exemption, the cutoff level for total deposits above which reports of deposits must be filed rises $0.2 million to $3.4 million. Institutions with total deposits below $3.4 million are excused from reporting if their deposits can be estimated from other sources. The $42.1 million cutoff level for weekly versus quarterly FR 2900 reporting and for quarterly FR 2910q versus annual FR 2910a reporting, and the $3.4 million level threshold for reporting will be used in the second quarter 1989 deposits report screening process, and the adjustments will be made when the new deposit reporting panels are implemented in September 1989.

All U.S. branches and agencies of foreign banks and all Edge and Agreement Corporations, regardless of size, and all other institutions with reservable liabilities in excess of the exemption level amount prescribed by section 19(b)(11) of the Federal Reserve Act (known as "nonexempt institutions") and with total deposits at least equal to the deposit cutoff level are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). Depository institutions with reservable liabilities in excess of the exemption level amount but with total deposits less than the deposit cutoff level may file the FR 2900 quarterly effective each September. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) on the same frequency as they file the FR 2900. The deposit cutoff is also used to determine whether an institution with reservable liabilities at or below the exemption level amount (known as an "exempt institution") must file one of two reduced deposits reports—the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) or the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a). Exempt institutions (that is, institutions with total deposits less than the exemption amount) are not required to file a deposits report if their deposits can be estimated from other sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or it overstates the deductions allowed in computing required reserve balances.

Notice and Public Participation

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve adjustments prescribed by statute and an interpretative statement reaffirming the Board's policy concerning reporting practices. The amendments also reduce regulatory burdens on depository institutions. Accordingly, the Board believes that notice and public participation is unnecessary and contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular effect on other small entities.

List of Subjects in 12 CFR Part 204

Banks, banking, Currency, Federal Reserve System, Penalties and reporting requirements.

Pursuant to the Board's authority under section 19 of the Federal Reserve Act, 12 U.S.C. 461 *et seq.*, the Board is amending 12 CFR Part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. The authority citation for 12 CFR Part 204 continues to read as follows:

Authority: Secs. 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); sec. 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and sec. 411 of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

2. In § 204.9, paragraph (a) is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement Corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts: [1]	
$0 to $41.5 million	3 percent of amount.
Over $41.5 million	$1,245,000 plus 12% of amount over $41.5 million.
Nonpersonal time deposits: By original maturity (or notice period):	
Less than 1½ years	3 percent.
1½ years or more	0 percent.
Eurocurrency liabilities	3 percent.

[1] Dollar amounts do not reflect the adjustment to be made by the next paragraph.

(2) *Exemption from reserve requirements.* Each depository institution, Edge or Agreement Corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a)(1) of this section, nonpersonal time deposits, or Eurocurrency liabilities or any combination thereof not in excess of $3.4 million determined in accordance with § 204.3(a)(3) of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-27846 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

[2] In November of 1985, the Board amended the definition of "total deposits" as used in determining the cutoff level to include not only gross transaction deposits, savings accounts, and time deposits but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

[T.D. 88-78]

Tariff Classification of Wire Rope With Becket Attachments

AGENCY: Customs Service, Treasury.

ACTION: Final interpretative rule.

SUMMARY: This document gives notice of a change in the tariff classification of wire rope with becket attachments or becket loops. This merchandise has previously been classified under the provision for wire ropes, cable or cordage fitted with hooks, swivels, clamps, clips, thimbles, sockets or other fittings in item 642.20, Tariff Schedules of the United States (TSUS). Merchandise classifiable under that item is dutiable at the column 1 rate of 5.7 percent ad valorem, but is not subject to any import restrictions under voluntary restraint arrangements (VRA's). The heavy-duty type of rope generally involved in this matter will now be classified under the provision for steel rope not fitted with fittings in item 642.16, TSUS, which requires a column 1 rate of duty of 4 percent ad valorem. If of stainless steel, the rope will now be dutiable at the rate of 4.4 percent ad valorem under item 642.14, TSUS. Merchandise classifiable under either item 642.14 or item 642.16 may not be imported without visas as required under VRA's. The applicable VRA's are agreements between the United States and such entities as the European Economic Community, Japan and the Republic of Korea under which exports of certain steel products to the United States are voluntarily limited. Customs published a previous notice of proposed change in this matter requesting comments on the proposed reclassification and an appropriate effective date for any change.

EFFECTIVE DATE: This decision will be effective as to merchandise entered, or withdrawn from warehouse, for consumption, on or after 30 days from the date of publication of this decision in the Customs Bulletin.

FOR FURTHER INFORMATION CONTACT: James A. Seal, General Classification Branch, Office of Regulations and Rulings (202) 566-8181.

SUPPLEMENTARY INFORMATION:

Background

Customs received on behalf of an organization representing domestic steel wire rope producers a request that the Customs position concerning the tariff classification of wire rope with becket attachments or becket loops be reconsidered. It was claimed that this classification was not consistent with later Customs classification positions affecting steel cordage products, and that an analysis of import statistics suggested that the Customs classification in question was being abused as a mean for avoiding limitations under applicable voluntary restraint arrangements (VRA's). The applicable VRA's are agreements between the United States and certain steel producing countries, such as the Republic of South Korea, Japan and the European Economic Community, to voluntarily limit exports to the United States of certain basic steel products identified by Tariff Schedules of the United States (TSUS) item numbers. In order to show compliance with the applicable restrictions, imports of the steel products are not entitled to admission into the United States unless accompanied by the necessary visa. Accordingly, Customs published a notice in the **Federal Register** on October 1, 1987 (52 FR 36789), that the classification in question was under review. The notice also requested public comment regarding the substantive considerations involving classification as well as comments concerning an appropriate effective date for any change in position.

The merchandise affected by this document mainly consists of heavy-duty steel wire rope typically used as hoist, drag or similar lines in earthmoving or mining equipment or in other heavy-duty applications. Rope of this type generally must be attached to the equipment with which it is used by mechanical connections, rather than by preattached fittings (which are not a practical means for transferring full loads to and from the rope when placed in service). However, the rope is supplied with becket attachments or becket loops which provide a means for handling the rope. For example, a more flexible rope of smaller diameter and load capacity may be attached to the larger rope using beckets to guide it for the purpose of threading the larger rope through pulleys or otherwise positioning it before full load connections are made.

In a letter dated November 1, 1974 (036046), Customs Headquarters ruled that wire rope with a pad eye welded to one end with a becket loop attached for use in a power shovel was classifiable under the provision for wire ropes, cables or cordage fitted with hooks, swivels, clamps, clips, thimbles, sockets or other fittings in item 642.20, TSUS. In apparent reliance on this precedent, New York Customs Region ruling letters dated March 23, 1986 (808452), and May 28, 1986 (818700), held wire rope with becket loops to be similarly classifiable. None of these rulings, however, examined the scope of the involved provision.

In the decision claimed to be inconsistent with that position, protest review decision dated April 23, 1984 (072959), Headquarters reviewed the tariff status of 7-wire prestressed concrete strand in continuous lengths of approximately 4,000 feet on reels. A cylinder with tapered center hole (chuck) was attached to each end of the strand. The chuck's stated purpose was to prevent fraying of the ends and to facilitate unreeling and handing of the strand during further processing. Customs rejected the protestant's claim that the merchandise was properly classifiable under item 642.20 as wire rope fitted with fittings. In confirming that the provision for steel strand not fitted with fittings in item 642.11, TSUS, represented the proper classification, Customs found that the chucks did not make the strand suitable for the use intended, and that they did not dedicate the strand to any particular use. Customs stated that the "fittings" within the meaning of the involved provisions were functional attachments for articles which have an identifiable use. Headquarters amplified that position in a letter dated August 16, 1984 (072959), by stating that in the context of the involved provisions a "fitting" must make the strand fit or suitable for, or adapt it to the purpose intended, and that attachments which do not make the strand ready for final use do not "fit" the strand in a tariff sense.

While merchandise classifiable under the provision for steel ropes fitted with fittings in item 642.20 is not subject to any VRA restrictions, the merchandise is subject to a column 1 rate of duty of 5.7 percent ad valorem. While changing the classification of merchandise to the provision for steel ropes not fitted with fittings in item 642.16 TSUS, will make it subject to visa requirements under applicable VRA's, the change also results in a reduction in the rate of duty to 4 percent ad valorem. For stainless steel wire cordage without fittings classifiable under item 642.14, TSUS, the rate of duty would be reduced to 4.4 percent ad valorem.

In response to the Customs Federal Register notice requesting comments on the change, a further submission was received on behalf of the same domestic producers initially requesting this review. In addition to further advocating the change, the comments also stated

that the change should be made without further delay. Submissions were received from seven other commenters, all of which were opposed to the change, and which included comments on behalf of importers and from foreign industry representatives.

Analysis of Comments

The main objection to the change was that the classification of the type of wire rope at issue with beckets as rope with fittings constituted a premise on which the applicable VRA's were negotiated, and that the change in classification will change the intended scope of VRA's and represent a unilateral violation of negotiated quotas. Customs recognizes that the change may impact the quantitative levels under the respective VRA's. However, Customs is equally cognizant of its obligations to properly classify and assess duty on merchandise in accordance with its condition as imported.

A second objection was that various Customs rulings have classified beckets as fittings, that they are so classified internationally, and that judicial precedent requires that beckets be classified as fittings. Customs has legal authority to modify or revoke rulings found to be in error, and, in fact, has a responsibility to do so. Moreover, *Oxford International Corp.* v. *United States*, 68 Cust. Ct. 12, C.D. 4326 (1972), cited by a commenter in connection with this objection, held that plastic covered lengths of wire cable fitted at either end with barrel and ferrule connectors, and used to transmit force in bicycle caliper brake systems, were fittings for item 642.20 purposes because they served a connective and fastening purpose. We do not agree that this is authority for the similar classification of wire rope with beckets that do not assist the rope in performing its ultimate function.

It was further commented that beckets are "fittings" both by common meaning and commercial usage, and that they are functional attachments which adapt or "fit" a rope for use as a drag line or hoist line on a particular piece of mining equipment, and that the temporary use of beckets does not negate their functional characteristics. However, the claim that beckets are within the common meaning of the term "fittings" is not supported by any lexicographic references. Moreover, they do not "fit" wire rope for tariff purposes because they do not adapt the rope to the purpose for which it is intended. Their only purpose is to pull a wire rope into place on a particular piece of equipment or in a particular application. With respect to mining equipment, such as an excavator, the rope is fastened for full load transfer to the drum and bucket respectively, by a series of clamps and wedge sockets, to function as a hoist line, boom pendant, etc. Becket end preparations or attachments are facilitating in nature, and do not enable the rope to transmit motion or perform some other specific function.

Another commenter stated beckets are custom-made attachments which dedicate heavy-duty ropes cut to lengths of over 500 feet for a specific end use, and that the ropes could not be used without them. It was further noted that ropes with beckets are ready to be installed upon importation and require no post-importation processing. However, we do not agree that beckets dedicate wire rope to its specific end use. The fact that ropes may be custom-made and require no post-importation processing is not dispositive.

A further claim was that beckets are *ejusdem generis* with the named exemplars, "hooks, swivels, clamps, clips, thimbles, sockets," preceding the general term "other fittings" in the superior heading to item 642.20. However, under the doctrine of *ejusdem generis*, we believe that beckets would be excluded from the general term "other fittings." The enumerated exemplars are end terminations, each with its own individual characteristic which will fit the needs of a given installation better than the others. Unlike beckets, these end terminations fit rope or cable for a particular ultimate purpose, which is their common feature not shared by beckets.

With respect to the comment that a change in classification and consequent application of import restrictions should be made effectively immediately, the Customs Service in the past has delayed the effective date of changes in positions which result in the imposition of a restriction which was not applicable under the previous position. The delays allow time for affected importers to readjust their business arrangements and avoid reliance on the previous position to their detriment. However, changes which result in reductions in rates of duty are generally made effective as to all entries which are open as of the date of the change and for which there has not been a final liquidation. In the instant matter, where the change has both an advantageous and disadvantageous result, these requirements are in conflict. Since both duty rate and VRA consequences are linked to the tariff classification of the merchandise, the single effective data chosen for any change must be one of which best takes into account both the benefit and detriment of the change.

Decision

After careful analysis of the comments submitted and further review of this matter, the previously proposed change in classification is adopted, and steel wire rope otherwise classifiable under the provisions of item 642.14 or item 642.16, TSUS, covering ropes without fittings, will not be excluded from those provisions and classified under the provision for steel wire rope with fittings in item 642.20, TSUS, on the basis of the presence of beckets or becket loops. This change in classification and resulting reduction in rates of duty is effective as to merchandise entered, or withdrawn from warehouse, for consumption, on or after 30 days from the date of publication of this decision in the Customs Bulletin. Customs previous decisions of November 1, 1974 (036046), March 23, 1986 (808452) and May 28, 1986 (818700) are revoked and will no longer be followed.

Drafting Information

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved:

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

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INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Interim Rules Governing the Posting and Possible Forfeiture of Temporary Relief Bonds by Complainants in Investigations of Unfair Practices in Import Trade

AGENCY: International Trade Commission.

ACTION: Interim rules and request for comments.

SUMMARY: The Commission has revised certain rules in 19 CFR Part 210 (53 FR 33043, Aug. 29, 1988) on an interim basis to implement the following: (1) A new statutory provision authorizing the Commission to require complainants who are seeking a temporary exclusion order under subsection (e) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(e)) to post a bond as a prerequisite

to the issuance of such relief; and (2) Congressional authorization in the legislative history of the statutory bonding provision for the Commission to order forfeiture of the bond to the U.S. Treasury if, after issuing a temporary exclusion order conditioned on a bond, the Commission determines that the respondents have not violated section 337.

DATES: The effective date of the interim rules is November 21, 1988. Comments on the interim rules will be considered by the Commission in promulgating final rules if received no later than February 6, 1989.

ADDRESS: A signed original and fourteen (14) copies of each set of comments, along with a cover letter addressed to Kenneth R. Mason, Secretary, should be sent to the U.S. International Trade Commission, Office of the Secretary, 500 E. Street SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1061. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION:

The Omnibus Trade and Competitiveness Act of 1988 and Its Legislative History

The temporary relief provisions of section 337 of the Tariff Act of 1930 ("the Tariff Act") (19 U.S.C. 1337 (e) and (f)) were amended in several important respects by the recently enacted Omnibus Trade and Competitiveness Act of 1988 ("the Omnibus Trade Act"), Pub. L. No. 100–418, 102 Stat. 1107 (1988).[1] Among other things, complainants can be required to post a bond as a prerequisite to the issuance of a temporary exclusion order. *See* 19 U.S.C. 1337(e)(2), created by section 1342(a)(3)(B) of the Omnibus Trade Act. The purposes of requiring a bond are to deter frivolous requests for temporary relief and to deter use of temporary relief for harassment of respondents and other improper purposes. *See* 134 Cong. Rec. H1863 and H2044 (April 20, 1988); H.R. Rep. No. 576, 100th Cong., 2d Sess. 635–636 (1988); 133 Cong. Rec. S10364–S10365 (July 21, 1987 (Statement of Sen. Lautenberg). The Commission's authority to require a bond also is intended by Congress to be a means of overcoming Commission hesitation to grant temporary exclusion orders. *See* 133 Cong. Rec. S10365; 134 Cong. Rec. H2044; H.R. Rep. No. 576 at 635.

The legislative history of the statutory bonding provision indicates that if the Commission issues a temporary exclusion order conditioned on a bond and subsequently determines that the respondents have not violated section 337, the bond may be forfeited to the U.S. Treasury in accordance with rules prescribed by the Commission. *See* H.R. Rep. No. 576 at 635; 133 Cong. Rec. S10365; H.R. Rep. No. 40, 100th Cong., 1st Sess. 158–159 (1987). The forfeiture authorization is intended to provide a further disincentive to abuse of requests for temporary exclusion orders by complianants. *See* H.R. Rep. No. 576 at 635; 134 Cong. Rec. H2044.

The effective date of the statutory bonding provision is November 21, 1988. *See* section 1342(d)(1)(B) of the Omnibus Trade Act; H.R. Rep. No. 576 at 635; 134 Cong. Rec. H2044. The interim rules set forth in this notice governing the posting and possible forfeiture of bonds by complainants apply only with respect to motions for temporary exclusion orders filed on or after November 21, 1988.

The Procedure for Adopting Interim Rules

The Legislative History of the statutory bonding provision admonished the Commission to issue implementing interim rules as expeditiously as possible. *See* H.R. Rep. No. 576 at 635; 134 Cong. Rec. H2044. Ordinarily, Commission rules to implement new legislation are promulgated in accordance with the rulemaking provision of the Administrative Procedure Act ("the APA"), which encompasses the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules 30 days prior to their effective date. *See* 5 U.S.C. 553(b) through (d). Because of the amount of time needed to develop interim bonding and forfeiture rules and the Congressional admonition to issue such rules as expeditiously as possible, the customary procedure could not be used. A notice soliciting public comments on proposed interim bonding and forfeiture rules was published in the **Federal Register** of November 3, 1988, 53 FR 44463. However, the time allotted for interested persons to file such comments was shorter than usual because of the limited time remaining before the effective date of the statutory bonding provision. *See* 53 FR 44463 and 44464 at footnote 2.[2] Time constraints imposed by the statutory effective date of the bonding provision also made it impossible for the Commission to publish the final interim rules set forth in this notice 30 days prior to their effective date.[3]

The interim bonding and forfeiture regulations that the Commission has adopted are intended to respond only to the exigencies created by the statutory bonding provision and the legislative history authorizing the Commission to order forfeiture of bonds. Final rules governing the posting and possible forfeiture of temporary relief bonds by complainants will be promulgated in accordance with the complete APA notice, public comment, and advance publication procedure.

Determinations Pursuant to Executive Order 12291 of February 17, 1981, and the Regulatory Flexibility Act

The Commission has determined, for the following reasons, that the interim rules contained in this notice are not subject to the provisions of Executive Order 12291 of February 17, 1981 (46 FR 13193, Feb. 19, 1981) governing federal regulation: Some of the interim rules pertain to administrative actions governed by the provisions of sections 556 or 557 of the APA (5 U.S.C. 556 and 557) (*e.g.*, evidentiary hearing and the issuance of an initial determination by a Commission administrative law judge and discretionary review by the Commission) and thus are not "regulations" or "rules" within the meaning of section 1(a) of Executive Order 12291. The interim rules also do not qualify as "major rules" under section 1(b) of Executive Order 12291 because they do not result in the following:

(1) An annual effect on the economy of $100 million or more;

[1] *See* FR 33043 (Aug. 29, 1988) for a summary of all the Omnibus Trade Act's amendments to section 337 and the text of interim Commission rules implementing the amendments that became effective on August 23, 1988.

[2] The public comments the Commission received concerning the proposed interim bonding and forfeiture rules are discussed elsewhere in this notice.

[3] Under section 553 of the APA, an agency may dispense with the publication of a notice of "final" interim rules 30 days prior to their effective date if (1) the rules are interpretive rules or statements of policy, or (2) the agency finds that "good cause" exists for not meeting the advance publication requirement, and (3) that finding is published along with the rule. *See* 5 U.S.C. 553(d)(3). In this instance, the Commission has determined that the amount of time needed to develop interim bonding rules, the short period allotted for pomulgating such rules, and the Congressional admonition to do so as expeditiously as possible constitute "good cause" for not complying with the 30-day advance publication requirement.

(2) A major increase in costs (apart from the litigation costs of obtaining a temporary exclusion order in an investigation under section 337 of the Tariff Act of 1930) or prices for consumers, individual industries, Federal, state, or local government agencies, geographic regions, or individual industries; or

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

In accordance with the Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 note), the Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the interim rules set forth in this notice are not likely to have a significant economic impact on a substantial number of small business entities. The Commission feels justified in making this certification, for the following reasons:

(1) The interim bonding and forfeiture rules set forth in this notice apply only to companies that are seeking a temporary exclusion order under section 337 of the Tariff Act of 1930. Historically, motions for temporary exclusion orders have been filed by only a very small percentage of the total number of section 337 complainants.[4] Although the Commission does not maintain statistics on the size of companies that appear before it as section 337 complainants, it safely can be said that not all complainants that seek temporary exclusion orders are small businesses as defined in 5 U.S.C. 601 and 15 U.S.C. 632.

(2) The Commission notes also that the interim rules which it has adopted are flexible enough not to unduly inhibit the ability of complainants that are small businesses to comply with the prescribed bonding and foreiture procedure or to compete in the marketplace (consequences that the RFA is designed to prevent). For example, with respect to bonding, the interim rules provide that even though there is a policy favoring the imposition of a bond in every case, the Commission may, in an appropriate case, waive the bond or require only a nominal bond after considering factors such as hardship to the complainant.

The interim rule governing the bond-related documentation that must be filed with motions for temporary relief also has a certain amount of flexibility designed to accommodate small businesses. The rule requires the complainant to submit certain audited financial statements or "the equivalent thereof." The rule was drafted in this fashion in recognition of the fact that some complainants may be very small businesses and may not have audited statements prepared. The Commission thus determined to accept reasonably equivalent substitutes to accommodate such complainants.

[4] For example, of the 17 investigations instituted in 2 involved a motion for a temporary exclusion order. Of the 23 investigations instituted in 1986, none involved a motion for a temporary exclusion order.

Summary of Public Comments on the Proposed Interim Rules, Overview of the Bonding and Forfeiture Processes, and Explanation of the Specific Interim Revisions to 19 CFR Part 210 (53 FR 33043 Aug. 29, 1988)

Apparently because of the short time allotted for filing, the Commission did not receive a large number of comments on the proposed interim bonding and forfeiture rules. The ITC Trial Lawyers Association ("ITCLA") filed a letter stating that it had not been able to prepare comments on the proposed rules within the time provided, but would file comments on the "final" interim rules for consideration by the Commission in drafting final rules. *See* letter to Kenneth R. Mason from Sandra A. Sellers of the ITCLA (dated Nov. 9, 1988). The only comments the Commission received were from the International Electronics Manufacturers and Consumers of America, Inc. ("IEMCA"), an association whose members include potential section 337 respondents and some potential complainants. *See* Letter to Kenneth R. Mason from the law firm of Powell, Goldstein, Frazer & Murphy (dated Nov. 9, 1988) and the accompanying comments of the IEMCA. The IEMCA's comments and the Commission's responses thereto are integrated into the discussion which follows.

1. Determining Whether the Complainant Should Be Required To Post a Bond and, if so, the Amount of the Bond

The procedures governing the disposition of motions for temporary relief are found primarily in interim rules 210.24(e), 210.41, 210.53, 210.58, and 210.59. *See* 53 FR 33043, 33060–33063, 33068, 33070, and 33072 (Aug. 29, 1988). The new interim rules governing the posting of bonds by complainants as a prerequisite to the issuance of a temporary exclusion order have been incorporated into those rules. Where appropriate, the interim bonding rules are based on or contain citations to Treasury Department and U.S. Customs Service regulations and statutes. For the most part, the preamble and interim rules set forth below are the same as the preamble and proposed interim rules published on November 3, 1988 (53 FR 44463).

Commission decisions on whether to require a complainant to post a bond and, if so, the amount of the bond, will be made by the initial determination/discretionary Commision review procedure that is currently used to determine whether to grant or deny motions for temporary relief. The factors administrative law judge and the Commission will consider in determining whether to require a bond include those specified in the legislative history of the bonding provision, as well as consideration of the public interest, which is to be paramount in the administration of section 337. *See* 133 Cong. Rec. S10365; H.R. Rep. No. 576 at 635; 134 Cong. Rec. H2044; S. Rep. No. 1298, 93 Cong., 2d Sess. 193 (1974). Complainants who seek a temporary exclusion order will be required to address the issues of bonding and the amount of the bond in the motion for temporary relief and to provide coroborating documentation with the motion. Each respondent's response to the motion must respond to bonding arguments in the motion for temporary relief to the extent possible.[5] In light of the stringent statutory deadlines for determining whether to grant temporary relief and the intent of Congress that the Commission issue temporary relief orders more quickly than it issued them under the previous enactment of section 337 (*see* H.R. Rep No. 40 at 159; S. Rep. No. 71, 100th Cong., 1st Sess. 131 (1987), the Commission believes that having as much relevant bonding data as possible before the administrative law judge at the outset of the temporary relief proceeding will foster the development of a more complete record (since the respondents and the Commission investigative attorney can conduct discovery and challenge the complainant's bonding data and assertions). It also will facilitate resolution of the question of bonding within the period allotted by law for determining whether to grant motions for temporary exclusion orders, as well as the expeditious issuance of a temporary exclusion order if the motion is granted and a bond is required.

The interim rules enunciate a policy favoring the requirement of a bond in every case in which the complainant will receive a temporary exclusion order. In a case where the complainant seeks to be excused from posting a bond, the complainant will have the

[5] *See infra* n.12.

burden of persuading the Commission that exemption from the bond requirement is warranted. The Commission believes that such a policy is consistent with the stated purpose of the bonding provision, which is to deter complainants from filing frivolous motions for temporary relief or using temporary relief as a means of harassing the respondent. *See* H.R. Rep. No. 576 at 635–636; 133 Cong. Rec. S10364–S10365; 134 Cong. Rec. H2044. The Commission also believes that a Commission policy favoring the imposition of a bond is consistent with the Congressional intent that the bond serve as a means of overcoming Commission hesitation to grant temporary relief (*e.g.*, in cases where the motion for temporary relief does not appear to be frivolous but the strength of the complainant's case is not overwhelming). 133 Cong. Rec. S10365; H.R. Rep. No. 576 at 635; 134 Cong. Rec. H2044.

The Commission believes that any perceived unfairness to complainants stemming from a Commission policy favoring the posting of bonds by complainants to secure temporary exclusion orders is mitigated somewhat by the fact that the Commission has considerable discretion in determining the amount of the bond and thus would be free to require only a nominal bond in appropriate cases. (The Commission notes also that the IEMCA, whose membership includes potential complainants as well as potential respondents expressed no objection to the aforesaid Commission policy favoring the imposition of a bond.)

As stated previously, the legislative history of the statutory bonding provision indicates that the purposes of requiring a bond are to deter frivolous requests for temporary exclusion orders and to deter the use of such relief by complainants to harass respondents or for other improper purposes. *See* H.R. Rep. No. 576 at 635–636; 134 Cong. Rec. H2044; 133 Cong. Rec. S10364–S10365. The Commission's goal in computing the amount of the bond is therefore is select an amount that is sufficient to deter the complainant in question from misusing the temporary exclusion order process and/or the temporary exclusion order if such relief is granted.[6]

In light of (1) the stringent new statutory deadlines for granting temporary relief (90 days in an ordinary investigation and up to 150 days in a "more complicated" investigation),[7] (2) the wide range of issues parties conceivably could raise in their arguments concerning the posting of a temporary relief bond by the complainant, and (3) the Commission's lack of prior experience with complainants' temporary relief bonds, the Commission found it appropriate to adopt an interim rule containing a specific formula for calculating the amount of the bond. A prescribed formula will not only make the computation relatively easy, it also will ensure, to a certain extent, that the bonding provision is applied in a reasonably consistent fashion and that a complainant considering seeking temporary relief will have some idea of the amount at issue (at least in certain types of cases).

For those reasons, the interim rules provide that in cases where a domestic industry exists and domestic sales have commenced and have not been de minimis, the Commission generally will require a bond in an amount ranging from 10 to 100 percent of sales revenues and licensing royalties from the domestic product at issue, as reported in the complainant's annual financial statements for the most recently completed fiscal year. The advantages of this formula are the following:

(1) In most cases, the Commission will not have to rely on allocations. Financial statement sales revenue figures generally are audited numbers and hence specific product revenues should be readily available.

(2) Since a sales revenue figure generally is an audited number, it has some validity. Hence, the only verification documents that the complainant must file along with the motion for temporary relief are (a) the audited financial statements (or the equivalent thereof) for the most recently completed fiscal year, (b) the back-up income statements, work sheets, or other documents showing product revenues tied to the aggregate revenue listed on the financial statements, and (c) a certification under oath by the complainant's chief financial officer indicating that the detail provided in the work sheets or other documents tied to the audited financial statements is correct.

(3) A bond computation formula keyed to a percentage of sales revenues and licensing royalties is appropriate because a bond amount can be tailored to provide a meaningful deterrent to complainant's abuse of temporary relief by taking into account the extent of the complainant's involvement with articles of the type under investigation and the complainant's relative financial strength.[8]

If the facts and circumstances so warrant, the presiding administrative law judge can recommend in the initial determination on temporary relief and bonding by the complainant (if a temporary exclusion order is requested) that the Commission order waiver of the rule requiring application of the range prescribed in the formula, and that it require instead a bond in an amount equal to less than 10 percent or more than 100 percent of the relevant product sales revenues and licensing royalties.[9]

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[6] In the preamble to the proposed interim rules, the Commission's objective in computing the amount of the bond was described as selecting a bond amount "that is sufficient to deter the complainant in question from abusing the use of a temporary exclusion order if such relief is granted." 53 FR 44465. The IEMCA commented that such a statement mischaracterized the abuses that are most likely to occur, *i.e.*, a complainant's misuse of the temporary relief *process* rather than misuse of a temporary relief *order* and that a complainant's conduct prior to the issuance of the order must be taken into account in computing the amount of the bond.

The Commission notes, in response, that the disputed language corresponded to the language of the Conference Committee Report accompanying the statutory bonding provision, which states that "the purpose of the bonding provision is to prevent the use of *TEOs* [temporary exclusion orders] as a form of harassment of respondents or for other frivolous or unjustified purposes." H.R. Rep. No. 576, 100th Cong., 2d Sess. 635–636 (1988) (emphasis added). The Commission also notes, however, that other statements in the legislative history provide support for the proposition that the real problem which Congress sought to address is potential misuse of the temporary exclusion order process and not just misuse of the order itself. A Senate colloquy incorporated by reference into the Conference Committee Report indicates, for example, that Congress gave the Commission authorization to require a bond as "a tool to weed out unjustified *requests* for temporary exclusion orders." 133 CONG. REC. S10365 (Statement of Sen. Lautenberg) (July 21, 1988) (emphasis added); H.R. Rep. No. 576 at 635; 134 CONG. REC. H1863 and H2044 (April 20, 1988). The aforesaid colloquy also indicates that the Commission may consider "all legal and equitable considerations" in determining whether to require a bond, *id.*, and such considerations clearly would include evidence or facts supporting the inference that a complainant has initiated a temporary relief proceeding to harass the respondents or for some other improper purpose. *See* H.R. Rep. No. 576 at 635; 134 CONG. REC. H2044. To be consistent with all relevant statements in the legislative history, the discussion in the preamble of this notice and the text of interim rule 210.24(e)(1)(iii) were drafted with a view toward deterring potential abuse by complainants of the temporary exclusion order process and/or the temporary exclusion order itself.

[7] 19 U.S.C. 1337(e)(2) as amended by section 1342(a)(3)(B) of the Omnibus Trade Act.

[8] Hardship to the complainant is one of the factors which the Commission is expected to consider in determining whether to require a bond (*see* 133 CONG. REC. S10365; H.R. Rep. No. 576 at 635; 134 CONG. REC. H2044), and thus may also be considered by the Commission in determining the amount of the bond, if a bond is required.

[9] Commission rule 201.4(b) provides that Commission rules may be amended, waived, suspended, or revoked by the mission when, in the judgment of tha Commission, there is good and sufficient causa therefor and the rule is not a matter of procedure required by law. *See* 19 CFR 201.4(b).

The Commission expects, however, that exceptions to the range set forth in the rule would be rare. Moreover, even though an occasional exception may arise, the Commission believes that it still is desirable to have a range for the possible amount of the bond set forth in the interim rules in order to lessen the possibility that a complainant with limited litigation resources would, in good faith, pursue a temporary exclusion order and then decide after the Commission determines to grant such relief that it cannot afford to post the required bond.

The Commission recognizes that in certain types of cases, the percentage-of-product-sales-revenue-and-licensing-royalties formula may not be suitable. Such cases may include (but would not be limited to) those in which the complaint alleges prevention of the establishment of an industry, or cases in which the complainant's domestic operations are newly established and commercial sales of the domestic product have not yet commenced or have been de minimis, or cases in which the complainant is a large multinational conglomerate with substantial litigation resources and the domestic product at issue accounts for only a small portion of the complainant's total revenues from sales and licensing royalties. In such cases, the administrative law judge's initial determination on temporary relief can recommend and the Commission can agree to waive application of the rule requiring computation of the bond by the percentage-of-product-sales-revenues-and-licensing-royalties formula. The administrative law judge and the Commission can then use whatever criteria are appropriate to determine the bond in that case. The interim rules thus provide that in cases where the prescribed formula would not be appropriate—*e.g.* including but not limited to cases where the domestic industry is embryonic and domestic sales have been de minimis, or cases involving the alleged prevention of the establishment of a domestic industry or the alleged restraint of trade or commerce in the United States—the amount of the bond will be determined on the basis of the facts on the record, the complainant financial strength, the parties' arguments, and any other factors which the presiding administrative law judge or the Commission deems relevant. If a case is a type for which the prescribed formula is or may not be suitable, the interim rule requires the motion for temporary relief to explain why the prescribed formula would not be appropriate, to state the theory the complainant believes would be appropriate for computing the amount of the bond (if the Commission determines to require a bond), and to provide supporting financial and economic data along with a certification under oath executed by the complainant's chief financial officer attesting to the veracity of the data. Finally, the interim rules state that all complainants who are seeking a temporary exclusion order (including complainants who have provided audited financial statements and back-up data), must be prepared to provide upon short notice any additional financial or economic data requested by the presiding administrative law judge in connection with the issue of bonding and certification under oath by the complainant's chief financial officer that the information submitted is accurate.

The bond computation formula and procedure discussed above were outlined in the preamble and proposed interim rules published November 3, 1988. *See* 53 FR 44465, 44466, and 44472. The IEMCA's comments criticized the proposed formula and the implementing rules on the following grounds: (1) They provide too little guidance and give too much discretion to the administrative law judge—which results in uncertainty for the parties; and (2) the formula relies on criteria that are not related to the concept of deterring misuse of the temporary relief process, since the formula is based on a complainant's *past* sales rather then future sales while the temporary exclusion order is in effect. The IEMCA suggested that, in keeping with the deterrent purpose of the bond, the amount of the bond should be commensurate with the actual or constructive commercial benefit the complainant would derive from the temporary exclusion order (an amount which, if forfeited to the U.S. Treasury, would return the complainant to the status quo prior to issuance of the temporary exclusion order). Specifically, the IEMCA recommended that the interim rules be drafted to provide that the amount of the bond would be based on the following: (1) The amount of the commercial benefit derived by the complainant as a result of the temporary exclusion order (based on the allegations of injury that are the basis for the motion for temporary relief), (2) the estimated amount of the benefit to the complainant based on economic projections of expected sales, or (3) the amount of harm to the respondent as a result of the temporary exclusion order, as a proxy for the complainant's benefit.

The Commission is aware that a percentage-of-post-sales-revenues-and-licensing-royalties bond computation formula has certain shortcomings, and that the approach advocated by the IEMCA is logical (since it focuses on commercial benefits to the complainant during the pendency of the temporary exclusion order). The Commission is concerned, however, that in most instances, the formulae advocated by the IEMCA would be too speculative and too difficult to apply within the very limited time available for discovery, an evidentiary hearing, the issuance of an initial determination by the presiding administrative law judge, and the Commission's determination on whether to grant a temporary exclusion order. The Commission has therefore determined that the IEMCA's proposed alternative formulae should not be incorporated into the interim rules as the standard for computing the amount of the bond.

However, the presiding administrative law judge and the Commission would not be precluded from applying one of the IEMCA's proposed formula in an appropriate case, where the complainant or other parties can demonstrate that the percentage-of-product-sales-revenues-and-licensing-royalties formula is inappropriate, that the rule requiring its application should be waived, and that another formula should be applied instead. What constitutes "an appropriate case" will depend on the facts (as well as on the reliability of financial or economic data that are available to support the request for waiver of the prescribed formula in favor of an alternative approach).

Although it is possible that the bond computation methodology in the initial bonding cases may be ad hoc to a certain extent, that result cannot be entirely avoided, for the following reasons:

(1) No single formula will be appropriate for all types of cases (as the IEMCA's comments and proposed alternative formulae tacitly acknowledge).

(2) The Commission has no previous experience in computing the amount of temporary relief bonds, and bonds posted to secure temporary exclusion orders under section 337 are not directly analogous to injunction bonds posted in civil actions pursuant to Rule 65(c) of the Federal Rules of Civil Procedure (which generally are computed on the basis of the amount of harm to the respondent and may be forfeited to the respondent if it turns out that the injunction should not have been issued).

(3) Congress did not provide any specific guidelines for computing the amount of the bond.

One purpose of having flexible interim rules in effect during the initial bonding cases is to develop experience which can be used in the formulation of final bonding (and forfeiture) rules. Significant computation problems that arise in the initial cases under the interim bonding rules can be remedied by further revision of the rules published in this notice on an interim basis (if necessary) or through the promulgation of final rules.

The statutory provision authorizing the Commission to require that the complainant post a bond to secure a temporary exclusion order and other provisions of federal law (cited in the proposed rules) provide that: (1) The surety need not be a guarantee corporation and the Government cannot require that the person posting the bond use a particular guarantee corporation; and (2) in lieu of the surety bond of a guarantee corporation, the person may post the surety bond of an individual or other types of Government obligations [10], *viz.*, a certified check, a postal money order, cash, United States bonds, or Treasury notes. *See* 31 U.S.C. 9301, 9303, and 9304(b). *See* also 31 CFR Part 225. For those reasons, the proposed rules provide for the posting of individual or corporate surety bonds, as well as other types of government obligations, such as a certified check, a bank draft, a postal money order, cash, United States bonds, or Treasury notes, in lieu of a surety bond in accordance with the applicable Treasury statutes and regulations.

Federal law also requires that the Commission formally approve any bond posted to secure a temporary relief order. The interim rules designate the Commission Secretary as the Commission's bond approval officer. The bond approval process will entail verification of the information provided in and with the bond (with assistance from the Commission's Office of Investigations, where necessary) in accordance with governing Treasury regulations or circular. The interim rules authorize the Secretary to disapprove and reject a bond submitted by a complainant for the following reasons: (1) Noncompliance with the Commission order, notice, determination, or opinion requiring the complainant to post a bond; (2) noncompliance with governing Commission or Treasury regulations (or a restriction imposed by a Treasury regulation or circular); (3) evidence of fraud or misrepresentation on the face of the bond or any supporting documentation (*e.g.*, powers of attorney) or in the instrument governing the posting and disposition of the certified check, the bank draft, postal money order, cash, United States bond, or Treasury note submitted in lieu of a surety bond; or (4) any other reason deemed appropriate by the Secretary. If the complainant believes that the Secretary's rejection of the bond was erroneous as matter of law, the complainant may appeal to the Commission by filing a petition in the form of a letter to the Chairman of the Commission within 10 days after service of the Secretary's rejection letter.

The Commission notes that the bond approval process will be expedited if the complainant chooses to use surety corporation that is licensed to do business in the United States and is on the list of approved corporate sureties mantained by the Clerk of the U.S. District Court for the District of Columbia. From the Commission's standpoint, the administrative advantage of using such a company is that the Commission can seek advice and assistance from the clerk of that court in connection with the verification needed to approve a bond posted by such a company. The advantage to the complainant is that this may expedite the bond approval process and the issuance of the temporary relief order which the bond is intended to secure.

The bond approval process can be expected to take longer if the complainant chooses to use the bond of an individual surety, or a certified check, a bank draft, a post office money order, cash, a United States bond, or a Treasury note in lieu of a surety corporation's bond to secure a temporary exclusion order. This is due to the verification that must be performed before the bond or Government obligation tendered in lieu of a surety corporation's bond can be accepted by the Commission.

For example, when the bond of an individual surety is tendered, the verification entails investigation to ensure the solvency and financial responsibility of the individual. For that reason, the individual must file an affidavit of the type shown in Appendix A to interim rule 210.58 (which corresponds to Customs Form 3579 (19 CFR 113.35). If the bond or Government obligation is in the form of a certified check, a bank draft, a post office money order, cash, a United States bond, or a Treasury note, the bond approval officer must conduct the verification specified in 31 CFR 225.6. That verification entails ascertaining ownership of the Government obligation in question, as well as the sufficiency of the accompanying power of attorney and bond agreement or the equivalent thereof. In cases where a registered bond or note is posted, the bond approval officer must verify the regularity of the assignments and that the deposit is made in conformity with the provisions of 31 CFR Part 225.

Since federal law prohibits the Commission from requiring complainants to use a surety corporation or a particular surety corporation, the interim rules do not *require* that complainants post bonds of corporate sureties registered with the U.S. District Court for the District of Columbia or that the complainant post the bond of a surety corporation rather than the bond of an individual surety or another type of Government obligation in lieu of a surety bond (such as a certified check, a bank draft, a post office money order, cash, a United States bond, or a Treasury note).

The manner in which the Commission has incorporated the procedures discussed above into existing Commission rules is summarized below.

Interim Rule 210.1

Interim rule 210.1 (53 FR 33043 and 33056, Aug. 29, 1988) describes the applicability of the rules in and lists the statutory provisions that authorize the enactment of such rules. As indicated above, the Commission's authority to require a complainant to post a bond as a prerequisite to the issuance of a temporary exclusion order is found in subsection (e)(2) of section 337 of the Tariff Act (created by section 1342(a)(3)(B) of the Omnibus Trade Act). The authority to issue interim bonding rules to implement that provisions is found in section 1342(d)(1)(B) of the Omnibus Trade Act. The Commission's authority to require forfeiture of the bond to the U.S. Treasury is found in the legislative history of the aforesaid bonding provision. *See* H.R. Rep. No. 576 at 636; 133 CONG. REC. S10365; 134 CONG. REC. H2044.

The interim revisions to interim rule 210.1 therefore consist of the following: (1) The addition of the words "expressly or implicitly" before the word "authorized" in the sentence beginning "These rules are authorized by * * *"; and (2) the insertion of citations to the relevant statutory provisions and legislative history at the end of that sentence.[11]

[10] A "Government obligation" is a public debt obligation of the United States Government and an obligation whose principal and interest is unconditionally guaranteed by the Government. 31 U.S.C. 9301.

[11] Section 2 of the Omnibus Trade Act is cited in the revised version of interim rule 210.1 (in addition

Continued

Interim Rule 210.24(e)

Interim rule 210.24(e) published on August 29, 1988 (53 FR 33043 and 33060) sets out the procedure for filing, processing, and the ultimate disposition of motions for temporary relief. Paragraph (1) of rule 210.24(e) (53 FR 33043 and 33060, Aug. 29, 1988) sets forth the mandatory content of motions for temporary relief. The new interim revision consists of requiring the motion to address the following issues when the complainant is seeking a temporary exclusion order: (1) Whether the complainant should be required to post a bond as a prerequisite to the issuance of such an order; and (2) the appropriate amount of the bond, if the Commission determines (despite any arguments to the contrary) that a bond will be required. Paragraph (1) of interim rule 210.24(e) also has been revised to include the following: (1) A recitation of the factors the Commission will consider in determining whether to require a bond; (2) the Commission's policy favoring the posting of temporary relief bonds in every case in which the complainant seeks and the Commission determines to issue a temporary exclusion order; (3) the formula for computing the amount of the bond in cases where the domestic industry is established and sales of the domestic product in question have not been de minimis; and (4) the documentation that must be provided to support the bonding arguments in the motion for temporary relief.

Paragraph (7) of interim rule 210.24(e) (53 FR 33043 and 33061, Aug. 29, 1988) governs the amendment of motions for temporary relief. Prior to the adoption of the new interim bonding and forfeiture rules, paragraph (7) stated, in pertinent part, that if the complainant amends the motion for temporary relief in a manner that expands the scope of the motion, the 35-day period allotted under paragraph (8) of interim rule 210.24(e) (53 FR 33043 and 33061, Aug. 29, 1988) for determining whether to institute an investigation and to initiate temporary relief proceedings shall begin to run anew from the date the amendment is filed with the Commission. Paragraph (7) has been revised by the addition of a provision stating that if the complainant amends the motion for temporary relief in a manner that changes the complainant's original assertions on whether a bond is to be required or the appropriate amount of the bond, the 35-day period allotted for determining whether to institute an investigation and to initiate temporary relief proceedings shall begin to run anew from the date the amendment is filed with the Commission. The Commission found this change to be appropriate because the issue of bonding is likely to be vigorously contested and each respondent's response to the motion for temporary relief must address the complainant's arguments on bonding to the extent possible. (*See* the revision of paragraph (9) of interim rule 210.24(e)). The Commission notes further that this revision of paragraph (7) of interim rule 210.24(e) is consistent with the Commission's intent that the respondents have at least 30 days in which to review the motion in its entirety, to consult an attorney, and to decide prior to the tolling of the period for filing a response to the motion what course of action and arguments would be appropriate if an investigation is instituted.

Paragraph (9) of interim rule 210.24(e) (53 FR 33043 and 33061, Aug. 29, 1988) sets forth the required content of responses to motions for temporary relief. Paragraph (9) has been revised by addition of the following: (1) A statement that if the motion requests that the Commission issue a temporary exclusion order, each response to the motion must address, to the extent possible, the complainant's arguments concerning whether a bond should be required and the appropriate amount of the bond; [12] and (2) a statement that each response to the motion for temporary relief may also contain counter proposals concerning the amount of the bond or the manner in which the bond amount should be calculated.

Prior to the adoption of the interim bonding and forfeiture rules, paragraph (10) of interim rule 210.24(e) (53 FR 33043 and 33061, August 29, 1988) provided that following provisional Commission acceptance of a motion for temporary relief and upon institution of an investigation, the motion for temporary relief must be forwarded to an administrative law judge for an initial determination on whether there is reason to believe there is a violation of section 337 of the Tariff Act and whether temporary relief is appropriate. Since the Commission has determined that the question of bonding will be determined by using the initial determination/discretionary Commission review procedure, the revision of paragraph (10) of interim rule 210.24(e) consists of new language to provide that the initial determination on temporary relief must also address whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued) and, if so, the amount of the bond.

Paragraph (11) of interim rule 210.24(e) (53 FR 33043 and 33061, Aug. 29, 1988) pertains to designating an investigation "more complicated" for purposes of adjudicating a motion for temporary relief. That paragraph previously provided, in pertinent part, that after a motion for temporary relief is referred to the administrative law judge for an initial determination, the administrative law judge may issue an order, sua sponte or on motion, designating the investigation "more complicated" in order to obtain additional time to adjudicate the motion for temporary relief.

The issues of bonding by the complainant and computing the amount of the bond are likely to be contested in most investigations. Moreover, Commission resolution of those issues may pose procedural and substantive difficulties, at least until the administrative law judges and the Commission gain experience with bonding. For those reasons and because the issue of bonding must be addressed in the initial determination on temporary relief, the interim revision of paragraph (11) of interim rule 210.24(e) consists of clarification that the "more complicated designation" may be applied because of the complexity of the bonding issues and/or the complexity of issues relating to whether there is reason to believe the respondents have violated section 337 (as discussed in interim rule 210.59(a)(1)).

Paragraph (12) of the interim rule 210.24(e) (53 FR 33043 and 33062, Aug. 29 1988) discusses the administrative law judge's discretion to control the time, place, nature, and extent of discovery relating to the motion for temporary relief and the administrative law judge's authority to compel discovery on certain issues. The interim revisions to

to the relevant legislative history) for the following reasons: Although the bill that became the Omnibus Trade Act is H.R. 4848, 100th Cong., 2d Sess. (1988), the reports comprising the relevant legislative history expressly pertain to H.R. 3, 100th Cong., 2d Sess. (1988), a trade bill which the President vetoed. The provisions of H.R. 4848 that amend section 337 of the Tariff Act are identical to provisions of H.R. 3. For that reason, section 2 of the Omnibus Trade Act provides that the legislative history of H.R. 3 also serves as the legislative history of the relevant provisions of H.R. 4848.

[12] The Commission recognizes that a respondent's ability to respond to the complainant's arguments on the issue of whether the complainant should be required to post a bond and the appropriate amount of the bond may be limited by the fact that much of the data upon which the complainant may rely to support its position is likely to be confidential business information, which would not be served on the respondents along with the motion and the complaint.

paragraph (12) include new language expressly authorizing the administrative law judge to compel discovery on matters relating to (1) whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order and (2) if so, the amount of the bond. The interim revisions to paragraph (12) also include changing the previous reference in that paragraph from "bonding" to "bonding by respondents." This change will avoid confusion since complainants may now be required to post a bond as a prerequisite to the issuance of a temporary exclusion order.

Paragraph (13) of interim rule 210.24(e) (53 FR 33043 and 33062, Aug. 29, 1988) relates to evidentiary hearings on motions for temporary relief. Paragraph (13) discusses the administrative law judge's authority to rule on such motions with or without a hearing, his or her discretion to control the form and scope of the hearing, and the matters that are to be addressed at the hearing. The interim revisions to paragraph (13) include a statement that the following issues must be discussed at the hearing (if a hearing is conducted): (1) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued) and (2) if so, the amount of the bond. The interim amendments to paragraph (13) of interim rule 210.24(e) also include changing the previous reference in that paregraph from "bonding" to "bonding by respondents" where appropriate. Paragraph (14) of interim rule 210.24(e) (53 FR 33043 and 33062, Aug. 29, 1988) discusses the administrative law judge's discretion to permit the parties to file proposed findings of fact, conclusions of law, and briefs concerning the grant or denial of temporary relief. The interim revision of paragraph (14) consists of clarification that the administrative law judge has the same discretion with respect to the filing of written submissions on whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order and the amount of the bond.

Paragraph (15) of interim rule 210.24(e) (53 FR 33043 and 33062, August 29, 1988) discusses interlocutory appeals and review by the Commission of the administrative law judge's actions and findings relating to motions for temporary relief. No interim revision has been made in the directive set forth in this rule. But for purposes of internal consistency in the references to the initial determination concerning temporary relief, paragraph (15) of interim rule 210.24(e) has been revised by changing the previous reference in that paragraph from "an initial determination granting or denying a motion for temporary relief" to "an initial determination granting or denying a motion for temporary relief and, if applicable, a ruling on the issue of bonding by the complainant as prerequisite to the issuance of a temporary exclusion order."

The Commission has made the same type of clarification in paragraph (16) of interim rule 210.24(e) (53 FR 33043 and 33062, August 29, 1988), which pertains to certification of the record to the Commission.

Paragraph (17) of interim rule 210.24(e) (53 FR 33043 and 33062, Aug. 29, 1988) discusses the content of the initial determination on temporary relief and Commission action thereon. The interim revision to paragraph (17)(i) of this rule (53 FR 33043 and 33062, August 29, 1988) consists of the same type of clarification the Commission made in paragraphs (15) and (16) of rule 210.24(e). The revisions to paragraph (13) also include changing the previous reference to "bonding" to "bonding by respondents" where appropriate. This change will avoid confusion since, complainants may now be required to post a bond as a prerequisite to the issuance of a temporary exclusion order.

Paragraph (17)(ii) of interim rule 210.24(e) (53 FR 33043 and 33062, August 29, 1988) has not been revised. Although the issue of bonding by the complaintant will be included in the initial determination in cases involving a request for a temporary exclusion order, the scope of review by the Commission continues to be limited to alleged errors of law and matters of policy (including policy considerations related to the public interest and bonding). Neither the ruling on bonding by the complainant nor any other aspect of the initial determination will be reviewed by the Commission solely for alleged errors of fact.

The preamble and proposed interim rule 210.24(e)(17) published on November 3, 1988, indicated that the scope of review would be limited to errors of law and matters of policy articulated by the Commission and that questions of fact would not be reviewed. The IEMCA objected to the proposed rule, arguing that the Commission could not lawfully delegate its factfinding responsibility to an administrative law judge and that limiting Commission review in that manner would effectively preclude any review of bonding and public interest matters (which, in the IEMCA's view, are largely factual matters and the responsibility of the Commission).

The Commission noted that section 557(b) of the APA provides, in pertinent part, that on appeal from or review of an initial decision by an administrative law judge, an agency has all powers that it would have in making the initial decision "except as it may limit the issues on notice or by rule." 5 U.S.C. 557(b). The Commission noted also that while the judicial decisions cited by the IEMCA in its comments supported the IEMCA's assertion that there is a widespread assumption that a system of restricted review can be brought about only through legislation, the cited decisions are inapposite to the circumstances at issue here because each of the cited decisions is an affirmation of an agency's ability to review factual findings, rather than a decision affirmatively precluding the delegation of factfinding responsibility. In each case, the agency in question had a duty to review factual findings because it had not limited the scope of its review by notice or by rule. In none of the cited decisions was the issue whether an agency may restrict the scope of its review.

The Commission noted that there is no definitive legislative history of the APA upon which the Commission could rely to determine whether the proposed rule was unlawful, as the IEMCA had suggested and that interpreters of the statute disagree on its meaning. *See, e.g.*, K. Davis, Administrative Law Treatise, § 17.14 at 324 (2d ed. 1980) at 323, 324 citing Administrative Conference Statement on ABA Proposals to Amend the Administrative Procedure Act, 24 Ad. L. Rev. 419, 442 (1973); *Universal Camera Corp.* v. *Labor Bd.*, 340 U.S. 494 n.27 (1950).

The short time provided by law for determining whether to grant or deny motions for temporary relief necessitates abbreviation of the customary administrative adjudicative process. For that reason, and the fact that section 557(b) expressly permits an agency to limit the scope of its review of an initial determination by rule, the Commission determined not to change the proposed interim rule making Commission review unavailable for purely factual matters addressed in an initial determination on temporary relief and bonding. However, to clarify that bonding and the public interest involve policy matters for which Commission review should and will be available (particularly as the Commission gains experience with bonding issues in the initial cases and in light of the fact that the public interest is paramount in the

administration of section 337), the preamble in this notice and interim rule 210.24(e) were drafted to indicate that review of an initial determination on temporary relief and bonding may be granted for errors of law and/or policy matters, including policy considerations relating to bonding and public interest.

Paragraphs (17) (iii) and (v) of interim rule 210.24(e) (53 FR 33043 and 33063, Aug. 29, 1988) discuss, among other things, the page limits for comments and responses thereto which the parties may file concerning the presence or absence of alleged errors of fact or law in the initial determination on temporary relief. The interim revisions to paragraphs (17) (iii) and (v) include the same type of clarification the Commission has made in paragraphs (15) and (16) of interim rule 210.24(e). Additionally, since the initial determination must address the question of bonding by the complainant when the complainant is seeking a temporary exclusion order and that issue is likely to be vigorously contested (at least in the first few investigations), the revisions to paragraphs (17) (iii) and (v) of interim rule 210.24(e) include 5-page increases in the current page limits imposed for the parties' comments on the initial determination and the responses thereto.

Paragraph (17)(vi) of interim rule 210.24(e) (53 FR 33043 and 33063, Aug. 29, 1988) provide that if the Commission determines to modify or vacate the initial determination, a notice and (if appropriate) a Commission opinion will be issued, and if the Commission does not modify or vacate the initial determination, it will automatically become the determination of the Commission and a notice of that fact will not be issued. The operation of the statutory bonding provision necessitates modification of this rule to indicate that if the Commission determines (either by reversing or modifying the administrative law judge's initial determination, or by adopting the initial determination) that a temporary exclusion order should be issued and that the complainant must post a bond as a prerequisite to the issuance of the order, the Commission may issue (on the statutory deadline for determining whether to grant temporary relief or as soon as possible thereafter) a notice setting forth conditions for the bond if any (in addition to those outlined in the initial determination) and the deadline for filing the bond with the Commission.

Paragraph (18) of interim rule 210.24(e) (53 FR 33043 and 33063, Aug. 29, 1988) sets forth the Commission's procedure for determining (1) the appropriate form of temporary relief, (2) whether the statutory public interest factors preclude such relief, and (3) the amount of the bond under which respondents' merchandise will be permitted to enter the United States during the pendency of the investigation and any temporary relief order issued in response to the motion. The interim amendments to paragraph (18) of interim rule 210.24(e) consist of changing all previous references to "bonding" to "bonding by respondents" where appropriate.

Interim Rule 210.41

Interim rule 210.41 (53 FR 33043 and 33068, Aug. 29, 1988) sets forth general provisions governing hearings in section 337 investigations. Paragraph (a)(2) of that rule previously stated that "[e]xcept as provided under § 120.24(e)(13), an opportunity for a hearing shall also be provided to take evidence and hear argument for the purpose of determining whether there is reason to believe there is a violation of section 337 of the Tariff Act." For internal consistency with other interim rules governing the initial adjudication of motions for temporary relief by the administrative law judge, the interim revision to paragraph (a)(2) of interim rule 210.41 consists of clarification that the hearing may also address the issue of whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is being requested) and, if so, the amount of the bond.

Interim Rule 210.53

Interim rule 210.53 (53 FR 33043 and 33068, Aug. 29, 1988) discusses the issuance and disposition of initial determinations for all matters that are to be adjudicated by the initial determination/discretionary review procedure, including motions for temporary relief. Paragraph (b) of that rule previously stated that "[t]he disposition of an initial determination concerning temporary relief is governed by the provisions of § 210.24(e)(17)." For internal consistency with the revisions to interim rule 210.24(e) relating to bonding by the complainant, the Commission has revised paragraph (b) of interim rule 210.53 to state that "[t]he disposition of an initial determination concerning temporary relief (and if appropriate, the posting of a bond by the complainant and the amount of the bond) is governed by the provisions of § 210.24(e)(17)."

Interim Rule 210.56

Interim rule 210.56 (53 FR 33043 and 33071, Aug. 29, 1988) discusses the process of reviewing initial determinations, including the filing of briefs, requests for oral argument, the scope of the review, what action the Commission can take upon completion of the review, and the time limits for concluding a review of an initial determination concerning temporary relief. For consistency with other interim rules pertaining to the grant or denial of temporary relief and to avoid confusion, the Commission has changed the language in paragraph (d) of interim rule 210.56 which previously referred to "an initial determination concerning temporary relief" to "an initial determination concerning temporary relief and, possibly, bonding by the complainant and the respondents."

Interim Rule 210.58

Interim rule 210.58 (53 FR 33043 and 33068, Aug. 29, 1988) governs the Commission's adjudication of the issues of remedy, the public interest, and bonding by respondents in section 337 investigations. Since the Commission is now authorized to require complainants to post a bond as a prerequisite to the issuance of a temporary exclusion order, the bonding issues encompassed in that determination are cited in paragraph (b) of that rule. The definition of the "bond" to be posted by the complainant, the criteria the Commission will use in determining the amount of bond, the standard bond provisions that will be required in every case, the restrictions and requirements relating to individual and corporate sureties, are also discussed in the revised version of paragraph (b).

Interim Rule 210.59

Paragraph (b) of interim rule 210.59 (53 FR 33043 and 33072, Aug. 29, 1988) discusses designating an investigation "more complicated" for purposes of determining whether to grant a motion for temporary relief. The Commission has revised paragraph (b) of this rule by clarifying that the "more complicated" designation can be applied for purposes of determining whether to grant a motion for temporary relief and/or determining (1) whether to require the complainant to post a bond as a prerequisite to the issuance of a temporary exclusion order, and (2) if so, the amount of the bond.

2. Determining Whether the Complainant Should be Required to Forfeit the Bond in Whole or in Part

The legislative history of the statutory provision authorizing the Commission to require a complainant to post a bond as a prerequisite to the issuance of a temporary exclusion order also

authorizes the Commission to require forfeiture of the bond when the Commission determines, after issuing a temporary exclusion order conditioned on a bond, that the respondents have not violated section 337. *See* H.R. Rep. No. 576 at 635; 134 CONG. REC. H2044; 133 CONG. REC. S10365; H.R. Rep. No. 40 at 158–159. Congress intends that the forfeiture provision operate in the same way that respondents' section 337 import bonds "revert" to the U.S. Treasury when the Commission determines that imported articles permitted to enter the United States under a bond violated section 337.[13]

Interim rule 210.58(c) provides that if an investigation is terminated on the basis of a settlement agreement or a consent order with no concurrent determination as to the violation of section 337, the parties will not address and the Commission will not determine the issue of whether the bond posted by the complainant to secure a temporary exclusion order should be forfeited. The proposed rules published on November 3, 1988, did not include such a provision. The IEMCA's comments noted that the proposed rules should discuss how the matter of bond forfeiture would be resolved in the event that an investigation involving a temporary exclusion order is terminated on the basis of a settlement agreement or a consent order with no concurrent finding as to the violation of section 337.

The Commission agreed that this issue should be addressed in the "final" interim rules. The legislative history authorizing the Commission to order forfeiture of the bond only provides for forfeiture after the Commission has determined that there is no violation of section 337. *See* H.R. Rep. No. 576 at 635–636; 134 Cong. Rec. H2044; 133 Cong. Rec. S10365. For that reason, interim rule 210.58(b) provides that if the investigation is terminated on the basis of a settlement agreement or a consent order and without a final determination as to the violation of section 337, forfeiture of the temporary relief bond will not be addressed by the parties and will not be determined by the Commission.[14]

The other interim forfeiture rules which the Commission has adopted are, for the most part, the same as the proposed rules published on November 3, 1988 (*see* 53 FR 44466, 44470–44471, and 44476–44477). Paragraph (c) of interim rule 210.58 provides that if the Commission issues a temporary exclusion order secured by a bond and subsequently determines that one or more of the respondents whose merchandise was covered by the temporary exclusion order has not violated section 337 to the extent alleged in the motion for temporary relief and contemplated by the temporary exclusion order,[15] the Commission will determine whether to order forfeiture of the bond in whole or in part to the U.S. Treasury. Unlike the interim rule governing the posting of temporary relief bonds by complainants, there is no Commission policy favoring forfeiture of the bond. Nor is there a prescribed policy disfavoring forfeiture. The decision concerning forfeiture will be made on a case-by-case basis.

In its comments on the proposed rules, the IEMCA argued that the interim rules should contain a rebuttable presumption that the bond will be forfeited in all cases where the Commission determines that section 337 has not been violated and that such an approach would be consistent with the deterrent purpose of the forfeiture authority and the liquidated damages assessment procedure of the U.S. Customs Service (which is to serve as an analog for the Commission's bonds forfeiture procedure). The IEMCA added that the absence of such a Commission policy would vitiate the deterrent value of the forfeiture authorization.

The Commission believes that adopting a rebuttable presumption of forfeiture would have few practical consequences or benefits to the complainant or to the respondents, for the following reasons:

Although there is no rebuttable presumption of forfeiture in the interim rules, the complainant is still required to present arguments on the issue of forfeiture within a short time after the Commission has determined that section 337 has not been violated, and the forfeiture determination and actual forfeiture (if ordered) will not be postponed pending the outcome of any judicial review of the determination on violation. (*See* the discussion below.)

Moreover, the absence of a presumption favoring forfeiture does not necessarily mean that the Commission will be less likely to order forfeiture than it would be if a rebuttable presumption were incorporated into the rules. There is, after all, no Commission policy disfavoring forfeiture. The Commission will simply consider all parties' arguments, with no predisposition one way or the other, in determining whether forfeiture is warranted.

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[13] The Customs Service regulations provide that after the date on which the Commission's final determination and remedial order concerning the violation of section 337 become final (*i.e.*, after Presidential review), imported articles that were allowed to enter the United States under a bond must either be exported or destroyed under Customs supervision within 30 days after the date on which Customs district directors notify the importer or consignee that the exclusion order has become final. 19 CFR 12.39(b)(2). If the exporter or consignee fails to take the required action within 30 days, the district director who allowed the articles to enter must assess liquidated damages in the full amount of the bond.

If that happens, a written notice of the claim for liquidated damages and a demand for payment are served on the principal and the surety. The principal and the surety also are advised of their right to petition for relief from the payment of such damages under section 623(c) of the Tariff Act (19 U.S.C. 1623(c)) or any other applicable statute authorizing the cancellation of any bond or any bond charge that may have been made against such bond. The surety and the principal then have 30 days to take the following action: (1) Petition for relief from the payment of liquidated damages; (2) pay the damages; or (3) make arrangements to pay the damages. If the parties who are liable for liquidated damages fail to take the aforesaid action, the district director must refer the claim to the U.S. Attorney (unless otherwise ordered by the Commissioner of Customs or the importer files one or more supplemental petitions for relief). (*See generally* 19 CFR Part 172 for the procedure governing assessment of liquidated damages under the bond and the cancellation of a claim for such damage.)

[14] The IEMCA's comments also expressed concern about cases in which a complainant that obtains a temporary exclusion order (and the competitive benefits resulting from such an order) subsequently declines to proceed with the investigation. Even if there is evidence that the complainant has misused the temporary relief proceeding (the type of conduct the forfeiture authority is designed to punish), the Commission believes that it would be constrained from ordering forfeiture of the bond in the absence of a Commission determination that section 337 has not been violated. In such a case, however, the Commission would have to determine (after considering all relevant legal, equitable, and public interest considerations and the stage to which the investigation has progressed) whether to proceed with the investigation (despite the complainant's wish to discontinue the proceeding) and to issue a final determination on violation based on the evidence of record, the arguments of the parties, and possibly on substantive findings against the complainant based on sanctions imposed pursuant to interim rule 210.36 (or any governing rule in effect at the time).

As an alternative to determining whether to proceed with the investigation despite the complainant's wish to terminate the proceeding, if there is evidence that the complainant has abused the section 337 process, the Commission could determine what other action (if any), would be permissible and appropriate under the authority conferred by subsection (h) of section 337 to order sanctions for abuse of process to the extent authorized by the Federal Rules of Civil Procedure and the Commission rules in effect at the time.

[15] *E.Q.*, because the importation or sale of certain merchandise covered by the order does not violate section 337 owing to the invalidity, unenforceability, or noninfringement of the intellectual property right(s) in question, or the absence of other types of unfair acts and unfair methods of competition alleged in the complaint or motion for temporary relief, or because a domestic industry for the subject domestic merchandise does not exist and is not in the process of being established as required by paragraphs (a) (2) and (3) of section 337 of the Tariff Act.

The legislative history conferring the bond forfeiture authorization does not make forfeiture mandatory; it provides that the Commission *may* order forfeiture of the bond if it determines that the respondents have not violated section 337. *See* H.R. Rep. No. 576 at 635; 134 Cong. Rec. H2044; H.R. Rep. No. 40 at 158–159. The Commission believes that there may be cases in which the purpose of the forfeiture authority would not be served by ordering forfeiture even though the complainant did not prevail on the question of the violation of section 337.

An example would be a case in which the investigation was brought by the complainant in good faith and the Commission's final determination was negative owing to a recent judicial decision which superseded the Commission's previous ruling on a particular issue (and hence invalidated the ruling favorable to the complainant on that issue during the temporary relief phase of the investigation). In a case of that type, the Commission conceivably could conclude (depending on other relevant facts and the arguments of the parties) that the policy of deterring misuse of section 337 temporary relief proceedings had been adequately served by requiring the complainant to undergo the expense and burden of posting a bond, and that ordering forfeiture would not be in the public interest, since forfeiture under such circumstances could deter holders of intellectual property rights with valid section 337 complaints from seeking temporary relief in the future.

For all the foregoing reasons, the Commission determined that at least for purposes of the interim forfeiture rules, it would not adopt a policy favoring or disfavoring forfeiture, but would make forfeiture determinations based on the facts in each case as they relate to the Congressional purpose of the forfeiture authorization.

The procedure for determining whether to order forfeiture of the bond under the interim rules is as follows:

When the Commission determines that one or more of the respondents whose merchandise was covered by the temporary exclusion order has not violated section 337 to the extent alleged in the motion for temporary relief, the complainant must file, within 30 days after the effective date of the aforesaid Commission determination,[16] a written submission discussing whether the Commission should or should not order forfeiture of the bond in whole or in part. The other parties will subsequently be permitted to file responses to the complainant's submission.

The factors the Commission will consider (and which the parties' submission must address) in determining whether forfeiture should be ordered include the following: (1) The extent to which the Commission determined that the respondents have not violated section 337; (2) whether the complainant's assertions with respect to the violation alleged as the basis for obtaining a temporary exclusion order were substantially justified, taking into account the record of the investigation as whole; (3) whether forfeiture would be consistent with the legislative intent of the forfeiture authority (which is to provide a "disincentive" to the abuse of temporary relief by complainant); (4) whether forfeiture (in whole or in part) would be in the public interest; and (5) any other legal, equitable, or policy considerations that are relevant to the issue of forfeiture.

Factors (3), (4), and (5) are derived from the legislative history of the bonding and forfeiture authority and the legislative history of other provisions of section 337. Factor (2) was borrowed from the criteria the Commission uses to implement the Equal Access to Justice Act. *See* 5 U.S.C. 504; 19 CFR Part 212. Under that statute and the Commission regulations, eligible individuals and entities who are parties to certain administrative proceedings (including section 337 investigations) may receive an award of attorneys fees and other costs from the Government if the party prevails over the agency in the proceeding, the agency's position in the proceeding was not substantially justified, and there are no special circumstances that would make such an award unjust.

In its comments on the proposed rules, the IEMCA expressed disapproval of the fact that the Commission proposed to employ criteria related to the Equal Access to Justice Act to determine whether to order forfeiture of a complainant's temporary relief bond under section 337. The IEMCA argued that the purposes and objectives of the Equal Access to Justice Act and the Commission's bond forfeiture authority are in no way analogous.

The Commission is fully cognizant of the differences between the two and assures interested parties that forfeiture determinations will be made in a manner that is consistent with the purpose and intent articulated in the section 337 legislative history authorizing the Commission to order forfeiture.

The analytical factor the interim forfeiture rules is borrowing from the Equal Access to Justice Act regulations—*i.e.*, "whether the complainant's assertions with respect to the violation alleged as a basis for obtaining a temporary exclusion order were substantially justified, taking into account the record of the investigation as a whole"—will help the Commission determine whether the complainant's motion for temporary relief was frivolous and constituted a misuse of the temporary relief process. As such, that factor is fully consistent with the Congressional purpose for authorizing forfeiture of bonds.

The IEMCA also argued that the Commission's adoption of an interim rule providing for Commission assessment of "all other legal, equitable, and public interest considerations relating to forfeiture" would be inappropriate because, in the IEMCA's view, the legislative history authorizing forfeiture of a temporary relief bond by the complainant does not authorize such an open-ended analysis.

As stated above, Congress did not mandate that the bond be forfeited in every case where the final determination is negative, and the Commission believes that there may be instances in which forfeiture would be inconsistent with the Congressional intent of the bond forfeiture authority. Since the Commission has no previous experience in adjudicating bond forfeitures, it cannot fully anticipate all relevant issues that are likely to arise. The Commission, therefore, believes it advisable not to adopt narrowly-drawn interim forfeiture rules that expressly or impliedly would prevent consideration of unanticipated but relevant issues raised in favor of or against forfeiture.

The interim forfeiture rule provides that the decision on whether to order forfeiture of the bond will be made by using the procedures set forth in interim rules 210.53(j) and 210.54 through 210.56(c), which allow for longer filing deadlines, petitions for review and responses thereto with no page limitations, and broader criteria for reviewing, modifying, and reversing an initial determination than the procedures and criteria set forth in paragraphs (17) and (18) of proposed interim rule 210.24(e), which govern the disposition of motions for temporary relief and the posting of bonds by

[16] Interested persons are reminded that a wholly negative final determination on the violation of section 337 and the negative portions of a mixed determination concerning the violation of section 337 are not subject to Presidential review and thus are final on the effective date specified in the Commission rules or when issued (*see* interim rules 210.53(h), 210.56(c), and 210.57(d), 53 FR 33043, 33070, and 33071, Aug. 29, 1988).

complainants. The Commission believes that the procedures set forth in interim rules 210.53(c) and 210.54 through 210.56(c) are appropriate for determining whether to order forfeiture of a complainant's temporary relief bond, since forfeiture decisions are not subject to statutory deadlines.

Although there are no statutory deadlines applicable to forfeiture of bonds, the interim forfeiture rule provides that motions to stay forfeiture proceedings or the effective date of a forfeiture order pending the outcome of judicial review of the violation determination will not be granted, for the following reasons. The legislative history of the forfeiture authority indicates that "[b]onds posted by [complainants], if forfeited, would revert to the Treasury in the same way as bonds now posted by respondents" (133 Cong. Rec. S10365; H.R. Rep. No. 576 at 635; 134 Cong. Rec. H2044). The Customs Service regulations governing the assessment of liquidated damages under a bond posted pursuant to 19 CFR 12.39(b) do not provide for stay on the assessment of liquidated damages under 19 CFR Part 172 pending the outcome of judicial review of the subject Commission determination concerning the violation of section 337. Moreover, preliminary information we have received from the Treasury Department indicates that if the negative violation determination supporting the forfeiture order is reversed on judicial review, the complainant would not have to file suit against the United States in order to recover the money forfeitured pursuant to the Commission order.[17]

In accordance with interim rules 210.53 (a) and (h) (which have been revised in the manner discussed below), an initial determination on forfeiture of the bond will become the determination of the Commission within 45 days after issuance of the presiding administrative law judge's initial determination on forfeiture unless the Commission orders a review or extends the deadline for determining whether to order a review.

Interim rule 210.53 (governing initial determinations) and interim rule 210.58(b) (governing Commission action, the public interest, and bonding by respondents) have been modified to incorporate the foregoing procedures governing the possible forfeiture of bonds.

Interim rule 210.53 (53 FR 33053 and 33070, Aug. 29, 1988) has been revised by creating a new paragraph (j) to provide for the issuance of an initial determination on whether the Commission should order a complainant to forfeit a bond in whole or in part when the Commission determines, after issuing a temporary exclusion order conditioned on the bond, that the respondents have not violated section 337 to the extent alleged in the motion for temporary relief. The revisions to this rule also include a statement that the provisions of interim rules 210.54 through 210.56(c) will govern the disposition of an initial determination issued pursuant to paragraph (j) of interim rule 210.53 and that if the Commission does not order a review, the initial determination on forfeiture will become the determination of the Commission within 45 days after service of the initial determination. Corresponding and appropriate revisions have been made in interim rule 210.54 concerning the filing of petitions for review and responses thereto to indicate that such petitions may be filed within 10 days after service of the initial determination on forfeiture and that responses to the petitions may be filed within 5 days after service of the petition.

All other aspects of the forfeiture procedures discussed above have been incorporated into interim rule 210.58 (53 FR 33053 and 33072, Aug. 29, 1988).

List of Subjects in 19 CFR Part 210

Administrative practice and procedure, Investigations.

Chapter II, Subchapter C, of Part 210 of Title 19 of the Code of Federal Regulations is amended as follows:

PART 210—ADJUDICATIVE PROCEDURES

1. The authority citation for Part 210 is revised to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337, and sections 2 and 1342(d)(1)(B) of Pub. L. No. 100–418, 102 Stat. 1107 (1988); 133 Cong. Rec. S10364–S10365 (statement of Sen. Lautenberg) (July 21, 1987), H.R. Rep. No. 576, 100th Cong., 2d Sess. 635–636 (1988); 134 Cong. Rec. H1863 and H2044 (Apr. 20, 1988).

2. Section 210.1 is revised to read as follows:

§ 210.1 Applicability of part.

The rules in this part govern procedure relating to proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). These rules are expressly or impliedly authorized by sections 333, 335, and 337 of the Tariff Act of 1930 (19 U.S.C. 1333, 1335, and 1337), sections 2 and 1342(d)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. 1107 (1988), and its legislative history , 133 Cong. Rec. S10364–S10365 (Statement of Sen. Lautenberg) (July 21, 1987), H.R. Rep. No. 576, 100th Cong., 2d Sess. 635–636 (1988), 134 CONG. REC. H1863 and H2044 (April 20, 1988).

3. The introductory text of paragraph (e) and paragraphs (e)(1), (7), and (9) through (18) of § 210.24 are revised to read as follows:

§ 210.24 Motions.

* * * * *

(e) *Motions for temporary relief.* Requests for temporary relief pursuant to subsection (e) or (f) of section 337 of the Tariff Act shall be made through a motion to be filed and adjudicated in accordance with the following provisions.

(1) *Motion accompanying complaint.* (i) A complaint requesting temporary relief pursuant to § 210.20(a)(10) shall be accompanied by a motion that sets forth complainant's request for temporary relief. The motion must contain a detailed statement of specific facts bearing on:

(A) Complainant's probability of success on the merits;

(B) Immediate and substantial harm to the domestic industry in the absence of the requested temporary relief;

(C) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and

(D) The effect, if any, that the issuance of the requested temporary relief would have on the public interest.

(ii) If the motion requests that the Commission issue a temporary exclusion order under subsection (e) of section 337, the motion must also contain a detailed statement of facts bearing on:

(A) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order; and

(B) The appropriate amount of the bond, if the Commission determines that a bond will be required.

[17] Our preliminary information is that money forefeited to the U.S. Treasury pursuant to the bond forfeiture authorization in the Omnibus Trade Act will be deposited into a miscellaneous receipts account. If the Commission determines that a refund is needed (following issuance of a judicial determination reversing or vacating the Commission determination of no violation providing the basis for the forfeiture proceedings), the Commission can arrange through its Office of Finance to have a check in the appropriate amount issued to the complainant (after executing certain formalities with Treasury's Financial Management Service). The Commission notes that the Customs Service's liquidated damages assessment regulations provide for the filing of a petition setting forth an appeal of the final Custom's decision requiring the assessment and payment of liquidated damages (i.e., the adverse ruling on the party's original petition for relief from liquidated damages) within 60 days after an administrative or judicial decision which reduces the loss of duties upon which the mitigated penalty amount was based. *See* 19 CFR 172.33(c).

(iii) The factors the Commission will consider in determining whether to require a bond include the following:

(A) The strength of the complainant's case;

(B) Whether posting a bond would impose an undue hardship on the complainant;

(C) Whether the respondent has responded to the motion for temporary relief (in the time and manner specified by paragraph (e)(9) of this section or by order of the Commission or the presiding administrative law judge);

(D) Whether the respondent will be harmed by issuance of the temporary exclusion order sought by the complainant; and

(E) Any other legal, equitable, or public interest consideration that is relevant to whether complainant should be required to post a bond as a condition precedent to obtaining temporary relief (including the question of whether the complainant is using the temporary relief proceedings, or is likely to use a temporary exclusion order, to harass the respondents or for some other improper purpose).

No single factor will be determinative. The Commission's policy is to favor the posting of a bond in every case. Therefore, a complainant who believes that a bond should not be required has the burden of persuading the Commission that a bond should not be required.

(iv) The following documents and information shall be filed along with all motions for temporary relief:

(A) A memorandum of points and authorities in support of the motion;

(B) Affidavits executed by persons with knowledge of the facts specified in the motion; and

(C) All documentary information and other evidence in complainant's possession that complainant intends to submit in support of the motion.

(v) If the motion requests issuance of a temporary exclusion order, the complainant must also provide information and documents that will assist the presiding administrative law judge and the Commission in computing the amount of the bond if a bond is to be required. (A complainant also may file, if it chooses, a draft of the bond it expects to submit if a bond is to be required.) In cases where a domestic industry exists and domestic sales of the product in question have commenced and have not been de minimis, the amount of the bond is likely to be an amount ranging from 10 to 100 percent of the sales revenues and licensing royalties (if any) from the domestic product at issue, as reported in the complainant's audited annual financial statements for the most recent fiscal year. In such cases, the complainant must provide the following documents:

(A) The audited financial statements (or the equivalent thereof, if audited statements do not exist) for the most recently completed fiscal year;

(B) The back-up income statements, work sheets, or other documents showing revenues for the domestic product at issue in the investigation, which are tied to the aggregate revenue listed on the financial statements; and

(C) A certification under oath by the complainant's chief financial officer indicating that the detail provided in the work sheets or other documents tied to the audited financial statements is correct.

In cases where the aforesaid formula would not be appropriate—including but not limited to cases where the domestic industry is embryonic and domestic sales have been de minimis, or cases involving the alleged prevention of the establishment of a domestic industry or the alleged restraint of trade or commerce in the United States—the amount of the bond will be determined on the basis of the facts on the record, the complainant's financial strength, the parties' arguments, and any other factors which the presiding administrative law judge or the Commission deem relevant. In such cases, the motion for temporary relief should state why the prescribed formula is not appropriate (with supporting documentation where appropriate). The motion should also state the theory the complainant believes is appropriate for computing the amount of the bond (if the Commission determines to require a bond) and should provide supporting financial and economic data with certification under oath executed by the complainant's chief financial officer attesting to the veracity of the data provided. All complainants who are seeking a temporary exclusion order (including complainants who have provided the audited financial statements and back up data listed above in paragraph (e)(v)(B) of this section) must be prepared to provide upon short notice any additional financial or economic data requested by the presiding administrative law judge in connection with the issue of bonding and the certification under oath by the complainant's chief financial officer that the information submitted is accurate.

(vi) If the complaint, the motion for temporary relief, and the supporting documentation contain confidential business information as defined in § 201.6(a), of this chapter, the complainant must follow the procedure outlined in §§ 210.6(a), 201.6 (a) and (c), of this chapter and paragraph (e)(5) of this section.

* * * * *

(7) *Amendment of the motion.* A motion for temporary relief may be amended at any time prior to the institution of an investigation. However, all material filed to amend the motion (or the complaint) must be served on all proposed respondents and on the embassies in Washington, DC, of the foreign governments that they represent, in accordance with paragraph (e)(4) of this section. If the amendment expands the scope of the motion or changes the complainant's assertions on the issue of whether a bond is to be required as a prerequisite to the issuance of a temporary exclusion order or the appropriate amount of the bond, the 35-day period allotted under paragraph (e)(8) of this section for determining whether to institute an investigation and to initiate temporary relief proceedings shall begin to run anew from the date the amendment is filed with the Commission. Motions for temporary relief may not be amended after an investigation is instituted.

* * * * *

(9) *Responses to the motion and the complaint.* Any party may file a response to a motion for temporary relief. Responses shall be filed within ten (10) days after service of the motion by the Commission upon institution of an investigation, unless otherwise ordered by the administrative law judge. The response must comply with the requirements of § 201.8 of this chapter and § 210.5, and shall contain the following information:

(i) A statement that sets forth with particularity any objection to the motion for temporary relief;

(ii) A statement that sets forth with specificity facts bearing on:

(A) Complainant's probability of success on the merits;

(B) Immediate and substantial harm, if any, to the domestic industry in the absence of the requested temporary relief;

(C) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and

(D) The effect, if any, that issuance of the requested temporary relief would have on the public interest.

(iii) A memorandum of points and authorities in opposition to the motion:

(iv) Affidavits, where possible, executed by persons with knowledge of the facts specified in the response. If the motion requests that the Commission

issue a temporary exclusion order, each response to the motion must address, to the extent possible, the complainant's assertions regarding whether a bond should be required and the appropriate amount of the bond. Responses to the motion for temporary relief also may contain counter proposals concerning the amount of the bond or the manner in which the bond amount should be calculated. Each response to the motion for temporary relief must also be accompanied by a response to the complaint and notice of investigation. Response to the complaint and notice of investigation must comply with § 201.8 of this chapter and §§ 210.5 and 210.21.

(10) *Referral to an administrative law judge.* Following provisional Commission acceptance of a motion for temporary relief and upon institution of an investigation, the motion for temporary relief shall be forwarded to an administrative law judge for an initial determination on whether there is reason to belief there is a violation of section 337 of the Tariff Act, whether temporary relief is appropriate, whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued) and, if so, the amount of the bond.

(11) *Designating an investigation "more complicated" for the purpose of adjudicating a motion for temporary relief.* At the time the Commission determines to institute an investigation and provisionally accepts a motion for temporary relief pursuant to paragraph (e)(8) of this section, the Commission may designate the investigation "more complicated" pursuant to § 210.59(b) for the purpose of obtaining additional time to adjudicate the motion for temporary relief. In the alternative, after the motion for temporary relief is referred to the administrative law judge for an initial determination under paragraphs (e)(10) and (17) of this section, the administrative law judge may issue an order, sua sponte or on motion, designating the investigation "more complicated" for the purpose of obtaining additional time to adjudicate the motion for temporary relief. Such order shall constitute a final determination of the Commission, and notice of the order shall be published in the **Federal Register**. The "more complicated" designation may be applied by the Commission or the presiding administrative law judge pursuant to this paragraph on the basis of the complexity of issues relating to whether there is reason to believe that the respondents have violated section 337 and whether temporary relief is appropriate. The "more complicated" designation also may be applied by the Commission or the presiding administrative law judge because of complications in determining whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order and, if so, the amount of the bond.

(12) *Discovery and compulsory process.* The administrative law judge shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitation set forth in paragraph (e)(17)(i) of this section relating to issuance of an initial determination concerning the motion for temporary relief. The administrative law judge's authority to compel discovery includes discovery relating to the following issues:

(i) The effect, if any, that issuance of the temporary relief requested in the motion would have on the public interest;

(ii) The form of temporary relief the Commission should issue if it determines to grant temporary relief;

(iii) Whether the public interest factors enumerated in the statute preclude that form of relief;

(iv) The amount of the bond under which the respondent(s)' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission;

(v) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order; and, if so,

(vi) The amount of bond.

As part of the standard analysis for determining whether to grant a motion for temporary relief (see paragraphs (e)(1)(i) and (9) of this section), the administrative law judge should make findings on the issue specified in paragraphs (e)(12) (v) and (vi) of this section. The administrative law judge may, but is not required to, make findings on issues specified in paragraphs (e)(12) (ii), (iii), and (iv) of this section. Evidence and information obtained through discovery on those issues will be used by the parties and considered by the Commission in the context of the parties' written submissions on remedy, the public interest, and bonding by respondents, which are filed with the Commission pursuant to paragraph (e)(18) of this section.

(13) *Evidentiary hearing.* A motion for temporary relief and the matter of bonding by the complainant may be ruled upon without a hearing by the administrative law judge when a motion for summary determination under § 210.50(a) is granted in favor of respondents or other parties opposing the motion for temporary relief, or if the administrative law judge determines that the motion should be dismissed for some other reason (*e.g.*, failure to comply with some portion of paragraph (e)(1) of this section). (Such rulings by the administrative law judge shall be in the form of an initial determination issued under paragraph (e)(17)(i) of this section.) If a hearing is conducted, the precise form and scope of the hearing are left to the discretion of the administrative law judge. At the hearing or as directed by the administrative law judge, the parties shall address the following issues:

(i) Whether there is reason to believe that there is a violation of section 337 of the Tariff Act;

(ii) Whether temporary relief is appropriate;

(iii) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued); and, if so,

(iv) The amount of the bond.

The administrative law judge may, but is not required to take evidence at the hearing concerning remedy, the public interest, and bonding by respondents as specified in paragraphs (e)(12) (ii), (iii), and (iv) of this section. However, as part of the standard analysis for determining whether to grant or deny a motion for temporary relief (*see* paragraphs (e) (1) and (9) of this section), the administrative law judge should take evidence on the question of what effect the form of temporary relief requested in the motion for temporary relief would have on the public interest, and the question of whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if applicable) and, if so, the amount of the bond.

(14) *Proposed findings and conclusions and briefs.* The administrative law judge shall determine whether and, if so, to what extent the parties shall be permitted to file proposed findings of fact, proposed conclusions of law, and/or briefs (pursuant to § 210.52) concerning:

(i) The grant or denial of temporary relief;

(ii) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued); and, if so,

(iii) The amount of the bond.

(15) *Interlocutory appeals and review by the Commission.* There will be no interlocutory appeals to the Commission (pursuant to § 210.71) of the administrative law judge's ruling on any matter delegated to him or her for decision under a provision of paragraph (e) of this section. After the administrative law judge has certified the following materials to the Commission (pursuant to paragraphs (e)(16) and (17) of this section) an initial determination granting or denying a motin for temporary relief, a ruling on the issue of bonding by the complainant as a prerequisite to the issuance of a temporary exclusion order, and the administrative record upon which the initial determination is based, the Commission's review of the administrative law judge's actions and rulings relating to the motion for temporary relief and the question of bonding by the complainant will be limited to the issues specified in paragraph (e)(17)(ii) of this section.

(16) *Certification of the record.* At the close of the reception of evidence in any hearing held pursuant to paragraph (e)(13) of this section or as soon as possible thereafter, the administrative law judge shall certify the record to the Commission prior to issuance of an initial determination concerning temporary relief and, if applicable, bonding by the complainant as a prerequisite to the issuance of a temporary exclusion order. However, if such advance certification is not feasible, the record shall be certified to the Commission when the administrative law judge issues the aforesaid initial determination, in accordance with paragraph (e)(17)(i) of this section.

(17) *Initial determination concerning temporary relief and Commission action thereon.* (i) On the 70th day after publication of the notice of investigation in an ordinary investigation, or on the 120th day after such publication in a "more complicated" investigation, the administrative law judge will issue an initial determination concerning whether there is reason to believe that respondents have violated section 337 of the Tariff Act and, if applicable, the issue of bonding by the complainant as a prerequisite to the issuance of a temporary exclusion order. The initial determination may, but is not required to, address appropriate relief, the public interest, and bonding by the respondents as specified in paragraphs (e)(12), (ii), (iii), and (iv) of this section. However, as part of the standard analysis for determining whether to grant or deny a motion for temporary relief (*see* paragraphs (e) (1) and (9) of this section), the initial determination shall address the questions of:

(A) What effect the form of relief requested in the motion would have on the public interest (except when the initial determination is granting a summary determination denying the motion for temporary relief (pursuant to paragraph (e)(13) of this section);

(B) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued); and, if so,

(C) The amount of the bond.

(ii) The initial determination will become the Commission's determination twenty (20) calendar days after issuance thereof in an ordinary case, and thirty (30) calendar days after issuance in a "more complicated" investigation, unless the Commission modifies or vacates the initial determination within that period. Such modification or vacation may be ordered on the basis of errors of law or for policy matters (including policy considerations related to bonding and the public interest). No review will be ordered solely on the basis of alleged errors of fact. In computing the aforesaid 20-day and 30-day deadlines, intermediary Saturdays, Sundays, and federal holidays shall be included. However, if the last day of the period is a Saturday, Sunday, or federal holiday as defined in § 201.14(a) of this chapter, the filing deadline shall be extended to the next business day. Because of the time constraints imposed by the statutory deadlines for determining whether to order temporary relief under section 337 of the Tariff Act, the additional time ordinarily allotted under § 201.16(d) of this chapter cannot be provided.

(iii) In order to assist the Commission to determine whether modification or revocation of the initial determination is warranted, all parties may file written comments concerning the presence (or absence) of errors of law in the initial determination and/or matters of policy (including policy considerations related to bonding and the public interest) that justify such action (or show that would not be justified). Such comments will be limited to thirty-five (35) pages and must be filed no later than seven (7) calendar days after service of the initial determination in an ordinary case and ten (10) calendar days after service of the initial determination in a "more complicated" investigation. In computing the aforesaid 7-day and 10-day deadlines, intermediary Saturdays, Sundays, and federal holidays shall be included. However, if the last day of the period is a Saturday, Sunday, or federal holiday as defined in § 201.14(a) of this chapter, the filing deadline shall be extended to the next business day. Because of the time constraints imposed by the statutory deadlines for determining whether to order temporary relief under section 337 of the Tariff Act, the additional time ordinarily allotted under § 201.16(d) of this chapter cannot be provided.

(iv) Nonconfidential copies of the initial determination also will be served on other agencies, and they will be given ten (10) calendar days in which to file comments on the initial determination.

(v) Each party may file a response to other parties' comments within ten (10) calendar days after issuance of the initial determination in an ordinary case, and within fourteen (14) calendar days after issuance of an initial determination in a "more complicated" investigation. The reply comments will be limited to twenty (20) pages. If the last day of the 10-day or 14-day period is a Saturday, Sunday, or federal holiday as defined in § 201.12(a) of this chapter, the filing deadline shall be extended to the next business day. Because of the constraints imposed by the statutory deadlines, additional time ordinarily allotted under § 201.16(d) of this chapter will not be provided. The parties are expected to facilitate the filing of timely and useful responses to each other's initial comments by serving the initial comments by the fastest means available.

(vi) If the Commission determines to modify or vacate the initial determination within twenty (20) calendar days after issuance thereof in an ordinary case, or thirty (30) calendar days after issuance in a "more complicated" case, a notice and (if appropriate) a Commission opinion will be issued. If the Commission does not modify or vacate the administrative law judge's initial determination within the time provided, the initial determination will automatically become the determination of the Commission and a notice of that fact will not be issued. However, if the Commission determines (either by reversing or modifying the administrative law judge's initial determination, or by adopting the initial determination) that a temporary exclusion order should be issued and that the complainant must post a bond as a prerequisite to the issuance of the order, the Commission may issue (on the statutory deadline for determining whether to grant temporary relief or as soon as possible thereafter) a notice setting forth conditions for the bond if any (in addition to those outlined in the

initial determination) and the deadline for filing the bond with the Commission.

(18) *Remedy, the public interest, and bonding by respondents.* The procedure for arriving at the Commission's determination of the issues of the appropriate form of temporary relief, whether the public interest factors enumerated in the statute preclude such relief, and the amount of the bond under which the respondents' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission, is as follows:

(i) While the motion for temporary relief is before the administrative law judge, he or she may compel discovery on matters relating to remedy, the public interest, and bonding by respondents (as provided in paragraph (e)(12) of this section). The administrative law judge also is authorized to make findings pertaining to the public interest, as provided in paragraph (e)(17)(i) of this section. However, such findings may be superseded by Commission findings on that issue as provided in paragraph (e)(18)(iii) of this section.

(ii) On the 60th day after institution in an ordinary case or on the 105th day after institution in a "more complicated" investigation, all parties may file written submissions with the Commission addressing those issues. The submissions shall refer to information and evidence already on the record, but additional information and evidence germane to the issues of appropriate relief, the statutory public interest factors, and bonding by respondents may be provided along with the parties' submissions.

(iii) On or before the 90-day or 150-day statutory deadline for determining whether to order temporary relief under subsection (b) of section 337 of the Tariff Act, the Commission will determine what relief is appropriate in light of any violation that appears to exist, whether the public interest factors enumerated in the statute preclude the issuance of such relief, and the amount of the bond under which the respondents' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission. In the event that Commission's findings on the public interest pursuant to paragraph (e)(18)(iii) of this section are inconsistent with findings made by the administrative law judge in the initial determination pursuant to paragraph (e)(17)(i) of this section, the Commission's findings are controlling.

4. In § 210.41, the introductory text of paragraph (a) is republished and paragraph (a)(2) is revised to read as follows:

§ 210.41 General provisions for hearings.

(a) *Purpose of hearings.* Unless otherwise ordered by the Commission:

* * * * *

(2) Except as provided under § 210.24(e)(13), an opportunity for a hearing shall also be provided to take evidence and hear argument for the purpose of determining whether there is reason to believe there is a violation of section 337 of the Tariff Act, whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is being requested) and, if so, the amount of the bond.

* * * * *

5. In § 210.53, paragraph (b) is revised and paragraph (j) is added to read as follows:

§ 210.53 Initial determination.

* * * * *

(b) *On issues concerning temporary relief.* The disposition of an initial determination concerning temporary relief (and if appropriate, the posting of a bond by the complainant and the amount of the bond) is governed by the provisions of § 210.24(c)(17).

* * * * *

(j) *Concerning the possible forfeiture of a complainant's temporary relief bond in whole or in part.* The disposition of an initial determination pursuant to § 210.58(c) concerning the possible forfeiture of a complainant's temporary relief bond in whole or in part shall be governed by the provisions of §§ 210.54 through 210.56(c). The initial determination shall beccme the determination of the Commission forty-five (45) days after the date on which it is served on the parties by the Secretary unless the Commission orders a review pursuant to § 210.54(b) or § 210.55 or extends the deadline for determining whether to order a review.

6. Paragraph (a)(1) sentence two and paragraph (b)(1) sentence one of § 210.54 are revised to read as follows:

§ 210.54 Petition for review.

(a) * * *

(1) * * * A petition for review of an initial determination filed pursuant to § 210.53(a) or (j) shall be filed within ten (10) days after the service of the initial determination. * * *

* * * * *

(b) * * *

(1) The Commission shall decide whether to grant, in whole or in part, a petition for review filed pursuant to § 210.53(a) or (j) within forty-five (45) days of the service of the initial determination on the parties, or by such other time as the Commission may order. * * *

* * * * *

7. Paragraph (d) of § 210.56 is revised to read as follows:

§ 210.56 Review by Commission.

* * * * *

(d) *Initial determinations concerning temporary relief and bonding by the complainant and the respondents.* Commission action on an initial determination concerning temporary relief and, possibly, bonding by the complainant and the respondents is governed by the provisions of § 210.24(e)(17) and (18).

8. In § 210.58, paragraph (b) is revised and a new paragraph (c) and Appendix A are added to read as follows:

§ 210.58 Commission action, public interest factor, and bonding.

* * * * *

(b)(1) With respect to addressing the issues of appropriate Commission action, the public interest, and bonding by the respondents for purposes of an initial determination concerning the grant or denial of a motion for temporary relief, see § 210.24(e)(12), (13), and (17). Unless otherwise ordered by the Commission or permitted by this paragraph, and except as provided in § 210.24(e)(12) and (13), the administrative law judge shall not take evidence or other information or hear arguments from the parties and other interested persons with respect to the subject matter of paragraphs (a)(1), (2), (3) and (4) of this section.

(2) Regarding settlements by agreement or consent order under § 210.51 (b) and (c), the parties may file statements regarding the impact of the proposed settlement on the public interest, and the administrative law judge may in his or her discretion hear argument, although no discovery may be compelled with respect to issues relating solely to the public interest. Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

(3) Regarding the issuance of an initial determination concerning the granting of a motion for a temporary exclusion order and whether the complainant should be required to post a bond as a prerequisite to the issuance of such an

order, *see* § 210.24(e)(1), (9), (10), (12), (13), and (17). If the Commission determines under § 210.24(e)(17)(ii) that the complainant must post a bond as a prerequisite to the issuance of a temporary exclusion order, the "bond" which the complainant submits may consist of one or more of the following:

(i) The surety bond of a surety or guarantee corporation that is licensed to do business with the United States in accordance with 31 U.S.C. 9304–9306 and 31 CFR Parts 223 and 224;

(ii) The surety bond of an individual, a trust, an estate, or a partnership, pursuant to 31 U.S.C. 9301 and 9303(c), whose solvency and financial responsibility will be investigated and verified by the Commission; or

(iii) A certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation within the meaning of 31 U.S.C. 9301 and 31 CFR Part 225, which are owned by the complainant and tendered in lieu of a surety bond, pursuant to 31 U.S.C. 9303(c) and 31 CFR Part 225.

The same restrictions and requirements relating to individual and corporate sureties on Customs bonds, which are set forth in 19 CFR Part 113, shall apply with respect to bonds posted by complainants pursuant to an order, notice, determination or opinion of the Commission issued pursuant to this paragraph or § 210.24(e)(17). If the survey is an individual, the individual must file an affidavit of the type shown in Appendix A to § 210.58. Unless otherwise ordered by the Commission, while the bond of the individual surety is in effect, an updated affidavit must be filed every four months (computed from the date on which the bond was approved by the Secretary or the Commission).

(4) The "bond" and accompanying documentation must be submitted to the Commission within the time specified in the Commission notice, order, determination, or opinion requiring the posting of a bond, or within such other time as the Commission may order. If the bond is not submitted within the specified period (and an extension of time has not been granted), a temporary exclusion order will not be issued.

(5) The corporate or individual surety on a bond or the person posting a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must provide the following information on the face of the bond or in the instrument authorizing the Government to collect or sell the bond, certified check, bank draft, post office money order, cash, United States bond, Treasury note, or other Government obligation in response to a Commission order requiring forfeiture of the bond pursuant to paragraph (C) of this section:

(i) The investigation caption and docket number;

(ii) The names, addresses, and seals (if appropriate) of the principal, the surety, the obligee, as well as the "attorney in fact" and the registered process agent (if applicable) (*see* Customs Service regulations 19 CFR Part 113 and Treasury Department regulations in 31 CFR Parts 223, 224, and 225);

(iii) The terms and conditions of the bond obligation, including the reason the bond is being posted, the amount of the bond, the effective date and duration of the bond (as prescribed by the Commission order, notice, determination, or opinion requiring the complainant to post a bond); and

(iv) A section at the bottom of the bond or other instrument for the date and authorized signature of the Commission Secretary to reflect Commission approval of the bond.

(6) Complainants who wish to post a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must notify the Commission in writing immediately upon receipt of the Commission document requiring the posting of a bond, and must contact the Secretary to make arrangements for Commission receipt, handling, management, and deposit of the certified check, bank draft, post office money order, or cash in accordance with 31 U.S.C. 9303, 31 CFR Parts 202, 206, 225 and 240, and other governing Treasury regulations and circular(s). If required by the governing Treasury regulations and circular, a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation tendered in lieu of a surety bond may have to be collateralized. *See, e.g.*, 31 CFR 202.6 and the appropriate Treasury Circular.

(7) In accordance with 31 U.S.C. 9304(b), all bonds posted by complainants must be approved by the Commission before the temporary exclusion order which the bond will secure will be issued. *See* 31 U.S.C. 9303(a) and 9304(b) and 31 CFR 225.1 and 225.20. The Commission's "bond approval officer" within the meaning of 31 CFR 225.1 and 255.20 shall be the Commission Secretary. The bond approval process will entail investigation by the Secretary or the Commission's Office of Investigations to determine the veracity of all factual information set forth in the bond and the accompanying documentation (*e.g.*, powers of attorney), as well as any additional verification required by 31 CFR Parts 223, 224, and 225, or the Commission rules. The Secretary may reject a bond on one or more of the following grounds:

(i) Failure to comply with the instructions in the Commission determination, order, or notice directing the complainant to post a bond;

(ii) Failure of the surety or the bond to provide information or supporting documentation required by the Commission rules, 31 U.S.C. 9304 and 31 CFR Parts 223 and 224, or governing Treasury circulars or because of a limitation prescribed in a governing statute, regulation, or circular;

(iii) Failure of an individual surety to execute and file with the bond, an affidavit of the type shown in Appendix A to § 210.58, which corresponds to Customs Form 3579 (19 CFR 113.35) and sets forth information about the surety's assets, liabilities, net worth, real estate and other property of which the individual surety is the sole owner, other bonds on which the individual surety is a surety (and which must be updated at 4-month intervals while the bond is in effect, measured from the date on which the bond is approved by the Secretary on behalf of the Commission or by the Commission);

(iv) Any question about the solvency or financial responsibility of the surety, or any question of fraud, misrepresentation, or prejury which comes to light as a result of the verification inquiry during the bond approval process; and

(v) Any other reason deemed appropriate by the Secretary.

If the complainant believes that the Secretary's rejection of the bond was erroneous as a matter of law, the complainant may appeal the Secretary's rejection of the bond by filing a petition with the Commission in the form of a letter to the Chairman, within ten (10) days after service of the rejection letter.

(8) After the bond is approved and the temporary exclusion order it secures is issued, if any question concerning the continued solvency of the individual or the legality or enforceability of the bond or undertaking develops, the Commission may take the following action, sua sponte or on motion;

(i) Revoke the Commission approval of the bond and require complainant to post a new bond; or

(ii) Revoke or vacate the temporary exclusion order for public interest reasons or changed conditions of law or

fact (criteria that are the basis for modification or rescission of final Commission action pursuant to § 211.57(a)(1) of this Chapter); and/or

(iii) Notify the Treasury Department if the problem involves a corporate surety licensed to do business with the United States under 31 U.S.C. 9303–9306 and 31 CFR Parts 223 and 224; and/or

(iv) Refer the matter to the U.S. Department of Justice if there is a suggestion of fraud, perjury, or related conduct.

(c) Forfeiture of complainant's bonds.

(1) When the Commission determines that one or more of the respondents whose merchandise was covered by the temporary exclusion order have not violated section 337 to the extent alleged in the motion for temporary relief and provided for in the temporary exclusion order, the complainant must file within thirty (30) days after the effective date of the aforesaid Commission determination, a written submission discussing whether the Commission should or should not order forfeiture of the bond. The factors the Commission will consider (and which the complainant's submission must address) in determining whether forfeiture of the bond should be ordered in whole or in part include the following:

(i) The extent to which the Commission has determined that section 337 has not been violated;

(ii) Whether the complainant's assertions with respect to the violation alleged as the basis for obtaining a temporary exclusion order were substantially justified, taking into account the record of the investigation as a whole;

(iii) Whether forfeiture would be consistent with the legislative intent of the forfeiture authority (which is to provide a "disincentive" to the abuse of temporary relief by complainants);

(iv) Whether forfeiture would be in the public interest; and

(v) Any other legal, equitable, or policy considerations that are relevant to the issue of forfeiture.

(2) The other parties to the investigation may file responses to the complainant's submission that address the aforesaid issues within fifteen (15) days after service of the complainant's submission.

(3) If the investigation is terminated on the basis of a settlement agreement or a consent order with no concurrent determination concerning the violation of section 337, the parties will not address, and the Commission will not determine the issue of whether the bond should be forfeited.

(4) The Commission's determination on whether to order forfeiture of the bond will be made by using the initial determination/discretionary Commission review procedure set forth in § 210.53(j) and §§ 210.54 through 210.56(c), which allow for longer filing deadlines, petitions for review and responses thereto with no page limitations, and broader criteria for reviewing, modifying and reversing an initial determination than the procedures and criteria set forth in § 210.24(e) (17) and (18) which govern the disposition of motions for temporary relief and the posting of bonds by complainants. In accordance with § 210.53 (a) and (h), the initial determination on forfeiture of the bond will become the determination of the Commission within forty-five (45) days after issuance of the presiding administrative law judge's initial determination on forfeiture unless the Commission orders a review or extends the deadline for determining whether to order a review.

(5) Motions to stay forfeiture proceedings or the effective date of a forfeiture order pending the outcome of judicial review of the violation determination will not be granted. If the negative violation determination supporting the forfeiture order is reversed on judicial review, within sixty (60) days after the judgment or judicial order becomes final, the complainant may file a petition with the Commission for a refund of the amount of the bond forfeited to the Treasury (if any). The other parties to the investigation may file responses to the forfeiture refund petition within ten (10) days after service of the petition. If the Commission determines in response to the complainant's petition or sua sponte that the bond amount forfeited to the Treasury should be refunded in whole or in part, the Commission shall issue an order directing that the appropriate sum be refunded as expeditiously as possible in accordance with the governing Treasury procedures and regulations.

BILLING CODE 7020-02-M

Appendix A to § 210.58
Affidavit by Individual Surety

UNITED STATES INTERNATIONAL TRADE COMMISSION

AFFIDAVIT BY INDIVIDUAL SURETY

19 C F R 210.58

STATE OF)
) SS:
COUNTY)
)

I, the undersigned, being duly sworn, depose and say that I am a citizen of the United States, and of full age and legally competent; that I am not a partner in any business of the principal on the bond or bonds on which I appear as surety; that the information herein below furnished is true and complete to the best of my knowledge. This affidavit is made to induce the United States International Trade Commission to accept me as surety on the bond(s) filed or to be filed with the United States International Trade Commission pursuant to 19 C F R 210.58. I agree to notify the Commission of any transfer or change in any of the assets herein enumerated.

1. NAME (First, Middle, Last)	2. HOME ADDRESS
3. TYPE & DURATION OF OCCUPATION	4. NAME OF EMPLOYER (If Self-Employed, So State)
5. BUSINESS ADDRESS	5. TELEPHONE NO. HOME - BUSINESS -

7. THE FOLLOWING IS A TRUE REPRESENTATION OF MY ASSETS, LIABILITIES, AND NET WORTH AND DOES NOT INCLUDE ANY FINANCIAL INTEREST I HAVE IN THE ASSETS OF THE PRINCIPAL ON THE BOND(S) ON WHICH I APPEAR AS SURETY.

a.	Fair value of solely owned real estate*	$_____
b.	All mortgages or other encumbrances on the real estate included in Line a	_____
c.	Real estate equity (subtract Line b from Line a)	_____
d.	Fair value of all solely owned property other than real estate	_____
e.	Total of the amounts on Lines c and d	_____
f.	All other liabilities owing or incurred not included in Line b	_____
g.	Net worth (subtract Line f from Line e)	_____

*Do not include property exempt from execution and sale for any reason. Surety's interest in community property may be included if not so exempt.

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8. LOCATION AND DESCRIPTION OF REAL ESTATE OF WHICH I AM SOLE OWNER, THE VALUE OF WHICH IS INCLUDED IN LINE (a), ITEM 7 ABOVE 1/

Amount of assessed value of above real state for taxation purposes:

9. DESCRIPTION OF PROPERTY INCLUDED IN Line (d), ITEM 7 ABOVE (List the value of each category of property separately) 2/

10. ALL OTHER BONDS ON WHICH I AM SURETY (State character and amount of each bond; if none, so state) 3/

11. SIGNATURE	12. BOND AND COMMISSION INVESTIGATION TO WHICH THIS AFFIDAVIT RELATES

SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

DATE OATH ADMINISTERED MONTH DAY YEAR	CITY	STATE (Or Other Jurisdiction)

NAME & TITLE OF OFFICIAL ADMINISTERING OATH	SIGNATURE	MY COMMISSION EXPIRES

INSTRUCTIONS

1. Here describe the property by giving the number of the lot and square or block, and addition or subdivision, if in a city, and, if in the country after showing state, county, and township, locate the property by metes and bounds, or by part of section, township, and range, so that it may be identified.

2. Here describe the property by name so that it can be identified - for example "Fifteen shares of the stock of the National Metropolitan Bank, New York City," or "Am. T. & T. s. f.5's 60".

3. Here state what other bonds the affiant has already signed as surety, giving the name and address of the principal, the date, and the amount and character of the bond.

BILLING CODE 7020-02-C

9. Paragraph (b) of § 210.59 is revised to read as follows:

§ 210.59 Period for concluding Commission investigation.

* * * * *

(b) An investigation may be designated "more complicated" by the Commission or the presiding administrative law judge pursuant to § 210.24(e)(11) for the purpose of extending the statutory deadline for determining whether to grant or deny a motion for temporary relief, as well as the issues of bonding by the complainant if a temporary exclusion order is to be issued and the amount of the bond. The Commission's or the administrative law judge's reasons for designating the investigation "more complicated" for that purpose shall be published in the **Federal Register.** In computing the statutory deadline for determining whether to grant or deny a motion for temporary relief in an investigation designated "more complicated" pursuant to this paragraph (and § 210.24(e)(11), there shall be excluded any period of time during which the investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

* * * * *

By order of the Commission.

Issued: November 29, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-28003 Filed 12-5-88; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74 and 201

[Docket No. 86C-0192]

FD&C Yellow No. 6 Label Declaration

AGENCY: Food and Drug Administration.

ACTION: Final rule; suspension.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, pending further agency action, it will not enforce the provisions of the FD&C Yellow No. 6 regulations (21 CFR 74.706(d)(2), 74.1706(c)(2), and 201.20(c)) that require that beginning January 1, 1989, the labels of all foods and drugs that contain this color additive declare its presence.

DATE: Sections 74.706(d)(2), 74.1706(c)(2), and 201.20(c) are suspended as of December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 19, 1986 (51 FR 41765), FDA published a final rule that permanently listed FD&C Yellow No. 6 for use in food, drugs, and cosmetics. That final rule also established a label declaration requirement for all food and drug products (21 CFR 74.706(d)(2), 74.1706(c)(2), and 201.20(c)) containing the color additive because of reported allergic reactions to FD&C Yellow No. 6. In that final rule, the agency stated that the compliance date for declaring FD&C Yellow No. 6 on product labels would be November 19, 1987.

FDA received several objections to the labeling requirement for FD&C Yellow No. 6. Those objections addressed, among other things, the evidence used by the agency to establish the ruling, the fact that FDA did not propose labeling before making it a requirement in a final rule, and the effective date for the labeling requirement.

FDA evaluated the objections and presented its responses in the **Federal Register** of June 8, 1987 (52 FR 21505). The agency reiterated its reasoning for establishing the labeling requirements for FD&C Yellow No. 6. In response to some of the objections, the agency made revisions in the labeling language for drug products and extended the effective date for compliance with the label declaration requirement to January 1, 1989.

On October 5, 1987, the Certified Color Manufacturers Association, Inc. (CCMA), filed in the U.S. Court of Appeals for the District of Columbia Circuit a petition challenging only that portion of the final rule dated June 8, 1987, that required by making final the rule of November 19, 1986, that all food labeling declare the presence of FD&C Yellow No. 6. The issues raised by CCMA were: (1) Whether FDA provided sufficient notice under the agency's regulations, the Administrative Procedure Act, the Federal Food, Drug, and Cosmetic Act and the Due Process Clause of the U.S. Constitution for that portion of the above-mentioned final rule, and (2) whether that portion of the final rule is supported by sufficient evidence. On February, 29, 1988, FDA and CCMA filed a stipulation for the voluntary dismissal of the petition for judicial review. The stipulation was based on the fact that FDA had agreed to issue in the **Federal Register** a notice withdrawing, as a final rule, the labeling requirement set forth at 52 FR 21505 and simultaneously to publish, as a proposed rule, a label declaration requirement for products containing FD&C Yellow No. 6. This agreement did not affect the permanent listing of the color additive as confirmed in the June 8, 1987, **Federal Register** document.

FDA is preparing the notice withdrawing this requirement and the proposed rule. Until further agency action, however, FDA will not enforce the provisions (21 CFR 74.706(d)(2), 74.1706(c)(2), and 201.20(c)) that require the label declaration of FD&C Yellow No. 6. Any food or drug product on the market on or after January 1, 1989, the effective date for labeling compliance, that contains the color additive but that does not have the specific declaration will not be considered out of compliance with the FD&C Yellow No. 6 regulations.

Dated: November 28, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-27848 Filed 12-5-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

[Docket No. R-88-1401; FR-2472]

Rental Rehabilitation Grants

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

ACTION: Final rule.

SUMMARY: This final rule implements sections 150(a), (c), (d), (e) and 311 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Section 150 makes a number of changes in the Rental Rehabilitation Grant Program authorized by section 17(a)(1)(A) of the United States Housing Act of 1937 and codified at 24 CFR Part 511.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice

of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become final until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, Office of Urban Rehabilitation, Room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–5970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Purpose

HUD's regulations at 24 CFR Part 511 authorize the Secretary of Housing and Urban Development to make rental rehabilitation grants to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes. This rule makes final a previously published interim rule to implement statutory revisions permitting a grantee to use uncommitted funds from prior years as well as FY 1988 funds to carry out its rental rehabilitation programs. The changes include permitting grantees to use a portion of their funds for administrative expenses, and increasing the per-unit assistance limits.

Two other 1987 Act amendments, one making eligible for rental rehabilitation assistance real property that will be privately owned upon completion of rehabilitation, and the other making eligible property owned by certain non-profit organizations, are not implemented by this rule.

The Department published an interim rule on July 6, 1988 (53 FR 25462) seeking public comment. HUD received one comment in support of the rule.

Finding and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969. The revisions in the Rental Rehabilitation Program regulations are not environmentally significant because the changes are administrative and will not result in significant impact on the physical environment. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not contribute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements several statutory provisions that improve the Rental Rehabilitation Program. These changes will have neither a significant economic impact on, nor an effect on a substantial number of, small entities.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that the rule will not have a significant impact on the family. The final rule implements several statutory provisions that improve the Rental Rehabilitation Program and will have little, if any, impact on family formation, maintenance and general well-being.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, *Federalism,* has determined that the final rule does not involve the preemption of State law by Federal statute or regulation, and does not have substantial direct effects on States or their political subdivisions, or on the relationship or distribution of power among the various levels of government. The rule, which permits a grantee to use uncommitted funds from prior years as well as FY 1988 funds to carry out its rental rehabilitation programs will not have a significant impact on the States.

The Catalog of Federal Domestic Assistance Program number is 14.230.

The rule was listed as Sequence No. 1026 in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 42003) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 511

Rental rehabilitation grants, Administrative practice and procedure, Grants programs: housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, the Interim Rule published in the **Federal Register** on July 6, 1988 (53 FR 25462), as corrected on July 26, 1988 (53 FR 28115), is adopted as final without changes.

Date: November 28, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

[FR Doc. 88–27980 Filed 12–5–88; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 885

[Docket No. N–88–1891; FR–2587]

Section 202 Loans for Housing for the Elderly or Handicapped; Fiscal Year 1989 Loan Interest Rate

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

ACTION: Announcement of Section 202 Loan Interest Rate—Fiscal Year 1989.

SUMMARY: Under 24 CFR 885.410(g), the interest rate for a loan for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 is set at one of two rates: (1) The annual interest rate announced by HUD under § 885.410(g)(1); or (2) the optional interest rate elected by the Borrower and computed by HUD at the time of the Borrower's request for conditional or firm commitment under § 885.410(g)(2). This document establishes 9.25 percent as the annual interest rate for Fiscal Year 1989. (Information concerning the calculation of the optional interest rate will be provided to Borrowers upon request. See § 885.410(h).)

FOR FURTHER INFORMATION CONTACT: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, 451 Seventh Street, SW., Room 6116, Washington, DC 20401–8000, telephone (202) 426–8730. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 24 CFR 885.410(g), the interest rate for a loan for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 is set at one of two rates: (1) The annual interest rate announced by HUD under § 885.410(g)(1); or (2) the optional interest rate elected by the Borrower

and computed by HUD at the time of the Borrower's request for conditional or firm commitment under § 885.410(g)(2). The citations in this document are to the interim rule published June 1, 1988 (53 FR 19899) and the final rule published November 9, 1988 (53 FR 45265).

This document announces HUD's determination of the annual interest rate. (Information concerning the calculation of the optional interest rate will be provided to Borrowers upon request. See § 885.410(h).)

The annual interest rate under § 885.410(g)(1) may not exceed:

(1) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceeding the fiscal year in which the loan is made (adjusted to the nearest one-eight of one percent) plus an allowance to cover administrative costs and probable losses under the program. (This allowance has been determined by the Secretary of Housing and Urban Development to be one-fourth of one percent (0.25 percent) per annum for both the construction and permanent loan periods); and

(2) Any applicable statutory ceiling on the loan interest rate including the allowance to cover administrative costs and probable losses. (§ 885.410(g)(1)(ii)). The current statutory ceiling is 9.25 percent per annum.

The average yield on the described interest-bearing obligations of the United States during the last three months of Fiscal Year 1988 was 9.125 percent. This rate plus the 0.25 percent allowance for administrative costs and probable losses yields an interest rate of 9.375 percent, a rate in excess of the 9.25 percent statutory ceiling. Accordingly, this Notice establishes the annual interest rate for section 202 loans made during Fiscal Year 1989 at the statutory ceiling of 9.25 percent per annum.

Under 24 CFR 50.20(l), an environmental finding is not necessary because the statutorily required establishment of interest rates is among matters that are categorically excluded from the environmental requirements of 24 CFR Part 50.

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 28, 1988.

Thomas T. Demery,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 88-28000 Filed 12-5-88; 8:45 am]

BILLING CODE 4210-27-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) by adding a new Table I–89 to Appendix D. Table I–89 is to be used by any terminating pension plan with a valuation date falling in 1989 to determine expected retirement ages for plan participants in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Although the amendments to Title IV effected by the Single-Employer Pension Plan Amendments Act of 1986 and the Pension Protection Act (Part II of Subtitle D of Title IX of the Omnibus Budget Reconciliation Act of 1987) change significantly the rules for terminating single-employer plans, the rules for valuing benefits in such plans are much the same. Under ERISA section 4041(c), plans wishing to terminate in a distress termination generally must value guaranteed benefits and benefit liabilities under the plan using formulas set forth in Part 2619. Plans terminating in a standard termination may also use the formulas in Part 2619 to value benefit liabilities for purposes of the notice to the PBGC required by ERISA section 4041(b)(2)(A), although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Under § 2619.46, early retirement benefits are valued according to the annuity starting date, if a retirement date has been selected, or according to the expected retirement age, if the annuity starting date is not known on the valuation date. Subpart D of Part 2619 sets forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendices D and E of Part 2619 contain tables and examples to be used in determining the expected early retirement ages.

There are two sets of tables in Appendix D. The first set, Selection of Retirement Rate Category (I–79 through I–88), is used to determine whether a participant has a low, medium, or high probability of retiring early. The second set of tables, Expected Retirement Ages for Individuals in the Low/Medium/High Categories (II–A, II–B, and II–C), is used to determine the expected retirement age after the probability of early retirement has been determined.

The first set of tables determines the probablility of early retirement based on the year a participant would reach normal retirement age and the participant's monthly benefit at normal retirement age. The second set of tables establishes, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the normal retirement age under the plan. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

Tables I–79 through I–88 in Appendix D establish retirement rate categories for the calendar years 1979 through 1988. The table for each year applies only to plans with valuation dates in that year. This rule amends Appendix D to add Table I–89 in order to provide an updated correlation, appropriate for calendar year 1989, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–89 will be used to value benefits in plans with valuation dates that occur during calendar year 1989.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest.

Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 1989, the plan administrator needs the updated table being promulgated in this rule. Accordingly,

the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 1989. Moreover, because of the need to provide immediate guidance for the valuation of benefits under such plans, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity or innovation.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Appendix D to Part 2619 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 9312–13, Pub. L. 100–203, 101 Stat. 1330.

2. Appendix D to Part 2619 is amended by adding Table I–89 as follows:

Appendix D—Tables Used to Determine Expected Retirement Age

* * * * *

TABLE I–89.—SELECTION OF RETIREMENT RATE CATEGORY

[For plans with valuation dates after December 31, 1988, and before January 1, 1990]

Participant reaches NRA in year—	Participant's retirement rate category is—			
	Low [1] if monthly benefit at NRA is less than—	Medium [2] if monthly benefit at NRA is—		High [3] if monthly benefit at NRA is greater than—
		From—	To—	
1990	316	316	1,330	1,330
1991	327	327	1,378	1,378
1992	338	338	1,422	1,422
1993	347	347	1,461	1,461
1994	355	355	1,493	1,493
1995	363	363	1,526	1,526
1996	371	371	1,559	1,559
1997	379	379	1,594	1,594
1998	387	387	1,629	1,629
1999 or later	395	395	1,665	1,665

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

Issued at Washington, DC, this 1st day of December 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88–28019 Filed 12–5–88; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF EDUCATION

34 CFR Parts 74, 75, 76, 80, 100, 200, 222, 241, 251, 253, 254, 255, 256, 257, 258, 263, 298, 300, 302, 307, 309, 315, 324, 326, 338, 361, 366, 367, 369, 370, 385, 386, 387, 388, 389, 390, 396, 538, 600, 607, 624, 626, 628, 637, 639, 643, 644, 649, 650, 653, 656, 657, 668, 674, 675, 676, 682, 690, 745, 755, 762, 769, 776, 777, 778, 779, 787, and 790

OMB Control Numbers

AGENCY: Department of Education.

ACTION: Final regulations; technical amendments.

SUMMARY: The Secretary amends Title 34 of the Code of Federal Regulations (CFR) to add Office of Management and Budget (OMB) control numbers to certain sections of the regulations. These sections contain information collection requirements approved by OMB. The Secretary takes this action to ensure that valid OMB control numbers are displayed for these sections of Department regulations.

EFFECTIVE DATE: These regulations are effective December 6, 1988.

FOR FURTHER INFORMATION CONTACT: A. Neal Shedd, Director, Division of Regulations Management, 400 Maryland Avenue SW., (Room 2131, FOB–6), Washington, DC 20202. Telephone: (202) 732–2887.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980, Pub. L. 96–511, establishes policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public. Under the Act, the Director of OMB has oversight authority for information collection activities. The Act authorizes the Director of OMB to promulgate necessary rules, regulations, or procedures (44 U.S.C. 3516).

OMB regulations published at 5 CFR 1320.4(a) and 1320.7(f)(2) require publication of these control numbers in the Federal Register for inclusion in the CFR.

In accordance with the applicable OMB regulations, the Secretary publishes OMB control numbers in this document for certain sections of regulations promulgated prior to OMB's publication of regulations implementing the Paperwork Reduction Act of 1980.

The Department has determined that some sections of final regulations listed as subject to OMB approval do not require review under the Paperwork Reduction Act of 1980. These sections became effective at the same time as the other regulations with which they were published. These sections include 34 CFR 628.32, Endowment Challenge Grant Program, published on July 12, 1984 (49 FR 28520); 34 CFR 690.72, Pell Grant Program, published on March 15, 1985 (50 FR 10710); and 34 CFR 706.21 and 706.22, Regional Educational Laboratories and Research and Development Centers Program: General Provisions, published on July 23, 1984 at (49 FR 29746).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking on these regulations is unnecessary and contrary to the public

interest and that a delayed effective date is not required under 5 U.S.C. 553(d)(3).

List of Subjects

34 CFR Part 74

Administrative practice and procedure, Grant programs—education, Grants administration.

34 CFR Part 75

Grant programs—education, Grants administration.

34 CFR Part 76

Grant programs—education, Grants administration, Intergovernmental relations, State-administered programs.

34 CFR Part 80

Accounting, Administrative practice and procedure, Grants administration, Insurance, Reporting and recordkeeping requirements.

34 CFR Part 100

Administrative practice and procedure, Civil rights.

34 CFR Part 200

Education of disadvantaged, Education of handicapped, Elementary and secondary education, Juvenile delinquency, Migrant labor.

34 CFR Part 222

Education of handicapped, Elementary and secondary education. Federally affected areas, Grant programs—education.

34 CFR Part 241

Education, Educational study programs, Elementary and secondary education, Grant programs—education, Law.

34 CFR Parts 251, 253, 254, 255, and 256

Elementary and secondary, Grant programs—Indians, Indians—education.

34 CFR Part 257

Grants programs—Indians, Indians—education, Teachers.

34 CFR Part 258

Adult education, grant programs—Indians, Indians—education.

34 CFR Part 263

Business and industry, Colleges and universities, Indians—education, Scholarships and fellowships, Teachers.

34 CFR Part 298

Administrative practice and procedure, Elementary and secondary education, Grant programs—education, State-administered programs.

34 CFR Part 300

Education of handicapped, Grant programs—education.

34 CFR Part 302

Education of handicapped, Elementary and secondary education, Grants programs—education.

34 CFR Part 307

Education of handicapped, Government contracts, Grant programs—education.

34 CFR Part 309

Education of handicapped, Grant programs—education.

34 CFR Part 315

Education of handicapped, Education—research, Grant programs—education, Teachers.

34 CFR Part 324

Education of handicapped, Grant programs—education, Scholarships and fellowships, Teachers.

34 CFR Part 326

Education of handicapped, Transitional services.

34 CFR Part 338

Adult education, Colleges and universities, Education of handicapped, Vocational education.

34 CFR Part 361

Administrative practice and procedure, Grant programs—education, Vocational rehabilitiation.

34 CFR Parts 366, 367, 369, 385, 386, 387, 388, 389, 390, and 396

Grant programs—education, Vocational rehabilitation.

34 CFR Part 370

Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 538

Bilingual education, Elementary and secondary education, Grant programs—education, Refugees.

34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Reporting and recordkeeping requirements.

34 CFR Part 607

Colleges and universities, Reporting and recordkeeping requirements.

34 CFR Parts 624 and 626

Colleges and universities, Grant programs—education.

34 CFR Part 628

Colleges and universities, Grant programs—education.

34 CFR Part 637

Colleges and universities, Education of disadvantaged, Grant programs—education, Science and technology.

34 CFR Part 639

Colleges and universities, Grant programs—education, Law.

34 CFR Part 643

Education of disadvantaged, Education of handicapped, Grant programs—education, Student aid.

34 CFR Part 644

Education of disadvantaged, Grant programs—education, Student aid.

34 CFR Part 649

Colleges and universities, Grant programs—education, Mineral resources, Scholarships and fellowships.

34 CFR Part 650

Colleges and universities, Scholarships and fellowships.

34 CFR Part 653

Grant programs—education, State-administered programs, Student aid.

34 CFR Part 656

Colleges and universities, Cultural exchange programs, Grant programs—education, Scholarships and fellowships.

34 CFR Part 657

Colleges and universities, Foreign languages, Scholarships and fellowships.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Loan programs—education, Grant programs—education, Student aid.

34 CFR Part 674

Loan programs—education, Student aid.

34 CFR Part 675

Colleges and universities, Employment, Grant programs—education, Student aid.

34 CFR Part 676

Grant programs—education, Student aid.

34 CFR Part 682

Administrative practice and procedure, Loan programs—education, Vocational education.

34 CFR Part 690

Administrative practice and procedure, Education of disadvantaged, Grant programs—education, Student aid.

34 CFR Part 745

Grant programs—education, Sex discrimination.

34 CFR Part 755

Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 762

Educational research, Fellowships.

34 CFR Part 769

Colleges and universities, Elementary and secondary education, Grant programs—education.

34 CFR Part 776

Colleges and universities, Grant programs—education, Libraries, Student aid.

34 CFR Part 777

Educational research, Grant Programs—education, Libraries.

34 CFR Part 778

Colleges and universities, Grant programs—education, Libraries, Research.

34 CFR Part 779

Libraries.

34 CFR Part 787

Dissemination and educational research.

34 CFR Part 790

Colleges and universities, Grant programs—education, Teachers.

(44 U.S.C. 3501–3520; 5 CFR Part 1320)

Dated: November 30, 1988.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance does not apply)

The Secretary amends Parts 74, 75, 76, 80, 100, 200, 222, 241, 251, 253, 254, 255, 256, 257, 258, 263, 298, 300, 302, 307, 309, 315, 324, 326, 338, 361, 366, 367, 369, 370, 385, 386, 387, 388, 389, 390, 396, 538, 600, 607, 624, 626, 628, 637, 639, 643, 644, 649, 650, 653, 656, 657, 668, 674, 675, 676, 682, 690, 745, 755, 769, 776, 777, 778, 779, 787, and 790 of Title 34 of the Code of Federal Regulations as follows:

PART 74—ADMINISTRATION OF GRANTS

1. The authority citation for Part 74 continues to read as follows:

Authority: 20 U.S.C. 3474; OMB Circular A–110, unless otherwise noted.

§§ 75.61, 74.73, 74.74, 74.75, 74.76, 74.82, and 74.140 [Amended]

2. Sections 74.61, 74.73, 74.74, 74.75, 74.76, 74.82, and 74.140 are amended by adding "(Approved by the Office of Management and Budget under control number 1880–0513)" following each section.

PART 75—DIRECT GRANT PROGRAMS

3. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), unless otherwise noted.

§§ 75.107, 75.108, 75.118, 75.119, 75.210, 75.261, 75.720, 75.730, and 75.732 [Amended]

4. Sections 75.107, 75.108, 75.118, 75.119, 75.210, 75.261, 75.720, 75.730, and 75.732 are amended by adding "(Approved by the Office of Management and Budget under control number 1880–0513)" following each section.

PART 76—STATE-ADMINISTERED PROGRAMS

5. The authority citation for Part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), unless otherwise noted.

§§ 76.131, 76.301, 76.302, 76.720, 76.730, 76.771, 76.780, and 76.781 [Amended]

6. Sections 76.131, 76.301, 76.302, 76.720, 76.730, 76.771, 76.780, and 76.781 are amended by adding "(Approved by the Office of Management and Budget under control number 1880–0513)" following each section.

PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

7. The authority citation for Part 80 continues to read as follows:

Authority: 20 U.S.C. 3474; OMB Circular A–102, unless otherwise noted.

§§ 80.10, 80.20, 80.24, 80.30, 80.32, 80.36, 80.40, 80.41, 80.42 and 80.50 [Amended]

8. Sections 80.10, 80.20, 80.24, 80.30, 80.32, 80.36, 80.40, 80.41, 80.42 and 80.50 are amended by adding "(Approved by the Office of Management and Budget under control number 1880–0517)" following each section.

PART 100—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF EDUCATION EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

9. The authority citation for Part 100 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1, unless otherwise noted.

§ 100.6 [Amended]

10. Section 100.6 is amended by adding "(Approved by the Office of Management and Budget under control number 1870–0500)" following the section.

PART 200—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

11. The authority citation for Part 200 continues to read as follows:

Authority: Secs. 552–559, 591–596 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3801–3808, 3871–3876, unless otherwise noted.

§ 200.13 [Amended]

12. Section 200.13 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0504)" following the section.

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

13. The authority citation for Part 222 continues to read as follows:

Authority: 20 U.S.C. 236–244, unless otherwise noted.

§§ 222.22, 222.23, 222.25 and 222.40 [Amended]

14. Sections 222.22, 222.23, 222.25 and 222.40 are amended by adding "(Approved by the Office of Management and Budget under control number 1880–0036)" following each section.

PART 241—LAW-RELATED EDUCATION PROGRAM

15. The authority citation for Part 241 is revised to read as follows:

Authority: 20 U.S.C. 3851, unless otherwise noted.

§§ 241.30 and 241.31 [Amended]

16. Sections 241.30 and 241.31 are amended by adding "(Approved by the Office of Management and Budget under control number 1880–0507)" following each section.

PART 251—FORMULA GRANTS—LOCAL EDUCATIONAL AGENCIES

17. The authority citation for Part 251 continues to read as follows:

Authority: 20 U.S.C. 2601–2606, unless otherwise noted.

§ 251.41 [Amended]

18. Section 251.41 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following the section.

PART 253—INDIAN CONTROLLED SCHOOLS—ENRICHMENT PROJECTS

19. The authority citation for Part 253 continues to read as follows:

Authority: Title IV, Part A, Pub. L. 92–318 (the Indian Education Act), 86 Stat. 334, as amended (20 U.S.C. 241bb(b)), unless otherwise noted.

§ 253.31 [Amended]

20. Section 253.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following the section.

PART 254—EDUCATIONAL SERVICES FOR INDIAN CHILDREN

21. The authority citation for Part 254 continues to read as follows:

Authority: Title IV, Part B, Pub. L. 92–318 (the Indian Education Act), 86 Stat. 339, as amended (20 U.S.C. 3385(a), (c)), unless otherwise noted.

§ 254.32 [Amended]

22. Section 254.32 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following the section.

PART 255—PLANNING, PILOT, AND DEMONSTRATION PROJECTS FOR INDIAN CHILDREN

23. The authority citation for Part 255 continues to read as follows:

Authority: Title IV, Part B, Pub. L. 92–318 (the Indian Education Act), 86 Stat. 339, as amended (20 U.S.C. 3385(a), (b)), unless otherwise noted.

§§ 255.32, 255.33 and 255.34 [Amended]

24. Sections 225.32, 255.33, and 255.34 are amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following each section.

PART 256—EDUCATIONAL PERSONNEL DEVELOPMENT

23. The authority citation for Part 255 continues to read as follows:

Authority: Title IV, Part B, Pub. L. 92–318, 86 Stat. 339, as amended (20 U.S.C. 3385); and the Indian Education Act, Section 422, as amended (20 U.S.C. 3385a), unless otherwise noted.

§ 256.32 [Amended]

26. Section 256.32 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following the section.

PART 257—EDUCATIONAL SERVICES FOR INDIAN ADULTS

27. The authority citation for Part 257 continues to read as follows:

Authority: Title IV, Part C, Pub. L. 92–318 (The Indian Education Act), 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

§ 257.31 [Amended]

28. Section 257.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following the section.

PART 258—PLANNING, PILOT, AND DEMONSTRATION PROJECTS FOR INDIAN ADULTS

29. The authority citation for Part 258 continues to read as follows:

Authority: Title IV, Part C, Pub. L. 92–318 (the Indian Education Act), 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

§§ 258.32, 258.33 and 258.34 [Amended]

30. Sections 258.32, 258.33, and 258.34 are amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following each section.

PART 263—INDIAN FELLOWSHIP PROGRAM

31. The authority citation for Part 263 continues to read as follows:

Authority: Sec. 423, Indian Education Act, as amended (20 U.S.C. 3385b), unless otherwise noted.

§§ 263.12 and 263.23 [Amended]

32. Sections 263.12 and 263.23 are amended by adding "(Approved by the Office of Management and Budget under control number 1810–0020)" following each section.

PART 298—CHAPTER 2 OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981

33. The authority citation for Part 298 continues to read as follows:

Authority: Secs. 561–596 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3811–3876, unless otherwise noted.

§ 298.4 [Amended]

34. Section 298.4 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0053)" following the section.

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

35. The authority citation for Part 300 continues to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

§§ 300.121 through 300.134, 300.136 through 300.141, 300.144, 300.146, 300.148 through 300.151, 300.380 through 300.385, 300.387 and 300.754 [Amended]

36. Sections 300.121, 300.122, 300.123, 300.124, 300.125, 300.126, 300.127, 300.128, 300.129, 300.130, 300.131, 300.132, 300.133, 300.134, 300.136, 300.137, 300.138, 300.139, 300.140, 300.141, 300.144, 300.146, 300.148, 300.149, 300.150, 300.151, 300.380, 300.381, 300.382, 300.383, 300.384, 300.385, 300.387, and 300.754 are amended by adding "(Approved by the Office of Management and Budget under control number 1820–0030)" following each section.

§ 300.507 [Amended]

37. Section 300.507 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0509)" following the section.

PART 302—STATE OPERATED PROGRAMS FOR HANDICAPPED CHILDREN

38. The authority citation for Part 302 is revised to read as follows:

Authority: 20 U.S.C. 241c–1, unless otherwise noted.

§§ 302.21 and 302.30 [Amended]

39. Sections 302.21 and 302.30 are amended by adding "(Approved by the Office of Management and Budget under control number 1820–0510)" following each section.

§ 302.25 [Amended]

40. Section 302.25 is amended by adding "(Approved by the Office of Management and Budget under control

number 1820–0513)" following the section.

PART 307—SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH

41. The authority citation for Part 307 continues to read as follows:

Authority: Sec. 622 of the Education of the Handicapped Act (20 U.S.C. 1422), unless otherwise noted.

§§ 307.31 and 307.40 [Amended]

42. Sections 307. 31 and 307.40 are amended by adding "(Approved by the Office of Management and Budget under control number 1820–0028)" following each section.

PART 309—HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM

43. The authority citation for Part 309 continues to read as follows:

Authority: 20 U.S.C. 1423, unless otherwise noted.

§ 309.21 [Amended]

44. Section 309.21 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0028)" following the section.

PART 315—PROGRAM FOR SEVERELY HANDICAPPED CHILDREN

45. The authority citation for Part 315 continues to read as follows:

Authority: 20 U.S.C. 1424.

§§ 315.32 and 315.33 [Amended]

46. Sections 315.32 and 315.33 are amended by adding "(Approved by the Office of Management and Budget under control number 1820–0028)" following each section.

PART 324—RESEARCH IN EDUCATION OF THE HANDICAPPED PROGRAM

47. The authority citation for Part 324 is revised to read as follows:

Authority: 20 U.S.C. 1414–1444, unless otherwise noted.

§§ 324.31 and 324.32 [Amended]

48. Sections 324.31 and 324.32 are amended by adding "(Approved by Office of Management and Budget under control number 1820–0028)" following each section.

PART 326—SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR HANDICAPPED YOUTH PROGRAM

49. The authority citation for Part 326 continues to read as follows:

Authority: 20 U.S.C. 1425, unless otherwise noted.

§§ 326.32 and 326.33 [Amended]

50. Sections 326.32 and 326.33 are amended by adding "(Approved by Office of Management and Budget under control number 1820–0028)" following each section.

PART 338—POSTSECONDARY EDUCATION PROGRAMS FOR HANDICAPPED PERSONS

51. The authority citation for Part 338 continues to read as follows:

Authority: 20 U.S.C. 1424a, unless otherwise noted.

§ 338.31 [Amended]

52. Section 338.31 is amended by adding "Approved by the Office of Management and Budget under control number 1820–0028)" following the section.

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

53. The authority citation for Part 361 continues to read as follows:

Authority: 20 U.S.C. 711(c), unless otherwise noted.

§§ 361.2, 361.17, 361.18, 361.36, 361.39, 361.40, 361.41, and 361.48 [Amended]

54. Sections 361.2, 361.17, 361.18, 361.36, 361.39, 361.40, 361.41, and 361.48 are amended by adding "(Approved by the Office of Management and Budget under control number (1820–0500)" following each section.

PART 366—CENTERS FOR INDEPENDENT LIVING

55. The authority citation for Part 366 continues to read as follows:

Authority: 29 U.S.C. 711(c), and 796(e), unless otherwise noted.

§§ 366.20 and 366.31 [Amended]

56. Sections 366.20 and 366.31 are amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following each section.

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER BLIND INDIVIDUALS

57. The authority citation for Part 367 continues to read as follows:

Authority: 29 U.S.C. 796f, unless otherwise noted.

§§ 367.20 and 367.21 [Amended]

58. Sections 367.20 and 367.21 are amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following each section.

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

59. The authority citation for Part 369 continues to read as follows:

Authority: 29 U.S.C. 711(c), 732, 750, 775, 777(a)(1), 777(a)(3), 777(b), 777f, and 795g, unless otherwise noted.

§ 369.31 [Amended]

60. Section 369.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following the section.

PART 370—CLIENT ASSISTANCE PROGRAM

61. The authority citation for Part 370 is revised to read as follows:

Authority: 29 U.S.C. 732, unless otherwise noted.

§ 370.44 [Amended]

62. Section 370.44 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0528)" following the section.

PART 385—REHABILITATION TRAINING

63. The authority citation for Part 385 continues to read as follows:

Authority: 29 U.S.C. 711(c), 744, and 776, unless otherwise noted.

64. Section 385.32 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following the section.

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

65. The authority citation for Part 386 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§ 386.30 [Amended]

66. Section 386.30 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following the section.

PART 387—EXPERIMENTAL AND INNOVATIVE TRAINING

67. The authority citation for Part 387 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§ 387.30 [Amended]

68. Section 387.30 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following the section.

PART 388—STATE VOCATIONAL REHABILIATATION UNIT IN-SERVICE TRAINING

69. The authority citation for Part 388 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§ 388.30 [Amended]

70. Section 388.30 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following the section.

PART 389—REHABILITATION CONTINUING EDUCATION PROGRAMS

71. The authority citation for Part 389 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§ 389.30 [Amended]

72. Section 389.30 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following the section.

PART 390—REHABILITATION SHORT-TERM TRAINING

73. The authority citation for Part 390 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§ 390.30 [Amended]

74. Section 390.30 is amended by adding the authority citation "(Authority: 29 U.S.C. 711(c) and 774)" following the section and adding "(Approved by the Office of Management and Budget under control number 1820–0018)".

PART 396—TRAINING OF INTERPRETERS FOR DEAF INDIVIDUALS

75. The authority citation for Part 396 continues to read as follows:

Authority: Sec. 304(d) of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602, 92 Stat. 2970 (29 U.S.C. 774(d)), unless otherwise noted.

§§ 396.20 and 396.30 [Amended]

76. Sections 396.20 and 396.30 are amended by adding "(Approved by the Office of Mangement and Budget under control number 1820–0018)" following each section.

PART 538—TRANSITION PROGRAM FOR REFUGEE CHILDREN

77. The authority citation for Part 538 continues to read as follows:

Authority: Immigration and Nationality Act, as amended by the Refugee Act of 1980, Pub. L. 96–212, 8 U.S.C. 1522(d), unless otherwise noted.

§ 538.20 [Amended]

78. Section 538.20 is amended by adding "(Approved by the Office of Management and Budget under control number 1885–0503)" following the section.

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

79. The authority citation for Part 600 continues to read as follows:

Authority: 20 U.S.C. 1085 (a), (b), and (e), 1088 (b) and (c), 1094(c)(3), and 1141 (a), unless otherwise noted.

§§ 600.8, 600.10, 600.20, 600.30 and 600.31 [Amended]

80. Sections 600.8, 600.10, 600.20, 600.30, and 600.31 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0098)" following each section.

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

81. The authority citation for Part 607 continues to read as follows:

Authority: 20 U.S.C. 1057–1059, 1066–1069f, unless otherwise noted.

§ 607.8 [Amended]

82. Section 607.8 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0114)" following the section.

PART 624—INSTITUTIONAL AID PROGRAMS—GENERAL PROVISIONS

83. The authority citation for Part 624 continues to read as follows:

Authority: 20 U.S.C. 1051–1069c, unless otherwise noted.

§ 624.21 [Amended]

84. Section 624.21 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0593)" following the section.

PART 626—SPECIAL NEEDS PROGRAM

85. The authority citation for Part 626 continues to read as follows:

Authority: Secs. 321–324 and 341–347 of Title III of the Higher Education Act of 1965 (20 U.S.C. 1060–1063 and 1066–1069c), unless otherwise noted.

§ 626.21 [Amended]

86. Section 626.21 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0593)" following the section.

PART 628—ENDOWMENT CHALLENGE GRANT PROGRAM

87. The authority citation for Part 628 continues to read as follows:

Authority: 20 U.S.C. 1065a, unless otherwise noted.

§§ 628.41 and 628.47 [Amended]

88. Sections 628.41 and 628.47 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0564)" following each section.

PART 637—MINORITY SCIENCE IMPROVEMENT PROGRAM

89. The authority citation for Part 637 continues to read as follows:

Authority: 20 U.S.C. 1135b–1135b–3, 1135d–1135d–6, unless otherwise noted.

§ 637.32 [Amended]

90. Section 637.32 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0109)" following the section.

PART 639—LAW SCHOOL CLINICAL EXPERIENCE PROGRAM

91. The authority citation for Part 639 continues to read as follows:

Authority: 20 U.S.C. 1134s–1134t, unless otherwise noted.

§ 639.31 [Amended]

92. Section 639.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0041)" following the section.

PART 643—TALENT SEARCH PROGRAM

93. The authority citation for Part 643 continues to read as follows:

Authority: 20 U.S.C. 1070d–1, unless otherwise noted.

§§ 643.31 and 643.32 [Amended]

94. Sections 643.31 and 643.32 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0549)" following each section.

PART 644—EDUCATIONAL OPPORTUNITY CENTERS PROGRAM

95. The authority citation for Part 644 continues to read as follows:

Authority: 20 U.S.C. 1070d–1c.

§ 644.31 [Amended]

96. Section 644.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0065)" following the section.

PART 649—PATRICIA ROBERTS HARRIS FELLOWSHIPS PROGRAM

97. The authority citation for Part 649 continues to read as follows:

Authority: 20 U.S.C. 1134d to 1134f, unless otherwise noted.

§ 649.12 [Amended]

98. Section 649.12 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0508)" following the section.

§ 649.13 [Amended]

99. Section 649.13 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0509)" following the section.

PART 650—NATIONAL GRADUATE FELLOWS PROGRAM

100. The authority citation for Part 650 continues to read as follows:

Authority: 20 U.S.C. 1134h–1134k, unless otherwise noted.

§ 650.44 [Amended]

101. Section 650.44 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0562)" following the section.

PART 653—PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

102. The authority citation for Part 653 continues to read as follows:

Authority: 20 U.S.C. 1111–1111h, unless otherwise noted.

§ 653.21 [Amended]

103. Section 653.21 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0595)" following the section.

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR FOREIGN LANGUAGE AND AREA STUDIES OR FOREIGN LANGUAGE AND INTERNATIONAL STUDIES

104. The authority citation for Part 656 continues to read as follows:

Authority: 20 U.S.C. 1122, unless otherwise noted.

§§ 656.21 and 656.22 [Amended]

105. Sections 656.21 and 656.22 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0068)" following each section.

PART 657—FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM

106. The authority citation for Part 657 continues to read as follows:

Authority: 20 U.S.C. 1122, unless otherwise noted.

§§ 657.3 and 657.21 [Amended]

107. Sections 657.3 and 657.21 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0068)" following each section.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

108. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094 and 1141, unless otherwise noted.

§§ 668.8, 668.13, 668.14, 668.15, 668.17, 668.22, 668.23, 668.32, 668.33, 668.34, 668.35, and 668.96 [Amended]

109. Sections 668.8, 668.13, 668.14, 668.15, 668.17, 668.22, 668.23, 668.32, 668.33, 668.34, 668.35, and 668.96 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0537)" following for each section.

PART 674—PERKINS LOAN PROGRAM

110. The authority citation for Part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

§§ 674.8, 674.10, 674.16, 674.19, 674.20, 674.31, 674.34, 674.35, 674.37, 674.38, 674.52, and 674.58 [Amended]

111. Sections 674.8, 674.10, 674.16, 674.19, 674.20, 674.31, 674.34, 674.35, 674.37, 674.38, 674.52, and 674.58 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0535)" following each section.

§§ 674.42, 674.43, 674.45, 674.48, 674.49, and 674.50 [Amended]

112. Sections 674.42, 674.43, 674.45, 674.48, 674.49, and 674.50 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0581)" following each section.

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

113. The authority citation for Part 675 is revised to read as follows:

Authority: 42 U.S.C. 2751–2756a, unless otherwise noted.

§§ 675.10, 675.16, 675.19, 675.20, 675.27, 675.34, and 675.35 [Amended]

114. Sections 675.10, 675.16, 675.19, 675.20, 675.27, 675.34, and 675.35 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0535)" following each section.

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

115. The authority citation for Part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–107b–3, unless otherwise noted.

§§ 676.16 and 676.19 [Amended]

116. Sections 676.16 and 676.19 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0535)" following each section.

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

117. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.301 [Amended]

118. Section 682.301 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0110)" following the section.

PART 690—PELL GRANT PROGRAM

119. The authority citation for Part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a through 1070a–6, unless otherwise noted.

§ 690.81 [Amended]

120. Section 690.81 is amended by adding "(Approved by the Office of

Management and Budget under control number 1840–0536)" following the section.

PART 745—WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM

121. The authority citation for Part 745 continues to read as follows:

Authority: 20 U.S.C. 3341–3348, unless otherwise noted.

§§ 745.8 and 745.30 through 745.35 [Amended]

122. Sections 745.8, 745.30, 745.31, 745.32, 745.33, 745.34, and 745.35 are amended by adding "(Approved by the Office of Management and Budget under control number 1810–0062)" following each section.

PART 755—SECRETARY'S DISCRETIONARY PROGRAM FOR MATHEMATICS, SCIENCE, COMPUTER LEARNING, AND CRITICAL FOREIGN LANGUAGES

123. The authority citation for Part 755 continues to read as follows:

Authority: 20 U.S.C. 3972, unless otherwise noted.

§§ 755.32 and 755.33 [Amended]

124. Sections 755.32 and 755.33 are amended by adding "(Approved by the Office of Management and Budget under control number 1880–0510)" following each section.

PART 762—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT FELLOWS PROGRAM

125. The authority citation for Part 762 continues to read as follows:

Authority: 20 U.S.C. 1221e, unless otherwise noted.

§ 762.21 [Amended]

126. Section 762.21 is amended by adding "(Approved by the Office of Management and Budget under control number 1850–0620)" following the section.

PART 769—THE LIBRARY SERVICES AND CONSTRUCTION ACT LIBRARY LITERACY PROGRAM

127. The authority citation for Part 769 continues to read as follows:

Authority: 20 U.S.C. 351 *et seq.*, unless otherwise noted.

§ 769.31 [Amended]

128. Section 769.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1850–0587)" following the section.

PART 776—LIBRARY CAREER TRAINING PROGRAM

129. The authority citation for Part 776 continues to read as follows:

Authority: 20 U.S.C. 1021, 1031, 1032, unless otherwise noted.

§§ 776.10, 776.21, 776,22 and 776.23 [Amended]

130. Sections 776.10, 776.21, 776.22 and 776.23 are amended by adding "(Approved by the Office of Management and Budget under control number 1850–0022)" following each section.

PART 777—LIBRARY RESEARCH AND DEMONSTRATION PROGRAM

131. The authority citation for Part 777 continues to read as follows:

Authority: 20 U.S.C. 1021 *et seq.*, unless otherwise noted.

§ 777.31 [Amended]

132. Section 777.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1850–0600)" following the section.

PART 778—STRENGTHENING RESEARCH LIBRARY RESOURCES

133. The authority citation for Part 778 continues to read as follows:

Authority: 20 U.S.C. 1021, 1041, 1042, unless otherwise noted.

§§ 778.2, 778.21 and 778.22 [Amended]

134. Sections 778.2, 778.21, and 778.22 are amended by adding "(Approved by the Office of Management and Budget under control number 1850–0054)" following each section.

PART 779—COLLEGE LIBRARY TECHNOLOGY AND COOPERATIVE GRANTS PROGRAM

135. The authority citation for Part 779 continues to read as follows:

Authority: 20 U.S.C. 1021 and 1047, unless otherwise noted.

§ 779.30 [Amended]

136. Section 779.30 is amended by adding "(Approved by the Office of Management and Budget under control number 1850–0622)" following the section.

PART 787—NATIONAL DIFFUSION NETWORK: DISSEMINATION PROJECTS

137. The authority citation for Part 787 continues to read as follows:

Authority: 20 U.S.C. 3851, unless otherwise noted.

§ 787.10 [Amended]

138. Section 787.10 is amended by adding "(Approved by the Office of Management and Budget under control number 1850–0086)" following the section.

PART 790—TERRITORIAL TEACHER TRAINING ASSISTANCE

139. The authority citation for Part 790 continues to read as follows:

Authority: Title XV, Part C, sec. 1525, Education Amendments of 1978 (Pub. L. 95–561), 92 Stat. 2379, unless otherwise noted.

§ 790.20 [Amended]

140. Section 790.20 is amended by adding "(Approved by the Office of Management and Budget under control number 1850–0619)" following the section.

[FR Doc. 88–27955 Filed 12–5–88; 8:45 am]
BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 796 and 798

[OPTS–42079C; FRL–3487–5]

Technical Amendments to Certain Chemical Fate and Health Effects Test Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing technical amendments to certain chemical fate and health effects test guidelines used in the testing of chemical substances under section 4 of the Toxic Substances Control Act. These amendments are necessary to incorporate changes resulting from comments by interested parties on the regulations and to correct specific editorial errors.

EFFECTIVE DATE: Effective on December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Room EB–44, 401 M Street SW., Washington, DC 20460, (202) 554–1404. TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 20, 1985 (50 FR 39252), EPA issued as final regulations test guidelines that were previously available through the National Technical Information Service (NTIS). These guidelines are used in the testing of chemicals designated for priority testing by the Interagency

Testing Committee under section 4 of the Toxic Substances Control Act. These regulations under 40 CFR Parts 796 through 798, were amended in the Federal Register of May 20, 1987 (52 FR 19056).

These technical amendments incorporate changes resulting from comments from interested parties to § 798.2250 *Dermal toxicity;* § 798.2450 *Inhalation toxicity;* and § 798.2650 *Oral toxicity.* Since the comments were considered minor and nonsubstantive in nature, the Agency finds no need for detailed discussion of those comments in the preamble. Specific editorial amendments are also made in:

1. Sections 796.3140(b)(2)(i) (A) and (C).
2. Sections 798.2250 (a), (e)(7), (9)(vi), (10) (i) (A) and (B), (ii) (A) and (B), (11)(ii) and (12) (iv) and (vi).
3. Sections 798.2450 (a), (b)(7), (d)(11)(i), (12)(ii), (13) (v) and (vi) and (e)(13).
4. Sections 798.2650(b) (1) and 4), (e)(8)(vii), (9)(i) (A) and (B), (10)(ii) and (f)(3).

List of Subjects in 40 CFR Parts 796 and 798

Chemical fate, Health effects, Chemicals, Environmental protection, Hazardous substances, Laboratories.

Dated: November 28, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR, Chapter I, Subchapter R is amended as follows:

PART 796—[AMENDED]

1. In Part 796:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603.

b. Section 796.3140 is amended by revising paragraphs (b)(2)(i) (A) and (C) to read as follows:

§ 796.3140 Anaerobic biodegradability of organic chemicals.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) Prereduced medium is prepared by adding 8 mL of stock solution S–1, 8 mL of S–2, and 40 mL of S–3 to approximately 3,500 mL of deionized water in a 4–L Florence or Erlenmeyer flask. This medium is heated to a boil, while being stirred with a magnetic stir bar and sparged with oxygen (O_2)-free nitrogen. The O_2-free nitrogen is obtained by passing nitrogen gas through a quartz cylinder filled with copper filings heated to 400 °C. Alternatively, commercial nitrogen free of oxygen may be used.

* * * * *

(C) When the medium has cooled to 35 °C, the flask is removed from the ice bath and the following components are added: 4 mL of solution S–4; 20 mL of solution S–5; 10.56 g sodium bicarbonate; and 400 mL of sludge inocullum. The final volume should be approximately 4 L.

* * * * *

PART 798—[AMENDED]

2. In Part 798:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603.

b. Section 798.2250 is amended by revising paragraphs (a); the introductory text of (e)(7) and (9)(vi); 10(i) (A) and (B) and (ii) (A) and (B); 11(ii); and (12) (iv) and (vi) to read as follows:

§ 798.2250 Dermal toxicity.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a chemical, the determination of subchronic dermal toxicity may be carried out after initial information on toxicity has been obtained by acute testing. The subchronic dermal study has been designed to permit the determination of the no-observed-effect level and toxic effects associated with continuous or repeated exposure to a test substance for a period of 90 days. The test is not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening). It provides information on health hazards likely to arise from repeated exposure by the dermal route over a limited period of time. It will provide information on target organs, the possibilities of accumulation, and can be of use in selecting dose levels for chronic studies and for establishing safety criteria for human exposure.

* * * * *

(e) * * *

(7) Preparation of animal skin.

* * * * *

(9) * * *

(vi) At the end of the study period, all survivors in the nonsatellite treatment groups shall be sacrificed. Moribund animals shall be removed and sacrificed when noticed.

(10) * * *

(i) * * *

(A) Certain hematology determinations shall be carried out at least two times during the test period on all groups of animals including concurrent controls: After 30 days of test and just prior to terminal sacrifice at the end of the test period. Hematology determinations which are appropriate to all studies: Hematocrit, hemoglobin concentration, erythrocyte count, total and differential leukocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations on blood should be carried out at least two times during the test period on all groups of animals including concurrent controls: After 30 days of test and just prior to terminal sacrifice at the end of the test period. Clinical biochemistry test areas which are considered appropriate to all studies: Electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance. Suggested determinations: Calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species), serum glutamic pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen blood creatinine, total bilirubin, and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include: Analyses of lipids, hormones, acid/base balance, methemoglobin, and cholinesterase activity. Additional clinical biochemistry may be employed, where necessary, to extend the investigation of observed effects.

(ii) * * *

(A) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, shall be made prior to exposure to the test substance and at the termination of the study.

(B) Urinalysis is not recommended on a routine basis, but only when there is an indication based on expected or observed toxicity.

(11) * * *

(ii) The liver, kidneys, adrenals, brain, and gonads shall be weighed wet, as soon as possible after dissection, to avoid drying. In addition, for the rodent, the brain; for the non-rodent, the thyroid with parathyroids also shall be weighed wet.

* * * * *

(12) * * *

(iv) The tissues listed in parenthesis in paragraph (e)(11)(iii) of this section, if indicated by signs of toxicity or expected target organ involvement.

* * * * *

(vi) When a satellite group is used, histopathology shall be performed on tissues and organs identified as showing effects in the treated groups.

* * * * *

c. Section 798.2450 is amended by revising paragraphs (a); (b)(7); the introductory text of (d) (11)(i), (12)(ii), (13) (v) and (vi); and the introductory text of (e)(3) to read as follows:

§ 798.2450 Inhalation toxicity.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a gas, volatile substance, or aerosol/particulate, determination of subchronic inhalation toxicity may be carried out after initial information on toxicity has been obtained by acute testing. The subchronic inhalation study has been designed to permit the determination of the no-observed-effect level and toxic effects associated with continuous or repeated exposure to a test substance for a period of 90 days. The test is not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening). It provides information on health hazards likely to arise from repeated exposures by the inhalation route over a limited period of time. It will provide information on target organs, the possibilities of accumulation, and can be of use in selecting dose levels for chronic studies and for establishing safety criteria for human exposure. Hazards of inhaled substances are influenced by the inherent toxicity and by physical factors such as volatility and particle size.

(b) * * *

(7) Cumulative toxicity is the adverse effects of repeated doses occuring as a result of prolonged action on, or increased concentration of the administered test substance or its metabolites in susceptible tissues.

* * * * *

(d) * * *

(11) * * *

(i) The following examinations shall be made on all animals of each sex in each group:

(A) Certain hematology determinations shall be carried out at least two times during the test period on all groups of animals including concurrent controls: After 30 days of test and just prior to terminal sacrifice at the end of the test period. Hematology determinations which are appropriate to all studies: Hematocrit, hemoglobin concentration, erythrocyte count, total and differential leukocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations on blood should be carried out at least two times during the test period on all groups of animals including concurrent controls: After 30 days of test and just prior to terminal sacrifice at the end of the test period. Clinical biochemistry test areas which are considered appropriate to all studies: Electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance. Suggested determinations: calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species), serum glutamic-pyruvic transaminase, (now known as serum alanine aminotransferase), serum glutamic-oxaloacetic transaminase (now known as serum aspartate aminotransferase). ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen, blood creatinine, total bilirubin, and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include: Analyses of lipids, hormones, acid/base balance, methemoglobin, and cholinesterase activity. Additional clinical biochemistry may be employed, where necessary, to extend the investigation of observed effects.

* * * * *

(12) * * *

(ii) At least the liver, kidneys, adrenals, brain, and gonads shall be weighed wet, as soon as possible after dissection to avoid drying. In addition, for the rodent, the brain; for the non-rodent, the thyroid with parathyroids also shall be weighed wet.

* * * * *

(13) * * *

(v) Lungs of animals (rodents) in the low and intermediate dose groups shall also be subjected to histopathological examination, primarily for evidence of infection since this provides a convenient assessment of the state of health of the animals.

(vi) When a satellite group is used, histopathology shall be performed on tissues and organs identified as showing effects in the treated groups.

* * * * *

(e) * * *

(3) *Test report.* In addition to the reporting requirements as specified under EPA Good Laboratory Practice Standards, 40 CFR Part 792, Subpart J, the following specific information shall be reported:

* * * * *

d. Section 798.2650 is amended by revising paragraphs (b) (1) and (4); (e)(8)(vii), (9)(i) (A) and (B) and (10)(ii); and the introductory text of (f)(3) to read as follows:

§ 798.2650 Oral toxicity.

* * * * *

(b) * * *

(1) Subchronic oral toxicity is the adverse effects occurring as a result of the repeated daily exposure of experimental animals to a chemical by the oral route for a part (approximately 10 percent) of a life span.

* * * * *

(4) Cumulative toxicity is the adverse effects of repeated doses occurring as a result of prolonged action on, or increased concentration of, the administered test substance or its metabolites in susceptible tissue.

* * * * *

(e) * * *

(8) * * *

(vii) At the end of the 90-day period all survivors in the nonsatellite treatment groups shall be sacrificed. Moribund animals shall be removed and sacrificed when noticed.

* * * * *

(9) * * *

(i) * * *

(A) Certain hematology determinations shall be carried out at least two times during the test period on all groups of animals including concurrent controls: After 30 days of test and just prior to terminal sacrifice at the end of the test period. Hematology determinations which are appropriate to all studies: Hematocrit, hemoglobin concentration, erythrocyte count, total and differential leukocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations on blood should be carried out at least two times during the test period on all groups of animals including concurrent controls: After 30 days of test and just prior to terminal sacrifice at the end of the test period. Clinical biochemistry test areas which are considered appropriate to all studies: Electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance. Suggested

determinations: Calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species), serum glutamic-pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen, blood creatinine, total bilirubin, and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include: Analyses of lipids, hormones, acid/base balance, methemoglobin, and cholinesterase activity. Additional clinical biochemistry may be employed, where necessary, to extend the investigation of observed effects.

* * * * *

(10) * * *

(ii) At least the liver, kidneys, adrenals, and gonads shall be weighed wet, as soon as possible after dissection to avoid drying. In addition, for the rodent, the brain; for the non-rodent, the thyroid with parathyroids also shall be weighed wet.

* * * * *

(f) * * *

(3) *Test report.* In addition to the reporting requirements as specified under EPA Good Laboratory Practice Standards, 40 CFR Part 792, Subpart J, the following specific information shall be reported:

* * * * *

[FR Doc. 88-28034 Filed 12-5-88; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6690

[AK-932-09-4214-10; AA-5671]

Partial Revocation of Public Land Order No. 960 for Selection of Land by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order (PLO) insofar as it affects 7.30 acres of public land withdrawn for the Federal Aviation Administration for inclusion into Air Navigation Site No. 4. The land is no longer needed for the purpose for which it was withdrawn. This action makes the land available for selection by the State of Alaska, if such land is otherwise available. If not selected by the State, the land will be subject to the terms and conditions of PLO No. 5186, and will remain closed to location for metalliferous minerals until a further opening order is published.

EFFECTIVE DATE: December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-3342.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order No. 960 is hereby revoked insofar as it affects the following described land:

Copper River Meridian

T. 31 S., R. 59 E., partially surveyed,
Sec. 2, lots 7, 8, 9, and 17.

The area described contains approximately 7.30 acreas.

2. Subject to valid existing rights, the land described above is hereby opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2371, 2437-2438; 43 U.S.C. 1635.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described above, for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will be subject to the terms and conditions of PLO No. 5186, and any other withdrawal of record, and shall remain closed to location for metalliferous mining until a further opening order is published.

J. Steven Griles,

Assistant Secretary of the Interior.

November 28, 1988.

[FR Doc. 88-27993 Filed 12-5-88; 8:45 am]
BILLING CODE 4310-JA-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 840

Rules Pertaining to Notification of Railroad Accidents

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: By this rule change, the Board is amending § 840.3 to reduce the period of time during which notification of certain railroad accidents is mandatory to 2 hours after the occurrence of an accident that results in a fatality or serious injury to two or more crewmembers or passengers, the emergency evacuation of a passenger train, or the release of hazardous materials, as further described herein; and to 4 hours for any accident that requires an evaluation of property damage.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. William G. Zielinski, Chief, Railroad Accident Division, 800 Independence Avenue, SW., Washington, DC 20594 ((202) 382-6840).

SUPPLEMENTARY INFORMATION: Section 840.3 requires notification to the National Transportation Safety Board of certain railroad, and, included therein, rail rapid transit accidents, at the earliest practical time. The Safety Board's rules that pertain to notification of railroad accidents, specifically Rule 840.3, provide a convenient mechanism for complying with the notification requirement in the form of a toll-free telephone number, and, prior to this amendment, those Rules imposed a six-hour time limit during which reporting was mandatory. Notwithstanding the toll-free telephone number and the six-hour time limit, the Safety Board determined that there were still numerous instances where reporting of accidents was not sufficiently expeditious as to afford Board personnel access to the accident site before the initiation of post-accident cleanup efforts. In order to remedy the situation, and after notice and public procedure (53 FR 11520; published April 7, 1988), the Board is amending its railroad accident notification rules to require notification within two hours of any railroad accident that involves a fatality, injury that requires admission to a hospital of two or more crewmembers or passengers, the release of hazardous materials, or an emergency evacuation. In cases that do not involve any of these eventualities but that

require a preliminary monetary estimate of damages, a four-hour limit is being placed on the notification time.

Additionally, although virtually all railroad trains and facilities are at present equipped for radio communication, the Board recognizes that in certain extraordinary circumstances, communication from the site of an accident immediately after its occurrence may be problematical. This could be the case in accidents occurring in remote areas where radio transmission is ineffective. In such instances the reporting time limits prescribed in § 840.3(a) can be computed from the time railroad personnel, other than those at the accident site at the time of its occurrence, have received notice of the accident. This provision is contained in paragraph (d) of the revised regulation.

The Safety Board received five comments in response to its notice of proposed rulemaking which was published April 7, 1988 (53 FR 11520). The Board has given the views expressed in those responses its careful consideration but finds that our expressed goal of affording Board personnel access to the accident site as early as possible, and, wherever feasible, before initiation of clean-up efforts, is paramount, and that the deleterious effects of earlier reporting may in fact never materialize.

The major obstacle to the requirements for earlier reporting concerns the difficulty of arriving at a preliminary monetary estimate of damage. One commentator expressed concern that accidents that do not meet the Board's estimated damage criteria would be reported because of hasty damage evaluation. The Board considered that possibility when it proposed a 4-hour limit for any accident requiring a damage estimate. Moreover, the Board does not believe that the reporting of any accidents that do not meet those criteria will impose an undue administrative burden on either the reporting railroad or on the Safety Board's staff.

In respect to the comment that initiation of clean-up efforts should take precedence over all other activities, the Board believes that the accident cure and prevention objectives that are its investigatory goal are equally essential. It is patent that a number of tasks, such as the proper control of hazardous materials, must be undertaken at once; however, notification to the Board at the earliest practicable time after the occurrence is equally in the best interests of public safety and accident prevention, and it is imperative that the Board be notified as soon as possible if hazardous materials are involved.

As do other agencies of Government, the Department of Transportation's Research and Special Programs Administration requires immediate reporting of most hazardous materials spills by any carrier that transports them (49 CFR 171.15); accordingly, notification to the Board through the National Response Center's telephone service is not an additional burden. All other matters dealt with in the comments, especially alternative proposals, have been give consideration by the Board.

Under the criteria of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Safety Board has determined that these amendments will not have a significant economic impact on a substantial number of small entities because the new rules require only a somewhat more expeditious reporting, and they do not create any increase in the number of accidents for which notification must be made, the costs of complying with the rule are not substantial, and the Safety Board has so certified.

List of Subjects in 49 CFR Part 840

Administrative practice and procedure, Investigations, Hazardous materials transportation, Railroad Safety, Reporting and recordkeeping requirements.

PART 840—[AMENDED]

1. Accordingly, the authority citation for 49 CFR Part 840 continues to read as follows:

Authority: Sec. 304(a)(1)(c), Independent Safety Board Act of 1974, as amended (49 U.S.C. 1903).

2. Section 840.3 of Part 840, Chapter VIII, Title 49, Code of Federal Regulations, is revised to read as follows:

§ 840.3 Notification of railroad accidents.

The operator of a railroad shall notify the Board by telephoning the National Response Center at telephone 800–424–0201 at the earliest practicable time after the occurrence of any one of the following railroad accidents:

(a) No later than 2 hours after an accident which results in:

(1) A passenger or employee fatality or serious injury to two or more crewmembers or passengers requiring admission to a hospital;

(2) The evacuation of a passenger train;

(3) Damage to a tank car or container resulting in release of hazardous materials or involving evacuation of the general public; or

(4) A fatality at a grade crossing.

(b) No later than 4 hours after an accident which does not involve any of the circumstances enumerated in paragraph (a) of this section but which results in:

(1) Damage (based on a preliminary gross estimate) of $150,000 or more for repairs, or the current replacement cost, to railroad and nonrailroad property; or

(2) Damage of $25,000 or more to a passenger train and railroad and nonrailroad property.

(c) Accidents involving joint operations must be reported by the railroad that controls the track and directs the movement of trains where the accident has occurred.

(d) Where an accident for which notification is required by paragraph (a) or (b) of this section occurs in a remote area, the time limits set forth in that paragraph shall commence from the time the first railroad employee who was not at the accident site at the time of its occurrence has received notice thereof.

Signed at Washington, DC on November 29, 1988.

James L. Kolstad,

Acting Chairman.

[FR Doc. 88–27878 Filed 12–5–88; 8:45 am]

BILLING CODE 7533–01–M

Proposed Rules

Federal Register
Vol. 53, No. 234
Tuesday, December 6, 1988

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 Part 979

Melons Grown in South Texas; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule regarding South Texas melons would authorize expenses and establish an assessment rate under Marketing Order 979 for the 1988–89 fiscal period. Authorization of this budget would allow the South Texas Melon Committee to incur expenses reasonable and necessary to administer the program. Funds for this program would be derived from assessments on handlers.

DATE: Comments must be received by December 16, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: .

This rule is proposed under Marketing Order No. 979 (7 CFR Part 979), regulating the handling of melons grown in South Texas. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

There are approximately 35 handlers of Texas melons under this marketing order, and approximately 70 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable melons handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of melons. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of melons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee;s expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The South Texas Melon Committee met on November 1, 1988, and unanimously recommended a 1988–89 budget of $308,438. This total exceeds last year's budget of $251,811 by $56,627, reflecting an increase in production research project expenses from $50,723 to $104,398. Administrative expenses are up $3,517 from last year to $84,040, and promotion expenses have been reduced $565 to $120,000.

The committee also unanimously recommended an assessment rate of 4 cents per carton, down one cent from the 1987–88 rate. The recommended assessment rate, when applied to anticipated shipments of 7.7 million cartons, would yield $308,000 in assessment revenue. This amount, when added to $438 from the reserve, would be adequate to cover budgeted expenses. The current reserve minus $438 would result in a yearend reserve of $382,353. This total is within the limit of two fiscal periods' expenses allowed by the order.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons (Texas).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 979 be amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979 continues to read as follows:

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

2. Section 970.211 is added to read as follows:

§ 979.211 Expenses and assessment rate.

Expenses of $308,438 by the South Texas Melon Committee are authorized and an assessment rate of $0.04 per carton of melons is established for the fiscal period ending September 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: December 1, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–28070 Filed 12–5–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 1124 and 1125

[Docket Nos. AO–368–A16 and AO–226–A32; DA–88–108]

Milk in the Oregon-Washington and Puget Sound-Inland Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision merges the Oregon-Washington and Puget Sound-Inland Federal orders, based on industry proposals considered at a public hearing held November 17–18, 1987. In addition to the presently regulated marketing areas, the merged "Pacific Northwest" marketing area would include five additional Washington counties, the unregulated portion of another Washington county, and three central Oregon counties. The Class I differentials at Portland, Oregon, and Spokane, Washington, are reduced from $1.95 to $1.90; and the Class I differential at Seattle, Washington, is increased from $1.85 to $1.90.

The provisions of the merged order are patterned largely after those of the present Puget Sound order, with some modifications to accommodate specific marketing conditions of the Oregon-Washington order area. Provisions of the merged order that represent significant changes in regulation for handlers and producers currently pooled under the Oregon-Washington order include a single butterfat differential for adjusting order prices for variations in butterfat content, payment to producers on the basis of a uniform price for all production rather than a base-excess plan, and determination of handler obligations to the marketwide pool on an equalization basis (the difference between the use value of producer receipts and the value of those receipts at the uniform price).

The merger is needed to reflect changes in market structure in that the two separately regulated areas have become, in effect, one common market. Cooperative associations will be polled to determine whether producers favor the issuance of the merged order.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

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

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

Prior documents in this proceeding:

Notice of Hearing: Issued October 26, 1987; published October 29, 1987 (52 FR 41566).

Recommended Decision: Issued September 7, 1988; published September 19, 1988 (53 FR 36291).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Oregon-Washington and Puget Sound-Inland 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 Portland, Oregon on November 17–18, 1987. Notice of such hearing was issued on October 26, 1987 and published October 29, 1987 (52 FR 41566).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, AMS, on September 7, 1988, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

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

1. Under the heading "6. Classification of milk.", one paragraph is added at the end.

2. Under the heading "7. Class prices, location adjustments and butterfat differential.", two paragraphs are added after paragraph 9.

3. Under the heading "8. Handler obligations to the pool.", one paragraph is added after paragraph 4.

4. Under the heading "9. Payments to producers.", one paragraph is added at the end.

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

1. Whether the handling of milk produced for sale in the proposed merged and expanded marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether the marketing areas of the Oregon-Washington and Puget Sound-Inland orders should be included under one order;

3. Whether the proposed merged marketing area should be expanded to include additional territory;

4. Milk to be priced and pooled;

5. Handler reports;

6. Classification of milk;

7. Class prices, location adjustments and butterfat differential;

8. Handler obligations to the pool;

9. Payments to producers;

10. Administrative provisions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Character of commerce.* The handling of milk in the proposed and expanded marketing area is in the current of interstate commerce and directly burdens, obstructs and affects interstate commerce in milk and milk products.

The marketing area specified in the proposed order, hereinafter referred to as the "Pacific Northwest marketing

area", includes 72 contiguous counties, of which 37 are in the State of Washington, 29 in Oregon and six in Idaho. The principal cities in the marketing area are Eugene and Portland, Oregon; and Seattle and Spokane, Washington. The specific territory included in the marketing area is set forth in the marketing area discussion.

Handlers located in the Oregon-Washington area have route sales in Oregon and Washington, while handlers regulated under the Puget Sound-Inland order distribute milk in the States of Alaska, Idaho, Montana, Oregon and Washington. Handlers located in the States of California, Idaho, Montana, Oregon and Washington distribute milk within the proposed marketing area.

Similarly, milk procurement for the proposed merged area crosses state boundaries. Handlers regulated by the Puget Sound-Inland order procure milk from producers located in Idaho, Oregon and Washington. The milk needed to supply Oregon-Washington distributing plants is procured from California, Idaho, Oregon and Washington.

There are numerous manufacturing plants located within the proposed marketing area that manufacture dairy products. These products are sold in California, Oregon, Washington and other states in competition with manufactured products produced in many other states.

2. *Need for merger of the orders.* Marketing conditions in the two separately regulated marketing areas under consideration justify the issuance of a single order regulating the handling of milk in these areas. This single order would be the most appropriate means of effectuating the declared policy of the Act.

Federal regulation of milk marketing in northwestern Washington State was initiated May 1, 1951, when the Puget Sound order became effective. The marketing area was later amended in December 1952 and July 1966 to include Island and San Juan Counties and most of the remaining portions of Grays Harbor, King, Lewis, Skagit, Snohomish and Whatcom Counties. Milk marketing in northeastern Washington State and northern Idaho came under Federal regulation March 1, 1956, when the Inland Empire order became effective. The Inland Empire marketing area was later amended in October 1957 and in March 1962 to add the Idaho Counties in Benewah, Boundary, Latah and Shoshone and the remaining unregulated portions of Bonner and Kootenai Counties; and Whitman County, Washington. The Puget Sound and Inland Empire marketing areas were merged to become the Puget Sound-Inland order effective January 1, 1984. The Washington Counties of Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln and Okanogan, and the remaining unregulated portions of Pend Oreille and Stevens Counties, were included in the merged Puget Sound-Inland order in addition to the already regulated areas.

Milk marketing in western Oregon and southwestern Washington became federally regulated under the Oregon-Washington order on January 1, 1970. The marketing area of the Oregon-Washington order has not changed since it became effective.

The merger of the Oregon-Washington and Puget Sound-Inland orders was proposed by six cooperative associations representing dairy farmer members whose milk is pooled under the two orders. The merger proponents represent a substantial majority of the producers whose milk would be pooled under the merged order.

The principal proponent witness, a representative of Northwest Dairymen's Association (NDA) stated that the merged order is needed because the proposed marketing area is becoming one competitive market. He stated that NDA, which represents about 60 percent of the producers delivering milk to the two Federal order marketing areas, has producer members located in almost every county in the proposed marketing area and supplies bulk milk to handlers operating plants with distribution in all parts of the proposed marketing area. The witness testified that the existence of two Federal orders in an area that has become one competitive marketing area has required NDA to alter the movement of member milk to plants in order to prevent inequities between the prices paid to NDA members supplying different markets. He also stated that operating within the constraints of two separate orders sometimes causes difficulty and inefficiency in supplying the demands of each order market as those demands vary over time.

The NDA witness concluded that a merger would increase the efficiency of administering marketing order regulations in the Pacific Northwest, and would reduce the complexity of reports which must be filed by regulated handlers. No opposition to a merger of the two orders was expressed at the hearing.

The record indicates that the Oregon-Washington and Puget Sound-Inland marketing areas have become interrelated to such an extent that a merger is the most appropriate means of regulating milk marketing in the area involved. When the two orders were promulgated, they regulated the handling of milk in areas that were clearly distinguishable as separate markets for particular handlers and producer groups. Changes in marketing practice and market structure since that time, however, have caused these separately regulated areas to become substantially interrelated in both distribution and supply arrangements.

In September 1987, a majority of the pooled handlers regulated under the Puget Sound-Inland milk order distributed fluid milk products within the Oregon-Washington marketing area. At the same time, 20 percent of Oregon-Washington pooled handlers distributed milk within the Puget Sound-Inland order. The fact that one-third of the handlers regulated under the two orders distribute milk in competition with handlers regulated under the other order is an indication of the degree of interrelationship that has developed between the two markets. A merger of the two marketing areas under one order will assure that fully regulated handers competing with each other are subject to the same regulatory provisions and aligned prices.

NDA markets the milk of producers located throughout the proposed merged marketing area, and Darigold, Inc., NDA's marketing agent, distributes fluid milk products throughout the proposed area from its five bottling plants that are currently pooled under the two orders. Many of NDA's member producers are located in production areas from which the milk produced on neighboring farms is delivered to pool plant regulated under the two different Federal orders. The differing provisions of the two orders prevent the cooperative from easily being able to shift the milk of a producer from a plant pooled under one order to a plant regulated by the other order, even when such a shift would be the most efficient means of moving milk to where it is needed. The Oregon-Washington order's base-excess plan is one such provision that prevents an easy interchange of producer milk between the two orders. The milk of baseholding producers cannot be pooled under the Puget Sound-Inland order without those producers losing the benefit of their earned bases. At the same time, producers previously pooled under the Puget Sound-Inland order have not earned Oregon-Washington production bases and thus would receive less for their milk if it were pooled under the Oregon-Washington order. Because of this feature of regulation by the two separate orders, it is not practicable for a handler such as NDA to haul the milk of some

neighboring producers in the same loads.

An occasional need to deliver the milk of producers customarily pooled under one order to a plant location normally priced under the other order is another situation in which the existence of the two interconnected orders causes marketing problems for handlers. Problems arise because of the differing location adjustments under the two orders. Milk produced in the Yakima Valley and customarily pooled under the Oregon-Washington order that is surplus to the market's fluid needs is usually hauled to Chehalis, Washington, where there is no location adjustment under the Oregon-Washington order. If the Chehalis facility is already operating at capacity, however, the milk must be moved to manufacturing plants at Issaquah or Lynden, Washington, where the Oregon-Washington location adjustments are minus 25.5 and 40.5 cents, respectively. If the same milk from Yakima Valley were pooled under the Puget Sound-Inland order at Issaquah or Lynden, however, it would be subject to location adjustments of zero or minus six cents.

The differences in Class I and producer prices under the two orders at the same location is also a factor that causes marketing difficulties for Darigold, and for any other handler attempting to market milk under both orders in an efficient manner. Specifically, larger amounts of the milk surplus to the fluid needs of each order area are delivered to a Darigold manufacturing plant in Chehalis, Washington. Chehalis is located in the production area of both Federal order markets, and is approximately equidistant from Portland, Oregon, and Seattle, Washington. The Puget Sound-Inland location adjustment at Chehalis is a minus six cents, while there is no price adjustment at Chehalis under the Oregon-Washington order. Because of the 10-cent difference between the two orders' Class I prices, the Class I price difference at Chehalis is actually 16 cents.

However, because the milk received at Chehalis is used for manufactured products rather than for Class I use, the difference in producer pay prices between the two orders at the same location is the primary cause of inequity at Chehalis. The price difference between the two orders extends to producer payments because the orders' minimum uniform prices are subject to the same location adjustments as are the Class I prices.

Although the difference in Class I prices as Chehalis is 16 cents, the difference in order prices due to producers for milk delivered to Chehalis under the Puget Sound-Inland and Oregon-Washington orders is normally less, but nevertheless significant. During 1986 and the months of 1987 preceding the hearing, the Oregon-Washington uniform price to producers exceeded the Puget Sound-Inland uniform price by an average of 6.7 cents, with the difference ranging from two to 13 cents. When the six-cent location adjustment under the Puget Sound-Inland order is taken into account, prices paid to similarly located producers for milk delivered to Chehalis under the two orders differed by an average of 12.7 cents per hundredweight, and by as much as 19 cents. The location adjustment differences at the same location under the two orders, therefore, result in a significant difference in returns to producers whose milk is delivered to the same location.

For the reasons described above, a merger of the Oregon-Washington and Puget Sound orders will represent the most effective means of achieving efficient and orderly handling and marketing of milk in the Pacific Northwest. The merger will permit the minimizing of hauling expenses by allowing surplus milk supplies to be better matched to the nearest plant location without consideration of the regulatory effects of the two orders. Similarly located handlers and producers will be subject to more equitable pooling provisions under a single order than under the two separate orders. Accordingly, the merger should be adopted.

3. *Merged and expanded marketing area.* The marketing area of the proposed merged order should include all of the territory in the presently designated marketing areas of the Oregon-Washington and Puget Sound-Inland orders. Certain additional territory adjacent to the two present marketing areas also should be part of the merged marketing area. The additional territory to be included are the entire Washington counties of Asotin, Columbia, Garfield, Kitsap and Mason, and the portion of Pierce County that is currently unregulated; and the Oregon counties of Crook, Lake and Wheeler. All territory within the boundaries of the designated marketing area which is occupied by government (municipal, State or Federal) reservations, installations, institutions or other establishments, likewise should be part of the marketing area. Where such an establishment is partly within and partly without such territory, the entire establishment should be included in the marketing area.

The merged and expanded marketing area consists of 37 Washington State counties (omitting only Clallam and Jefferson), 29 western and central Oregon counties, and the same six northern Idaho counties that are included in the present Puget Sound-Inland marketing are. The total population of the merged and expanded marketing area, according to the 1980 census, was approximately 6,738,000 people, or about 224,000 more people than the two separate order areas contain. The territory proposed to be added to the merged order, therefore, increases the population of the merged marketing area by less than four percent over that of the separate marketing areas. Data obtained from 1986 population estimates of the proposed merged area give approximately the same results.

The territory to be added to the merged marketing area was proposed for inclusion by Darigold. Proponent witness states that no additional handlers would become regulated as a result of adding the proposed areas to the merged marketing area. He also testified that all of the route distribution in the areas to be added is by handlers regulated under one or both of the two orders proposed to be merged. The witness stated that incorporating the proposed additional area into the merged order would eliminate much of the recordkeeping currently required of handlers to report out-of-area sales, and would improve the efficiency of order administration by reducing the complexity of handlers' exports.

On the basis of the evidence received and in view of the fact that there was no opposition to the addition of the proposed territory to the marketing area or contradiction of proponent's characterization of the counties proposed to be added as supplied with fluid milk products entirely by handlers currently regulated under the two existing orders, the marketing area of the merged orders should be defined as proposed.

4. *Milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the merged order. This is accomplished by providing definitions to describe the persons, plants and milk to which the applicable provisions of the order relate.

The following definitions included in the proposed order will serve to identify the specific types of milk and milk products to be subject to regulation and the persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are "route disposition," "plant," "distributing plant," "supply plant," "pool plant" and

"nonpool plant". Definitions of persons include "handler," "producer-handler," "cooperative reserve supply unit," "producer" and "cooperative association." Definitions relating to milk and milk products include "producer milk," "other source milk," "fluid milk product," "fluid cream product" and "filled milk." Some of these definitions were of particular issue at the hearing or are substantially different than those presently contained in either the Oregon-Washington or Puget Sound-Inland orders. Such definitions are discussed below.

Plant. The definition of a "plant" included in the proposed merged order should be adopted as proposed. However, due to some contradictory testimony in the hearing record, some clarification is needed. Milk may be considered a receipt for accounting and pricing purposes only at a "plant", and may not be considered a receipt for either purpose at a reload point at which bulk milk is transferred from one tank truck to another.

Pool plant. It is necessary to establish minimum performance requirements to distinguish between plants that serve the fluid milk needs of the regulated market and those that do not serve the market to a degree that warrants their sharing in the Class I utilization of the market by being included in the marketwide pool. The pooling standards for distributing plants and supply plants that are included in the attached order are the most appropriate means of determining which plants should be eligible to share in the marketwide pool under the marketing conditions present in the merged marketing area.

The pool plant definition of the merged order should be based on those contained in the two present orders. Because the pool status of handlers that customarily have been pooled under the two separate orders should not be altered by the provisions of the merged order, the pooling standards adopted for the merged order should reflect the more liberal of the pooling standards contained in the separate orders.

The proposed pool distributing plant definition, based on the definition in the Puget Sound-Inland order, should be adopted with some modification. The proposed pool supply plant definition, based on the definition in the Oregon-Washington order, also should be incorporated in the merged order in a modified form. The proposed definition of a cooperative supply plant should not be adopted. A provision allowing the Director of the Dairy Division to revise temporarily the pooling standards for distributing and supply plants should be included in the merged order.

The Darigold witness testified that the percentage of receipts disposed of as route dispositions within the marketing area required for pool status under the present Puget Sound-Inland Federal order would be an appropriate standard for determining pool qualifications under the proposed merged order. He stated that the Oregon-Washington order's separate requirement that a minimum of 30 percent of a handler's total receipts be distributed on routes is probably not necessary for the merged order, as most of the out-of-area sales by handlers currently regulated under the two separate orders are within the marketing area of the other order. Therefore, he concluded, handlers regulated under the merged order should have a relatively small volume of route dispositions outside the marketing area, and should be subject only to a requirement that 10 percent of their receipts be distributed on routes within the marketing area. The witness also advocated adoption of a provision of the present Oregon-Washington order that allows a handler operating more than one distributing plant to have those plants considered on a combined basis for the purpose of meeting pooling qualifications.

The Darigold witness supported adoption of the same supply plant pooling requirements currently in effect under the Oregon-Washington order. He urged that the pool supply plant definition continue as part of the merged order so that organizations currently operating nonpool plants that receive substantial quantities of Grade A milk by diversion from handlers or cooperative associations may qualify as pool supply plants if they so desire. The percentage of receipts proposed to be required of pool supply plants as shipments to pool distributing plants is the same as that contained in the present Oregon-Washington order. During the months of September through November, a pool supply plant would have to ship to pool distributing plants or distribute on routes in the marketing area at least 40 percent of the producer milk physically received at the plant or diverted directly from producers' farms to another plant. The applicable percentage for other months would be 30 percent. Direct shipments of producer milk could be counted for qualification only to the extent they do not exceed transfers of bulk milk from the supply plant.

The witness explained that at present, there is only one pool supply plant regulated under the Oregon-Washington order, and none under the Puget Sound-Inland order. The witness pointed out that at times in the past more than one supply plant has been regulated under the Oregon-Washington order, and that the possibility that there may be other supply plants in the future would justify inclusion of a provision that would allow two or more supply plant operators to have their plants' pool qualifications determined on a combined basis. Such a provision, he explained, is included in the present Oregon-Washington order.

In addition to the definition for a pool distributing plant and a pool supply plant, the Darigold representative supported adoption of a provision defining a "cooperative supply plant" as a pool plant. The witness explained that cooperative associations generally provide services to the market which are not provided by proprietary plants, such as operating a plant that separates milk and provides skim milk to pool distributing plants as required. He stated that because of seasonal variations in demand for bulk skim milk, a cooperative association operating such a plant may find it difficult to meet the necessary volume of milk shipments required to meet pooling qualifications. For this reason, the witness advocated defining as a pool plant a cooperative association plant that ships at least 30 percent of its receipts of producer milk to pool distributing plants by any combination of direct shipments (from farm to plant) and transfers from the supply plant to distributing plants.

The Darigold witness also supported adoption of a provision not currently contained in either order that would allow the Director of the Dairy Division to make temporary adjustments in the performance standards for the pooling qualification of distributing plants, supply plants, and cooperative supply plants. The witness stated that such a provision would give the order flexibility in dealing with sudden or marked increases or decreases in supply, demand, or both, without necessitating emergency hearings to amend the pooling standards.

A spokesman for Tillamook County Creamery Association (TCCA) testified that modifications to the proposed "cooperative supply plant" definition would be necessary if the provision is to meet TCCA's needs and current operations. He proposed limiting the months during which such a supply plant would be required to meet the proposed order's 30-percent shipping requirement to the months of September through February, and adding a provision that would allow a "cooperative supply plant" that met the order's shipping requirements for those months to be pooled for the months of

March through August without having to meet required shipping percentages. The witness stated that such modifications are necessary to assure the continued pooling of TCCA members' milk without requiring uneconomic and inefficient handling solely for the purpose of maintaining the producers' association with the pool. He observed that TCCA would have failed to qualify for pooling under the proposed standards in three summer months of each of the past two years, and barely would have met the standards in three additional months during that period. According to the witness, a lower percentage of shipping requirement is also necessary to accommodate the pooling of the rapidly increasing volume of milk produced by TCCA members. The witness testified that TCCA currently is pooled under the existing pool supply plant definition of the Oregon-Washington order, and suggested that the proposed "cooperative pool supply plant" definition would better accommodate TCCA's operations if it were modified to more closely resemble the order's present pool supply plant definition.

A witness representing Olympia Cheese Company, a proprietary cheese plant, testified that the small cooperative associations that supply milk to Olympia Cheese are facing increased difficulties in meeting the order's requirements for pooling their members' milk. The witness stated that if the Olympia Cheese operation, which is currently a nonpool plant, were able to qualify as a pool supply plant by separating milk and supplying skim milk to distributing plants, the cooperative associations supplying milk to the cheese plant would be assured of the pool status of their members' milk, and Olympia Cheese would be assured of a continued supply of milk. For Olympia Cheese to achieve pool supply plant status, the witness suggested, the proposed pool supply plant definition should be modified to require only 30 percent of a supply plant's receipts year-round to be shipped to pool distributing plants. He stated that such a modification would eliminate what he characterized as the proposed definition's discrimination against proprietary supply plants and in favor of cooperative-owned supply plants.

The proposed pool distributing plant definition should be adopted with only minor modification. Although the proposed percentage of receipts used in route disposition, in total and within the marketing area, (10 percent) is quite low for the purpose of defining a plant primarily engaged in the processing and distributing of fluid milk, the proposed percentage apparently is necessary to ensure the continued pool status of a plant that historically has been pooled under the Puget Sound-Inland order. An exhibit in the hearing record indicates that during at least one month of the 17 months preceding the hearing, the distributing plant in question exceeded the 10-percent requirement by only one percentage point. According to the exhibit, all of the other distributing plants pooled under the two orders during the four months covered in the exhibit disposed of at least 40 percent of their receipts as fluid milk products on routes. Although the proposed standard of route dispositions as a percentage of receipts may not be high enough to avoid pooling plants that are not primarily distributing plants, that level has existed in the Puget Sound-Inland order for some time and there was no testimony that would support increasing it.

Because the total percentage of receipts required to be disposed of on routes to assure pool status is to be set at such a minimal level, there is no reason to incorporate in the merged order the provision of the present Oregon-Washington order that allows a handler operating two or more distributing plants to have their operations considered on a combined basis for the purpose of meeting pooling standards. The Oregon-Washington order requires a pool distributing plant to distribute at least 30 percent of its receipts as route dispositions. Under such a requirement, it is possible that a handler who would find it more economical to concentrate milk by-product processing in one of its distributing plants could still justify having such a plant pooled on the basis of the combined receipts and route dispositions from two or more distributing plants. It would be difficult, however, to consider any plant that distributes less than 10 percent of its receipts on routes as qualifying as a distributing plant regardless of the extent of fluid milk dispositions from any of its operator's other plants.

The two proposed pool supply plant definitions should be combined into one. According to the hearing record, the only plant that either of the two proposed definitions would apply to at the present time is the TCCA plant. Adoption of the "cooperative supply plant" definition would result in the TCCA plant being pooled under that definition only when it failed to meet the shipping standards of the regular "pool supply plant" definition. Such changes in regulation are needlessly confusing. The TCCA witness testified that certain modifications of the proposed "cooperative supply plant" definition would assure the continued pooling of the TCCA supply plant. Application of the suggested modifications and certain features of the proposed "cooperative supply plant" definition to the regular "pool supply plant" definition would eliminate the need for a second "supply plant" definition. It would also allow the order to avoid establishing differing pool standards for cooperative and proprietary pool plants.

The pool supply plant definition should establish a year-round shipping standard of 30 percent, rather than a higher standard for certain fall months. This standard would allow TCCA to maintain the pool status of its members' milk and would accommodate the increasing volume of producer milk handled by the association. In addition, a cooperative's member producer milk which is delivered directly to pool distributing plants should be included as qualifying shipments without any limit on the quantity which may be so included. Such shipments represent as great a commitment by a cooperative to supplying the market's fluid milk needs as do transfers from a supply plant. One of the principal distinctions between the proposed "supply plant" and "cooperative supply plant" definitions is that the "supply plant" definition limits the amount of direct-shipped milk that may be included in a supply plant's qualifying shipments to the amount of milk transferred from the supply plant to pool distributing plants. Maintaining such a limit serves no real purpose under either definition, and therefore should not constitute a reason to define a special category of pool supply plants.

The inclusion of a supply plant's route dispositions of fluid milk products within the marketing area as a qualifying shipment should be continued under the merged order, as should the provision enabling a supply plant that qualified for pooling during the months of September through February to continue to be pooled in each of the following months of March through August. These are provisions that have been included in the Oregon-Washington order and apparently are necessary to maintain the pool status of the TCCA supply plant and TCCA's member producers.

The proposed provision that would allow the Director of the Dairy Division to revise pool plant performance standards temporarily if such revision is found to be appropriate should be adopted. Such a provision will give the merged order needed flexibility to deal with fluctuations in supply and demand.

Without such a provision, the only possible adjustments to rapidly changing marketing conditions are suspensions, which leave an order with no pooling standards at all, or amendatory proceedings, which do not allow timely action. Allowing the Director the discretion to temporarily adjust pooling standards, with appropriate input from the industry, is a means by which timely reaction to changed marketing conditions may be achieved.

Under the paragraph in the "pool plant" definition that describes plants that are not to be considered pool plant is a description of a "portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk products for Grade A disposition." In his testimony, the principal Darigold witness advocated that such a portion of a plant be allowed to be connected by pipeline to the Grade A or pooled portion of the plant for the purpose of easily moving surplus milk and cream from the pool plant to the nonpool plant. Such an arrangement may make it difficult to assure that milk is moving through the pipeline only in the amounts and direction reported by the handler. If milk is to be allowed to move by pipeline from a pool plant to a nonpool plant located on the same premises, each individual arrangement must meet with the market administrator's approval by complying with specific guidelines developed by the market administrator. Only under fairly close scrutiny can it be assured that a pipeline arrangement from a pool plant to a nonpool plant is operated in conformity with the order.

Handler. The impact of regulation under an order is primarily on handlers. The handler definition identifies persons who will have responsibility for filing reports and/or making payments for milk under the merged order. The handler definition proposed by proponents should be adopted. As herein provided, the following persons are defined as handlers under the order:

(1) The operator of one or more pool plants;

(2) A cooperative association with respect to the milk of producers that it causes to be picked up at the farms and delivered to a pool plant unless the cooperative and the pool plant operator agree that the pool plant operator will be the handler on such milk, or diverted for the cooperative's account to a nonpool plant;

(3) The operator of an other order plant from which milk is disposed of in the marketing area;

(4) A producer-handler;

(5) The operator of a partially regulated distributing plant;

(6) The operator of an unregulated supply plant; and

(7) The operator of an exempt plant.

All such persons are now defined as handlers under the Puget Sound-Inland order, and most are so defined under the present Oregon-Washington order. Each person that may incur an obligation (reporting and/or financial) under the order should be designated a handler. This will assure that all information necessary to determine their regulatory status under the order can be readily determined by the market administrator.

Proponent witness testified that the proposed definition is essentially the same as those contained in the separate orders and is intended to serve the same purpose. Specifically, the definition is identical to the one contained in the present Puget Sound-Inland order. Adoption of the handler definition described above should help to assure orderly marketing in the merged marketing area.

A proposal to adopt a "cooperative reseve supply unit" should be adopted, but not as part of the handler definition. The "cooperative reserve supply unit" is discussed below.

Producer-handler. The merged order should continue the exemption now contained in each of the two individual orders of a "producer-handler" from the pooling and pricing provisions of the order. Under the merged order, the definition of a producer-handler should be the same as that now contained in the Puget Sound-Inland order.

Proponent witness stated that retaining the provision of the present Puget Sound-Inland order that requires a producer-handler to distribute a daily average of at least 300 pounds of fluid milk products on routes will eliminate from producer-handler status 5 of the operations that currently have producer-handler status under the Oregon-Washington order.

The witness for proponents observed that the percentages of Class I disposition by producer-handlers in the Puget Sound-Inland and Oregon-Washington marketing areas are, respectively, the highest and third highest of any Federal orders in the United States. He cited such activity as evidence that the producer-handler provisions in these orders are not unduly restrictive. The witness stated that any relaxation of the present and proposed provisions would provide producer-handlers an additional unfair advantage in their competition with regulated handlers for the sale of fluid milk products on routes in the marketing area.

In addition to testimony about the provisions proposed for the actual producer-handler definition, proponent witness testified that the proposed order should include a provision of the present Oregon-Washington order that directs that fluid milk producers received or acquired for disposition by a pooled handler from a producer-handler be allocated to the extent possible first to Class III, then to Class II, and finally to Class I use. The witness stated that the provision had been incorporated into the Oregon-Washington order at its promulgation in response to a situation in which a handler wished to receive unlimited quantities of packaged products from a producer-handler at a location outside the handler's plant without accounting to the pool for such receipts.

A primary basis for exempting a producer-handler from the pricing and pooling provisions of the order is that such a person customarily has a relatively small operation and is operating in a self-sufficient manner. The milk that is processed, packaged and distributed by a producer-handler is obtained from the producer-handler's own production. Any fluctuation in a producer-handler's daily and seasonal milk needs is met through his own farm production, and any excess milk supplier are disposed of at his own expense. Under this arrangement, a producer-handler seldom can be a major competitive factor in the market for regulated handlers, nor can such a person have a preferred market for his milk relative to producers who supply the regulated handlers and share in the proceeds of the marketwide pool.

If a producer-handler processes milk from his own farm but also relies on pool plants for substantial supplies, either in bulk or packaged form, his operations are not significantly different than the operations conducted by a pool handler. Since his operation is not fully regulated, the pool does not receive the benefits of the producer-handler's Class I sales. At the same time, the other producers in the market are bearing the cost of balancing his operation by carrying such operator's necessary reserve milk supplies. Such an operator should not have producer-handler status under the merged order, but should be accorded pool status similar to that of any other handler receiving milk directly from dairy farms.

There was no opposition to adoption of the producer-handler definition as proposed. In view of the fact that producer-handlers supply a significant share of the fluid milk dispositions in the marketing area, and yet are not subject to the same pricing and pooling provisions of the order as are regulated handlers, it is appropriate to require producer-handlers to rely almost totally on their own milk production to balance their fluid sales and to find outlets for their surplus production outside the fluid market. Only in this way can there be any reasonable assurance that their exemption would not have an adverse impact on the market.

Therefore, as adopted herein, a producer-handler would be allowed, within the limitations on supplemental purchases, to purchase fluid milk products in bulk or packaged form. This change would not undermine the concept of self-sufficiency, but rather would provide a producer-handler with the flexibility to purchase supplemental fluid milk products in the form that fits his needs. It is appropriate to include handlers who produce and distribute less than 300 pounds of milk per day in the order's "exempt plant" definition. Such handlers represent far too small a share of the total market for fluid milk production to justify the same degree of administrative attention necessary to assure that larger producer-handlers operate within the parameters of the producer-handler definition adopted herein.

The provision of the Oregon-Washington order directing that products acquired from a producer-handler for sale by a regulated handler be reported as receipts and allocated first to Class III, then to Class II, and finally to the handler's Class I use, should be included in the merged order. Adoption of this provision also requires that any such receipts allocated to Class I will be subject to a compensatory payment to the producer-settlement fund at a rate determined by the difference between the Class I and Class III prices.

Without such a provision, a producer-handler would be able to find a fluid outlet for any of its milk production that might exceed demand for its fluid milk products sold through customary channels. In addition, regulated handlers associated with retail outlets would have access to unregulated and potenially lower-cost supplies of fluid milk products, giving them a competitive advantage over other pooled handlers who must pay the order's Class I price for fluid milk products disposed of on routes.

Cooperative reserve supply unit. A proposal to include in the merged order a "cooperative reserve supply unit" should be adopted. Such a provision will assure the continued pooling of the milk of coooperative association members having an historical relationship with the market. In order to qualify as a reserve supply unit, a cooperative association must have been a handler of producer milk under the merged order or one of its two predecessor orders for at least the immediately preceding twelve months. In addition, a cooperative reserve supply unit must supply milk to pool distributing plants located within 125 miles of the majority of its producers as directed by the market administrator when the market administrator has determined that such shipments are necessary to assure consumers an adequate supply of fluid milk products.

The "cooperative reserve supply unit" provision was proposed on behalf of two cooperative associations whose members' milk is pooled under the Oregon-Washington and Puget Sound-Inland orders. A witness representing one of the cooperatives, Northwest Independent Milk Producers Association (NWI), testified that the production of NWI members represents approximately 1 percent of the milk pooled under the two Northwest orders. He stated that NWI historically has marketed 25–30 percent of its members' production to a pool distributing plant, with the balance diverted to a nonpool cheese plant, and asserted the cooperative's willingness to continue to supply the fluid market. However, the witness testified, NWI's sole pool distributing plant customer signed a full-supply agreement with Darigold in October 1986 for necessary shipments of milk to supplement the plant's nonmember milk supply. He stated that he contracted and met with out the pool plant operators in the marketing area in an unsuccessful attempt to arrange for alternative pool outlets for the cooperative's milk. The witness described NWI's position as a participant in the marketwide pool as vulnerable, although the cooperative's pool plant customer has continued to receive enough of NWI's production to assure the pool status of the cooperative's members. He urged adoption of the "cooperative reserve supply unit" provision as a means of correcting the potential inequity of being excluded from the marketwide pool. The witness stated that failure to qualify the cooperative's member producers' milk for pooling would result in their receiving 65 to 70 cents per hundredweight less for their milk than pooled producers receive.

The NWI witness recommended that the "call area" from which the market administrator could require milk to be shipped by cooperative reserve supply units from members' farms to pool distributing plants be defined as 100 miles. He stated that this would represent a reasonable distance over which milk supplies needed for fluid use might be required to be shipped. The witness observed that adequate supplies of milk for fluid use are produced within 100 miles of both Portland and Seattle, and that expanding a "call area" much beyond 100 miles would result in inefficient and prohibitively expensive hauling.

The witness representing Darigold and NDA testified that those organizations would have no objection to a "cooperative reserve supply unit" provision as long as certain safeguards are included so that producers not actually associated with the market would not be eligible to participate in the marketwide pool. The Darigold representative proposed that a "cooperative reserve supply unit" be required to have qualified for pool status for the 24 consecutive months immediately preceding its reserve supply unit status, and that the headquarters and all of the producer members of the association should be located within the marketing area. The witness based the need for such modifications on the possibility that producer groups having no real historical supply relationship with the market might otherwise attempt to be pooled under the provision.

The provision defining a "cooperative reserve supply unit" should be included in the merged order to assure the continued pooling of the milk of producers historically associated with the market. The provision will protect the member producers of marketing cooperatives who have been associated with the market over a significant period of time and have demonstrated their willingness and ability to supply milk to the fluid market from losing their association with the pool as a result of forces beyond their control. The order's requirement that such an association supply milk to pool distributing plants as specified by the market administrator in order to retain pool status will assure that the milk supplies of a "cooperative reserve supply unit" would be made available for fluid use whenever needed by the market. The specific order language proposed by proponent should be modified to better reflect the role that a cooperative reserve supply unit would play in the merged order. It is not necessary to define such an entity as a "handler" since the only means it has of marketing its members' milk is by moving it to either pool plants or

nonpool plants. Both of those possible movements, when directed by a cooperative, are already included in the handler definition. Therefore, a "cooperative reserve supply unit" has been defined in a separate section, and an exemption from the constraints of diversion limits has been included in the "producer milk" definition.

In addition, the concept of a "call area" to determine the area containing the producers whose milk is required to be shipped and the pool distributing plants to which the milk is to be shipped is not appropriate in the context of this provision. The area encompassing the locations of producers' farms is likely to be more difficult to delineate than the supply plants from which milk supplies are "called" under similar provisions in other orders. The market administrator has the information necessary to determine whether the members of any "cooperative reserve supply units" are within a reasonable distance of pool distributing plants in need of milk supplies and, if so, how much milk should be shipped. The testimony dealing with the distance over which such shipments should be required indicated that some producers in Whatcom County, Washington, are more than 100 miles from Seattle, the nearest likely market for their milk. Therefore, a reserve supply unit should not be "called" upon for milk needed at locations more than 125 miles from the majority of its producers. It would not be reasonable to compel such a unit to move milk several hundred miles if there is an adequate supply nearer to the area experiencing a shortage. It also would not be reasonable to require shipments from a cooperative reserve supply unit at a percentage level of its supply that exceeds the percentage of milk supplied to pool distributing plants by other pooled handlers.

Another change needed in the proposed definition is in the penalty for failure of a unit to comply with any announced shipping requirements. The penalty proposed by proponent, that loss of reserve supply unit status would preclude the unit from qualifying for such status for a period of one year, leaves unclear the status of the cooperative for the next year and the steps that must be taken for such a unit to regain "cooperative reserve supply unit" status. Instead of the proposed language, the merged order should require a cooperative that loses reserve supply unit status to meet the order's pooling requirements for 12 consecutive months before again becoming eligible for "cooperative reserve supply unit" status.

Darigold's proposed modification to the provision, that a cooperative reserve supply unit be required to meet the order's pooling standards for its producers' milk for 24 consecutive months, is not necessary and should not be adopted. A handler whose producers have been pooled for 12 consecutive months has demonstrated a considerable association with the fluid milk market. Extending the period to 24 months would serve no useful purpose beyond delaying for a year a handler's ability to pool milk under the "cooperative reserve supply unit" provision. Darigold's argument that a handler can obtain a 12-month milk supply contract to meet the order's delivery requirements is not sufficient to require a 24-month association with the market. The order cannot erect unreasonable barriers to the entry of producers or producer groups that are not currently included in the marketwide pool.

Another proposed modification, that the headquarters and all of the members of a reserve supply unit be located within the marketing area, is not a reasonable restriction. The market statistics clearly show that milk production for the two orders is not normally limited to the marketing areas of the orders. Production from counties on the Olympic Peninsula and from other counties near the boundaries of the present marketing areas is currently pooled under both of the present orders. There is no basis on which to limit the membership of cooperatives operating reserve supply units to the marketing area when other cooperatives are not so limited. However, because a reserve supply unit will be required to ship milk only to pool distributing plants located within 125 miles of the majority of its producers, only those units having a majority of their member producers located within 125 miles of a pool distributing plant should qualify for reserve supply unit status.

Changes in other order provisions that will accommodate the pooling of milk handled by a "cooperative reserve supply unit" should be made where necessary.

Producer milk. For the most part, the producer milk definition should be very similar to the one proposed by proponents, which is the same as the current Puget Sound-Inland definition, and similar to the present Oregon-Washington definition. However, some changes in the producer milk definition of the merged order will be necessary to accommodate the continued pooling of the milk currently pooled under the two orders, and to conform with other features of the merged order. As in the case of pool provisions for handlers, the pool status of producers that customarily have been pooled under the two separate orders should not be altered by the provisions of the merged order. Therefore, the pooling standards adopted for producers and producer milk under the merged order should reflect the more liberal of the pooling standards contained in the separate orders.

Adoption of the "cooperative reserve supply unit" provision will necessitate omission of references to "diversion from" particular kinds of plants. By definition, milk pooled by a reserve supply unit will have no attachment to any particular pool plant, and therefore cannot be considered as being "diverted from" a pool plant. Milk delivered directly to manufacturing plants can be considered to be "diverted from" the fluid market rather than from a pool distributing plant or a pool supply plant. This change in the terminology relating to diverted milk will result in non-substantive changes in the wording of some of the paragraphs of the "producer milk" definition. Additionally, it will require that the proposed distinction between the percentages of allowable diversions from pool distributing plants and pool supply plants be omitted.

The language requiring different levels of allowable diversions from pool distributing and pool supply plants is contained in the present Puget Sound-Inland order. The only supply plant expected to be pooled under the merged order is operated by Tillamook County Creamery Association. The plant is currently a supply plant under the Oregon-Washington order, which applies the same diversion limits to all producer milk, regardless of the type of pool plant from which it is diverted.

The limits on diversions of producer milk proposed for the merged order are taken from the Puget Sound-Inland order, and are slightly more liberal than those in the present Oregon-Washington order. Allowances for the movement of producer milk direct from producers' farms to nonpool plants enable handlers to move milk more economically and efficiently than if all producer milk were required to be received first at pool plants. The proposed 80-percent limit on diversions of producer milk during the months of September through April, with no limit during May through August, will permit handlers the same degree of flexibility and efficiency in handling milk that they now enjoy under the Puget Sound-Inland order.

Also as proposed by proponents, the merged order should contain no

restrictions on the amount of an individual producer's milk that may be diverted to nonpool plants (commonly referred to as "touch-base" requirements). Proponent witness testified that a large portion of the milk pooled under the Puget Sound-Inland order is produced in Whatcom County, Washington, located 110–120 miles from Seattle and from most of the order's pool plants. According to the witness, most of the Whatcom County milk is delivered directly to a nearby manufacturing plant. The Darigold witness stated that milk produced in such locations, much closer to manufacturing outlets than to any pool plants, should not be required to be delivered to a pool plant simply to demonstrate an association with the market.

The present Puget Sound-Inland order has no requirement that any particular percentage or amount of each producer's milk be received at pool plants, and there is no basis in the record of this proceeding on which more demanding delivery requirements could be adopted. Therefore, in accordance with the approach of adopting the more liberal pooling requirements of the two present orders, the merged order should contain no "touch-base" requirement.

5. *Handler reports.* Reports required to be submitted by handlers should be the same as those currently required under the Puget Sound-Inland order, and similar to those proposed by proponents. Exempt plants and unregulated supply plants should not be required to report in the same detail as pooled handlers are required to do. Instead, any requirements of such handlers to file reports would be at the discretion of the market administrator.

The adopted requirements for handler reports, payroll reports and other reports are identical to those currently contained in the Puget Sound-Inland order and very similar to those of the present Oregon-Washington order. Proponenet failed to establish sufficient reason for requiring exempt and unregulated supply plants to be subject to the same reporting requirements as regulated handlers. There was no testimony that any current difficulties exist in evaluating the status of such plants. Therefore, such handlers should be required to file no more reports, nor in any greater detail, than prescribed by the market administrator.

6. *Classification of milk.* The merged order should use essentially the same uniform classification plan that is commonly provided in most other Federal milk orders. However, the plan should be modified in several respects to conform to local market conditions. Basically, the plan adopted herein provides, as is the case under the individual orders, for the classification of milk according to use, including rules for determining the classification of milk moved from one plant to another and the classification of shrinkage. The plan also sets forth a procedure for allocating a handler's receipts of milk and milk products from various sources to his utilization in each class in order to determine the classification of producer milk.

Under the classification plan here adopted, Class I milk would include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milkshakes and ice milk mixes containing less than 20 percent total solids and mixtures of cream and milk or skim milk containing less than 15 percent butterfat. Skim milk and butterfat disposesd of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content. The remaining volume of the product, which represents the skim milk equivalent of added nonfat milk solids, would be classified as Class III.

Each product designated herein as a Class I product would be considered a "fluid milk product" as defined in the order. In addition to these fluid milk products, Class I milk would include any skim milk and butterfat not specifically accounted for in Class II or III, other than shrinkage permitted as Class III classification.

Class III milk should include products which are make from surplus Grade A milk and which compete in a national market with similar products made from manufacturing grade milk. These products include cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), butter, any milk product in dry form (such as nonfat dry milk), any concentrated milk product in bulk, fluid form that is used to produce a Class III product, and evaporated or condensed milk (plain or sweetened) in a consumer-type package. Additionally, Class III milk should include any product not specified in Class I or Class II.

An intermediate class, Class II, should apply to certain products which can command a higher value than Class III products but which must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured dairy products that can be used in making Class II products. Class II milk should include skim milk and butterfat disposed of in the form of a "fluid cream product," eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles one of these products. As defined in the order, "fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 15 percent or more butterfat, with or without the addition of other ingredients.

Class II milk would also include bulk fluid milk products and bulk cream products disposed of to any commercial food processing establishment at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. In addition, it would include milk used to produce cottage cheese, lowfat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, milk or milk products sterilized and packaged in hermetically sealed metal or glass containers, and certain other products as specified in the order.

The classification plan adopted herein was proposed by the merger proponent and embraces the basic features of the uniform classification plan contained in many other Federal orders. This plan was developed from exhaustive hearings held on the broad issue of classification in 1971 for 39 markets. A full discussion and appropriate order language on the uniform classification plan is contained in a final decision issued February 19, 1974 (34 FR 8202, 8452, 8712, 9012). This decision was duly noted on the record of this proceeding. Proponent testified that this classification system, with certain minor revisions, would be fully appropriate for the merged order and would comport with the need for greater uniformity among those essential provisions of marketing orders that should be uniform.

The minor revisions to the uniform classification plan applicable to most orders, which were proposed by the merger proponent and adopted herein,

concern the classification of certain fluid cream products and ending inventories of packaged fluid milk products. Under the adopted classification plan, any mixtures of cream and milk or skim milk containing less than 15 percent butterfat would continue to be Class I. Such products are Class II under the 39-market uniform classification plan. Although inventories of fluid milk products in packaged form on hand at the end of the month are included in Class III in most other Federal orders, they should be classified in Class I under the merged order. Such inventories in bulk form, however, should be classified in Class III. This procedure for handling fluid milk product inventories is identical with that provided under both the present Puget Sound-Inland and Oregon-Washington orders.

Such revisions to the 39-market uniform classification plan that are herein adopted make allowance for the provisions under which Northwest handlers are accustomed to operating. On the basis of the hearing record, there is no reason to change the classification of cream and milk mixtures containing less than 15 percent butterfat (half-and-half) from Class I to Class II. Proponent witness supported retaining such products in Class I on the basis that they are customarily used in coffee as a beverage and as an alternative to whole milk for many purposes. The witness explained that the limit on the butterfat content of fluid milk products should be reduced from 18 percent to 15 percent in order to eliminate any possibility of sour cream being classified as a fluid milk product instead of a fluid cream product.

A brief filed on behalf of Carnation Company, a proprietary handler operating three pool distributing plants in the proposed merged marketing area, proposed lowering the limit on butterfat content of fluid milk products from the current level of 18 percent to 9 percent. The handler supported such a change by stating that half-and-half and related by-products are classified in Class II by Federal orders in surrounding states, and that such products are moving greater distances than before from processing plants through grocery chain warehouse deliveries. The Carnation brief also advocated Class II classification for "biscuit mix", a skim milk formula with added stabilizer, salt and biscuit flour. The handler observed that such a product has been classified as Class II in the Ohio Valley Federal order.

Although the uniform classification plan does classify a milk and cream mixture containing 9 percent or more butterfat in Class II, there is no evidence that the proposed merged order should do so. The only Federal order in a state adjoining the proposed marketing area is the Southwest Idaho-Eastern Oregon order. The nearest distributing plant in that market is in Boise, Idaho, located nearly 400 miles from distributing plants in Spokane, Washington, and over 400 miles from distributing plants in Eugene or Portland, Oregon. Although milk products such as half-and-half may be moving greater distances than before, there is no testimony or data in the hearing record that would support a conclusion that handlers in the proposed merged marketing area are competing for sales of half-and-half with handlers from other areas who are subject to a lower price. Similarly, there is nothing in the hearing record that would support a Class II classification for "biscuit mix".

At the hearing, proponents' principal witness testified that certain diversion provisions in each of the two orders should not be included in the merged order. The merged order proposed by proponents would omit the Oregon-Washington order provision allowing pooled handlers to divert milk from producers' farms to other pool plants at Class III use if so requested by both handlers. The witness suggested that the Puget Sound-Inland order provision allowing producer milk to be diverted to a commercial food processor located in Pacific County, Washington, and classified as Class II not be included in the merged order because the commercial food processor affected by the provision has moved its operation to Seattle and no longer receives diverted producer milk.

The ability of handlers to divert milk from producers' farms to other pool plants and to commercial food processing plants should be retained in the merged order, with diversions between pool plants accommodated in all three classes of use. Direct shipments of producer milk are the most efficient and economical means of moving milk from farms to the plants in which it ultimately will be used. Such efficiencies should not be prohibited by order provisions. Although the food processing plant that previously received such shipments apparently has ceased to do so, such a means of disposing efficiently of producer milk surplus to the fluid needs of the market should continue to be available to other milk handlers and commercial food processors. The order should continue to assure that the records of a commercial food processing plant receiving Class II milk by transfers or diversions from regulated handlers will be available to the market administrator for audit and verification purposes.

Two changes in the order language included with the recommended decision have been made in the order language accompanying this decision to reflect accommodation of producer milk diversions to pool, as well as to nonpool, plants.

7. *Class prices, location adjustments and butterfat differential.* The Class I price for the merged Pacific Northwest market should be the basic formula price for the second preceding month plus a Class I differential of $1.90. This price should apply to plants located within zones established to approximate distances of 90 miles from Spokane and Seattle, Washington; and Eugene and Portland, Oregon. For the purpose of applying location adjustments, the marketing area should be divided into four pricing zones. Zone 1, which would be the base zone and would have no price adjustment, should include northern Idaho and most of eastern Washington; western Washington, except for the counties of Clallam, Jefferson, San Juan and Whatcom; and western Oregon north of, and including, Douglas County. Zone 2, with a location adjustment of minus 6 cents, should consist of Whatcom County, Washington. Zone 3 would have a location adjustment of minus 8 cents, and would include three southern Oregon counties. Zone 4 would have a minus 15-cent location adjustment, and would include the Idaho counties of Lewis and Nez Perce, twelve central and northeastern Oregon counties, fourteen central and southeastern Washington counties, and three northwestern Washington counties. The Class II and Class III prices to be effective under the merged order should be adopted as proposed.

The location adjustment for each zone, the resulting Class I differential (shown parenthetically), and the territory that should be included in each zone are as follows:

Zone 1—No Adjustment ($1.90)

Idaho Counties

Benewah	Boundary	Latah
Bonner	Kootenai	Shoshone

Oregon Counties

Benton	Hood River	Multnomah
Clackamas	Lane	Polk
Clatsop	Lincoln	Tillamook
Columbia	Linn	Washington
Douglas	Marion	Yamhill

Washington Counties

Clark	Island	Lincoln
Cowlitz	King	Mason
Ferry	Kitsap	Pacific
Grays Harbor	Lewis	Pend Oreille

Pierce	Skamania	Thurston
Skagit	Spokane	Wahkiakum
Snohomish	Stevens	Whitman

Zone 2—Minus 6 cents ($1.84)

Whatcom County, Washington

Zone 3—Minus 8 cents ($1.82)

Oregon Counties

Coos	Jackson	Josephine

Zone 4—Minus 15 cents ($1.75)

Idaho Counties

Lewis	Nez Perce

Oregon Counties

Crook	Klamath	Umatilla
Deschutes	Lake	Wallowa
Gilliam	Morrow	Wasco
Jefferson	Sherman	Wheeler

Washington Counties

Adams	Douglas	Klickitat
Asotin	Franklin	Okanogan
Benton	Garfield	San Juan
Chelan	Grant	Walla Walla
Clallam	Jefferson	Yakima
Columbia	Kittitas	

At plant locations outside the zones specified above, the Class I price and the uniform price to producers should be reduced by 1.5 cents for each 10 miles that the plant is from the nearer of the county courthouse in Spokane, Washinton; the Multnomah County Courthouse in Portland, Oregon; or the city hall in Eugene, Oregon.

The single butterfat differential currently in use under the Puget Sound-Inland order should be adopted for the merged order, rather than the provisions of the Oregon-Washington order under which the price of milk used by handlers in Class I is adjusted by a different butterfat differential than the price of milk used in Classes II and III.

Class I price. The Class I price differentials effective at the primary population centers of the merged marketing area should be changed to $1.90. Currently, the Class I price differential at Portland, Oregon, and Spokane, Washington, is $1.95, while the corresponding differential at Seattle, Washington, is $1.85.

The Darigold witness testified that adequate supplies of milk are produced within short distances of each of the Pacific Northwest cities in which population and distributing plants are concentrated. He also observed that packaged Class I milk products move freely between the population centers without being impeded by the price differences. The witness stated that the proposed reduction in the Class I price level at Portland and Spokane would more than offset the effect of the proposed increase at Seattle on prices to producers.

A producer from the Spokane area opposed the proposed 5-cent reduction of the Class I differential at Spokane. Instead, he suggested, the differential should be increased to $2.00. The witness expressed his concern that the proposed 5-cent increase in the Class I differential at Seattle would cause dairy farmers to move their operations to the Seattle area for the benefits of a higher Class I price and lower hauling costs. He also stated that the proposed change would cost him 5 cents per hundredweight.

Adoption of the $1.90 Class I differential for all of the marketing area's population centers will bring the prices for fluid milk at those locations into line without significantly changing total returns to producers. In view of the volume of milk supplies produced in the vicinity of all the market's population centers, there is no reason to maintain a higher price level at some of the metropolitan areas than at others. The hearing record provides no support for the Spokane-area producer's concerns about a reduction in his returns for milk or a migration of dairy farmers from eastern Washington State to the Seattle area. The effect of the decrease in the Class I differential at Spokane and Portland will be largely offset by the increase in the Class I differential at Seattle. As a result, little change in the uniform price paid to producers should be attributable to the changes in Class I differentials. As a result of the merger of the two orders, however, the uniform price paid to producers currently pooled under the Puget Sound-Inland order should increase by several cents. Such an increase would result from the relatively higher percentage of milk used in Class I in the Oregon-Washington market.

As for the possibility of eastern Washington producers moving to the Seattle area because of the increase in the Class I price there, in combination with lower hauling rates, such a shift in production area is unlikely. For one thing, producers in both parts of the marketing area will be receiving the same uniform price, regardless of the class in which their milk is used. For another, the Washington area that appears to be experiencing marked increases in milk production is Yakima County. Milk received at plants located in central Washington is subject to significant location adjustments under both of the two separate orders, reducing prices to producers by 15 or 20 cents below the uniform price. Milk produced in Yakima County that is surplus to the fluid milk needs of central Washington handlers must be hauled over 150 miles to the nearest plants in Spokane, Portland or the Seattle area, at substantial hauling costs to producers. In spite of these advantages in price and hauling cost, Yakima County appears to be one of the fastest-growing areas of milk production in the merged marketing area. It is apparent that there are factors beyond the local Class I differential and effective hauling rates that influence milk production trends in any given area.

Proponents originally proposed that the Commodity Credit Corporation allowance for manufacturing butter and powder (currently $1.22) be used in the computation of the Class III price under the merged order instead of the 48-cent manufacturing allowance provided for in the two separate orders. At the hearing, proponents withdrew that proposed change, and stated that they wished to use the formula currently used in the two separate orders. Modification of the proposal was not discussed in the recommended decision, nor was the change incorporated into the order language accompanying the decision. Two of the merger proponents and Northwest Independent Milk Producers Association filed exceptions to adoption of the Class III price computation as originally proposed, noting correctly that failure to adopt the language as modified at the hearing must be the result of an error.

The Class III price computation in the merged order should reflect the modification proposed at the hearing by proponents. If adopted as originally proposed, the Class III price under the merged order could fall as much as 74 cents below the current Class III price level, depending on the margin by which the Minnesota-Wisconsin, or basic formula, price exceeds the butter-powder snubber price computed with the use of the designated manufacturing allowance. Such a price reduction would significantly reduce the blend prices to be paid to producers, and would give Pacific Northwest manufacturing plant operators a significant advantage in competing for sales of butter, cheese and nonfat dry milk with manufacturing operations elsewhere in the United States. Therefore, the Class III price computation procedure under the merged order should be changed from that contained in the recommended decision to the procedure followed in the two individual orders.

Location adjustments. A system of establishing location adjustments by the zone in which a plant is located is appropriate for the merged order, since location pricing under the separate orders is determined largely by zones. The amounts of most of the proposed adjustments are also appropriate, and should be adopted. The Darigold

witness testified that location adjustments should be reduced at all locations in the marketing area that are subject to adjustments to the Class I and uniform prices. He supported proponents' proposal that location adjustments be reduced from 10 cents to 8 cents in southern Oregon; from 18 and 20 cents to 15 cents in central Oregon; and from 20 cents under the Oregon-Washington order to 15 cents in central Washington. The 15-cent adjustment of this latter area, however, would mean a 5-cent greater adjustment than now exsits under the Puget Sound-Inland order. The witness also supported the elimination of location adjustments at locations between Seattle and Portland, and the reduction of the present 6-cent adjustment at locations in Whatcom County, Washington, to 3 cents.

The Darigold witness based his support of a reduction in the adjustments to be made in Class I and uniform prices on two principal arguments. First, he stated, location adjustments to producer prices under the Oregon-Washington order have been applied only to the amount of each producer's base production, and not to producers' total production. With the elimination of the base-excess plan, he said, location adjustments will be applied to the unform price for all of each producer's milk, and will have a greater impact on producer returns. According to the witness, another reason for reducing the amounts of location adjustments is to "modernize" the merged order. He cited recent Federal order decisions in which location adjustments were reduced, eliminated or not adopted as evidence of such a trend.

Opposition to the proposal to reduce the location adjustment at Darigold's Lynden, Washington, manufacturing plant in Whatcom County from 6 to 3 cents was expressed in two briefs received by the Department. Both Northwest Independent Milk Producers Association and Carnation Company protested that the current 6-cent location adjustment rate is too low when compared to the cost of handling milk from Whatcom County to Seattle. The handlers stated that Darigold's ability to charge its producers a very low hauling rate because of their proximity to Darigold's manufacturing plant makes it very difficult for other handlers to procure milk supplies in that area for the Seattle fluid milk market. The handlers argued that the location adjustment for Whatcom County should, if changed at all, be increased to more closely reflect the actual cost of hauling milk from Whatcom County to Seattle.

The location adjustments in most parts of the marketing area should be changed as proposed. Most of the locations affected by such price adjustments obtain milk supplies from producers currently pooled under the Oregon-Washington order. The location adjustments deducted from the prices paid for these producers' milk are calculated on the basis of the producers' base production. According to the Darigold witness, base production under the Oregon-Washington base-excess plan generally represents about 80 percent of producers' total production. Under the proposed merged order, each producer's entire production will be subject to the full price adjustment at the location of the plant at which it is received. Accordingly, a slight (approximately 20 percent) reduction in the location adjustment rates at those locations will result in a minimal impact on producer returns when considered with the elimination of the base-excess plan.

The proposed changes in location adjustments at locations in the Oregon-Washington marketing area should have little or no effect on the handlers at those locations. Most of the southern and central Oregon and central Washington handlers have, according to the Darigold witness, more than adequate supplies of milk available nearby and no nearby competition for producer milk supplies from manufacturing plants. The handlers in these areas are located at great enough distance from each other and from handlers in the zero location adjustment zone that changes of 2 to 5 cents in location adjustment rates should not affect their competitive relationships with other distributing plants.

The location adjustments effective at locations between Portland and Seattle under the two separate orders should be eliminated. Areas within 90 miles of Eugene, Portland, Seattle and Spokane should be free of location adjustments. The record indicates that ample milk supplies for the market's population centers are available within 90 miles of those centers. The distance between Portland and Seattle is less than 180 miles, so any plant located between the two cities must be less than 90 miles from either Portland or Seattle.

Location adjustments for the northern Olympic Peninsula and San Juan County, Washington, should be reduced by 1 cent, from 16 cents to 15 cents, as proposed. It appears that there are no pool plants in this area to which location adjustments could be applied. Therefore, the 1-cent change is unlikely to make any real difference.

Proponents' arguments for reducing the present 6-cent location adjustment at locations in Whatcom County, Washington, are less persuasive. The location adjustment should not be reduced. One reason given for such a reduction was that the nearby manufacturing plant in Lynden provides an outlet for milk surplus to the market's fluid needs, while location adjustments are still needed at locations in southern and central Oregon and central Washington precisely because no nearby manufacturing plants exist to provide an outlet for surplus milk produced in those areas. In fact, the situation thus described by the Darigold witness should result in a greater location adjustment for Whatcom County than, for instance, Jackson County, Oregon. The receipt of milk at a manufacturing plant located in an area of heavy milk production at some distance from the market's center is the classic situation to which location adjustments were designed to apply. Prices paid for such milk are adjusted downward for location to compensate for the fact that the milk has not had to be hauled to distant bottling plants but instead has been shipped a relatively short distance at a significantly lower hauling cost.

Another reason advanced by the Darigold witness for a reduction in the location adjustment rate at Whatcom County was the need to "modernize" the order. According to the witness, reduction and elimination of location adjustments in Federal orders generally has become a trend that should be followed in the merged order. The witness cited 3 relatively recent decisions relating to the Southwestern Idaho-Eastern Oregon, Eastern Ohio-Western Pennsylvania and Greater Kansas City orders in which location adjustments had been, respectively, not adopted, eliminated and reduced.

None of the reasons given in the cited decisions for the actions taken are relevant to marketing conditions in the Pacific Northwest. The Southwestern Idaho-Eastern Oregon decision found that no location adjustments were necessary for that marketing area because all of the distributing plants that were expected to be regulated by the order were located in counties in which enough milk was produced to satisfy the local distributing plant's demand for fluid milk. Also, the distributing plants were found to be distributed throughout the marketing area, not concentrated in one or two large population centers.

In the Eastern Ohio-Western Pennsylvania decision, location

adjustments at locations in the marketing area were eliminated because most of the distributing plants had moved out of the population centers nearer to the production areas, leaving the leading population centers as no longer significant fluid milk processing centers. The decision reiterated the traditional rationale for location adjustments, but determined that the conditions for which location adjustments were designed no longer existed in the Eastern Ohio-Western Pennsylvania marketing area.

The Greater Kansas City decision referred to by proponent expanded the order's location adjustment-free area to assure that prices at a pool supply plant located south of Kansas City and closer to a higher-priced order would not be subject to a negative adjustment. The decision was part of a 6-market proceeding held to consider location adjustment changes for the purpose of assuring inter-market price alignment after Class I prices were legislatively amended in many Federal orders. In the six orders affected by the decision, location adjustments were increased in 3, reduced in 1, and unchanged in 2.

The decisions cited by the Darigold witness address marketing conditions that differ markedly from those in the proposed merged marketing area. However, the witness failed to cite decisions affecting the New England and New York-New Jersey orders in which location adjustments were increased to reflect increases in hauling costs. These markets, with manufacturing plants located in the heavy production areas distant from most distributing plant locations, are more comparable to the situation of Whatcom County. Such increases, that update location adjustments to correspond to the significant increases in hauling costs that have been experienced since most location adjustment provisions were written, are actually the only means of "modernizing" location adjustments. It is very possible that it would be appropriate to "modernize," or increase, the location adjustment at Whatcom County, as urged by Northwest Independent Milk Producers Association and Carnation Company. However, there is inadequate data and testimony in the record of this proceeding to determine an appropriate change in the level of location adjustment for Whatcom County. Therefore, there should be no change in the present 6-cent adjustment.

Butterfat differential. The merged order should provide for a single butterfat differential for adjusting order prices to the butterfat content of the milk being priced. The differential should be the Chicago 92-score butter price for the month multiplied by a factor of 0.115, rounded to the nearest 0.1 cent. Such differential should be announced on the fifth day after the end of the month to which it applies.

This differential is now used under the present Puget Sound-Inland order. However, the Oregon-Washington order provides for three separate butterfat differentials. The Class I butterfat differential for handlers is determined by multiplying the Chicago butter price for the preceding month by 0.12, while the handler Class II and III differentials are determined by multiplying the butter price for the current month by 0.115. The butterfat differential applicable in adjusting the uniform price to producers is the average of the Class I, Class II and Class III butterfat differentials weighted by the proportion of buttefat in producer milk in each class.

Presently, the Class I, Class II, and Class III differentials for the Oregon-Washington order are announced on the fifth day of the month. The Class I differential applies to the month in which announced, while the Class II and Class III differentials apply to the preceding month. The producer butterfat differential is announced on the 14th day of each month and applies to milk received during the preceding month.

The merger proponents proposed that all class prices and uniform prices under the merged order be subject to an adjustment by a butterfat differential based on the Chicago butter price times the factor of 0.115. No opposition to the use of this single factor was presented at the hearing.

As proposed and as herein adopted, using a single factor of 0.115 for computing class butterfat differentials will change the relationship of Class I skim milk and butterfat values of those handlers that are presently regulated by the Oregon-Washington order. The impact of this change will increase such handlers' cost of skim milk since less value will be assigned to the butterfat component of Class I milk. However, the absolute effect on a handler's cost for Class I milk is dependent on the average test of his Class I products.

Nevertheless, adopting a lower Class I butterfat differential for the Oregon-Washington portion of the proposed merged marketing area gives recognition to the reduced demand and the related lower market value of butterfat in fluid milk products in Class I. This lower value for Class I butterfat will be reflected in returns to producers which, in turn, should provide less incentive to produce high-test milk that consumers do not want.

8. *Handler obligations to the pool.* The value of producer milk to handlers should continue to be determined on the basis of its use in the three classes of utilization, and the prices associated with each class. As proposed by proponents, each handler's obligation to the producer-settlement fund should be determined by "equalization", as is currently the case under the Puget Sound-Inland order. In an "equalization" pool, a handler pays to the producer-settlement fund the amount by which the handler's use value of producer milk exceeds the value of the producer milk at the uniform price. If the value of the producer milk at the uniform price exceeds the handler's use value, the handler receives the difference from the producer-settlement fund in order to pay the producers the uniform price. In this way, each handler pays the total use value of producer milk received and each handler is left with a sum great enough to pay all of the handler's producers for their milk at the uniform price.

Under the Oregon-Washington order, handlers are required to pay the full class use value of their producer milk to the producer-settlement fund. The market administrator then pays nonmember producers, handlers, cooperative associations and the Oregon State Division of Milk Stabilization for the milk supplied by them or by the producers for whose milk they are responsible for paying. With the cessation of payments to the State of Oregon (see below), it is no longer necessary to require handlers to pay the full use value of their milk to the producer-settlement fund. Operation of the Pacific Northwest pool as an "equalization" pool will reduce the amount of money paid into and out of the producer-settlement fund, and should improve handlers' cash flow.

Late payment charge. The merged order should include a late payment charge to be applied to handlers' payments to the producer-settlement fund, as a result of audit adjustments, and for administrative and marketing service assessments that are received after the date such payments are due under the order. The charge should be 1 percent of the amount due, and should be applied on the first day after the due date. The late payment charge should also be applied to any unpaid balance (including any previously unpaid overdue charges) on the due date for such obligation in each following month.

Proponent proposed the late payment charge on the basis that such a

provision had been found necessary in the Oregon-Washington order to assure timely payment of handlers' obligations to the producer-settlement fund and for administrative and marketing service assessments. The Darigold witness testified that the late payment charge provision, as proposed, should be modified to remove a requirement that late payment charges be assessed under the order on late payments for milk purchased from cooperative association plants by other handlers. He explained that agreements between cooperatives and their customers may enable cooperatives to impose such a charge outside the order.

Some of the wording in paragraph (b) of the section on late payment charges in the recommended decision order language appears to correspond to that part of the originally proposed section that proponents testified should not be adopted. The requirement that "All charges on overdue accounts shall be paid to the fund or to the person to whom the account was due . . ." appears to be related to the original proposal that would have instructed the market administrator to apply such charges not only to accounts overdue to the market administrator, but accounts overdue to cooperative associations and nonmember producers as well. The order language therefore is changed to reflect the omission of such an application of late payment charges.

Two briefs opposing adoption of a late payment charge were received. Carnation Company, a proprietary handler operating distributing plants under both of the two orders, objected to the imposition of a late payment charge in months when billings from cooperatives or the market administrator arrive after the date payments are due. The Carnation brief stated that the company does accept billing information by telephone so that payments can be made on time, but considers a late payment charge unreasonable unless the billings arrive on time. Carnation also stated that the 1 percent charge for a payment one day late is unreasonable. Olympia Cheese Company, a nonpool cheese plant operator, also objected to adoption of a late payment charge for the merged order. The brief filed by the handler stated that cooperatives and other handlers are able to charge late payment fees on overdue accounts outside the Federal order. Olympia Cheese's brief also stated that the proposed provision would disrupt the operation of the order, goes beyond the intent of the Act, and violates usury laws.

The late payment charge, modified as suggested by the Darigold witness, is necessary to assure that payments to the funds maintained by the market administrator will be made promptly. Prompt payment is essential in order for the market administrator to make payments to handlers on the dates specified in the order so that those handlers, in turn, may pay producers according to the timetable required by the order. Failure on the part of a handler to meet the order's due dates unnecessarily delays payments to producers and gives the late-paying handler a financial advantage over handlers who comply with the order's payment dates. Allowing a period after the due date when no late payment charge would be imposed would only encourage handlers to put off payment until the day before the charge is effective. A charge for late payments will enable the order to operate smoothly, and will assure that producers will receive payment for their milk, some of which was used by handlers over a month earlier, in a timely manner. Elimination of the proposed provision subjecting handlers' late payments to cooperative associations for milk received from cooperatives' plants will enable the market administrator to avoid unnecessary involvement in business dealings between regulated handlers.

A charge of one percent of the amount overdue should not be considered excessive. A lesser rate would constitute little deterrent to late payments. Furthermore, since handler obligations under the merged order will reflect only their equalization value (the difference between the class use value of the milk and its value at the uniform price), the amount of late payment charge imposed should not be unduly burdensome. The late payment charge is not considered interest, and is not subject to usury laws. The late payment charge assures that timely payment of a handlers' obligations to the pool will represent the most economic use of the handler's financial resources.

9. *Payments to producers.* Marketwide pooling of producer returns should be provided under the merged order as the basis of distributing among producers the proceeds from the sale of their milk. This type of pooling is now being used in each of the individual markets to be merged and was the only alternative proposed or supported for use under the merged order.

A single marketwide uniform price, adjusted for butterfat content and for location of the plant to which the milk is delivered, should be the basis of distributing total pool proceeds from producer milk in making payments to individual producers. Under this payment arrangement, each producer would share equally in the higher-valued Class I milk of the market as well as in the lower-valued Class II and Class III uses of milk. A single uniform price to producers is now applicable under the Puget Sound-Inland order.

The present Oregon-Washington order provides for a 12-month operating base plan, which is another method of distributing the total proceeds from handlers to producers. This plan provides for producers to earn daily bases that represent the producer's daily average production during the market's four lowest months of production for the previous year. For deliveries within a producer's base, the producer receives a "base" price that includes a share of the value of the market's Class I sales. For marketings in excess of his base, the producer receives an "excess" price which is comparable to the lower manufacturing, or Class III, price. In addition to the "base-excess" plan, the Oregon-Washington order includes authorization for the market administrator to pay pool proceeds to the Oregon State Milk Audit and Stabilization Division at the base and excess values for producers and cooperative associations participating in the "Oregon Base Plan."

Proponents proposed that both the Oregon-Washington Federal order base plan and provisions facilitating operation of the Oregon State Base Plan be omitted from the proposed order. The Darigold witness testified that participation by Oregon-Washington producers in the Oregon Base Plan had declined from nearly 100 percent at the time the Oregon-Washington order was promulgated to approximately 18 percent at the time of the hearing in this proceeding. He stated further that the State of Oregon was expected to discontinue operation of its base plan at the end of 1987. There was no opposition, at the hearing or in briefs, to the omission of both the Federal order base plan and the Oregon base plan from the merged order. Because no support was expressed for retention of the Federal order base plan or provisions facilitating operation of the Oregon State Base Plan in the merged order, the provisions associated with those plans should not be included.

Adoption of the equalization method of pooling the value of producers' milk will necessitate adoption of the proposed procedure for paying producers. The Oregon-Washington order currently requires the market

administrator to pay the full amounts due to producers directly to nonmember producers, cooperative associations, the Oregon State Department of Agriculture or, upon request, to the handler of nonmember producer milk. Such a payment scheme would not be possible with an equalization system under which only the differences between the values of milk at class prices and at the uniform price are paid to and from the producer-settlement fund. The market administrator would not have the necessary funds to pay for all of the milk production of individual producers. Therefore, the producer payment provisions of the present Puget Sound-Inland order should be adopted.

In testimony, the Darigold witness proposed two corrections to the proposed order language relating to payments to producers. He requested that the date by which handlers are required to pay cooperative associations for milk received from cooperatives' plants be changed from the 17th to the 15th day after the end of the month in which the milk is moved. The change should be adopted. Under the merged order, the cooperative association, as the handler of the milk, must account to the pool for such milk on the 16th day after the end of the month. The cooperative should have access to the money needed to pay for the milk before such payment is due to the producer-settlement fund.

The other proposed modification to the proposed order was to change a reference in the provision dealing with the application of location adjustments to payments for milk delivered by a cooperative association from producers' farms directly to the plant of another handler. The requested change would cause the provision to be applied instead to transfers from a cooperative association's plant to another handler's plant. Application of location adjustments to such milk movements are already covered in the order. A change of the provision referred to would result in no location adjustment being applied to a cooperative's milk received directly at another handler's plant. The proposed modification should not be adopted.

One change from the payment provisions of the present Puget Sound-Inland order, and from the recommended decision, should be made for the reason of consistency. Payments by handlers to cooperative associations are to be made 2 days prior to the dates specified for payments to producers. In § 1124.73(d)(2), final payment by handlers receiving milk for which a cooperative association is the handler under § 1124.9(c) should be made on or before the 17th day after the end of the month, rather than the 18th as specified in the recommended decision. Such payment to cooperative associations on the 17th day would correspond to final payment to producers on the 19th day after the end of the month.

10. *Administrative provisions—administrative assessment.* The maximum rate of payments by handlers for the cost of administering the merged order should be 4 cents per hundredweight. Such payments are required if the market administrator is to perform the necessary function of administering the merged order. The 4-cent per hundredweight rate is the same as under the two separate orders, and was proposed at the hearing without objection. Continuation of the 4-cent rate should enable the market administrator to administer the merged order effectively. If experience indicates that the merged order can be administered at a lesser rate, the order provides that the Secretary may adjust the rate downward without the necessity of a hearing.

Deduction for marketing services. The maximum rate of deduction from payments to nonmember producers for the cost of providing marketing services such as butterfat testing and market information should be 5 cents per hundredweight. The marketing service deduction is necessary to reimburse the market administrator for providing such services to producers to whom the services are not provided by a cooperative association.

Currently, the maximum rates under the separate orders are 6 cents under the Oregon-Washington order, and 5 cents under the Puget Sound-Inland order. A 5-cent rate, which was proposed at the hearing without objection, should enable the market administrator to provide adequate testing and information services to nonmember producers. The marketing service deduction rate, like the administrative assessment, may be adjusted downward if the maximum rate is higher than necessary.

Merger of the administrative expense, marketing service and producer-settlement funds. To accomplish the merger of the two orders effectively and equitably, the reserves in the administrative expense funds that have accumulated under the individual orders should be combined. Similar procedures should be followed with respect to the marketing service and producer-settlement fund reserves of the individual orders. Any liabilities of such funds under the individual orders should be paid from the appropriate new funds established under the merged order. Similarly, obligations that are due the several funds under the individual orders should be paid from the appropriate combined fund under the merged order.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. It is anticipated that all handlers currently regulated under the two orders will continue to be regulated under the merged order. In view of this, it would be an unnecessary administrative and financial burden to allocate back to handlers the reserve funds under the individual orders and then accumulate an adequate reserve for the merged order. It is equally equitable and more efficient to combine the administrative monies accumulated under the individual orders and to pay any liabilities against such funds from the consolidated fund of the merged order.

The money accumulated in the marketing service funds of the individual orders is that which has been paid by producers for whom the market administrator is performing services. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the merged Pacific Northwest market. The consolidation of the reserves in the individual marketing service funds is therefore appropriate in view of the continuation of the marketing service program for these producers under the merged order.

The producer-settlement fund balances in the two orders should be combined so that the producer-settlement fund under the merged order may be continued without interruption. The producers currently supplying the individual markets are expected to continue to supply milk for the merged Pacific Northwest market. Thus, monies now in the producer-settlement funds of the individual orders would be reflected in the uniform prices of the producers who will benefit from the merged order. The combined fund would also serve as a contingency fund from which money would be available to meet obligations [resulting from audit adjustments and otherwise] accruing under one or the other of the separate funds.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the

extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Oregon-Washington and Puget Sound-Inland 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 agreement and the Pacific Northwest order which amends and merges the present Oregon-Washington and Puget Sound-Inland orders, 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 Pacific Northwest marketing area, and the minimum prices specified in the tentative marketing agreement and the Pacific Northwest order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the Pacific Northwest order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held;

(d) All milk and milk products handled by handlers as defined in the tentative marketing agreement and the merged Pacific Northwest order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his prorata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to milk specified in § 1124.85 of the tentative marketing agreement and the Pacific Northwest order.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

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 order regulating the handling of milk in the Oregon-Washington and Puget Sound-Inland marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

September 1988 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order, amending and merging the orders regulating the handling of milk in the Oregon-Washington and Puget Sound-Inland marketing areas is approved or favored by producers, as defined under the terms of the attached order who during such representative period were engaged in the production of milk for sale within the marketing area defined in such attached order.

List of Subjects in 7 CFR Parts 1124 and 1125

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on November 29, 1988.

Robert Melland,

Acting Deputy Secretary for Marketing and Inspection Services.

Order Amending and Merging the Orders Regulating the Handling of Milk in the Oregon-Washington and Puget Sound-Inland 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 Oregon-Washington and Puget Sound-Inland 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 Pacific Northwest order, which amends and merges the Oregon-Washington and Puget Sound-Inland orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Pacific Northwest marketing area; and the minimum prices specified in the Pacific Northwest order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The Pacific Northwest order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the Pacific Northwest order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1124.85.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Oregon-Washington and Puget Sound-Inland marketing areas (Parts 1124 and 1125, respectively) shall be amended and merged into one order. Part 1125 is superseded thereby, and such vacated part designation shall be reserved for future assignment. The handling of milk in the merged marketing area, to be designated as the "Pacific Northwest marketing area" (Part 1124), shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended and merged as follows:

The provisions of the proposed marketing agreement and order amending and merging the Oregon-Washington and Puget Sound-Inland orders contained in the recommended decision issued by the Administrator, AMS, on September 7, 1988, and published in the **Federal Register** on September 19, 1988, (53 FR 36291), shall be and are the terms and provisions of this order, and are set forth in full herein, subject to the following modifications:

1. In § 1124.9, paragraph (b) is revised.
2. In § 1124.13, paragraph (c)(1) is revised.
3. In § 1124.50, paragraph (c)(3) is revised.
4. In § 1124.73, paragraph (d)(2) is revised.
5. In § 1124.78, paragraph (b) is revised.

Accordingly, 7 CFR Part 1125 is proposed to be removed and Part 1124 is proposed to be revised as follows:

PART 1125—[REMOVED]

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.

Definitions

Handler Reports

Classification of Milk

Class Prices

Uniform Price

Payments for Milk

Administrative Assessment and Marketing Service Deduction

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

Subpart—Order Regulating Handling

General Provisions

§ 1124.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby referenced and made a part of this order.

Definitions

§ 1124.2 Pacific Northwest marketing area.

"Pacific Northwest Marketing Area" (hereinafter called the "Marketing Area") means all territory geographically within the places listed below including all territory fully or partly therein occupied by government (municipal, state or federal) reservations, facilities, installations, or institutions:

Idaho Counties:

Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone.

Washington Counties:

Adams, Asotin, Benton, Chelan, Clark, Columbia, Cowlitz, Douglas, Ferry, Franklin, Garfield, Grant, Grays Harbor, Island, King, Kitsap, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Skamania, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman and Yakima.

Oregon Countries:

Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill.

§ 1124.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a plant to a retail or wholesale outlet (including any delivery through a distribution point as provided by this section, by a vendor, from a plant store or through a vending machine). The term "route disposition" does not include: (a) A delivery to a plant. However, packaged fluid milk products that are transferred to a pool distributing plant from another pool distributing plant, and classified as Class I under § 1124.42(a), shall be considered route disposition from the transferor-plant for the sole purpose of qualifying it as a pool distributing plant under § 1124.7(a), and the transferor-plant shall be assigned in-area dispositions but not in excess of the in-area dispositions of the transferee plant;

(b) A delivery in bulk to a commerical food processing establishment pursuant to § 1124.40(b)(3); or

(c) A delivery to a military or other ocean transport vessel leaving the marketing area, of fluid milk products which originated at a plant located outside the marketing area and were not received or processed at any pool plant.

§ 1124.4 Plant.

"Plant" means the buildings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment, which is maintained and operated primarily for the receiving, handling and/or processing of milk or milk products (including filled milk). Separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition or separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a "plant" under this definition.

§ 1124.5 Distributing plant.

"Distributing plant" means a plant in which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is processed or packaged and that has route disposition in the marketing area during the month.

§ 1124.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is transferred during the month to a pool distributing plant.

§ 1124.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which there is route disposition (except filled milk) in the marketing area during the month equal to not less than 10 percent of receipts of Grade A milk at such plant (exclusive of transfers of packaged fluid milk products from plants qualifying as pool plants pursuant to this paragraph, filled milk, and milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted thereform pursuant to § 1124.13;

(b) A supply plant from which during any month not less than 30 percent of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.12 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing area of fluid milk producets (except filled milk) processed and packaged at such plant; *Provided,* That:

(1) With respect to a supply plant operated by a cooperative association, the producer milk of its members which it caused to be delivered directly from their farms to pool distributing plants, shall for the purpose of this paragraph, be considered as a receipt at the cooperative's supply plant and a shipment from the supply plant to pool distributing plants;

(2) A plant which qualified as a pool plant pursuant to this paragraph in each month of September through February shall be a pool plant in each of the following months of March through August unless a written application is filed with the Market Administrator prior to the first day of any such month requesting that the plant be designated a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant; and

(3) For the purpose of this paragraph, the operations of two or more supply plants may be combined and considered as the operation of one plant if so requested in writing to the Market Administrator by the handler(s) operating such plants prior to the first day of the month for which such consideration is requested.

(c) The Director of the Dairy Division may reduce or increase up to 10 percentage points from the levels set forth therein the pool plant performance standards in paragraph (a) or (b) of this section, if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or a the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal Order and from which, the Secretary determines, there is a greater quantity of route disposition during the month in such other Federal Order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediateiy preceding month it shall continue to be subject to all the provisions of this part until the fourth consecutive month in which a greater proportion of its route disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition in this marketing area than in such other marketing area but which plant maintains pooling status for the month under such other Federal order;

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pool plant requirements of another Federal order and from which greater shipments are made during the month to plants regulated under such other order than are made to plants regulated under this order;

(5) A distributing plant from which total route disposition (except filled milk) in the marketing area during the month averages 300 pounds or less per day; or

(6) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk products for Grade A disposition.

§ 1124.8 Nonpool plant.

"Nonpool plant" means any plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which during the month an average of more than 300 pounds daily of fluid milk products is disposed of as route disposition in the marketing area.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are moved to a pool plant during the month.

(e) "Exempt distributing plant" means a plant, other than a pool supply plant or a regulated plant under another Federal order that meets all the requirements for status as a pool distributing plant except that its route disposition (exclusive of filled milk) in the marketing area in the month does not exceed an average of 300 pounds daily. For purposes of this paragraph, route disposition shall not include receipts from a transferor-plant pursuant to the proviso of § 1124.3(a).

§ 1124.9 Handler.

"Handler" means:

(a) The operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it caused to be diverted for the account of such cooperative association to another plant or pursuant to § 1124.40(b)(3);

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a plant defined in § 1124.8 (a) through (e).

§ 1124.10 Producer-handler.

"Producer-handler" means a person who is engaged in the production of milk and also operates a plant from which during the month an average of more than 300 pounds daily of fluid milk products, except filled milk, is disposed of as route disposition within the marketing area and who has been so designated by the market administrator upon determination that all of the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exists. All designations shall remain in effect until canceled pursuant to paragraph (c) of this section. Any State institution shall be a producer-handler exempt from the provisions of this section and §§ 1124.30 and 1124.32 with respect to milk of its own production and receipts from pool plants processed or received for consumption in State institutions and with respect to movements of milk to or from a pool plant.

(a) *Requirements for designation.* (1) The producer-handler has and exercises (in its capacity as a handler) complete and exclusive control over the operation and management of a plant at which it handles and processes milk received from its milk production resources and facilities (designated as such pursuant to paragraph (b)(1) of this section), the operation and management of which are under the complete and exclusive control of the producer-handler (in its capacity as a dairy farmer).

(2) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of its milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (b)(2) of this section) milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) its designated milk production resources and facilities, (ii) pool plants within the limitation specified in paragraph (c)(2) of this section, or (iii) nonfat milk solids which are used to fortify fluid milk products.

(3) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(4) Designation of any person as a producer-handler following a cancellation of its prior designation shall be preceded by performance in accordance with paragraphs (a) (1), (2), and (3) of this section for a period of 1 month.

(b) *Resources and facilities.* Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) As milk production resources and facilities: All resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly or partially owned, operated or controlled by any partner or stockholder of the producer-handler. However, for purposes of this paragraph any such milk production resources and facilities which the producer-handler proves to the satisfaction of the market administrator do not constitute an actual or potential source of milk supply for the producer-handler's operation as such shall not be considered a part of the producer-handler's milk production resources and facilities; and

(2) As milk handling, processing and distributing resources and facilities: All resources and facilities (including store outlets) used for handling, processing and distribution any fluid milk product:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler; or

(ii) In which the producer-handler in any way has an interest, including any contractual arrangement, or with respect to which the producer-handler directly or indirectly exercises any degree of management or control.

(c) *Cancellation.* The designation as a producer-handler shall be canceled under any of the conditions set forth in paragraphs (c)(1) and (2) of this section or upon determination by the market administrator that any of the requirements of paragraphs (a)(1),(2), and (3) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellations occurred.

(1) Milk from the designated milk production resources and facilities of the producer-handler is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the designated milk production facilities and resources, with the exception of purchases from pool plants in the form of fluid milk products which do not exceed in the aggregate a daily average during the month of 100 pounds.

(d) *Public announcement.* The market administrator shall publicly announce the name, plant location and farm location(s) of person designate as producer-handlers, of those whose designations have been canceled and the effective dates of producers-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.5 of this chapter that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 1124.11 Cooperative reserve supply unit.

"Cooperative reserve supply unit" means any cooperative association or its agent that is a handler pursuant to § 1124.9(b) or (c) that does not own or operate a plant, if such cooperative has been qualified to receive payments pursuant to § 1124.73 and has been a handler of producer milk under this or its predecessor order(s) during each of the 12 previous months, and if a majority of the cooperative's member producers are located within 125 miles of a pool distributing plant. A cooperative reserve supply unit shall be subject to the following conditions:

(a) The cooperative shall file a request with the market administrator for cooperative reserve supply unit status at least 15 days prior to the first day of the month in which such status is desired to be effective. Once qualified as a cooperative reserve supply unit pursuant to this paragraph, such status shall continue to be effective unless the cooperative requests termination prior to the first day of the month that change of status is requested, or the cooperative fails to meet all of the conditions of this section;

(b) The cooperative reserve supply unit supplies fluid milk products to pool distributing plants located within 125 miles of a majority of the cooperative's member producers in compliance with any announcement by the market administrator requesting a minimum level of shipments as further provided below:

(1) The market administrator may require such supplies of bulk fluid milk from cooperative reserve supply units whenever the market administrator finds that milk supplies for Class I use at pool distributing plants are needed for plants defined in § 1124.7(a). Before making such a finding, the market administrator shall investigate the need for such shipments either on the market administrator's own initiative or at the request of interested persons. If the market administrator's investigation shows that such shipments might be appropriate, the market administrator shall issue a notice stating that a shipping announcement is being considered and inviting data, views and arguments with respect to the proposed shipping announcement.

(2) Failure of a cooperative reserve supply unit to comply with any announced shipping requirements, including making any significant change in the unit's marketing operation that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of cooperative reserve supply unit status until such time as the unit has been a handler pursuant to § 1124.9(b) and (c) for at least 12 consecutive months.

§ 1124.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any persons who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1124.9(c); or

(3) Diverted in accordance with § 1124.13;

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by such person that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1124.44(a)(9)(iii) and the corresponding step of § 1124(b);

(3) Any person with respect to milk produced by such person that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such order;

(4) Any person who during the month has disposed of as route disposition or to consumers at the farm an average of more than 110 pounds daily of fluid milk or fluid cream products; and

(5) Any person (known as a dairy farmer for other markets) whose milk was received at a nonpool plant or a commercial food processing establishment during the month as other than producer milk under this or any other Federal milk order.

§ 1124.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk of a producer that is:

(a) Received or diverted by a handler defined in § 1124.9(a) under one of the following conditions:

(1) Received at such handler's pool plant directly from the farm of such producer;

(2) Received at such handler's plant from a handler defined in § 1124.9(c) for all purposes other than those specified in paragraph (b)(2)(i) of this section; and

(3) Diverted for the account of the operator of the pool plant, subject to the conditions set forth in paragraph (c) of this section.

(b) Received or diverted by a cooperative defined in § 1124.9 (b) or (c) under one of the following conditions:

(1) Milk diverted for the account of the cooperative association. Except for milk moved by a cooperative reserve supply unit defined in § 1124.11, such diversions shall be subject to the conditions set forth in paragrpah (c) of this section;

(2) Milk for which the cooperative association is a handler pursuant to § 1124.9(c) to the following extent:

(i) For purposes of reporting pursuant to §§ 1124.30(c) and 1124.31(a) and making payments to producers pursuant to § 1124.73(a); and

(ii) For all purposes, with respect to any such milk which is not delivered to the pool plant of another handler;

(c) The following conditions shall apply to diverted producer milk:

(1) A cooperative association or its agent may divert for its account the milk of any producer. The total quantity of milk diverted may not exceed 80 percent during the months of September through April of the total quantity of producer milk which the association or its agent causes to be delivered to pool distributing plants or diverted. No percentage limit shall apply during the months of May through August. The percentage limits on diversions specified in this paragraph shall not apply to a cooperative reserve supply unit defined in § 1124.11;

(2) A handler other than a cooperative association that operates a pool plant may divert milk for its account to other plants or pursuant to § 1124.40(b)(3). The total quantity of milk so diverted may not exceed 80 percent during the months of September through April of the milk received at such handler's pool plant or diverted by such handler from any producer other than a member of a cooperative association which markets milk under paragraph (c)(1) of this section and for which the operator of such plant is the handler during the month. No percentage limit shall apply during the months of May through August;

(3) Milk diverted in excess of the limits specified shall not be considered producer milk, except for milk diverted by a cooperative reserve supply unit.

The diverting handler shall specify the producers whose milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by the handler during the month;

(4) Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of producer milk which the associations cause to be delivered to pool plants or diverted during the month if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning overdiverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(5) Diverted milk shall be priced at the location of the plant or commercial food processing establishment to which diverted; and

(d) In the case of any bulk tank load of milk originating at farms and subsequently divided among plants, the proportion of the load received at each plant shall be prorated among the individual producers involved on the basis of their respective percentage of the total load.

§ 1124.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1124.40(b)(1) from any source other than producers, handlers described in § 1124.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1124.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1124.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1124.40(b)(1)) for which the handler fails to establish a disposition.

§ 1124.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, mixtures of cream and milk or skim milk containing less than 15 percent butterfat (including those which are sterilized or aseptically packaged), filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use and milk or milk products (including filled milk) that are sterilized and packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1124.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 15 percent or more butterfat, with or without the addition of other ingredients.

§ 1124.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

§ 1124.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers, which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and any amendments thereto;

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

§ 1124.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1124.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A

work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday, except national holidays.

Handler Reports

§ 1124.30 Reports of receipts and utilization.

On or before the 9th day of each month each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for the preceding month:

(a) Each handler operating a pool plant(s) shall report separately for each pool plant:

(1) The quantities of skim milk and butterfat contained in:

(i) Milk received directly from producers, showing separately any milk of own-farm production;

(ii) Milk received from a cooperative association pursuant to § 1124.9(c);

(iii) Fluid milk products and bulk fluid cream products received from other pool plants showing filled milk separately;

(iv) Other source milk showing filled milk separately; and

(v) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1124.40(b)(1).

(2) The utilization of all skim milk and butterfat required to be reported, including separate statements of quantities in route disposition inside and outside the marketing area.

(b) Each producer-handler shall report:

(1) The quantities of skim milk and butterfat contained in:

(i) Milk of own-farm production;

(ii) Receipts of fluid milk products and fluid cream products from pool plants, showing separately receipts in packaged form and in bulk; and

(iii) Other source milk, showing separately any receipts from another dairy farmer.

(2) As specified in paragraph (a)(2) of this section.

(c) Each cooperative association shall report with respect to milk for which it is the handler pursuant to either § 1124.9 (b) or (c):

(1) The quantities of skim milk and butterfat received from producers;

(2) The utilization of skim milk and butterfat for which it is the handler pursuant to § 1124.9(b); and

(3) The quantities of skim milk and butterfat delivered to each pool plant pursuant to § 1124.9(c).

(d) Each handler who operates a partially regulated distributing plant shall report as specified in paragraphs (a)(1) and (2) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include separate statements, respectively, showing the respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area as Class I milk and the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area.

(e) Each handler who operates an other order plant with route disposition of fluid milk products in the marketing area shall report the quantities of skim milk and butterfat in such disposition.

(f) Each handler who operates an exempt plant or an unregulated supply plant shall report as specified in paragraphs (a)(1) and (2) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in producer milk.

§ 1123.31 Payroll reports.

On or before the 22nd day of each month handlers shall report to the market administrator as follows:

(a) Each handler with respect to each of its pool plants and each cooperative association which is a handler pursuant to § 1124.9 (b) or (c) shall submit its producer payroll for deliveries (other than own-farm production) in the preceding month which shall show:

(1) The total pounds of milk received from each producer, the pounds of butterfat contained in such milk, and the number of days on which milk was delivered by such producer in such month;

(2) The amount of payment to each producer and cooperative association; and

(3) The nature and amount of any deductions or charges involved in such payments; and

(b) Each handler operating a partially regulated distributing plant who wishes computations pursuant to § 1124.76(a) to be considered in the computation of its obligation pursuant to § 1124.76 shall submit its payroll for deliveries of Grade A milk by dairy farmers which shall show:

(1) The total pounds of milk and the butterfat content thereof received from each dairy farmer;

(2) The amount of payment to each dairy farmer (or to a cooperative association on behalf of such dairy farmer); and

(3) The nature and amount of any deductions or charges involved in such payments.

§ 1124.32 Other reports.

At such time and in such manner as the market administrator may prescribe, each handler shall report to the market administrator such information in addition to that required under §§ 1124.30 and 1124.31 as may be requested by the market administrator with respect to milk and milk products (including filled milk) handled by the handler.

Classification of Milk

§ 1124.40 Classes of utilization.

Except as provided in § 1124.42 all skim milk and butterfat required to be reported by a handler pursuant to § 1124.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section;

(2) In packaged inventory of fluid milk products at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more non-milk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In all bulk fluid milk products and bulk fluid cream products disposed of or diverted to any commercial food processing establishment, subject to the conditions of § 1124.42(e), at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products

other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cotton cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk fluid form other than that specified in paragraph (c)(1)(iv) of this section.

(iv) Plastic cream, frozen cream and anhydrous milkfat.

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers; and

(vii) Any milk or milk products sterilized and packaged in hermetically sealed metal or glass containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1124.15; and

(6) In shrinkage assigned pursuant to § 1125.41(a) to the receipts specified in § 1124.41(a)(2) and in shrinkage specified in § 1124.41 (b) and (c).

§ 1124.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1124.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant or pursuant to § 1124.40(b)(3) and milk received from a handler described in § 1124.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1124.9(c) and in milk diverted to such plant by the operator of another pool plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted by the plant operator to another plant or pursuant to § 1124.40(b)(3), except that if the operator of the plant or establishment to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section.

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1124.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of a plant or a commerical food processing establishment pursuant to § 1124.40(b)(3) to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1124.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. The classification of such transfers and diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the receiving handler's plant after the computation pursuant to § 1124.44(a)(13) and the corresponding step of § 1124.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1124.44(a)(8) or the corresponding step of § 1124.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1123.44(a) (12) or (13) or the corresponding steps of § 1124.44(b), the skim milk or butterfat so transferred or diverted up to the total of the skim

milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustments when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class II milk; and

(6) If the form in which any fluid milk product that is transferred to another order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1124.40.

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk is transferred or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to the transferee's receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not another order plant or a producer-handler plant shall be classified:

(12) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(A) The transferor-handler or divertor-handler claims such classification in its report of receipts and utilization filed pursuant to § 1124.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and

bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

(e) *Transfers and diversions to a commercial food processing establishment.* Skim milk and butterfat transferred or diverted to a commercial food processing establishment shall be classified:

(1) Subject to the provisions of § 1124.13(c) and, except as provided in paragraph (e)(2) of this section, as Class II milk; or

(2) Transfers of diversions shall be classified as Class I milk unless the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification.

§ 1124.43 General classification rules.

In determining the classification of producer milk pursuant to § 1124.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1124.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1124.9(b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1124.40, 1124.41, and 1124.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1124.9(b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) For classification purposes, pursuant to §§ 1124.40 through 1124.45, butterfat in skim milk, either disposed of to others or used in the manufacture of milk products shall be accounted for at a butterfat content of 0.060 percent unless the handler has adequate records of the actual butterfat content of such skim milk.

§ 1124.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1124.9(a) for each of the handler's pool plants separately and of each handler described in § 1124.9(b) and (c) by allocating the handler's receipts of skim milk and butterfat to its utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1124.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(8)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(5) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1124.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1124.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(7) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to any product specified in § 1124.40(b) but not in excess of the pounds of skim milk remaining in Class II;

(8) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(6) of this section applies, packaged inventory at the beginning of the month of products specified in § 1124.40(b)(1) that was not subtracted pursuant to paragraphs (a)(5), (6), and (7) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products received or acquired for distribution from a producer-handler as defined under this or any other Federal Order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of fluid milk products from a person described in § 1124.12(b)(5);

(9) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (8)(v) of this section for which the handler requests a classification other than Class I, but not in excess of pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (8)(v), and (9)(i) of this section which are in excess of the pounds of skim milk determined pursuant to

paragraph (a)(9)(ii)(A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiple by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(8)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentages that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant are of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(8)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(10) Subtract from the pounds of skim milk remaining in each class, in series, beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1124.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(4), (6), and (8)(i) of this section;

(11) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(12) Subject to the provisions of paragraphs (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity pro rated, to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (8)(v), (9)(i), and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unreglated supply plant from which fluid milk products to be allocated at this step were received;

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(8)(vi) and (9)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(13) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1124.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(13)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(13)(ii) of this section, should the computations pursuant to paragraph (a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plant(s) shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(13)(ii) of this section, should the computations pursuant to paragraph

(a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(14) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1124.42(a); and

(15) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(15) of this section and the corresponding step of paragraph (b) of this section.

§ 1124.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1124.44(a)(13) and the corresponding step of § 1124.44(b), estimate ane publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such recepts are allocated pursuant to § 1124.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 14th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1124.50 Class prices.

Subject to the provisions of § 1124.52, the class prices for the month, per hundredweight of milk, shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.90.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price. If the Class III price for the month is computed pursuant to paragraphs (c) (1) through (3) of this section, the final Class II price shall be reduced by the amount that the Class III price is less than the basic formula price to the extent such reduction does not cause the Class II price to be less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1124.51 and add 25 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1124.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month but not to exceed the price computed as follows:

(1) Multiply the Chicago butter price pursuant to § 1124.51 by 4.2;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under paragraph (c) (1) and (2) of this section subtract 48 cents and round to the nearest cent.

§ 1124.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) if Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1124.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1124.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight or milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1124.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1124.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include:

(i) The Idaho counties of Benewah, Bonner, Boundary, Kootenai, Latah and Shoshone;

(ii) The Oregon counties of Benton, Clackamas, Clatsop, Columbia, Douglas, Hood River, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington and Yamhill;

(iii) The Washington counties of Clark, Cowlitz, Ferry, Grays Harbor, Island, King, Kitsap, Lewis, Lincoln, Mason, Pacific, Pend Oreille, Pierce, Skagit, Snohomish, Skamania, Spokane, Stevens, Thurston, Wahkiakum, and Whitman.

(2) Zone 2 shall include: the Washington county of Whatcom.

(3) Zone 3 shall include: the Oregon counties of Coos, Jackson, and Josephine;

(4) Zone 4 shall include:

(i) The Idaho counties of Lewis and Nez Perce;

(ii) The Oregon counties of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Morrow, Sherman, Umatila, Wallowa, Wasco and Wheeler;

(iii) The Washington counties of Adams, Asotin, Benton, Chelan, Callam, Columbia, Douglas, Franklin, Garfield, Grant, Jefferson, Kittitas, Klickitat, Okanogan, San Juan, Walla Walla and Yakima.

(b) For milk received at a plant from producers and which is classified as Class I milk, the price specified in § 1124.50(a) shall be adjusted by the amount stated in paragraphs (b) (1) and (2) of this section for the location of such plant:

(1) For a plant located within one of the zones described in paragraphs (a) (1) through (4) of this section, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 2	Minus 6 cents.
Zone 3	Minus 8 cents.
Zone 4	Minus 15 cents.

(2) For a plant located outside of one of the zones described in paragraphs (a) (1) through (4) of this section, the adjustment shall be minus 1.5 cents per hundredweight for each 10 miles or fraction thereof by shortest hard-surfaced highway distance that the plant is located from the nearer of the county courthouse in Spokane, Washington, the Multnomah County Courthouse in Portland, Oregon, or the city hall in Eugene, Oregon;

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (b) of this section, except that the price when adjusted for location shall not be less than the Class III price.

(d) For fluid milk products transferred in bulk from a pool plant to another pool plant at which a higher Class I price applies and which is classified as Class I, the price shall be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant determined by the market administrator as follows:

(1) Subtract from the pounds of Class I remaining at the transferee-plant after the computations pursuant to § 1124.44 (a)(13) and (b) the pounds of packaged fluid milk products from other pool plants;

(2) Subtract the pounds of bulk fluid milk products received at the transferee-plant form the following sources:

(i) Producers;

(ii) Handlers described in § 1124.9(c); and

(iii) Pool plants at which the same or a higher Class I price applies.

(3) Assign any pounds remaining to transferor-plants in sequence beginning with the plant at which the least adjustment would apply; and

(4) Multiply the pounds so computed for each transferor-plant by the difference in the Class I prices applicable at the transferee-plant and transferor-plant.

§ 1124.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

§ 1124.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the pricing constituent that is required.

Uniform Price

§ 1124.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of its pool plants and of each handler described in § 1124.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1124.44(c), by the applicable class prices (adjusted pursuant to § 1124.52) and add together the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage deducted from each class pursuant to § 1124.44(a)(15) and the corresponding step of § 1124.44(b) by the class prices applicable at the location of the pool plant, as adjusted by the butterfat differential specified in § 1124.74. In case overage occurs in a nonpool plant located on the same premises as a pool plant, such overage shall be prorated between the quantity transferred from the pool plant and other source milk in such nonpool plant. In such case, add an amount equal to the value of overage prorated to the quantity transferred to the nonpool plant at the class price applicable at the pool plant.

(c) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1124.44(a)(8) (i) through (iv) and (vii) and the corresponding step of § 1124.44(b) excluding receipts of bulk fluid cream products from another order plant;

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(8) (v) and (vi) and the corresponding step of § 1124.44(b);

(e) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price adjusted pursuant to § 1124.52, or the Class II price as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1124.44(a)(10) and the corresponding step of § 1124.44(b);

(f) Add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(12) and the corresponding step of § 1124.44(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by a handler fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order; and

(g) Add or subtract as the case may be, the amount necessary to correct errors as disclosed by the verification of reports of such handler of the handler's receipts and utilization of skim milk and butterfat in previous months for which payment has not been made.

§ 1124.61 Computation of uniform price.

For each month the market administrator shall compute the "uniform price" per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.71 for the preceding month;

(b) Add the aggregate of all minus location adjustments computed pursuant to § 1124.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the produce-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1124.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1124.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 14th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1124.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which shall be deposited all payments made by handlers pursuant to §§ 1124.71 and 1124.76 and out of which shall be made all payments to handlers pursuant to § 1124.72. However, the market administrator shall offset the payment due to a handler from such fund against payments due from such handler.

§ 1124.71 Payments to the producer-settlement fund.

(a) On or before the 16th day after the end of the month during which the skim milk and butterfat were received each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a)(1) of this section exceeds the total amount specified in paragraph (a)(2) of this section:

(1) The sum of:

(i) The total value of milk of the handler for such month as determined pursuant to § 1124.60; and

(ii) For a cooperative association handler, the amount due from other handlers pursuant to § 1124.73(d) but without adjustment for butterfat;

(2) The sum of:

(i) The value of milk received by such handler from producers at the applicable uniform price pursuant to § 1124.73(a)(2) but without adjustments for butterfat;

(ii) The amount to be paid to cooperative associations pursuant to § 1124.73(d) but without adjustment for butterfat; and

(iii) The value at the uniform price for all skim milk and butterfat applicable at the location of the plant(s) from which received (not to be less than the value at the Class III price) with respect to other source milk for which a value is computed pursuant to § 1124.60(f); and

(b) On or before the 25th day after the end of the month, each handler operating a plant specified in § 1124.7(d) (2) and (3), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in the marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated

according to such disposition in each area.

(2) Compute the value of the quantity assigned in paragraph (b)(1) of this section to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant (but not to be less than the Class III price) and subtract its value at the Class III price.

§ 1124.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month during which the skim milk and butterfat were received, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(a)(2) exceeds the amount computed pursuant to § 1124.71(a)(1), and less any unpaid obligations of such handler to the market administrator pursuant to §§ 1124.71(a), 1124.77, 1124.85, and 1124.86. However, if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1124.73 Payments to producers and to cooperative associations.

(a) Each handler shall make payments to each producer for milk received from such producer during the month:

(1) On or before the last day of the month to each producer who had not discontinued shipping milk to such handler before the 18th day of the month, at not less than the Class III price for the preceding month per hundredweight of milk received during the first 15 days of the month, less proper deductions authorized in writing by such producer; and

(2) On or before the 19th day after the end of each month for milk received from such producers during such month:

(i) At not less than the uniform price for the quantity of milk received, adjusted by the butterfat differential pursuant to § 1124.74 and by any location adjustments applicable under § 1124.75;

(ii) Minus payments made pursuant to paragraph (a)(1) of this section. However, if by such date such handler has not received full payment for such month pursuant to § 1124.72, the handler shall not be deemed to be in violation of this paragraph if the handler reduced uniformly for all producers the payments per hundredweight pursuant to this paragraph by a total amount not in excess of the reduction in payment from the Market Administrator; however, the handler shall make such balance of payment uniformly to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payments is received from the market administrator.

(b) The payments required in paragraph (a) of this section shall be made, upon request, to a cooperative association qualified under § 1124.18, or its duly authorized agent, with respect to milk received from each producer who has given such association authorization by contract or by other written instrument to collect the proceeds from the sale of the producer's milk, and any payment made pursuant to this paragraph shall be made on or before 2 days prior to the dates specified in paragraph (a) of this section.

(c) Each handler shall pay to each cooperative association or its duly authorized agent which operates a pool plant for skim milk and butterfat received from such plant:

(1) On or before the 2nd day prior to the date specified in paragraph (a)(1) of this section for skim milk and butterfat received during the first 15 days of that month at not less than the Class III price for the preceding month; and

(2) On or before the 15th day after the end of such month, an amount of money computed by multiplying the total pounds of such skim milk and butterfat in each class pursuant to § 1124.42(a) by the class price adjusted by the butterfat differential and taking into account any location adjustments as provided by § 1124.52 applicable at the pool plant of the cooperative association or its agent, minus payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler who received milk for which a cooperative association is the handler pursuant to § 1124.9(c) shall pay such cooperative association for such milk received:

(1) On or before the 2nd day prior to the date specified in paragraph (a)(1) of this section for such milk received during the first 15 days of that month at not less than the Class III price for the preceding month; and

(2) On or before the 17th day after the end of each month, for the milk received at not less than the uniform price for all milk adjusted pursuant to §§ 1124.74 and 1124.75(b), minus payments made pursuant to paragraph (d)(1) of this section.

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act.

(f) In making payments to producers pursuant to this section, each handler, on or before the 19th days of each month shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show for the preceding month:

(1) The identity of the handler and the producer;

(2) The total pounds of milk delivered by the producer and the average butterfat test thereof and the pounds per shipment if such information is not furnished to the producer each day of delivery;

(3) The minimum rate at which payment to the producer is required under the provisions of this section;

(4) The rate per hundredweight and amount of any premiums or payments above the minimum price provided by the order;

(5) The amount or rate per hundredweight of each deduction claimed by the handler, together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

(g) In making payments to a cooperative association in aggregate pursuant to this section, each handler upon request shall furnish to the cooperative association, with respect to each producer for whom such payment is made, any or all of the above information specified in paragraph (f) of this section.

§ 1124.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago as reported by the Department for the month. § 1124.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payment to producers pursuant to § 1124.73(a) subject to the application of § 1124.13(c)(5) appropriate adjustments shall be made per hundredweight of milk received from producers at respective plant locations at the same rate as specified for Class I milk set forth in § 1124.52.

(b) In making payments to a cooperative association pursuant to § 1124.73(d) appropriate adjustments shall be made at the rates specified for Class I milk in § 1124.52 for the location

of the plant at which the milk was received from the cooperative association.

(c) For purposes of computations pursuant to §§ 1124.71(a) and 1124.72 the uniform price for all milk shall be adjusted at the rates set forth in § 1124.52 for Class I milk applicable at the location of the nonpool plant from which the milk or filled milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1124.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1124.30(d) and 1124.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, the handler shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1)(i) The obligation that would have been computed pursuant to § 1124.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which an equivalent amount of milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1124.60(f) and a credit in the amount specified in § 124.71(a)(2)(iii) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in paragraph (a)(1)(ii) of this section; and

(ii) If the operator of the partially regulated distributing plant so requests, and provides with reports filed pursuant to §§ 1124.30(d) and 1124.31(b) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1124.7(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of:

(i) The gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant adjusted to a 3.5 percent butterfat basis by the butterfat differential pursuant to § 1124.74, and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) Any payments to the producer-settlement fund of an other order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition of Class I milk within the maketing area;

(2) Deduct the respective amount of skim milk and butterfat received at the plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the Class I price applicable at the location of the nonpool plant (but not to be less than the Class III price) less the value of such skim milk at the Class III price.

§ 1124.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred following the 5th day after such notice.

§ 1124.78 Charges on Overdue Accounts.

(a) Any unpaid obligation of a handler pursuant to §§ 1124.71, 1124.76, 1124.77, 1124.85 or § 1124.86 shall be increased 1 percent beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(1) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid overdue charges previously computed pursuant to this section; and

(2) For the purpose of this section, 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.

(b) All charges on overdue accounts shall be paid to the fund to which the account was due immediately after the charge has been collected.

Administrative Assessment and Marketing Service Deduction

§ 1124.85 Assessment for order administration.

A pro rata share of the expense of administration of the order shall be paid to the market administrator by each handler on or before the 16th day after the end of the month 4 cents per

hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1124.44(a)(8) and (12) and the corresponding steps of § 1124.44(b), except such other source milk on which no handler obligation applies pursuant to § 1124.60(f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1124.76(b)(2)(ii).

§ 1124.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than with respect to milk of such handler's own production) pursuant to § 1124.73(a)(2), shall make a deduction of 5 cents per hundredweight of milk or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, with respect to the following:

(1) All milk received from producers at a plant not operated by a cooperative association.

(2) All milk received at a plant operated by a cooperative association from producers for whom the marketing services set forth below in this paragraph are not being performed by the cooperative association as determined by the market administrator. Such deduction shall be paid by the handler to the market administrator on or before the 16th day after the end of the month. Such moneys shall be expended by the market administrator for the verification of weights, sampling and testing of milk received from producers, and in providing for market information to producers. Such services are to be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of each producer;

(1) Who is a member of, or who has given written authorization for the rendering of marketing services and the taking of deductions therefore to, a cooperative association;

(2) Whose milk is received at a plant not operated by such association; and

(3) For whom the market administrator determines that such association is performing the services described in paragraph (a) of this section, each handler shall deduct, in lieu of the deduction specified under paragraph (a) of this section, from the payments made pursuant to § 1124.73 (a)(2) the amount per hundredweight on milk authorized by such producer and shall pay, on or before the 18th day after the end of the month, such deduction to the association entitled to receive it under this paragraph.

Marketing Agreement Regulating the Handling of Milk in the Pacific Northwest Marketing Area

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 §§ 1124.1 to 1124.86, all inclusive, of the order regulating the handling of milk in the Pacific Northwest marketing area (7 CFR Part 1124) which is annexed hereto; and

II. The following provisions:

§ 1124.87 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 September 1988, _____ 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.

§ 1124.88 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 _____

Date _____

FR Doc. 88-27619 Filed 12-5-88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-101]

Importation of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of animals and animal products to allow birds that originate in the United States, and the offspring of these birds, to be imported under specified conditions from an approved breeding facility without quarantine in the United States. Under the current regulations, with certain exceptions, birds imported from any part of the world must be quarantined in the United States as a condition of entry into the United States. We believe that the provisions included in this proposal could be used in lieu of the current quarantine provisions without increasing the risk of introducing communicable diseases of poultry into the United States.

DATES: We will consider only comments postmarked or received on or before February 6, 1989.

ADDRESS: Send an original and three copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Rd., Hyattsville, MD 20782. Please state that your comments refer to Docket No. 86-101. Comments received may be inspected at USDA, 14th and Independence Avenue, SW., Room 1141-South Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Wade H. Ritchie, Staff Microbiologist, Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8590.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) include provisions concerning the importation of birds into the United States. Section 92.11(e) of the regulations requires, with certain exceptions, that each lot of pet birds, commercial birds, zoological birds, or research birds imported from any part of the world be entered at certain ports and be quarantined at one of our

quarantine facilities or at a privately operated quarantine facility approved by the Administrator for the Animal and Plant Health Inspection Service (APHIS). The quarantine requirements were established to help ensure that birds imported into the United States are free from exotic Newcastle disease, forms of avian influenza lethal to poultry, and other communicable diseases of poultry.

Persons associated with the commercial bird industry have requested that we establish regulations to allow birds to be imported into the United States without quarantine in the United States, if the birds are imported from a country free of viscerotropic velogenic Newcastle disease (which poses the greatest threat to the poultry industry of all communicable diseases of poultry), from a closed breeding facility containing only birds that originated in the United States and the offspring of those birds. We are not proposing to establish those regulations.

Birds Shipped to the Closed Breeding Facility

This proposal includes provisions to ensure that birds brought *into* the closed breeding facility are free of communicable diseases of poultry upon arrival in the facility. The facility must conain only birds that have never previously been in a country other than the United States, or the offspring of those birds if they were hatched in the facility. The facility must contain no birds that were at any time removed from the facility. In order to ensure that the birds are free of communicable diseases of poultry at the time of shipment, we are proposing to require that a certificate issued by an accredited veterinarian and endorsed by a veterinarian employed by APHIS accompany each shipment of birds from the United States to the closed breeding facility. In addition to information identifying the birds, the certificate would have to contain information indicating that all birds in the shipment were inspected by an accredited veterinarian, and that no evidence of any communicable diseases of poultry was found among the birds. The certificate would also have to indicate that the birds were not subjected to any bacterial or viral agent known to cause a communicable disease of poultry during the 90 days immediately before their exportation from the United States; that the birds were placed in previously unused containers at the premises from which they were exported from the United States; and that the birds have not been vaccinated, unless the vaccine has been approved by the Administrator. We would include criteria for the approval of vaccines and a footnote (footnote 7) indicating where to write to request a list of approved vaccines. Additionally, we would acquire that the certificate indicate that during the 90 days immediately before exportation of the birds from the United States, Newcastle disease did not occur anywhere on the premises from which the birds are to be exported from the United States or on adjoining premises, and that none of the above premises are located in an area that has been under quarantine for poultry diseases at any time during the 90 days immediately before exportation of the birds from the United States. The 90-day provisions would ensure that any disease that the birds might have been exposed to before that time would manifest itself before shipment of the birds from the United States.

In order to ensure that the birds do not become infected with communicable diseases of poultry during shipment, we would require that the birds be shipped by air, without stopping, from the United States to the country in which the closed breeding facility is located. Upon arrival of the birds in the country in question, a salaried veterinarian of that country's national veterinary services would have to accompany the birds to the facility. Identification of the birds would have to be maintained during shipment by means of a serially numbered legband, coded to the facility, that would have to be applied before shipment of the birds from the United States. The Legbands would have to be shipped by the operator of the closed breeding facility, and would have to be individually identifiable closed legbands.

Conditions for Approval of Closed Breeding Facility

To qualify for approval by the Administrator of APHIS (referred to below as the Administrator), a closed breeding facility and its maintenance and operation would have to meet the requirements we are proposing in this document. However, the Administrator would approve a closed breeding facility only when he or she determines that sufficient veterinarians employed by APHIS are available to provide the services required by the facility. The operator of the facility would have to bear its costs and all costs associated with its maintenance and operation.

We would require that a closed breeding facility be located in a country that is designated in 9 CFR 94.6(a)(2) as being considered free of viscerotropic velogenic Newcastle disease, and be operated under conditions adequate to prevent introduction into the facility of communicable diseases of poultry. As noted above, viscerotropic velogenic Newcastle disease poses the greatest threat to the poultry industry of all communicable diseases of poultry. A requirement that the country be free of this disease would be consistent with current APHIS regulations that allow poultry eggs to be imported into the United States without quarantine only if they are imported from a country considered free of the disease.

The closed breeding facility would have to be maintained under the supervision of a veterinarian employed by APHIS and a salaried veterinarian of the national veterinary services of the country in which it is located. In this proposal, we specify required inspections by that salaried veterinarian.

We are proposing construction and procedural requirements regarding the closed breeding facility, to prevent the introduction into the facility of communicable diseases of poultry. The closed breeding facility would have to be at least one-half mile from any premises containing any of the following: poultry, a poultry processing plant, a poultry egg-laying farm, an aviary, a pigeon loft, a pet shop, a game bird breeding facility, a hatchery, or a poultry breeding farm. We have determined that the disease agent for viscerotropic velogenic Newcastle disease can travel in aerosol fashion, but is unlikely to do so for more than one-half mile. Specific requirements regarding doors and fences would be imposed to help prevent accidental entry of other birds and carnivores, and the entry of unauthorized individuals. The bird holding area would have to include windows that provide a full view of its interior, to allow supervisors to monitor activities in the area.

Effective sanitation and hygiene would be important in keeping the closed breeding facility free of disease. We would require procedures, including cleaning and disinfection, to keep the facility free from vermin, and from contamination that might otherwise occur from waste material and improper drainage.

To avoid human transmission of diseases harmful to birds or poultry, all individuals entering the bird holding area would (1) be permitted to have no contact with poultry or birds outside the bird holding area for at least 3 days before entering the bird holding area (a period of time sufficient to ensure that any disease organisms on the individuals will die before contact with the birds); (2) have to shower when entering and leaving the bird holding

area; and (3) have to dress in work clothing and footwear that has not been worn since it was last washed and that is available at the facility, when entering the bird holding area, and change out of that clothing and footwear upon leaving the bird holding area. To facilitate the showering and changing, there would have to be (1) a shower at the entrance into the bird holding area and a clothes storage and change area at each end of the shower; (2) restrooms at each end of the shower area; and (3) a receptacle in the clothes storage and change area nearest the bird holding area for clothes worn in the bird holding area. The operator of the closed breeding facility would have to collect used work clothing at the end of each workday and keep it in a bag until the clothing is washed. Footwear that has been worn in the bird holding area would either have to be left in the clothes change area or cleaned and disinfected.

A guard employed by the country in which the closed breeding facility is located would have to be posted at the facility at all times to prevent birds in the bird holding area from having contact with either individuals not authorized entry into the facility or other birds and animals. We would require that the guard be employed by the country where the closed breeding facility is located to ensure that he or she has maximum authority to prevent unauthorized entry into the facility. We believe that if the guard were employed directly by the closed breeding facility, conflicts might arise between his or her security responsibilities and his or her obligations to the employing facility. The guard would have to keep a daily log to record the entry and exit of all individuals entering the bird holding area. Access to the closed breeding facility would be restricted to individuals working at the facility, certain other authorized individuals, veterinarians employed by APHIS, and salaried veterinarians of the national veterinary services of the country in question.

We would also require that the closed breeding facility have a necropsy room containing a necropsy table, a hood with a viewing window over the table, refrigerated storage space for carcasses retained for laboratory examination, a sink with running water, and the following equipment: scissors, forceps, tweezers, BHI media, sterile tubes, and rubber gloves. Additionally, we would require that the closed breeding facility have office space for recordkeeping.

The operator of the closed breeding facility would have to supply APHIS with certain written information regarding day-to-day operations at the facility. This information would include the telephone number of the facility's operator or an individual who can act for the operator, and a current list of employees of the facility who are designated to handle and care for birds in the facility. We would need the list of employees to determine whether security procedures required elsewhere in the proposed regulations are being effectively carried out. We would also require a signed statement from each of the designated personnel at the facility that they will have no contact with poultry and birds for 3 days before entering the bird holding area.

Birds Imported From the Closed Breeding Facility

Before the birds are shipped from the closed breeding facility to the United States, we would require certain procedures to ensure that none of the birds are carrying communicable diseases of poultry when shipped.

In order to monitor the source of any possible disease spread among birds intended for importation into the United States, each bird hatched in the closed breeding facility would have to be banded with a serially numbered legband coded to the closed breeding facility. The legbanding would have to be done within 30 days after hatching, because after that time it is anatomically difficult or impossible to band the birds with closed legbands. The legbands would have to be supplied by the operator of the closed breeding facility and would have to be individually identifiable closed legbands.

For at least 30 days immediately before their shipment to the United States, birds imported from an approved closed breeding facility would have to be kept in a bird holding area, separate from other birds in the facility. This would allow sufficient time for any disease in the birds to clinically manifest itself before the birds are shipped to the United States.

At least 21 days before the birds are shipped to the United States, cloacal samples from all of the birds in the shipment, or from 150 birds in the shipment, whichever is fewer, would have to be submitted to the National Veterinary Services Laboratories in Ames, Iowa, by a salaried veterinarian of the national veterinary services of the country in question. For the birds to be allowed importation into the United States, the samples would have to test negative for viscerotropic velogenic Newcastle disease and forms of avian influenza lethal to poultry, using standard virus isolation procedures carried out of the National Veterinary Services Laboratories. We are including a footnote (footnote 3) in this poposed rule indicating where to write for copies of the virus isolation procedures used. Submission of the samples at least 21 days before shipment of the birds to the United States is necessary to allow sufficient time for laboratory isolation of the samples. The samples would have to be collected within 28 days before the birds are shipped to the United States. By collecting samples no earlier than 28 days before shipment, any disease that a bird might contract before the 30-day separation period would be detectable by the time the samples are taken. Testing a maximum of 150 birds in any lot has been shown statistically to be effective in determining whether a disease of concern has occurred in the lot.

At least 21 days before the birds are shipped to the United States, necropsy samples from lung, trachea, terminal gut, and spleen, either from all birds that were kept in a bird holding area and that died, or from 30 of these birds, whichever is fewer, must be submitted to the National Veterinary Services Laboratories, Ames, Iowa, by a salaried veterinarian of the national veterinary services of the country in which the approved closed breeding facility is located. In lots of more than 30 birds, samples from 30 of the birds have statistically been proven effective in detecting disease organisms in that lot.

The samples would have to be taken from birds that were kept in a bird holding area and that died between 30 and 21 days before the birds in the bird holding area are shipped to the United States. The 30-day outside limit represents the first day of the birds intended for shipment were isolated from other birds; the 21-day minimum represents the minimum time necessary to complete testing before shipment of the birds to the United States. Before the birds may be shipped to the United States, the samples must test negative for viscerotropic velogenic Newcastle disease and forms of avian influenza lethal to poultry, using standard virus isolation procedures carried out at the National Veterinary Services laboratories.

The operator of the closed breeding facility would have to collect daily any birds that die while in the bird holding area, and refrigerate them until specimens are collected. The refrigeration temperature could be no warmer than 35 °F if the birds are autopsied daily, and no warmer than 0°F if the birds are autoposied more than

1 day after being placed under refrigeration. The operator of the closed breeding facility would not be permitted to dispose of any carcass or parts of a carcass unless permitted to do so by a salaried veterinarian of the national veterinary services of the country in question, and would have to account for all birds in the closed breeding facility.

We are also proposing provisions for treating psittacine birds, and non-psittacine birds that are kept in the bird holding area with the psittacine birds and shipped with them to the United States, with feed containing chlortetracycline (CTC), for at least 30 days immediately before shipment of the birds to the United States. We believe this treatment is necessary as a preventive measure against chlamydiosis (psittacosis, ornithosis), a communicable disease of birds and poultry and also a disease that can be transmitted to humans. Although chlamydiosis can be spread to birds other than psittacine birds, psittacines are the primary carriers of the disease, and it appears that a 30-day treatment with CTC is sufficient to rid a bird of chlamydiosis.

After hatching, any bird that is imported into the United States from the approved closed breeding facility must be banded with a serially numbered legband coded to the facility. The legband must be an individually identifiable closed legband. The birds must be moved from the bird holding area to an aircraft for shipment to the United States in the presence of a salaried veterinarian of the national veterinary services of the country in which the facility is located. The aircraft, which may contain no other birds or poultry, must move, without stopping, from the country in which the facility is located to the United States port of entry. From the time the birds leave the bird holding area, until their importation into the United States, they may have no contact with any other birds or poultry.

We are also proposing to require that all birds in the shipment that die enroute from the approved closed breeding facility to the United States be made availale to a veterinarian employed by APHIS at the port of entry. Additionally, for the birds to be exempt from the quarantine requirements in current 9 CFR 92.11(e), there would have to be no evidence that any bird in the shipment has any communicable disease of poultry, based on port of entry inspection.

Request for Approval of a Closed Breeding Facility

We are including in this proposal instructions for requesting approval for a closed breeding facility. We are also including in this proposal requirements for a pre-approval inspection of the facility by APHIS, and requirements for an Advance Payment Agreement to cover the cost of the pre-approval inspection.

If the closed breeding facility is approved, the facility's operator would have to execute with APHIS another Advance Payment Agreement to cover the costs to the United States Department of Agriculture relating to the shipment of birds from the facility into the United States, and relating to ongoing inspections of the facility by a veterinarian employed by APHIS.

We are proposing that the Administrator will deny or withdraw approval of any closed breeding facility if: (1) Any provisions of the proposed regulations is not met; (2) the operator of the facility or a person responsibly connected with the business (as explained in the proposed regulations) has been convicted of a crime regarding the importation of an animal or bird into any jurisdiction; (3) the operator or a responsibly connected person has been convicted of any crime involving fraud, bribery, or extortion (all of which demonstrate a lack of integrity); or (4) no birds have been shipped from the facility to the United States for one year. We would also allow an operator to request voluntary withdrawal of approval.

We would establish due process procedures regarding a denial or withdrawal of approval, which would include adoption of rules of practice for a proceeding and an opportunity for a hearing when there is dispute of material fact regarding the denial or withdrawal.

To help the Administrator determine if grounds exist for denial or withdrawal of approval, and to facilitate action by APHIS in the event of a violation of the regulations, we would require from the operator of the facility his or her name and those of all persons responsibly connected with the business of the closed breeding facility, and the addresses of the operator and of certain specified responsibly connected persons.

We would also provide that denial or withdrawal of approval will not be based solely on the conviction of a responsibly connected person if the operator of the facility agrees to and complies with a consent agreement with the Administrator that the responsibly connected person will never again be associated with the closed breeding facility.

Miscellaneous

We are proposing to remove the definition of the word "Operator" in §92.1, because it does not aid in the understanding of the word. Further, we are proposing to add the definition of the terms "Animal and Plant Health Inspection Service" and "Bird holding area" to the definitions in § 92.1 to clarify the meaning of those terms as used in this proposal.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information supplied by the Department, we have determined that this action would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Based on industry projections, we believe that if this proposed rule is published as a final rule, approximately 200,000 parakeets will be imported annually from closed breeding facilities outside the United States. We expect that no brids other than parakeets would be imported under this rule. If there were any year in which the sale of the entire 200,000 imported birds would directly compete with the sale of birds that are produced by breeders in the United States, the dollar amount competed for would total a maximum of $1.4 million annually, based on a payment or breeders of $5.00 to $7.00 per parakeet. Based upon a Department survey, there are at least 12,000 parakeet breeders in the United States, virtually all of whom are small entities. The projected number of birds to be imported from the closed breeding facility would at most account for an average of approximately $117 annually per breeder that would otherwise be paid to breeders in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not

have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0040.

Executive Order 12372

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

List of Subjects in 9 CFR Part 92

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

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 would be amended as follows:

1. The authority citation for Part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.1 would be amended by removing the definition of "Operator", and adding the definitions of "Animal and Plant Health Inspection Service" and "Bird holding area" to read as follows:

§ 92.1 Definitions.

* * * * *

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Bird holding area. An area in a building located at an approved closed breeding facility, in which birds intended for importation to the United States are kept for a minimum of 30 days immediately before their shipment to the United States.

* * * * *

3. In § 92.11, footnotes 3, 4, and 5 and the references to them would be redesignated as 4, 5, and 6, respectively.

4. In paragraph (e) of § 92.11 the text following the heading would be designated as paragraph (e)(1) and a new paragraph (e)(2) would be added to read as follows:

§ 92.11 Quarantine requirements.

* * * * *

(e) * * *

(2) Birds imported from an approved closed breeding facility will be exempt from paragraph (e)(1) of this section if all of the following conditions have been met:

(i) Within 30 days after hatching, the birds are banded with a legband in compliance with paragraph (h)(5) of this section.

(ii) The birds had been kept together in a bird holding area separate from other birds in the approved closed breeding facility for at least 30 days immediately before shipment to the United States.

(iii) The birds had been shipped by air, without stopping, from the country in which the approved closed breeding facility is located to a United States port of entry listed in § 92.8(b) of this part.

(iv) The birds had been moved from the bird holding area to the aircraft for shipment to the United States in the presence of a salaried veterinarian of the national veterinary services of the country in which the approved closed breeding facility is located.

(v) The birds had been moved only on an aircraft containing no other birds or poultry.

(vi) The birds had no contact with poultry or other birds from the time they left the bird holding area until they are imported into the United States.

(vii) At least 21 days before the birds were shipped to the United States, cloacal samples either from all of the birds in the shipment, or from 150 birds in the shipment, whichever is fewer, had been submitted to the National Veterinary Services Laboratories, Ames, Iowa, by a salaried veterinarian of the national veterinary services of the country in which the approved closed breeding facility is located. The samples must have been collected within 28 days before shipment and must have tested negative for viscerotropic velogenic Newcastle disease and forms of avian influenza lethal to poultry, using standard virus isolation procedures carried out at the National Veterinary Services Laboratories, Ames, Iowa.[3]

[3] Standard procedures for virus isolation for viscerotropic velogenic Newcastle disease and for forms of avian influenza lethal to poultry, as published in "Methods for Examining Poultry Biologics and for Identifying and Quantifying Avian Pathogens," National Academy of Sciences, can be obtained by writing to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(viii) At least 21 days before the birds were shipped to the United States, necropsy samples from lung, trachea, terminal gut, and spleen either from all birds that were kept in a bird holding area and that died, or from 30 birds that were kept in a bird holding area and that died, whichever is fewer, had been submitted to the National Veterinary Services Laboratories, Ames, Iowa, by a salaried veterinarian of the national veterinary services of the country in which the approved closed breeding facility is located. The samples must be from birds that were kept in a bird holding area and that died between 30 and 21 days before shipment to the United States. The samples must have tested negative for viscerotropic velogenic Newcastle disease and forms of avian influenza lethal to poultry, using standard virus isolation procedures carried out at the National Veterinary Services Laboratories, Ames, Iowa.[3]

(ix) For at least 30 days immediately before shipment to the United States, all psittacine birds in the shipment, and all non-psittacine birds in the shipment that had been kept in a bird holding area with the psittacine birds at the approved closed breeding facility, had a balanced, medicated feed ration treatment of bird seed coated with not less than .5 mg chlorotetracycline (CTC) per gram of seed (for birds 9 inches in length or less measured from the forehead to the end of the tail) or a balanced, medicated feed ration treatment containing not less than 1 percent chlorotetracycline (CTC) with not more than 0.7 percent calcium (for birds more than 9 inches in length measured from the forehead to the end of the tail).

(x) All birds in the shipment that die enroute from the approved closed breeding facility to the United States are made available to a veterinarian employed by the Animal and Plant Health Inspection Service at the United States port of entry.

(xi) Based on port of entry inspection and all other information available to the inspector, there is no evidence to indicate that any bird in the shipment has any communicable disease of poultry.

* * * * *

5. In § 92.11, a new paragraph (h) would be added immediately following the concluding text in paragraph (g) to read as follows:

§ 92.11 Quarantine requirements.

* * * * *

(h) *Standards for an approved closed breeding facility for birds.* To qualify as an approved closed breeding facility for birds and to retain that approval, the closed breeding facility and its maintenance and operation must meet the requirements of this section. However, the Administrator will approve a closed breeding facility only when he or she determines that sufficient veterinarians employed by the Animal and Plant Health Inspection Service are available to provide the services required by the closed breeding facility. The operator of the closed breeding facility must bear the cost of the closed breeding facility and all costs associated with its maintenance and operation.

(1) *Disease status of country of facility.* The closed breeding facility must be located in a country that is designated in § 94.6(a)(2) of this chapter as being considered free of viscerotropic velogenic Newcastle disease.

(2) *Inspection of the facility.* The salaried veterinarian of the national veterinary services of the country in which the closed breeding facility is located must inspect the closed breeding facility at least once each calendar week to determine whether the closed breeding facility is operating in compliance with this section.

(3) *Physical plant requirements.* The closed breeding facility must meet the following criteria:

(i) *Location.* The closed breeding facility must be located at least one-half mile from any premises that contains any of the following: Poultry, a poultry processing plant, a poultry egg-laying farm, an aviary, a pigeon loft, a pet shop, a game bird breeding facility, a hatchery, or a poultry breeding farm.

(ii) *Construction and related provisions.* (A) The buildings housing birds in the closed breeding facility must be constructed so as to prevent accidental entry of birds.

(B) The bird holding area must:

(*1*) Be constructed so that all access into the bird holding area must be from within the building in which the bird holding area is located, and each entryway into the bird holding area must be equipped with self-closing double doors, unless emergency exits to the outside are required by local fire ordinances; in which case, the emergency exits may exist in the bird holding area if they are constructed so as to allow their opening from the inside of the bird holding area only;

(*2*) Have a vermin-proof feed storage area; and

(*3*) Have windows sufficient to provide a full view of the bird holding area.

(C) The closed breeding facility must:

(*1*) Have office space for recordkeeping;

(*2*) Have a necropsy room containing a necropsy table, a hood with a viewing window over the table, refrigerated storage space for carcasses retained for laboratory examination, a sink with running water, and the following equipment: scissors, forceps, tweezers, swabs, BHI media, sterile tubes, and rubber gloves.

(*3*) Have a supply of water adequate to meet the drinking needs of the birds and to allow for the cleaning specified in paragraph (h)(4)(i) of this section.

(*4*) Have a room for washing closed breeding facility equipment;

(*5*) Have a shower at the entrance into the bird holding area and have a clothes storage and change area at each end of the shower;

(*6*) Have a receptacle in the clothes storage and change area nearest the bird holding area for clothes worn in the bird holding area;

(*7*) Have restrooms at each end of the shower area;

(*8*) Have a storage area for hoses, brooms, shovels, soaps, cages, and waterers;

(*9*) Have a power sprayer to apply disinfectant and insecticide; and

(*10*) Be enclosed by a chain link security fence that is at least 6 feet high and that is made of a minimum of 11½ gauge wire, so as to prevent the entry of carnivores and unauthorized individuals.

(4) *Operational procedures.* (i) The closed breeding facility must be cleaned as follows, using hot water (148 °F minimum) and detergent:

(A) Floors, food and water receptacles, and drop pans from cages must be cleaned of excreta and food waste every other day; and

(B) Cages must be cleaned of excreta and food waste when they are emptied of birds.

(ii) After all birds are removed from a bird holding area, and before any other birds are put into the bird holding area, the following areas and items must be disinfected with either a quarternary ammonia-based disinfectant or a phenolic-based disinfectant, applied in accordance with the label approved by the Environmental Protection Agency: Floors, cages, food and water receptacles, and drop pans from cages.

(iii) A salaried veterinarian of the country in which the closed breeding facility is located must judge the areas and items specified in paragraph (h)(4)(B)(ii) of this section to be clean of all excreta and food waste before the disinfection is carried out, and must be present when the disinfection required by paragraph (h)(4)(ii) of this section is carried out.

(iv) Surface drainage into the bird holding area must be controlled to prevent any disease agent from entering the bird holding area.

(v) A guard employed by the country in which the closed breeding facility is located must be posted at the closed breeding facility at all times to prevent birds in the bird holding area from having contact with individuals not authorized entry into the closed breeding facility and with other birds and animals. The guard must maintain a daily log to record the entry and exit of all individuals entering the bird holding area.

(vi) The operator of the closed breeding facility must allow the unannounced entry into the closed breeding facility of veterinarians employed by the Animal and Plant Health Inspection Service, salaried veterinarians of the national veterinary services of the country in which the closed breeding facility is located, and other individuals authorized by the Administrator, to inspect both birds in the closed breeding facility and the operations at the closed breeding facility, and to determine whether this part is being complied with. Otherwise, access to the closed breeding facility must be restricted only to individuals working at the closed breeding facility, or to individuals specifically granted access by a salaried veterinarian of the national veterinary services of the country in which the closed breeding facility is located.

(vii) All individuals granted access to a bird holding area must:

(A) Upon entering a bird holding area, wear work clothing and footwear that has not been worn since it was last washed and that is available at the closed breeding facility;

(B) Change out of that work clothing and footwear upon leaving a bird holding area;

(C) Shower when entering and when leaving the bird holding area; and

(D) Have no contact with poultry or birds for at least 3 days before entering the bird holding area.

(viii) At the end of each workday, the operator of the closed breeding facility must collect work clothing worn into the bird holding area and keep it in a bag until the clothing is washed. Used footwear must be either left in the clothes change area or cleaned with hot water (148 °F minimum) and detergent and disinfected with either a quaternary

ammonia-based disinfectant or a phenolic-based disinfectant, applied in accordance with the label approved by the Environmental Protection Agency.

(ix) The operator of the closed breeding facility must submit the following to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782:

(A) The telphone number or numbers at which the operator of the closed breeding facility can be reached on a daily basis on the number of numbers for an agent who can act and make decisions on the operator's behalf;

(B) A current list of the legal names and residential addresses of personnel employed at the closed breeding facility and designated by the operator of the closed breeding facility to handle and care for birds in the closed breeding facility. Before additional designated individuals may handle and care for birds in the closed breeding facility, the legal names and residential addresses of these additional designated individuals must be submitted to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(C) A signed statement from each of the designated personnel employed at the closed breeding facility, that states for 3 days before entering the bird holding area, the designated personnel will refrain from having contact with poultry and birds.

(5) *Procedures concerning birds.* (i) The closed breeding facility must contain only birds that have never previously been in a country other than the United States, and the offspring of those birds if they were hatched in the closed breeding facility, and must not contain any birds that have been removed from the closed breeding facility.

(ii) Birds shipped to the closed breeding facility from the United States must be shipped by air, without stopping, from the United States to the country in which the closed breeding facility is located. When the birds arrive in the country in which the closed breeding facility is located, a salaried veterinarian of the national veterinary services of the country in which the closed breeding facility is located must accompany the shipment of birds to the closed breeding facility. Before shipment from the United States, the birds must be handled with serially numbered legbands that have been coded to the closed breeding facility. The legbands must be individually identifiable closed legbands. A certificate issued by an accredited veterinarian and endorsed by a veterinarian employed by the Animal and Plant Health Inspection Service in the United States must accompany each shipment of birds from the United States to the closed breeding facility. The certificate must indicate the following:

(A) Species, breed, and number of birds;

(B) Legband numbers;

(C) That all birds covered by the certificate have been inspected by the accredited veterinarian;

(D) That no evidence of any communicable disease of poultry was found among the birds;

(E) That during the 90 days immediately before their exportation from the United States, the birds were not subjected to any bacterial or viral agent known to cause a communicable disease of poultry;

(F) That the birds were placed in previously unused containers at the premises from which the birds were exported from the United States;

(G) That Newcastle disease did not occur anywhere on the premises from which the birds are to be exported from the United States or on adjoining premises during the 90 days immediately before the exportation of the birds from the United States, and that these premises are not located in any area that has been under quarantine for poultry diseases at any time during the 90 days immediately before exportation of the birds from the United States; and

(H) That the birds have not been vaccinated, except with a vaccine approved by the Administrator.[7] The Administrator will approve a vaccine if:

(1) The vaccine is licensed by the Animal and Plant Health Inspection Service in accordance with § 102.5 of this chapter; and

(2) The vaccine is not one that is used to prevent Newcastle disease, avian influenza, or any other hemagglutinating virus of poultry.

(iii) The operator of the closed breeding facility, in the presence of a salaried veterinarian of the national veterinary services of the country in which the closed breeding facility is located, must individually band each bird hatched in the closed breeding facility, within 30 days after hatching, with a serially numbered legband that has been coded to the closed breeding facility. The legbands must be individually identifiable closed legbands.

[7] A list of approved vaccines can be obtained by writing to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(iv) The operator of the closed breeding facility must collect daily all birds that die while kept in the bird holding area and hold them under refrigeration within the bird holding area until specimens are collected for laboratory examination. The refrigeration temperature must be no warmer than 35 °F if the birds are autopsied daily, and no warmer than 0 °F if the birds are autopsied more than 1 day after being placed under refrigeration. The operator of the closed breeding facility must account for all birds in the closed breeding facility, and must not dispose of any carcass or parts of a carcass unless permission to do so is given by a salaried veterinarian of the national veterinary services of the country in which the closed breeding facility is located.

(6) *Records.* (i) The operator of the closed breeding facility must maintain a current log concerning all birds in the closed breeding facility, recording the number of birds that die, the number of birds that enter the closed breeding facility (including a separate count of those arriving dead), and the number of birds that leave the closed breeding facility. The log must be made available upon request to veterinarians employed by the Animal and Plant Health Inspection Service and must be kept by the operator of the closed breeding facility until reviewed by a veteranarian employed by the Animal and Plant Health Inspection Service.

(ii) The operator of the closed breeding facility must submit the following to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782: the operator's legal name; the operator's residential address; the operator's business address; the legal names of all persons responsibly connected with the business of the closed breeding facility, as that term is defined in paragraph (h)(10)(iv) of this section; the residential addresses and business addresses of all directors, officers, partners, and owners of 10 percent or more of the voting stock of the closed breeding facility; and the address of the closed breeding facility. The operator must submit to the same address any change in any of this information within 14 days of the change.

(7) *Advance Payment Agreement for services required by operator of an approved closed breeding facility for birds intended for importation.* (i) When a closed breeding facility for birds intended for importation is approved by the Administrator, the operator of the

approved closed breeding facility and the Animal and Plant Health Inspection Service must execute an Advance Payment Agreement, as set forth in paragraph (h)(7)(ii) of this section.

(ii) *Advance Payment Agreement.*

Advance Payment Agreement between _____ (name of operator), referred to below as the Operator, and the United States Department of Agriculture, Animal and Plant Health Inspection Service, referred to below as the Service, with respect to _____ (approved closed breeding facility and address of facility). The Operator and the Service agree to the following:

(A) The Operator agrees to deposit with the Service upon execution of this agreement $10,000 to defray the following costs, when incurred by the Service in providing services required for two shipments of birds to the United States and one inspection of the approved closed breeding facility by a veterinarian employed by the Animal and Plant Health Inspection Service: costs for travel, salary, subsistence, local transportation, telephone, and postage incurred in inspection of the approved closed breeding facility; administrative costs to carry out the activities of the Advance Payment Agreement; and the cost of all tests required by this part that concern birds in the approved closed breeding facility. As funds from the $10,000 are obligated, the Service will issue monthly bills for costs incurred, based on official accounting records, to restore the deposit to its original level. The Opertor agrees to pay these bills within 14 days after receiving them.

(B) The Service agrees:

(*1*) To furnish the services of personnel needed to conduct inspections, perform laboratory procedures, and complete examination of birds intended for importation to insure that they are free of viscerotropic velogenic Newcastle disease and forms of avian influenza lethal to poultry.

(*2*) To provide the Operator on a quarterly basis, or within 30 days following receipt of a written request from the Operator, with an accounting of funds expended in providing services under this agreement. Any unobligated balance upon termination or expiration of this agreement will be returned to the Operator.

(*3*) To inform the Operator when a diagnosis of viscerotropic velogenic Newcastle disease or any form of avian influenze lethal to poultry has been made in an approved closed breeding facility.

(C) It is mutually understood and agreed that this agreement will become effective upon date of final signature and will continue indefinitely. This agreement may be amended by agreement of the parties in writing. It may be terminated by either party upon 30 days written notice to the other party.

(D) No member of or delegate to Congress shall be admitted to any share or part of this agreement, or to any benefit to arise therefrom.

Date _____

_____

Operator
Date _____

_____

Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture

(8) *Submission of Plans and Request for Approval.* Persons requesting approval for a closed breeding facility must submit the request for approval and architectural and floor plans for the closed breeding facility to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(9) *Advance Payment Agreement for inspection for approval of a closed breeding facility for birds intended for importation.* (i) Before the Administrator determines whether a closed breeding facility is eligible for approval, a veterinarian employed by the Animal and Plant Health Inspection Service must make a personal inspection of the closed breeding facility, to determine whether it complies with the standards in paragraph (h)(3) of this section. As a condition of the veterinarian employed by the Animal and Plant Health Inspection Service conducting an inspection of the closed breeding facility, the operator of the closed breeding facility and the Animal and Plant Health Inspection Service must execute an Advance Payment Agreement, as set forth in paragraph (h)(9)(ii) of this section.

(ii) *Advance Payment Agreement.*

Advance Payment Agreement between ____ (name of operator), referred to below as the Operator, and the United States Department of Agriculture, Animal and Plant Health Inspection Service, referred to below as the Service, with respect to ____ (closed breeding facility and address of facility). The Operator and the Service agree to the following:

(A) The Operator agrees to deposit with the Service upon execution of this agreement $4,000 to defray the costs for the following, when incurred by the Service in carrying out inspection of the closed breeding facility to determine if it is eligible for approval: costs for travel, salary, subsistence, local transportation, administrative expenses, telephone, and postage. If the costs incurred are more than $4,000, a bill for the extra costs incurred, based on official Service accounting records, will be issued to the Operator. The Operator agrees to pay these bills within 14 days after receiving them.

(B) The Service agrees:

(*1*) To furnish the services of a veterinarian employed by the Animal and Plant Health Inspection Service necessary to conduct an inspection of the closed breeding facility to determine if it is eligible for approval.

(*2*) To provide the Operator, within 30 days following receipt of a written request from the Operator, with an accounting of funds expended in providing services under paragraph (h)(9)(ii)(B)(*1*) of this section. Any unobligated balance upon termination or expiration of this agreement will be returned to the Operator.

(C) It is mutually understood and agreed that this agreement will become effective upon date of final signature and will continue until inspection of the closed breeding facility has been completed and any amounts owed by or to the Operator have been paid. This agreement may be amended by agreement of the parties in writing.

(D) No member of or delegate to Congress shall be admitted to any share or part of this agreement, or to any benefit to arise therefrom.

Date _____

_____

Operator
Date _____

_____

Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture

(10) *Denial and Withdrawal of Approval.* (i) The Administrator will withdraw the approval of any approved closed breeding facility when the operator of the approved closed breeding facility requests in writing the withdrawal of approval.

(ii) The Administrator will deny or withdraw approval of any closed breeding facility, for any of the reasons set forth in paragraph (h)(10)(iii) of this section. Before withdrawing or denying approval, the Administrator will inform the operator of the closed breeding facility of the reasons for the proposed action and provide the operator of the closed breeding facility with an opportunity to respond. The Administrator will give the operator of the closed breeding facility an opportunity for a hearing regarding any dispute of material fact, in accordance with rules of practice that will be adopted for the proceeding. However,

the suspension of approval will become effective pending final determination in the proceeding, when the Administrator determines that the suspension is necessary to protect the health of poultry in the United States. The suspension will be effective upon oral or written notification, whichever is earlier, to the operator of the closed breeding facility. In the event of oral notification, written confirmation will be given to the operator of the closed breeding facility within 10 days of the oral notification. This suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(iii) The Administrator will deny or withdraw approval of a closed breeding facility if:

(A) Any provision of this section is not met;

(B) The operator of the closed breeding facility or a person responsibly connected with the business of the closed breeding facility has been convicted of any crime under any statute or regulation regarding the importation into any jurisdiction of any animal or bird;

(C) The operator of the closed breeding facility or a person responsibly connected with the business of the closed breeding facility has been convicted of any crime involving fraud, bribery, or extortion; or

(D) No birds have been shipped from the closed breeding facility to the United States for one year.

(iv) For the purposes of this section, a person will be considered responsibly connected with the business of the closed breeding facility if that person has an ownership, mortgage, or lease interest in the closed breeding facility's physical plant, or if the person is a partner, officer, director, holder or owner of 10 percent or more of its voting stock, or is an employee of the operator of the closed breeding facility.

(v) The denial or withdrawal referred to in this paragraph will not be based solely on the conviction of a person responsibly connected with a closed breeding facility if the operator of the closed breeding facility enters into a consent agreement with the Administrator in which it is agreed that the responsibly connected person identified in the notification will never again be associated with the closed breeding facility, and the operator of the closed breeding facility complies with the consent agreement. Violation of the consent agreement by the operator of the closed breeding facility will constitute independent grounds for denial or withdrawal of approval of a closed breeding facility.

* * * * *

Done in Washington, DC, this 1st day of December, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-28067 Filed 12-5-87; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 113, 114, and 116

[Notice 1988-14]

Debts Owed by Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission requests comments on a proposed new Part 116 of its regulations governing the extension of credit and settlement of debts owned by candidates and political committees. These regulations implement sections 433, 434, 439a, 441a, 441b and 451 of the Federal Election Campaign Act of 1971, as amended, (the "Act" or "FECA"), 2 U.S.C. 431 *et seq.* Comment is also sought on proposed revisions to section 113.1 concerning the determination that a candidate's committee has excess campaign funds. Please note that public comment is requested on several related issues for which no specific regulatory language is proposed at this time. The draft rules that follow do not represent a final decision by the Commission on the amendment of 11 CFR 113.1 or the addition of 11 CFR Part 116 to its regulations. A public hearing has been scheduled to obtain further comment on the issues and proposed amendments discussed in this notice. Further information is provided in the supplementary information which follows.

DATES: Comments must be received on or before January 27, 1989. The Commission will hold a hearing on February 15, 1989 at 10:00 a.m. Persons wishing to testify should so indicate in their written comments.

ADDRESSES: Comments must be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is considering deleting the current debt settlement regulations at 11 CFR 114.10 and replacing them with a new Part 116 to address in a comprehensive manner a broad range of topics concerning debts owed by candidates and political committees. The proposed new regulations, together with revisions to the current debt settlement procedures (*see* Federal Election Commission Directive No. 3, Agenda Document #82-110, effective July 22, 1982), would establish a new system whereby indebted political committees would be required to submit comprehensive debt settlement plans for Commission review prior to termination. Such debt settlement plans would cover all debts owed and would provide for the disposition of the committees' remaining funds and assets. In contrast, committees that are not terminating would not be permitted to settle their just debts. However, their creditors would be allowed to completely forgive those debts if the committee is essentially defunct and clearly unable to pay its creditors. Please note that the proposed rules would cover several specific types of debts not mentioned in the current regulations, such as debts owed to unincorporated commercial vendors, committee employees, and other individuals. However, the proposed rules which follow would not apply to bank loans to candidates or political committees since this form of debt is governed by other regulations at 11 CFR 100.7(b)(11) and 100.8(b)(12), and is currently the subject of a separate rulemaking. *See* Notice of Proposed Rulemaking, 51 FR 28154 (Aug. 5, 1986); and Announcement of hearing, 52 FR 2416 (Jan. 22, 1987). The Commission does not generally consider bank loans in the debt settlement process and does not intend to change its approach. Another area addressed by these proposals involves situations where a candidate has multiple campaign committees for different elections and/or different offices, and certain of these committees have surplus funds or the ability to raise funds while other committees are significantly in debt.

This proposed new approach has been developed with several interrelated objectives in mind. One objective is to ensure that debt settlements, and the initial transactions creating the debts, do not result in excessive or prohibited contributions to the debtor committees. This concern prompted the Commission to adopt the current debt settlement regulations in 1977. Since that time, the

Commission's experiences in reviewing debt settlements have illustrated the need to encourage candidates and political committees to pay their debts. Previous debt settlements have also demonstrated the need to reduce the actual or perceived unfairness to certain creditors that may occur when a committee liquidates its assets to pay its debts in a piecemeal manner.

A. Proposed Part 116—Debts Owed by Candidates and Political Committees

The Commission has prepared this proposed new part to address, in a systematic way, several interrelated concerns regarding the creation and disposition of election-related debts and obligations under the FECA. Proposed Part 116 would explain when extensions of credit and debt settlements are treated as contributions from the creditors, how committees should report outstanding debts, including disputed debts, when to file a debt settlement plan and what information to include, and how the Commission reviews debt settlements.

1. Debts Owed by Ongoing and Terminating Committees

The current debt settlement regulations are not expressly limited to political committees that are in the process of winding down their activities and preparing to terminate, although the vast majority of those seeking debt settlement are in that posture. Thus, questions have arisen as to whether it is appropriate to permit ongoing committees, including party committees, separate segregated funds and nonconnected committees, to settle their debts for less than the full amount owed, particularly since some of these committees may have the ability and intention to continue to solicit funds and to engage in political activities. Consequently, the Commission seeks comments on proposed § 116.2, which would expressly limit debt settlements to terminating committees. However, this section would also create a very limited exception to allow creditors of ongoing committees to write off bad debts in the limited situation where it is demonstrated that the ongoing committee has been essentially dormant for some time and will not be able to pay its debts in the foreseeable future. This is not intended to serve as a routine method for ongoing committees to dispose of the debts.

Under proposed § 116.2, the Commission would review debt settlement plans to determine whether the committee has complied with new Part 116 and to ascertain whether the proposed plan would result in an apparent violation of the FECA or the Commission's regulations. This provision is based on current § 114.10, which provides for a similar review of debt settlements for potential violations. The Commission has not "approved" or "disapproved" debt settlement statements in the past. Nonetheless, comments are sought as to whether specific approval or disapproval should be granted to future debt settlement plans and what consequences should flow from such approval or disapproval, particularly in situations where creditors may disagree with certain aspects of the settlement plans.

2. Transfers Involving Indebted Committees

Proposed § 116.2 would also address situations where candidates seek to transfer an indebted campaign committee's remaining funds to another campaign committee authorized by that candidate. Such transfers would not be permitted under the proposals being published today because they would be unfair to the creditors of the transferor committee and they would be contrary to the objective of encouraging political committees to pay their just debts.

Comments are also sought on other situations involving transfers and indebted committees. For example, the Commission is considering whether to expressly permit, but not require, the forwarding of debts from previous to current campaign committees of the same candidate in accordance with AOs 1980–43 and 1977–52. Under such an approach, the previous campaign committee would be permitted to terminate after the transfer is made. The current campaign committee would be required to report separately the previous debts, as well as whatever contributions it receives to pay those debts. Such contributions would have to be aggregated with whatever contributions were previously received from the same donors for that prior election.

In some cases, a subsequent campaign committee may not wish to assume the obligation of paying debts incurred by previous campaign committees if they are not legally required to do so. Nevertheless, the Commission is interested in exploring ways to encourage campaign committees to pay or settle previous campaign debts before the candidate begins making expenditures for the next election, or before the campaign committee makes new purchases from the same vendors. A related question is whether the Commission should allow a candidate's committee to terminate and dispose of its surplus, if the candidate has another principal compaign committee that is in debt. Conversely, should the indebted committee be permitted to settle those debts if it could lawfully receive a tranfer of funds from the other committee to pay those debts in full?

3. Extensions of Credit and Settlements of Debts by Commercial Vendors

New § 116.3 would cover extensions of credit by incorporated and unincorporated vendors of goods and services to candidates and political committees. It would clarify that both incorporated and unincorporated vendors may extend credit to a candidate or committee provided that the credit is extended in the ordinary course of business on terms substantially similar to those offered to non-political purchasers where the degree of risk and the amount of the obligation are comparable. Please note that an extension of credit outside the commercial vendor's normal course of its own business would continue to be impermissible unless it involves a use of facilities or means of transportation such as that specifically permitted by 11 CFR 114.9.

This new provision would also list the factors the Commission would consider in determining whether credit was extended in the ordinary course of business. These suggested factors are intended to provide guidance so that commercial vendors and political committees may avoid situations that would result in the making or acceptance of excessive or prohibited contributions. One of the proposed factors would be whether the extension of credit conformed to the usual and normal practice in the vendor's trade or industry. However, this factor may not be pertinent in cases where the vendor could show that its own business practices are different, or where there may not be an established industry-wide practice. Thus, the proposed factors would not necessarily be accorded equal weight. The Commisison requests comments on these proposed criteria and suggestions as to other criteria that should be considered.

Section 116.4 would address the forgiveness or settlement of campaign debts by corporate and noncorporate commercial vendors and would explain that such actions will result in the making of a contribution to the debtor committee unless they are commercially reasonable.

The proposed regulation would also follow current § 114.10(c) by explaining when a settlement is commercially reasonable. The draft rules would include examples of commercially

reasonable efforts that could be undertaken by the debtor candidates and committees to pay the outstanding amounts, as well as examples of commercially reasonable remedies that the vendor could pursue in appropriate cases. However, the creditor and the debtor would not be required to undertake particular activities that are not likely to result in the payment of the debt and the vendor would not be required to go beyond its usual efforts to collect debts of similar amount from non-political entities. The Commission requests comments on this approach and suggestions concerning other examples of commercially reasonable efforts undertaken by the candidate, the committee or the vendor.

Finally, proposed § 116.4(d) would state explicitly that the proposed regulations are not intended to force a commercial vendor to forgive or settle a political debt is the vendor does not wish to do so. This would be consistent with the current Commission practice of examining debt settlement statements for indications that the creditors are in agreement with the terms of the settlement. *See* FEC Directive No. 3, Agenda Document #82–110 (effective July 22, 1982).

4. Advances by Committee Staff and Other Individuals

Issues have arisen during the course of several compliance matters and in advisory opinion requests concerning payments by individuals, including campaign staff, using personal funds including personal credit cards to purchase various goods or services for political committees. *See* MUR 1349; and AO 1984–37. For example, such individuals have used, or sought to use, personal funds to purchase goods and services such as airfare, rental cars, meals, lodging, postage, office supplies, messenger services and a variety of other election-related items with the expectation of later reimbursement by the committee. The Commission is concerned that individuals with sizable resources may have the ability to circumvent the contribution limitations by paying committee expenses and not being reimbursed for a substantial period of time.

If the payments are for transportation expenses incurred by individuals while traveling on behalf of candidates or political party committees, they would not be treated as contributions under 11 CFR 100.7(b)(8) if they do not exceed $1000 per candidate per election or $2000 per year for the political committees of a political party. Moreover, personal funds used by volunteers for usual and normal subsistence expenses incidental to volunteer activity are not contributions under current § 100.70(b)(8). However, if the payments do not fall within these exemptions, the problem is that the individuals involved have not provided goods or services to the committee as commercial vendors. Therefore, they cannot rely on § 100.7(a)(4), which permits extensions of credit for an amount of time within normal business or trade practice. Nevertheless, these individuals may need to pay for unanticipated expenses before obtaining the funds from the committee.

Consequently, the Commission is now seeking comments on draft § 116.5, which would allow individuals such as volunteers and paid employees of the campaign to use personal funds, including credit cards, to pay for certain types of expenses on behalf of candidates and political committees without being considered to have made a contribution, privided they are repaid within the time periods indicated below.

Under this approach, payments from personal funds for the purchase of campaign-related goods or services would not be treated as contributions if they fall within one of the categories of payments excluded from the definition of contribution under 11 CFR 100.7(b)(8). In addition, this proposal would state that nonexempted payments would be considered contributions unless two conditions are met. The payments must be for the individual's personal transportation expenses incurred while traveling on behalf of a candidate or party committee or for the individual's usual and normal subsistence expenses incurred while traveling on behalf of a candidate or party committee. Secondly, reimbursement must be obtained within sixty days for credit car transactions or thirty days in other cases. These proposals would be consistent with the changes suggested by the Commission to 11 CFR 100.7(b)(8). regarding unreimbursed subsistence expenses, and would also be consistent with the treatment of credit card transactions in the public financing regulations. *See* Notice of Proposed Rulemaking, 53 FR 35827 (September 15, 1988); and 11 CFR 9035.2(a)(2).

The proposal being published today is intended to provide flexibility in situations where certain individuals may find it necessary to pay personnal travel and subsistence expenses. The Commission recognizes that the campaign committee may not want to provide credit cards to its field workers. Under this approach, however, a contribution would result if the individual pays for the transportation or subsistence expenses of others, or for other campaign expenses such as the costs of meeting rooms or telephone services, or if reimbursement is not forthcoming within the proposed time limits. These time limits are intended to prevent individuals associated with the campaign from financing the campaign for long periods during which the candidate's funding may be quite limited. Comments are sought on this approach and on the appropriateness of the thirty and sixty day limits proposed. Although the draft rule does not set a maximum limit on the amount of reimbursable transportation and subsistence costs an individual may accrue, the Commission requests comments on whether to establish an upper limit. Finally, comment is sought on whether this new provision should apply to all individuals who make these types of advances for candidates and committees, or whether it should be limited to volunteers and paid campaign staff. The Commission recognizes that questions may also arise as to whether particular individuals are employees of or consultants to a committee.

Draft § 116.5 would also state that such unreimbursed payments must be treated as debts, in which case they must be reported as such until payment or settlement occurs. In addition, the Commission's proposals would clarify that the individual creditors are not required to settle or forgive such debts if they do not wish to do so.

The Commission notes that individuals may also lend funds directly to committees. Under the current regulations, such loans are contributions until repaid. 11 CFR 100.7(a)(1)(i)(B). The Commission is considering whether it may be advisable to state in proposed Part 116 that a loan must be treated as an outstanding debt to the extent that it has not been repaid and. therefore, it would have to be included in a debt settlement plan. Language could also be included to clarify that such loans are contributions to the extent forgiven by the lenders.

5. Salary Payments Owed to Employees

Questions have arisen regarding the treatment of unpaid salaries owed to committee staff as debts for debt settlement purposes. The current debt settlement regulations do not address this subject. In some situations, the political committee and the campaign worker may have agreed that a salary would be paid only as funds are available. In other cases, the committee may seek to treat the individuals as volunteers retroactively. Under section 431(8) of the Act and 11 CFR 100.7(b)(3),

the value of services provided by a volunteer is not a contribution.

The Commission is considering adding proposed § 116.6 to the regulations to provide political committees with guidance in this area. The proposed new language would permit the committee to treat the unpaid amount as a debt owed to the employee or as volunteer services under 11 CFR 100.7(b)(3), provided the employee agrees in writing to being considered a volunteer. This decision could be made at any time. If the amount is treated as a debt, it would have to be reported as such under current § 104.11 and included in any debt settlement plan filed under proposed § 116.7. Although proposed § 116.6 would not treat unpaid salary obligations as contributions, comments are requested as to whether there are situations where it would be advisable to do so.

6. Debt Settlement Plans Filed by Terminating Committees and Commission Review

Proposed § 116.7 would contain guidelines concerning the submission and review of comprehensive debt settlement plans by terminating committees. Under § 116.7(a), a debt settlement plan would have to be filed by an indebted terminating committee after it has reached settlements with all remaining creditors but before it has paid whatever amounts were agreed to in those settlements. In comparison, the current rules allow committees to file debt settlement requests as they reach agreements with various creditors. The current approach has raised questions as to how a committee intends to handle debts owed to other creditors, particularly when the committee has insufficient funds to pay these amounts and limited fundraising prospects. Consequently, the proposed rules would require the submission of a single settlement plan indicating how the political committee intends to handle all of its debts and dispose of its remaining assets and cash on hand, and how it plans to obtain whatever additional amounts may be needed to pay its creditors under the plan. Thus, the Commission would postpone review of a committee's debt settlements until the committee has reached agreements with every creditor and is ready to terminate. Comments are sought on whether it would be advisable to require the filing of a debt settlement statement within a set period of time after all settlements have been reached, and if so, what the appropriate deadline should be. Under this proposal creditors would no longer have the option of filing debt settlement statements. *Compare* current 11 CFR 114.10. Comments are requested as to whether this may present difficulties for creditors wishing to write off bad debts before the debtor committee is ready to terminate.

Paragraph (b) of proposed §116.7 would clarify that debts owed to the United States could not be settled except as permitted pursuant to applicable federal law, and that Title 26 repayments and civil penalties under Title 2 must be paid in full.

Under draft §116.7(c), a debt settlement plan filed by an indebted candidate or committee would have to include a signed affidavit from each creditor evidencing agreement to the terms of the settlement of the debt owed to that creditor. The creditors would also be able to submit written statements supporting or opposing settlements offered to other creditors.

Generally, since the Commission does not have the authority to waive reporting requirements, if any creditor refuses to accept the settlement, the political committee would not be able to file a debt settlement plan, would not be able to terminate, and would therefore be required to continue reporting its debate pursuant to § 104.11. The Commission realizes, however, that a political committee acting in good faith may encounter a creditor who absolutely refuses to settle when offered the same terms and conditions as other creditors, thereby preventing review of the entire debt settlement plan. Comment is sought as to whether committees faced with this situation should be allowed to submit their debt settlement plans for review, including a statement outlining their good faith efforts. The Commission is considering whether in such situations it may be appropriate for the Commission to suspend the reporting requirements pursuant to 11 CFR 102.4 after having determined that the committee did make a good faith attempt to reach a settlement.

The proposals being published today would also clarify the factors the Commission may consider in reviewing debt settlement plans. Most of these factors have been drawn from FEC Directive No. 3 regarding debt settlement procedures. Listing these factors in the new rules would enable political committees and their creditors to better understand how the Commission evaluates proposed debt settlements.

In the past, the Commission has not attempted to influence the indebted committee's decisions as to which creditors to include in a settlement agreement or as to the amount or percentage of debt to be forgiven. The proposed rules would require committees to include all debts in their settlement plans, but would give committees broad discretion in deciding how much to pay to each creditor. However, the Commission would be able to consider whether debts owed to the candidate received more favorable treatment than other campaign obligations. Since the proposed rules would not prevent committees from treating different creditors unequally, suggestions are requested as to whether and how to encourage committees to pay approximately the same percentage of each outstanding debt on similar terms. Comments are also requested as to whether an indebted committee should be expected to justify different settlement amounts and percentages for different creditors.

The Commission is also considering whether to establish mandatory or suggested priorities for the settlement of debts owed to different categories of creditors, or whether to require committees to adhere to the priorities set out in the Federal Bankruptcy Code. *See* 11 U.S.C. 507. These possibilities raise the question of whether the Commission should approve or disapprove debt settlements on the basis of such priorities. The Commission notes that implementation of priorities could create conflicts with decisions made by federal bankruptcy courts in cases brought by indebted political committees or their creditors. Nevertheless, the FECA grants the Commission authority to establish procedures to determine the insolvency of political committees, to liquidate the assets of insolvent committees for the reduction of outstanding debts, and to terminate insolvent committees after liquidation. 2 U.S.C. 433(d).

Thus, the Commission is seeking comments as to what its role should be in this area and whether insolvent committees should be permitted to seek discharges in bankruptcy prior to submission of debt settlement plans for Commission review. Although in the past the Commission has reviewed debt settlements where committees have sought liquidation under Chapter 7, the reorganization of a political committee under Chapter 11 may present different considerations. For example, such a reorganization may allow the committee to continue its political activities while restructuring its debts, thereby obtaining an advantage over other committees that are committed to paying their bills on time or in full. The Commission is also concerned that reorganizations may present opportunities for the committee

to accept prohibited or excessive contributions. Finally, Chapter 11 reorganizations may not be entirely consistent with the Commission's proposals to limit debt settlements to terminating committees.

The debt settlement proposals set out in § 116.7 contemplate that once the Commission has finished reviewing a debt settlement plan, the committee will liquidate its remaining assets and pay its creditors so that it may terminate as soon as possible. The Commission is considering whether committees should be required to terminate within a specified period of time, such as thirty or sixty days. Comments are also sought as to whether terminating committees should be permitted to make contributions or expenditures during this period just prior to termination. The concern is that this type of activity would drain resources already committed to paying past creditors.

7. Creditors' Forgiveness of Debts Owed by Ongoing Committees and Commission Review

Proposed section 116.8 would set out conditions under which creditors would be able to forgive debts owed by committees not intending to terminate. For the reasons stated above, the Commission does not favor allowing ongoing committees to settle debts with creditors if those committees have the ability and intention to continue fundraising for election-related purposes. Consequently, this proposed rule would only allow creditors to forgive an ongoing committee's debts if either the creditor is unable to locate the indebted committee or the committee meets certain conditions showing that it is essentially defunct and clearly unable to pay its bills. This proposed section also contemplates Commission review of the creditor's actions and the proposed forgiveness to determine whether the requirements of new Part 116 have been satisfied and whether the forgiveness would result in an apparent violation of the Act or the regulations. Comments are sought on this approach.

8. Disputed Debts

Another issue that sometimes arises involves disputed debts owed by either ongoing or terminating committees. In some cases, there may be no agreement as to the amount or even the existence of the debt. For this reason, the committee may not want to report the debt to avoid acknowledging it. In other situations there may be a bona fide dispute regarding the value of the goods or services received, or the vendor's compliance with the terms of the contract or the vendor's authority to undertake certain actions. Although the Commission's reporting regulations appear to require disclosure of all debts and obligations, the rules do not explain how to report disputed debts. Committees may be reluctant to list such debts on their reports because they wish to avoid jeopardizing their legal position with regard to the dispute. However, the failure to disclose such information is not consistent with the FECA's goal of achieving full disclosure of campaign finances.

To address these concerns, the Commission is considering promulgating new § 116.9, which would apply to disputed debts involving both terminating and ongoing committees. It would create a distinction for reporting purposes between situations in which the committee has received some goods or services, whether or not to the committee's satisfaction, and those situations in which nothing of value has been provided. This proposal would require committees to report a disputed debt only when they have actually received something of value pursuant to the agreement between the parties, thereby ensuring disclosure whenever there is the potential for a contribution to result. However, proposed § 116.9 would allow committees to indicate on their reports that they dispute the existence or the amount of the debt and that by noting the dispute they have not admitted to owing the amount claimed. This would permit the committee to disclose the possible obligation while preserving their rights in the dispute, and would be consistent with 11 CFR 9035.1(a)(2). Thus, reporting would be postponed only when nothing has been provided and only the creditor believes a debt exists.

With regard to terminating committees that have been unable to resolve disputed debts, the proposed rules would require such committees to state in the debt settlement plan what amount, if any, they propose paying creditors to resolve the disputes. These committees would not be expected to include statements from the creditors agreeing to the settlements. The Commission would review these proposals as part of the debt settlement plans. Comments are requested on this approach.

9. Issues Concerning Debts Owned by Publicly-Funded Presidential Campaign Committees

The current debt settlement regulations at 11 CFR 114.10 do not differentiate between debts owed by presidential campaign committees accepting public funding under 26 U.S.C. Chapters 95 and 96, and debts owed by other political committees. Consequently, the Commission has handled debt settlement requests submitted by presidential committees in accordance with the procedures set out in FEC Directive No. 3. Current § 9035.1(a)(2) contemplates that such debts may be settled and that a settlement does not affect the candidate's spending limits unless the lower amount represents a reasonable settlement of a dispute as to what was owed. Although proposed Part 116 would continue this approach, the question arises as to whether publicly funded committees should be permitted to settle debts, and if so, whether higher standards should be used to evaluate their settlement plans. Another issue concerns the timing of debt settlements filed by presidential committees. If the Commission continues to permit such debt settlements, should the Presidential committees submit their proposed settlement plans for Commission review as soon as feasible, or should they be able to wait until the Commission's audit process has been completed?

Questions were also raised in AO 1988–5 as to whether a publicly funded committee may use its funds to make loans or contributions to the candidate's previous publicly funded committee which is still in debt. The Commission concluded that such a payment would not constitute a qualified campaign expense pursuant to 11 CFR 9034.4 and would not be includible in the candidate's statement of net outstanding campaign obligations under 11 CFR 9034.5 upon the candidate's withdrawal from the race. However, the subsequent presidential campaign committee was permitted to treat part of its cash balance as excess campaign funds available to retire the previous committee's debts once the Commission's audit and review were completed and the committee has satisfied whatever repayment obligations or possible penalties it may owe. Accordingly, comments are requested as to whether the Commission's debt settlement rules, or the public financing rules should be revised to reflect this decision.

B. Proposed Amendments to Other Regulations

The Commission is considering several possible conforming amendments to §§ 104.11 and 113.1(e) that may be necessary to bring these sections into conformity with proposed new Part 116. Accordingly, the Commission seeks comments on several possible revisions discussed below. The Commission also notes that the cross

references in §§ 100.7(a)(4) and 104.3(d) to the current debt settlement provisions in § 114.10 will need to be revised.

1. Definition of Excess Campaign Funds

Section 113.1(e) of the regulations implements the statutory provisions regarding permissible uses of excess campaign funds. 2 U.S.C. 439a. The Commission is proposing to amend the definition of "excess campaign funds" so that a candidate's campaign committee could not declare excess campaign funds until after the campaign has ended and the committee has determined that it is not in a net debt situation. This proposal is intended to ensure that campaign funds will be used to pay for goods and services provided to the campaign. The Commission is concerned that under the current rules and advisory opinions, it is possible to declare excess campaign funds at any time, and to use those excess amounts to form a new campaign committee, or for a variety of political or non-political purposes, at the expense of the *bona fide* creditors of the previous committee. Accordingly, comments are sought on this proposed amendment.

2. Continuous Reporting of Debts and Obligations

Section 104.11 implements section 434(b)(8) of the Act by requiring that all debts and obligations owed by or to a political committee be continuously reported until extinguished, and by requiring the disclosure of settlements for less than the reported value or amount of the debt. Under § 104.11(b), debts of $500 or less must be reported either at the time of payment or no later than sixty days after they are incurred, which ever is earlier. However, obligations exceeding $500 must be reported as of the time of the transaction. Comments are requested as to whether § 104.11(b) should be revised to more clearly explain that debts exceeding $500 must be reported when they are incurred, and must be disclosed on subsequent reports as outstanding, and that payments must also be reported.

The Commission is also reevaluating the scope of § 104.11(b). Currently, for amounts not exceeding $500, the committee must disclose any "debt, obligation or other promise to make an expenditure." However, for amounts over $500, disclosure is required for "any loan, debt or obligation." The Commissioin's policy has been to treat these categories as the same. Accordingly, the Commission is considering clarifying this policy by making the language of the two provisions consistent with each other. Comments are requested as to whether both of these provisions should be revised to cover all "debts and obligations, including loans and written contracts, promises or agreements to make expenditures," which would be consistent with the definition of expenditure at 2 U.S.C. 431(9).

Several other questions concerning the reporting of debts and obligations could be addressed. For example, the reporting rules do not indicate when to report an employee's salary if the work is performed in one reporting period and the payment is made in another. Another situation that could be addressed concerns committees that may not know the exact amount of the obligation incurred during the reporting period until the vendor submits a bill in a later reporting period. This is particularly common with regard to telephone services and contingent fee arrangements. To ensure adequate disclosure, the Commission is considering whether it needs to be made clearer that the estimated cost should be reported as a debt on Schedule D with a notation that this amount is an estimate. When the committee receives the bill, it could either amend the previous report or note the change on a subsequent Schedule D. In some situations, the activity will also represent an in-kind contribution to a specific candidate. Thus, the estimated amount would also have to be included as a memo entry on Schedule B and adjustments would be made once the bill is received and paid. The detailed summary page would also reflect these figures and the changes. Comments are requested on whether this approach needs to be clarified.

Finally, § 104.11 could be amended to clarify when the obligation to continuously report ends. In most situations, the disclosure requirement ends once the bill is paid in full or the Commission has completed review of the debt settlement. However, a question arises as to whether a committee should also be permitted to report a debt as extinguished if the creditor has gone out of business. If this is allowed, the Commission recognizes that it may be necessary to require committees to demonstrate that the creditor no longer exists or that they have been diligent in trying to locate the creditor. Another issue concerns debts that are no longer legally enforceable against the committee under the applicable statute of limitations. The Commission is considering whether, in some cases, such debts should be treated as extinguished, thereby enabling the committees to terminate their reporting obligations. However, some committees may wish to make efforts to pay part or all of the amount owed, even after they are no longer legally obligated to do so. Comments are therefore requested as to whether committees should have the option to report debts as extinguished once they are no longer legally enforceable under the appropriate statute of limitations. The Commission notes that his approach would not be appropriate in situations where the credit was extended beyond a commercially reasonable length of time or where the creditor failed to take commercially reasonable steps to obtain payment.

The Commission welcomes comments on proposed new Par 116, the conforming amendments, and the issues raised in this Notice.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the Act's requirements in these areas.

List of Subjects

11 CFR Part 113

Campaign funds, Elections, Political candidates.

11 CFR Part 114

Business and industry, Elections, Labor.

11 CFR Part 116

Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

For the reasons set out in the preamble, it is proposed to amend Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 113—EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO SUPPORT FEDERAL OFFICE-HOLDER ACTIVITIES (2 U.S.C. 439a)

1. The authority citation for Part 113 would continue to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

2. Section 113.1 would be amended by revising paragraph (e) to read as follows:

§ 113.1 Definitions (2 U.S.C. 439a).

* * * * *

(e) *Excess campaign funds.* "Excess campaign funds" means amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures. The candidate shall not determine that any amounts constitute excess campaign funds until after the campaign has ended and the candidate has determined that his or her authorized committee has no net debts outstanding under 11 CFR 110.1(b)(3).

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

3. The authority citation for Part 114 would be revised to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432(c), 437d(a)(8), 438(a)(8) and 441b.

§ 114.10 [Removed and Reserved]

4. Section 114.10 would be removed and reserved.

5. Part 116 would be added to read as follows:

PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

Sec.

Authority: 2 U.S.C. 433(d), 434(b)(8), 438(c)(8), 441a, 441b and 451.

§ 116.1 Definitions.

(a) *Terminating committee.* For purposes of this part, "terminating committee" means any political committee that is in the process of winding down its political activities in preparation for filing a termination report, and that would be able to terminate under 11 CFR 102.3 except that it has outstanding debts and obligations.

(b) *Ongoing committee.* For purpose of this part, "ongoing committee" means any political committee that has not terminated and does not qualify as a terminating committee.

(c) *Commercial vendor.* For purposes of this part, "commercial vendor" means any person providing goods or services to a candidate or committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services for profit.

(d) *Disputed debt.* For purposes of this part, "disputed debt" means an actual or potential debt or obligation owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owned by the political committee.

§ 116.2 Debts owed by terminating and ongoing committees; transfers from indebted political committees.

(a) *Terminating committees.* A terminating committee may settle outstanding debts provided that the terminating committee files a debt settlement plan and the requirements of 11 CFR 116.7 are satisfied. The Commission will review the debt settlement plan to determine whether or not the terminating committee appears to have complied with the requirements set forth in this part, and whether or not the proposed debt settlement plan would result in an apparent violation of the Act or the Commission's regulations.

(b) *Ongoing committees.* An ongoing committee may not settle any outstanding debt for less than the entire amount owed. However, a creditor may forgive a debt owed by an ongoing committee provided the requirements of 11 CFR 116.8 are satisfied.

(c) *Transfers from indebted political committees.* No transfers of funds may be made from a candidate's authorized committee to another authorized committee of the same candidate if the transferor committee has net debts outstanding under 11 CFR 110.1(b)(3).

§ 116.3 Extensions of credit by commercial vendors.

(a) *Unincorporated vendor.* A commercial vendor that is not a corporation may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee. An extension of credit will not be considered a contribution to the candidate or political committee provided that the credit is extended in the ordinary course of the commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

(b) *Incorporated vendor.* A corporation in its capacity as a commercial vendor may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

(c) *Ordinary course of business.* In determining whether credit was extended in the ordinary course of business, the Commission will consider—

(1) Whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit;

(2) Whether the commercial vendor received prompt payment in full when it previously extended credit to the candidate or political committee; and

(3) Whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry.

(d) *Extension of credit by regulated industries.* The Commission may rely on the regulations prescribed by the Federal Communications Commission, the Interstate Commerce Commission, and the Department of Transportation on behalf of the Civil Aeronautics Board, issued pursuant to 2 U.S.C. 451 and any other regulations prescribed by other Federal agencies to determine whether extensions of credit by the entities regulated by those Federal agencies were made in the ordinary course of business.

§ 116.4 Forgiveness or settlement of debts owed to commercial vendors.

(a) *Unincorporated vendor.* A commercial vendor that is not a corporation may forgive or settle a debt incurred by a candidate, a political committee or another person on behalf of a candidate or political committee for less than the entire amount owed on the debt. The amount forgiven will not be considered a contribution by the commercial vendor to the candidate or political committee if—

(1) The amount forgiven is excluded from the definition of contribution in 11 CFR 100.7(b); or

(2) The commercial vendor has treated the debt in a commercially reasonable manner and the requirements of 11 CFR 116.7 or 116.8, as appropriate, are satisfied.

(b) *Corporation.* A corporation may not forgive or settle a debt incurred by a candidate, a political committee or another person on behalf of a candidate or political committee for less than the entire amount owed on the debt unless—

(1) The amount forgiven is excluded from the definition of contribution in 11 CFR 100.7(b); or

(2) The corporation has treated the debt in a commercially reasonable manner and the requirements of 11 CFR 116.7 or 116.8, as appropriate, are satisfied.

(c) *Commercially reasonable.* A debt settlement will be considered commercially reasonable if—

(1) The initial extension of credit was made in accordance with 11 CFR 116.3 or regulations issued pursuant to 2 U.S.C. 451;

(2) The candidate or political committee has undertaken all commercially reasonable efforts to satisfy the outstanding debt. Such efforts may include, but are not limited to, the following—

(i) Engaging in fundraising efforts;

(ii) Reducing overhead and administrative costs; and

(iii) Liquidating assets; and

(3) The commercial vendor has pursued its remedies as vigorously as it would pursue its remedies against a nonpolitical debtor in similar circumstances. Such remedies may include, but are not limited to, the following—

(i) Oral and written requests for payment;

(ii) Withholding delivery of additional goods or services until overdue debts are satisfied;

(iii) Imposition of additional charges or penalties for late payment;

(iv) Referral of overdue debts to a commercial debt collection service; and

(v) Litigation.

(d) *Settlement or forgiveness of the debt.* A commercial vendor and a political committee may agree to the total forgiveness of the debt pursuant to 11 CFR 116.8 or a settlement of the debt for less than the entire amount owed pursuant to 11 CFR 116.7. The provisions of this part shall not be construed to require a commercial vendor to forgive or settle the debt for less than the entire amount owed.

§ 116.5 Advances by committee staff and other individuals.

(a) *Treatment as contributions.* The payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee is a contribution unless the payment is excluded from the definition of contribution under 11 CFR 100.7(b)(8). If the payment is not exempted under 11 CFR 100.7(b)(8), it shall be considered a contribution by the individual unless—

(1) The payment is for the individual's transportation expenses incurred while traveling on behalf of a candidate or political committee of a political party or for usual and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate or political committee of a political party; and

(2) The individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. For purposes of this section, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement.

(b) *Treatment as debts.* A political committee shall treat a payment described in paragraph (a) of this section as an outstanding debt until reimbursed.

(c) *Settlement or forgiveness of the debt.* The individual and the political committee may agree to the total forgiveness of the debt pursuant to 11 CFR 116.8 or a settlement of the debt for less than the entire amount owed pursuant to 11 CFR 116.7. The provisions of this part shall not be construed to require the individual to forgive or settle the debt for less than the entire amount owed.

(d) *Reporting.* The political committee shall report the payment as a debt in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to 11 CFR 116.7(d) or until the individual agrees to forgive the entire amount owed pursuant to 11 CFR 116.8, or until the political committee pays the debt, whichever occurs first.

§ 116.6 Salary payments owed to employees.

(a) *Treatment as debts or volunteer services.* If a political committee does not pay an employee for services rendered to the political committee in accordance with an employment contract or a formal or informal agreement to do so, the unpaid amount may be treated either as a debt owed by the political committee to the employee or as volunteer services under 11 CFR 100.7(b)(3), provided that the employee signs a written statement agreeing to be considered a volunteer. The unpaid amount shall not be treated as a contribution under 11 CFR 100.7.

(b) *Settlement or forgiveness of the debt.* If the unpaid amount is treated as a debt, the employee and the political committee may agree to a settlement of the debt for less than the entire amount owed pursuant to 11 CFR 116.7. The provisions of this part shall not be construed to require the employee to settle the debt for less than the entire amount owed.

(c) *Reporting.* If the unpaid amount is treated as a debt, the political committee shall report the debt in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to 11 CFR 116.7(d) or until the employee agrees to be considered a volunteer, or until the political committee pays the debt, whichever occurs first.

§ 116.7 Debt settlement plans filed by terminating committees; Commission review.

(a) *Procedures for filing debt settlement plans.* A terminating committee that has any outstanding debts or obligations shall file a debt settlement plan with the Commission prior to filing its termination report under 11 CFR 102.3. The terminating committee shall continue to report all outstanding debts and obligations in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to paragraph (d) of this section. The terminating committee shall file the debt settlement plan after all of its creditors have agreed to the settlement or forgiveness of the particular debt(s) owed to each of them. The terminating committee shall not make any payments to the creditors pursuant to the settlement agreements until completion of Commission review.

(b) *Debts covered by the debt settlement plan.* The debt settlement plan shall provide for the disposition of the terminating committee's total assets and cash on hand and shall provide for the payment, settlement or forgiveness of each of the terminating committee's outstanding debts and obligations, including all amounts owed to the United States, commercial vendors, committee employees, volunteers, and other individuals, but not including any debts forgiven in accordance with 11 CFR 116.8. No debt or obligation owed to the United States shall be forgiven or settled for less than the entire amount owed except as permitted by other applicable law. Repayment obligations pursuant to 11 CFR 9007.2, 9008.10,

9008.11, 9038.2 or 9038.3 of funds received from the Presidential Election Campaign Fund or the Presidential Primary Matching Payment Account, and obligations to pay civil penalties pursuant to 2 U.S.C. 437g shall not be forgiven or settled for less than the entire amount owed.

(c) *Information required.* (1) The debt settlement plan shall provide the following information on each debt covered by the plan—

(i) The terms of the initial extension of credit and a comparison to the terms of the creditor's other extensions of credit involving nonpolitical debtors of similar risk and size of obligation;

(ii) A description of the efforts made by the candidate or the terminating committee to satisfy the debt;

(iii) A description of the remedies pursued by the creditor to obtain payment of the debt and a comparison to the remedies customarily pursued by the creditor in similar circumstances involving nonpolitical debtors; and

(iv) The terms of the debt settlement and a comparison to the terms of the creditor's other debt settlements involving nonpolitical debtors in similar circumstances, if any.

(2) Each debt settlement plant filed under this section shall include a signed affidavit from each creditor covered indicating agreement to the terms of the settlement of the debt owned to that creditor. The terminating committee shall notify each creditor as to the settlement terms offered to all other creditors, and shall permit each creditor to include in the debt settlement plan a written statement supporting or opposing the terms of the settlements offered to any other creditor(s).

(3) The debt settlement plan shall include a statement as to whether the terminating committee has sufficient cash on hand to pay the total amount indicated in the debt settlement plan, and if not, a statement as to what steps the terminating committee will take to obtain the funds needed to make the payments.

(4) If the terminating committee expects to have residual funds after disposing of its outstanding debts and obligations, the debt settlement plan shall include a statement as to the purpose for which such residual funds will be used.

(5) The debt settlement plan shall state whether the terminating committee expects to make or receive additional contributions or expenditures prior to termination, and when it expects to file a termination report under 11 CFR 102.3.

(6) Upon the Commission's request, the candidate, the terminating committee or the creditor shall provide such additional information as the Commission may require to review the debt settlement plan.

(d) *Commission review of debt settlement plans.* In reviewing the debt settlement plan, the Commission will consider—

(1) The information provided by the terminating committee and the creditors under this section;

(2) The amount of each debt that remains unpaid and the length of time each debt has been overdue;

(3) The amount and percentage of each debt that would be forgiven under the plan;

(4) The total amount of debts and obligations owed by the terminating committee to all creditors, compared to the total amount of cash on hand and other amounts available to pay those debts and obligations;

(5) The year to date expenditures and receipts of the terminating committee;

(6) Whether the total percentage that was or will be repaid on any loans made by the candidate to the terminating committee is comparable to the total percentage that was or will be paid to other creditors; and

(7) Whether the candidate has any other authorized committees as defined in 11 CFR 100.5(f)(1) that have funds available to transfer to the terminating committee to pay its outstanding debts and obligations.

§ 116.8 Creditor forgiveness of debts owed by ongoing committees; Commission review.

(a) *General requirements.* A creditor may forgive the total amount of a debt owed by an ongoing committee if the creditor and the ongoing committee have satisfied the requirements of 11 CFR 116.3 or 116.5, as appropriate, regarding the extension of credit, and—

(1) The creditor has exercised reasonable diligence in attempting to locate the ongoing committee and has been unable to do so; or

(2) The ongoing committee—

(i) Does not have sufficient cash on hand to pay the creditor;

(ii) Has receipts of less than $500 during the previous twenty-four months; and

(iii) Owes debts to other creditors of such magnitude that the creditor could reasonably conclude that the ongoing committee will not pay this particular debt.

(b) *Procedures for forgiving debts.* A creditor that intends to forgive a debt owed by an ongoing committee shall notify the Commission by letter of its intent. The letter shall demonstrate that the requirements set forth in paragraph (a) of this section are satisfied. The letter shall provide the following information—

(1) The terms of the initial extension of credit and a comparison to the terms of the creditor's other extensions of credit involving nonpolitical debtors of similar risk and size of obligation;

(2) A description of the efforts made by the candidate or the ongoing committee to satisfy the debt;

(3) A description of the remedies pursued by the creditor to obtain payment of the debt and a comparison to the remedies customarily pursued by the creditor in similar circumstances involving nonpolitical debtors; and

(4) An indication that the creditor has totally forgiven other debts involving nonpolitical debtors in similar circumstances, if any.

(c) *Commission review.* Upon the Commission's request, the ongoing committee or the creditor shall provide such additional information as the Commission may require to review the creditor's request. The Commission will review each request to forgive a debt to determine whether the candidate, the ongoing committee, and the creditor have complied with the requirements of 11 CFR 116.2 through 116.6, and whether or not the forgiveness of the debt would result in an apparent violation of the Act or the Commission's regulations.

§ 116.9 Disputed debts.

(a) *Reporting disputed debts.* A political committee shall report a disputed debt in accordance with 11 CFR 104.3(d) and 104.11 if the creditor has provided something of value to the political committee. Until the dispute is revolved, the political committee shall disclose on the appropriate reports the fair market value of what was provided, any amounts paid to the creditor, any amount the political committee admits it owes and the amount the creditor claims is owed. The political committee may also note on the appropriate reports that the disclosure of the disputed debt does not constitute an admission of liability or a waiver of any claims the political committee may have against the creditor. (*See also* 11 CFR 9035.1(a)(2) regarding the effect of disputed debts on a candidate's expenditure limitations under 11 CFR Part 9035.)

(b) *Disputed debts owed by terminating committees.* If a terminating committee and creditor have been unable to resolve a disputed debt, the terminating committee shall include the disputed debt in the debt settlement plan filed under 11 CFR 116.7. The debt settlement plan shall state what amount, if any, the terminating committee will pay to the creditor to satisfy the debt.

The debt settlement plan need not include a signed affidavit from the creditor pursuant to 11 CFR 116.7(c)(2).

Dated: November 30, 1988.

Danny L. McDonald,

Vice chairman, Federal Election Commission.

[FR Doc. 88-27903 Filed 12-5-88; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 774, and 786

[Docket No. 81139-8239]

General License G-COCOM; Shipments to Cooperating Countries

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Proposed rule with request for comments.

SUMMARY: To implement section 5(b)(2) of the Export Administration Act ("EAA") as amended by the Omnibus Trade and Competitiveness Act of 1988, the Bureau of Export Administration is proposing to create a new general license designated GCOCOM. General License G-COCOM is designed for exports to COCOM countries and countries designated as qualifying for full benefits under section 5(k) of the EAA. General License G-COCOM would authorize exports of those commodities described in Supplement No. 2 to Part 771, and those commodities eligible for General License G-COM or GFW. Supplement No. 2 to Part 771 lists commodities that could have been exported to the People's Republic of China with only notification to other COCOM governments as of the date of enactment of the Trade Act.

Some commodities are ineligible for General License G-COCOM because they are controlled for other than national security reasons or because their export requires more than mere notification to COCOM.

This procedure would not authorize exports or reexports to entities that the exporter or reexporter knows or has reason to know are controlled-in-fact by countries in Country Groups Q, W, Y or Z. BXA is seeking a means of assisting exporters and reexporters in identifying such entities. Among the options that will be considered is a full or partial list of entities known to BXA. Comments on this aspect of the proposal are encouraged.

DATE: Comments should be received by January 23, 1989.

ADDRESS: Written comments (six copies) should be sent to: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning or section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis was prepared.

2. The rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). As a result of this rule, a reduction of paperwork burden on the public is anticipated. Affected OMB controlled collection actions include 0694-0005, 0694-0007, and 0694-0010.

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

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

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Because this rule does not impose new controls, it is not subject to section 13(b) of the Export Administration Act. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close January 23, 1989. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4086, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2593.

List of Subjects in 15 CFR Parts 771, 774, and 786

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 771, 774, and 786 of the Export Administration Regulations (15 CFR Parts 768–799) are proposed to be amended as follows:

1. The authority citations for Parts 771, and 786 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985 and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. The authority citation for 15 CFR Part 774 is revised to read as follows:

Authority: Pub. L. 96–72, Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 771—[AMENDED]

3. A new § 771.24 is added to read as follows:

§ 771.24 General License G–COCOM: Certain shipments to cooperating countries.

(a) *Scope.* A general license designated G–COCOM is established, authorizing exports to COCOM participating countries and Switzerland, for use or consumption therein, of commodities that the United States may approve for export to controlled countries with only notification to the COCOM governments, as well as commodities within the China "Green Zone", as of August 23, 1988.

(b) *Eligible countries.* The countries that are eligible to receive exports under this general license are Belgium, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom. Exports may be made under G–COCOM only when intended for consumption within the importing country or when intended for reexport among and consumption within eligible countries.

(c) *Eligible exports.* The commodities eligible for export under this general license are those also eligible for General License G–COM or GFW, and those described in Supplement No. 2 to Part 771. End-use and quantity restrictions in Supplement No. 2 to Part 771, and the notes identifying those commodities that may be shipped under General License G–COM or GFW (see §§ 771.8 and 771.23), may be disregared in determining whether G–COCOM may be used. Shipments of eligible commodities are subject to the prohibitions contained in § 771.2(c).

(d) *Restrictions.* (1) No shipments of commodities that exceed the limits of General License G–COM (§ 771.8) may be made under this general license when the exporter knows or has reason to know the recipient is:

(i) An entity controlled in fact by a government in Country Group, Q, W, Y or Z;

(ii) A national of a country in Country Groups Q, W, Y or Z; or

(iii) An entity controlled in fact by nationals of a country in Country Groups Q, W, Y or Z.

(2) For purposes of this section, "controlled in fact" means the authority or ability of a government or national to establish, directly or indirectly, the general policies or to control, directly or indirectly, the day-to-day operations of the entity.

(3) An entity will be presumed to be controlled in fact by a government or national, subject to rebuttal by competent evidence, when such government or national:

(i) Owns or controls more than 50% of the outstanding voting stock of the corporation;

(ii) Has the authority and the ability to name or control the votes of a majority of the members of the board of directors of the corporation;

(iii) Has control or other powers to name the management of the corporation; or

(iv) Has powers similar to those listed in paragraph (d)(3) (i), (ii), or (iii) of this section with regard to unincorporated entities.

(4) An agency, department, diplomatic mission, or consular mission of a government will be presumed to be controlled in fact by such government.

4. A new Supplement No. 2 to Part 771 is added to read as follows:

Supplement No. 2 to Part 771—Commodities Eligible for General License G–COCOM

Export Control Commodity Number and Commodity Description

This Supplement provides a list of commodities eligible for General License G–COCOM. Use of this general license is subject to the conditions of § 774.24.

1312—Presses having no controlled thermal environment within the closed cavity and that are used for the manufacture of industrial refractory and ceramic products.

1353—Equipment specially designed for the manufacture of silicon-based optical fiber or cable, provided that it is designed to produce non-militarized silicon-based optical fiber or cable that is optimized to operate at a wavelength of 1,350 nm or less and provided that the equipment has been commercially available before May 1, 1985.

1354—Equipment for the manufacture of printed circuit boards, as follows:

(a) Equipment specially designed for the removal of resists or printed circuit board materials by dry (e.g., plasma) methods;

(b) "Stored program controlled" multi-spindle drills and routers with the following characteristics:

(1) Absolute positioning accuracy of + or − 5 micrometers or worse; and

(2) X and Y positioning speeds of 0.21 meter/second or slower for drilling of for routing.

1355—Equipment, as follows, for use in silicon semi-conductor manufacturing:

(a) Equipment for the production of polycrystalline silicon;

(b) Crystal pullers, except those that:

(1) Are rechargeable without replacing the crucible; or

(2) Operate at pressures above 1 atmosphere;

(c) Diffusion furnaces, except those that use computer feedback control operated from an "associated" computer;

Note: "Associated" with equipment or system means:

(a) Can feasibly be either:

(i) Removed from the equipment or systems; or

(ii) Used for other purposes; and

(b) Is not essential to the operation of such equipment or systems.

(d) Vacuum indication-heated zone refining equipment;

(e) Epitaxial reactors, except those that are:

(1) For molecular beam epitaxy; or

(2) Specially designed for organo-metallic deposition or liquid-phase epitaxy;

(f) Magnetically enhanced multiple-wafer sputtering equipment;

(g) Ion implantation, ion-enhanced or photo-enhanced diffusion equipment, except having:

(1) Patterning capability;

(2) An accelerating voltage for more than 200 keV; or

(3) A current greater than 0.5 mA;

(h) "Batch" planar, "batch" reactive ion, barrel or barrel-plannar dry etching equipment, except equipment incorporating end-point detection.

Note: "Batch" refers to equipment capable of etching two or more wafers simultaneously;

(i) Low pressure chemical vapor deposition equipment, except equipment capable of metal deposition;

(j) Reserved;

(k) Single-sided lapping and polishing equipment for wafer surfacing finishing;

(l) Hard surface (e.g., chromium, silicon, iron oxide) coated substrates (e.g., glass, quartz, sapphire) for the preparation of masks having dimensions greater then 12.5 cm x 12.5 cm;

(m) Mask fabrication equipment using photo-optical methods that was either commercially available before January 1, 1980, or has a performance no better than such equipment;

(n) Manually operated mask inspection equipment;

(o) Photo-optical contract and proximity mask align and exposure equipment defined in paragraph (b)(2)(vi), and projection aligners that can produce pattern sizes no finer than 3 micrometers;

(p) Contact image transfer equipment;

(q) Wafer and chip inspection equipment that was either commercially available before January 1, 1981, or has a performance no better than such equipment;

(r) Equipment for concurrent etching and doping profile analysis employing capacitance-voltage or current-voltage analysis techniques;

(s) "Stored program controlled" wire or die bonders;

(t) "Stored program controlled" wafer probing equipment that does not include associated test equipment or drive circuitry other than those identified in paragraphs (u) or (v) of ECCN 1355A;

(u) Test equipment for:

(1) Television circuit testing;

(2) Operational amplifier testing;

(3) Voltage regulator testing;

(4) Analog-to-digital and digital-to-analog converter testing; or

(5) Discrete semi-conductor testing at frequencies of 18 GHz or less;

(v) "Stored program controlled" equipment for functional testing (truth table) at a pattern rate of 10 MHz or less for micro-circuits or microcircuit assemblies.

1359—Tooling and fixtures for the manufacture of fiber-optic connectors and couplers controlled for export by ECCN 1526(f), provided that the tooling and fixtures are not specially designed to manufacture fiber-optic connectors and couplers for use with:

(a) Non-silicon-based fiber or cable; or

(b) Fiber-optic bulkhead or hull penetrators in ships or vessels.

1510—The following equipment:

(a) Acoustic systems or equipment for positioning surface vessels or underwater vehicles, providing that:

(1) They are not capable of processing responses from more than 8 beacons in the calculation of a single point;

(2) They have neither devices nor "software" for correcting automatically velocity-of-propagation errors for point calculation;

(3) They have no coherent signal processing means; and

(4) Transducers, acoustic modules, beacons or hydrophones therefor are not designed to withstand pressure during normal operation at depths greater than 1,000 meters;

(b) Side-scan sub-bottom profile systems, no portion of which is specially designed for operation at depths greater than 1,000 meters.

1519—The following equipment or components and accessories controlled for exports by paragraphs (a) or (b) of this ECCN:

(a) General communication transmission equipment, provided that:

(1) The equipment is to be used in non-strategic applications;

1510—The following equipment:

(a) Acoustic systems or equipment for positioning surface vessels or underwater vehicles, providing that:

(1) They are not capable of processing responses from more than 8 beacons in the calculation of a single point;

(2) They have neither devices nor "software" for correcting automatically velocity-of-propagation errors for point calculation;

(3) They have no coherent signal processing means; and

(4) Transducers, acoustic modules, beacons or hydrophones therefor are not designed to withstand pressure during normal operation at depths greater than 1,000 meters;

(b) Side-scan sub-bottom profile systems, no portion of which is specially designed for operation at depths greater than 1,000 meters.

1519—The following equipment or components and accessories controlled for exports by paragraphs (a) or (b) of this ECCN:

(a) General communication transmission equipment, provided that:

(1) The equipment is to be used in non-strategic applications;

(2) It is for other than underwater use;

(3) It is to be permanently installed in circuit (radio, coaxial cable, or multimode optical fiber) operated by the civilian authorities of the importing country; and

(4) It is to be used for general commercial traffic with a total digital bit rate at the highest level multiplex point of 45 Mbits per second or less for optical fiber or 140 Mbits per second or less for radio or coaxial cable, as follows:

(i) With a total number of voice channels per each physical bearer of 672 or less for optical fiber of 1,920 or less for radio or coaxial cable; or

(ii) With one monochrome or color television channel with a maximum nominal bandwidth of 6 MHz and associated sound channels in the case of optical fiber or four of those television channels and associated sound channels in the case of radio or coaxial cable;

(b) Intra-city communication transmission equipment, provided that it is:

(1) Designed for operation at a total digital data signalling rate at the highest level multiplex point of 140 Mbits per second or less;

(2) Installed under the supervision of the seller in a permanent circuit (radio, coaxial cable, multimode optical fiber with, or single mode optical fiber without repeaters/regenerators) between communication switching equipment; and

(3) Intended for general commercial traffic in an intra-city civil communication system;

(c) The minimum set of spare parts;

(d) Test or measurement equipment necessary for the use (i.e., installation, operation and maintenance) of equipment exported under the provision of this entry, provided:

(1) It cannot operate at a data rate exceeding 140 Mbits per second; and

(2) It will be supplied in the minimum quantity required for the transmission equipment eligible for export under this entry.

1519—The following equipment:

Modems and multiplexers controlled for export by subparagraphs (a)(2)(A) and (a)(2)(B) of this ECCN designed for operation at data signalling rates of 19,200 bps or less.

1520—The following radio relay communication equipment:

(a) Analog microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 20 GHz with a capacity of up to 1,920 voice channels of 4 kHz each or of a television channel of 6 MHz maximum nominal bandwidth and associated sound channels;

(b) Digital microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 19.7 GHz with a capacity of up to 1,9200 voice channels of 3.1 kHz or four television channels of 6 MHz maximum nominal bandwidth and associated sound channels;

(c) Ground communication radio equipment for use with temporarily-fixed services operated by the civilian authorities and designed to be used at frequencies not exceeding 20 GHz;

(d) Radio transmission media simulators/channel estimators designed for the testing of equipment covered by (a) or (b) above;

(e) Power amplifiers not exceeding 10 W and 6/4–GHz–transmitters/receivers for communication satellites.

1522—The following equipment:

(a) Tunable pulsed flowing-dye lasers having all of the following characteristics, and specially designed components therefor:

(1) An output wavelength shorter than 0.8 micrometer;

(2) A pulse duration not exceeding 100 ns; and

(3) A peak output power not exceeding 15 MW; (b) CO_2, CO or CO/CO_2 lasers having an output wavelength in the range from 9 to 11 micrometers and a pulsed output not exceeding 2 joules per pulse and a maximum rated average single-or multi-mode output power not exceeding 5 KW or a continuous wave maximum rated single-or multi-mode output power not exceeding 10 KW;

(c) Equipment specially designed for medical applications incorporating ND:YAG lasers covered by paragraph (a)(vi) of ECCN 1522A;

(d) Laser systems for trimming resisters of thick/thin film electronic circuits;

(e) Equipment incorporating CO_2 lasers with average or continuous wave output power not exceeding 5 kW, not exceeding the parameters of ECCN 1091A, and specifically designed for welding, cutting, bonding or drilling metals for civil applications.

1529—The following equipment:

(a) Quartz or rubidium frequency standards not specifically designed for military use;

(b) Swept frequency network analyzers or sweep generators for use at frequencies not exceeding 40 GHz and that cannot be controlled remotely;

(c) Swept frequency network analyzers for the automatic measurement of complex equivalent circuit parameters over a range of frequencies where the maximum frequency does not exceed 20 GHz;

(d) Instruments in which the functions can be controlled by the injection of digitally

coded electrical signals from an external source where the maximum frequency does not exceed 20 GHz;

(e) Instruments incorporating computing facilities with "user-accessible programability" and an alterable program and data memory of a total of less than 32 Kbytes;

(f) Digital test instruments with "users-accessible programability" controlled for export by sub-paragraph (b)(5) of this ECCN 1529A, required for the use (installation, operation or maintenance) of microcircuits or computers that are exported to the People's Republic of China under Advisory Notes to ECCNs 1564A or 1565A;

(g) Microprocessor and microcomputer development instruments for 8 bit microcircuits, i.e., microcircuits having an operand (data) word length of less than or equal to 8 bit(s) and an arithmetic logic unit (ALU) of less than or equal to 16 bit;

(h) Digital counters with any of the following characteristics:

(1) Not capable of counting successive input signals with less than 1.6 ns time difference without prescaling (digital division) of the input signal;

(2) Employing prescaling of the input signal in which the prescaler is not capable of resolving successive input signals with less than 0.5 ns time difference; or

(3) Not capable of measuring burst frequencies exceeding 250 MHz for a burst duration of less than 2 ms;

(i) Time interval measuring equipment employing digital techniques, not capable of measuring time intervals of less than 1 ns or a single shot basis;

(j) Instruments controlled by sub-paragraph (f) of this entry, not capable of more than 1,000 independent measurements per second;

(k) Transient recorders, not capable of sampling single input signals at successive intervals of less than 20 ns.

(l) PROM programers controlled by subparagraph (b)(6) of this ECCN.

1531—The following and specifically designed components and accessories therefor:

(a) "Frequency synthesizers" controlled only by paragraph (a) and not incorporating cesium beam standards;

(b) Instruments "frequency synthesizers" and synthesized signal generators controlled only by paragraphs (b)(1) an (b)(3) and having a maximum output frequency of 18 GHz, provided the "frequency switching time" is 2.0 ms or more;

(c) Instrument "frequency synthesizers" and synthesized signal generators not controlled by paragraph (b)(4) and having a maximum output frequency of 2.6 GHz, provided the "frequency switching time" is 0.3 ms or more;

(d) Conventional synthesizer based, digitally controlled, civil land or marine mobile radio receivers and transmitters, provided:

(1) They operate at frequencies not exceeding 960 MHz;

(2) The power output and frequency resolution parameters specified in paragraph (e)(3)(ii) remain in force;

(3) The equipment has "frequency switching time" of 5 ms or more;

(4) The equipment does not employ either frequency agility or other spread spectrum techniques; and

(5) The synthesizers are embedded in the radio receivers or transmitters;

(e) Radio receivers controlled by paragraph (d)(1) that have 1000 selective channels or fewer.

1533—The following equipment:

(a) Non-programmable signal analyzers including those with a tracking signal generator, provided the display bandwidth is 4.4 GHz or less;

(b) Programmable signal analyzers, including those with a scanning preselector or a tracking signal generator, having both of the following characteristics:

(1) Operating at frequencies of 4.4 GHz or less; and

(2) The overall dynamic range of the display not exceeding 100 dB;

(c) Signal analyzers employing time compression of the input signal of Fast Fourier Transform techniques not capable of;

(1) Analyzing signals with a frequency higher than 100 KHz if the instrument uses time compression, or

(2) Calculating 512 complex lines in less than 50 ms.

1537—Microwave equipment controlled for export by sub-paragraphs (a), (b) or (c) of ECCN 1537A, when designed for use at frequencies not exceeding 40 GHz and when specially designed for use with conventional commercial instruments described in ECCNs 1529A, 1531A, or 1533A, provided that the equipment does not in any way extend the frequency range of the basic instrument.

1548—Semi-conductor photodiodes for previously approved and installed Western civil communications equipment with a response time constant of 0.5 ns or more and with a peak sensitivity at a wavelength neither longer than 1,350 nm nor shorter than 300 nm.

Note: The photodiodes will be supplied on a replacement basis with no enhancement of the system.

1555—Electron tubes, as follows:

(a) Image intensifer and image conversion tubes that incorporate fiber optic face-plates or microchannel-plates, except image tubes specially designed for cameras controlled for export by ECCN 1585A;

(b) Television and video camera tubes that incorporate:

(1) Fiber optic face-plates; or

(2) Microchannel-plate electron multipliers not controlled by ECCN 1556A.

Note: Eligibility Note does not apply to electron tubes incorporating a gallium arsenide (or similar semi-conductor) photocathode.

1564—"Assemblies" for printed circuit boards and integrated circuits not specially designed to military standards for radiation hardening or temperature as follows:

(a) "Substrates" for printed circuits, except those exceeding the limits of subparagraph (a)(1)(E) or (a)(2) of this ECCN;

(b) Silicon-based devices exceeding the limits of:

(1) Subparagraphs (d)(2)(D)(a), (b) or (c), except those with more than 28 terminals;

(2) Subparagraphs (d)(2)(D)(g), or (h)

(3) Subparagraphs (d)(2)(D)(k), (1), (m)(4) and (5), (n), (r), (s), or (u); or

(4) Subparagraphs (d)(2)(D)(f), or (g)

(c) Silicon-based 8 bit or less "microcomputer microcircuits" exceeding the limit of subparagraphs (d)(2)(D)(e)(1) to (7);

(d) Silicon-based "microprocessor microcircuits" with an operand length of 16 bits or less and an arithmetic logic unit (ALU) not wider than 32 bit and exceeding the limits of subparagraphs (d)(2)(D)(i)(1) to (6), except;

(1) Those with a total processing data rate exceeding 28 million bits per second;

(2) Bit-slice "microprocessors microcircuits";

(e) Silcon-based memory devices, as follows:

(1) MOS DRAMs with no more than 256 Kbits;

(2) MOS SRAMs with no more than 64 Kbits;

(3) Mask PROMS with no more than 512 Kbits;

(4) UV-EPROMs (except keyed access EPROMs) with no more than 256 Kbits;

(5) EAROMs with no more than 64 Kbits; or

(6) EEROMs with no more than 64 Kbits;

[Note: 1 Kbit=1,024 bits.]

(f) Operational amplifiers exceeding the limits of subparagraph (d)(2)(D)(k)(4) that do not have slew rates exceeding 100 volts per microsecond;

(g) Analog-to-digital and digital-to analog converters exceeding the limits of subparagraphs (d)(2)(D)(m)(1) to (3), except:

(1) Analog-to-digital converters with less than a 500 ns conversion time to a maximum resolution of 12 bits;

(2) Digital-to-analog converters with less than 500 ns settling time for voltage output and a maximum resolution of 12 bits;

(3) Digital-to-analog converters with less than 25 ns settling time for current output and a maximum resolution of 12 bits;

(h) Silicon-based 8 bits or less user-programmable single chips "microcomputer microcircuits" controlled for export by subparagraph (d) of this ECCN;

(i) "Optical integrated circuits":

(1) Controlled for export by subparagraph (d) of this ECCN;

(2) With no more than 2,048 elements; and

(3) Not exceeding the limits of paragraphs (a) and (b) of ECCN 1548A; and

(j) Not-reprogrammable silicon-based integrated circuits specially designed or programed by the manufacturer for business or office use.

1565—"Digital computers" or "related equipment" therefor controlled for export by paragraph (h) of this ECCN 1565A, provided that:

(a) The "digital computers" or "related equipment" therefor;

(1) Are exported as complete systems or enhancements to previously exported systems up to the limits of paragraph (b) of this entry;

(2) Do not fall within the scope of both paragraphs (h)(1)(ii) (A) and (B);

(b) The "digital computers" or "related equipment" therefor do not exceed any of the following limits:

(1) Central processing unit with a "total processing data rate" of 550 million bit/s;

(2) Array transform processors:

(i) "Equivalent multiply rate"—800,000 operations per second;

(ii) Fast Fourier Transform of 1,024 complex points—40 ms;

(c) The "digital computers" or "related equipment" therefor do not have the following characteristics:

(1) Those identified in paragraphs (h)(1)(i)(D) to (H) or (M); or

(2) Those identified in paragraph (h)(1)(i)(b) having an "equivalent multiply rate" of more than 2 million operations per second;

1565—"Digital computer" or "related equipment" therefor in accordance with Advisory Note 5, on the understanding that:

(a) Paragraph (b)(1) of Advisory Note 5 does not apply;

(b) The "total processing data rate" under paragraph (c) of Advisory Note 5 does not exceed 155 million bit/s.

1565—Peripheral equipment and input/output interface or control units therefor as follows:

(a) Cathode ray tube graphic displays that do not exceed:

(1) 1,024 resolvable elements along one axis and 1,280 resolvable elements along the perpendicular axis; or

(2) 256 shades of gray or color (8 bit per pixel);

(b) Plotting equipment and digitalizing equipment that has an accuracy of 0.002% or worse, and an active area of 254 cm x 254 cm or smaller;

(c) Non-impact type printers and laser printers having a resolution not exceeding 120 dots per cm (300 dots per inch);

(d) Optical character recognition (OCR) equipment;

(e) Light gun devices or other manual graphic input devices.

(f) Disk drives having either an unformatted capacity that does not exceed 5.04 giga bytes or a maximum bit transfer rate that does not exceed 3 mega bytes/sec.

1565—Personal computers and small business computer systems controlled by paragraph (h) that do not exceed any of the following parameters:

(Note: This does not apply to graphic workstation exceeding the limits of paragraphs (a)(7) of Advisory Note 9)

(a) "Total processing data rate"—136 million bit/s;

(b) "Virtual storage" capability—512 MBytes

(Note: Supermini "digital computers" with a "virtual storage" capacity exceeding the level in this paragraph (b) will not be eligible for consideration under this Note. It is recognized, however, that other "digital computers" (e.g., micro-computers and super microcomputers) may have a "virtual storage" capacity exceeding this limit and in such cases they may be considered under this Note.)

(c) The other technical parameters of the system—the limits contained in paragraph (b) of Advisory Note 9 without taking into account paragraph (b)(2)(v) of Advisory Note 9.

1565—Spare parts in accordance with Advisory Note 7 (a) and (b) to this ECCN 1565A.

1567—"Stored-program-controlled telephone circuit switching" equipment or systems controlled by sub-paragraph (b) of this entry, provided that:

(a) The equipment or systems are designed for fixed civil use as "space-division digital exchanges" or "time-division digital exchanges" that fulfill the definition of "private automatic branch exchanges" ("PABXs");

(b) The equipment or systems:

(1) Are designed and used for fixed civil "stored-program-controlled telephone circuit switching" applications; and

(c) The equipment or systems do not contain "digital computers" or "related equipment" controlled for export by:

(1) ECCN 1565A(f);

(2) ECCN 1565A(h)(i) (a) to (k) or (m); or

(3) ECCN 1565A(h)(1)(ii);

(d) The "PABXs" do not have the following features:

(1) Multi-level call pre-emption, including overriding or seizing of busy subscriber lines, "truck circuits" or switches;

(Note: This limitation does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(3) Automatic tandem "trunk circuit" switching, including adaptive routing, or algorithms that would permit a search for "trunk circuit" connection paths within a network;

(4) Reserved;

(5) Reserved;

(6) Digital synchronization circuitry for networking two or more exchanges except that permitting slave exchanges to be synchronized by master exchanges;

(7) Reserved;

(8) Centralized maintenance by means of transmission or reception of instructions for the purpose of:

(i) Controlling traffic;

(ii) Directionalizing paths;

(iii) Altering routing tables;

(iv) Connecting or disconnecting subscriber circuits or "trunk circuits"; or

(v) Managing the network;

(e) "Communication channels" or "terminal devices" used for administrative and control purposes:

(1) Are fully dedicated to these purposes; and

(2) Do not exceed a "total data signalling rate" of 19,200 bit per second;

(f) Reserved;

(g) Reserved;

(h) Reserved;

(i) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; and

(ii) Machine-executable form; and

(2) Does not include "software":

(i) Controlled by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 779 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); or

(ii) To permit user-modification of generic "software" or its associated documentation;

1567—"Stored-program-controlled circuit switching" equipment or systems controlled for export by sub-paragraph (b) of this ECCN 1567A, provided that:

(a) The equipment or systems are designed for fixed civil use of "stored-program-controlled telegraph circuit switching" for data;

(b) The equipment or systems:

(1) Are designed and used for fixed civil "stored-program-controlled telegraph circuit switching" applications;

(c) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(1) ECCN 1565A(f);

(2) ECCN 1565A(h)(1)(i) (a) to (k) or (m); or

(3) ECCN 1565A(h)(1)(ii);

(d) The equipment or systems do not have the following features:

(1) Multi-level call pre-emption including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

Note: This limitation does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(e) The maximum internal bit rate per channel does not exceed 19,200 bit per second;

(f) Reserved;

(g) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; and

(ii) Machine-executable form; and

(2) Does not include "software":

(i) Controlled by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 779 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); or

(ii) To permit user-modification of generic "software" or its associated documentation;

1567—"Stored-program-controlled circuit switching" equipment or systems, controlled for export by sub-paragraph (b) of this entry, provided that:

(a) The equipment or systems are designed for fixed civil use as "stored-program-controlled telephone circuit switching" exchanges that fulfill the definitions of either "terminal exchange" or transit exchange";

(b) Reserved;

(c) The equipment or systems:

(1) Are designed and used for fixed civil "stored-program-controlled telephone circuit switching" applications;

(d) The equipment or systems cannot be adapted to mobile use or security use, as described in ECCN 1565A(f)(1) to (4), (g) or (h)(1)(ii)(a) and (b);

(e) Reserved;

(f) The equipment or systems do not have the following features:

(1) Multi-level call pre-emption including overriding or seizing of busy subscriber lines, "trunk circuits" or witches;

Note: This limitation does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(3) Adaptive routing or algorithms that would permit a search for "trunk circuit" connection paths within a network;

(4) Reserved;

(5) Reserved;

(6) Digital synchronization circuitry for networking two or more exchanges except that permitting slave exchanges to be synchronized by master exchanges; or

(7) Centralized maintenance by means of transmission or reception of instructions for the purposes of:

(i) Controlling traffic;

(ii) Directionalizing paths;

(iii) Altering routing tables;

(iv) Connecting or disconnecting subscriber circuits or "trunk circuits"; or

(v) Managing the network;

(g) "Communication channels" or "terminal devices" used for administrative and control purposes:

(1) Are fully dedicated to these purposes; and

(2) Do not exceed a "total data signalling rate" of 19,200 bit per second;

(h) Reserved;

(i) Reserved;

(j) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; and

(ii) Machine-executable form; and

(2) Does not include "software":

(i) Controlled by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 779 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); or

(ii) To permit user-modification of generic "software" or its associated documentation;

1572—Recording and reproducing equipment, as follows:

(a) Graphic instruments capable of continuous direct recording of sine waves at frequencies exceeding 20 KHz, and not containing a cathode ray tube with a fiber optic face plate;

(b) Analog magnetic tape recorders with all of the following characteristics:

(1) Bandwidth of up to:

(i) 4 MHz per track and having up to 28 tracks; or

(ii) 2 MHz per track and having up to 42 tracks;

(2) Tape speed of 610 cm (240 inches) per second or less;

(3) Not designed for underwater use;'

(4) Not ruggedized for military use; and

(5) Recording density not exceeding 6,532 magnetic flux sine waves per cm;

(c) Instrumentation digital recorders having all of the following characteristics:

(1) "Packing density" of 13,125 bits per cm or less;

(2) Maximum of 28 tracks;

(3) Tape speed of 305 cm (120 inches) per second or less;

(4) Not designed for underwater use; and

(5) Not ruggedized for military use;

(d) Magnetic tape appropriate for use with magnetic tape recorders free from control or exportable under this entry, provided that the tape length, "packing density" and "recording density" do not exceed the performance limits of the magnetic tape recorders;

(e) Disks appropriate for use with disk drives free from control or exportable under this entry, provided that the "packing density" and inner and outer diameters do not exceed the preformance limits of the disk drives;

(f) Video magnetic tape recorders specially designed for television recording.

1568—Analog-to-digital or digital-to analog converters, as follows:

(a) Analog-to-digital converters with more than a 200 ns conversion time to a maximum resolution of 12 bit;

(b) Digital-to-analog converters with more than 200 ns settling time for voltage output and a maximum resolution of 12 bit;

(c) Digital-to-analog converters with more than 25 ns settling time for current output and a maximum resolution of 12 bit.

1584—Cathode-ray oscilloscope not having any of the following characteristics:

(a) An amplifier bandwidth exceeding 350 MHZ;

(b) A horizontal sweep speed faster than 1 ns per cm and an accuracy (linearity) better than 2%;

(c) Using sampling techniques for the analysis of recurring phenomena that increase the effective bandwidth of an oscilloscope or time-domain reflectometer to a frequency greater than 5 GHz;

(d) Digital oscilloscopes with sequential sampling of the input signal at intervals of less than 20 ns;

(e) Ruggedized to meet military specifications; or

(f) Rated for operation over a temperature range of below −25 degrees C to above +55 degrees C.

1585—The following:

(a) Non-ruggedized cinema recording cameras, controlled for export by paragraph (a) of this ECCN, for normal civil purposes;

(b) Mechanical framing cameras controlled for export by paragraph (b) of this entry that are designed for civil purposes (i.e., non-nuclear use) with a framing speed of not more than $2x10^6$ frames per second;

(c) Electronic streak and/or framing cameras having all of the following characteristics:

(1) Not ruggedized;

(2) Capable in the framing mode of speeds of no more than 10^6 frames per second;

(3) Capable in the streak mode of writing speeds no more than 10mm per second;

(4) Designed for civil use;

(5) The performance of the camera is not field-upgradable such as through the substitution of electronic plug-ins;

(6) Exported for non-nuclear use; and

(7) Not using a electron tube having a gallium arsenide (GaAs) photocathode.

1587A—The following:

(a) Temperature-compensated crystal oscillators (TCXOs) copntrolled for export only by sub-paragraph (c)(1) of this ECCN 1587A;

(b) Quartz crystals for use as oscillator elements specially designed for temperature-controlled crystal ovens or for TCXOs covered by sub-paragraph (c) and having an average aging rate of + or − $1x10^{-11}$ per day or better (less) except stress compensated (SC) cut crystals.

3605A—Nickel powder obtained by the carbonyl process for non-nuclear civil applications.

1757A—Monocrystalline silicon, as follows:

(a) N-type, crystal orientation 1–1–1 with a resistivity not exceeding 100 ohm/cm;

(b) P-type, crystal orientation 1–1–1 with a resistivity not exceeding 5 ohm/cm;

(c) Polycrystalline silicon;

(d) Compounds used in the synthesis of polycrystalline silicon.

1767A—Optical fiber preforms specially designed for the manufacture of silicon-based optical fibers, provided that they are designed to produced non-militarized silicon-based optical fibers that are optimized to operate at a wavelength of 1,350 nm or less.

PART 774—[AMENDED]

§ 774.2 [Amended]

4. Section 774.2(a)(1) is amended by adding the phrase "G–COCOM" immediately after the phrase "G–COM" and before the phrase "GFW".

PART 786—[AMENDED]

5. Section 786.6 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 786.6 Destination control statements.

* * * * *

(ii) General License GLV, GTF–US, GTE, GLR, G–COM, G–COCOM or C–CEU; or

* * * * *

Dated: November 30, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88–27977 Filed 12–5–88; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Proposed Customs Regulations Amendment Relating to Charges for Returned Checks

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule, solicitation of comments.

SUMMARY: This document sets forth a proposed amendment to the Customs Regulations which will authorize a $100 charge for any check returned unpaid which was presented for payment of duties on noncommercial importations for which formal entry is not required or other Customs transactions not backed by a Customs bond. Currently there is no charge to cover the considerable extra expenditures in time and resources which the Customs Service incurs in connection with returned checks and attempted collection.

DATE: Comments must be received on or before February 6, 1989.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: John V. Accetturo, Chief, Billings & Collections, National Finance Center, U.S. Customs Service (317–298–1307).

SUPPLEMENTARY INFORMATION:

Background

Each year the Customs National Finance Center (NFC) receives over 4,000 returned checks drawn by importers, brokers, and persons returning from travel abroad. Establishing accountability for the associated debit vouchers and collecting the returned checks is an administrative process requiring significant time and effort that must be devoted to processing and handling by both the NFC and field officials. Although the NFC is primarily involved in establishing and monitoring control over the accountability and collection of the returned checks, there are substantial operational costs incurred at the NFC and at the district/port level where Customs officers must establish liquidated dameges, research entry documentation and provide copies of files to the NFC for colletion action. These special actions, which are necessary only because of returned checks, disrupt and impede the Customs commercial operations mission. Accordingly, Customs proposes to impose a $100 charge for each returned check presented for payment of duties or other charges on noncommercial importations for which a formal entry is not required or other transactions not backed by a Customs bond. This charge reflects the actual cost to Customs of processing the returned check.

Comments

Before adopting this proposal, consideration will be given to any written comments (perferably in triplicate) that are submitted timely to the Customs Service. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory impact analysis or other requirements of 5 U.S.C 603 and 604.

Drafting Information

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Taxes, Wages.

Proposed Amendment

It is proposed to amend Part 24, Customs Regulations (19 CFR Part 24) as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24, Customs Regulations (19 CFR Part 24) and the specific authority for § 24.1, therein (19 CFR 24.1) would continue to read as follows:

Authority: 19 U.S.C. 66, 1202, 1624, 31 U.S.C. 9701; Pub. L. 99–272, Pub. L. 99–509. Pub. L. 99–662. Section 24.1 also issued under 19 U.S.C. 197, 198, 1648.

2. It is proposed to amend § 24.1 by adding a new paragraph (e) to read as follows:

§ 24.1 Collection of Customs duties, taxes, and other charges.

* * * * *

(e) Any person who pays by checks any duties, taxes, fees or other charges or obligation due the Customs Service which is not guaranteed by a Customs bond shall be assessed a charge of $100 for each check which is returned upaid by a financial institution for any reason. This charge shall be in addition to any unpaid duties, taxes and other charges.

William von Raab,

Commissioner of Customs.

Approved: October 21, 1988.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88–27982 Filed 12–5–88; 8:45 am]

BILLING CODE 4820–02–M

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL–934–86]

Branch Tax; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the branch tax. This regulation will provide immediate guidance to taxpayers concerning the imposition of tax on profits of a U.S. branch of a foreign corporation that are removed from the branch and on interest that is paid, or deemed paid, by the branch.

DATES: The public hearing will be held on Tuesday, January 17, 1989, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Tuesday, January 3, 1989.

ADDRESS: The public hearing will be held in the I.R.S. auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, Attn: CC:CORP:T:R, Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Angela Wilburn of the Regulations Unit, Assistant Chief Counsel (Corporate), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202–566–3935 (not a toll free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 884, as added to the Code by section 1241 of the Tax Reform Act of 1986. The proposed regulations appeared in the Federal Register for Friday, September 2, 1988 at page 34120 (53 FR 34120).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to

the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, January 3, 1988 an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the Government and answers to these questions.

Because of controlled access restriction, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88-28032 Filed 12-5-88; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3487-2]

Approval and Promulgation of Implementation Plans; Sacramento, San Diego, South Coast, and San Francisco Bay Area Air Pollution Control Regulations; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On September 20, 1988 (53 FR 36473), EPA invited comment on the proposed disapproval of three rules, and the proposed approval of one rule, for the control of volatile organic compound emissions from can and coil coating operations in California. Sacramento County Air Pollution Control District Rule 452 (submitted on February 10, 1986), San Diego County Air Pollution Control District Rule 67.4 (submitted on November 12, 1985), and South Coast Air Quality Management District Rule 1125 (submitted on June 4, 1986) are proposed for disapproval. Bay Area Air Quality Management District Regulation 8, Rule 11 (submitted on April 12, 1985) is proposed for approval. At the request of a commentor during the comment period, EPA is extending the public comment period for a period of 60 days from the prior November 4, 1988 closing date.

DATE: Comments may be submitted to EPA at the address below, until January 3, 1989.

ADDRESSES. Comments on the proposal published at 53 FR 36473 on September 20, 1988 should be sent to: Morris Goldberg (A-2-3), Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Morris Goldberg at (415) 974-8213.

Date: November 2, 1988.

John Wise,

Acting Regional Administrator.

[FR Doc. 88-28035 Filed 12-5-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3483-6]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a site-specific revision to the Wisconsin State Implementation Plan (SIP) for ozone. This revision is a request for a site-specific reasonably available control technology (RACT) determination for volatile organic compounds (VOC) emissions from two miscellaneous metal parts and products spray coating lines at General Electric Company, Medical Systems (GE). This facility is located in Milwaukee, Wisconsin.

USEPA is proposing to disapprove this SIP revision, because the State has not documented that GE cannot meet a lower limit through the use of low solvent coatings.

DATE: Comments on this revision and on the proposed USEPA action must be received by January 5, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On August 22, 1986, the Wisconsin Department of Natural Resources (WDNR) submitted a proposed revision to its ozone SIP, consisting of a site-specific RACT [1] determination for two miscellaneous metal parts and products spray coatings lines. These operations are located at the GE facility in Milwaukee, Wisconsin, an area which has been designated as nonattainment for ozone, pursuant to Section 107 of the Clean Air Act (Act) and 40 CFR Part 81, 81.350.

On November 24, 1986, USEPA notified WDNR that the August 22, 1986, submittal was deficient for reasons stated in USEPA's technical support document (TSD), dated October 27, 1986. WDNR submitted supplemental information on January 29, 1987, which was intended to correct the cited deficiencies.

Wisconsin's SIP

Under the existing federally approved SIP for Wisconsin, each miscellaneous metal parts and products spray coating line is subject to the control requirements contained in Wisconsin Administrative Code, Section National Resource (NR) 154.13(4)(m). This rule limits air-dried coating to 3.5 pounds of VOC per gallon, excluding water, by December 31, 1985. USEPA approved these rules as meeting the RACT requirements of the Act on January 11, 1980 (45 FR 2319), and June 21, 1982 (47 FR 26622).

Analysis

In order for 7.31 pounds of VOC per gallon of coating limit proposed by GE

[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

to be considered RACT, the source must demonstrate that it is technically or economically infeasible to meet a lower emission limit using coatings with a lower VOC content or using add-on control equipment.

WDNR's January 29, 1987, submittal contains documentation of GE's efforts to reduce the VOC emissions from this process. This documentation shows that GE has considered the following alternatives:

1. Eliminate the coating step by integrating the lead shielding into the casing design. This study which was initiated in August 1986, is expected to extend into the fourth quarter of 1988.

2. Contract with an outside vendor to coat the lead shielding. The vendor contacted by GE, which coats for GE's competitors, indicated that it would be unable to coat GE's parts due to chemical storage issues.

3. Use of coating recommended by the vendor mentioned above. The VOC content of this coating exceeds the SIP limit. In fact, this coating has a higher VOC content than the one currently used by GE.

4. Use of a vacuum impregnation process utilizing solventless coatings. This process was determined to be infeasible for GE's application due to the density of the lead being coated.

5. Investigation of other coating materials. GE has provided evidence of having contacted, in late 1986, several suppliers of coating materials.

However, GE has not demonstrated that the suppliers are unable to provide coatings with a lower VOC content that meet all of GE's criteria. GE has provided limited information about coatings that it intends to evaluate. Wisconsin must also demonstrate that a 7.31 pound emission limit is RACT. Further discussion of the type of demonstration required can be found in Appendix A to the notice of proposed rulemaking for Easco Aluminum published on November 9, 1988 at 53 FR 45285.

Proposal

USEPA is proposing to disapprove this SIP revision because the State has not adequately documented that GE cannot meet a lower limit through the use of low solvent coatings.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before January 5, 1989 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office address provided at the front of this notice.

Under 5 U.S.C. 605(b), I certify that this SIP disapproval will not have a significant economic impact on a substantial number of small entities, because the effect of this disapproval is to leave in effect existing emission limitation. Therefore, there is no change or any impact on any source or community. Additionally, it applies to only one major corporation, GE.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbon, Intergovernmental relations, Ozone.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: June 26, 1987.

Valdas V. Adamkus,

Regional Administrator.

Editorial Note: This document was received at the Office of the Federal Register December 1, 1988.

[FR Doc. 88–28037 Filed 12–5–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 88–26]

Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to amend the definitions of "Conference agreement" and "Joint service/consortium agreement" in its rules governing the filing of agreements. These amendments are intended to state more clearly the class of agreements that are subject to the mandatory provisions requirements of section 5 of the Shipping Act of 1984. The amendments would codify current Commission policy which is not to require mandatory provisions in the case of strictly voluntary arrangements.

DATE: Comments due on or before February 6, 1989.

ADDRESS: Comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Austin L. Schmitt, Director, Bureau of Trade Monitoring, 1100 L Street NW., Washington, DC 20573, (202) 523–5787.

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW, Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Section 5(b) of the Shipping Act of 1984 ("1984 Act" or "Act"), 46 U.S.C. app. 1704(b), imposes eight requirements or mandatory provisions upon ocean common carrier conference agreements. These requirements include independent action, open membership, neutral body policing at the request of a member, and the establishment of procedures for considering shippers' requests and complaints.[1] The mandatory provisions place "substantial limitations on * * * conference activity," H.R. Rep. 600, 98th Cong. 2d Sess. 33 (1984), and the question of what constitutes a "conference" has a significant regulatory impact.

Section 3(7) of the Act, 46 U.S.C. app. 1702(7), defines a "conference" as:

> an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff; but the term does not inlcude a joint service, consortium, pooling, sailing or transshipment agreement.

The Commission's rules at 46 CFR 572.104(f) currently define "Conference agreement" as:

> an agreement between or among two or more ocean common carriers or between or among two or more marine terminal operators for the conduct or facilitation of ocean common

[1] Section 5(b) in its entirety requires each conference agreement to:

(1) state its purpose;

(2) provide reasonable and equal terms and conditions for admission and readmission to conference membership for any ocean common carrier willing to serve the particular trade or route;

(3) permit any member to withdraw from conference membership upon reasonable notice without penalty;

(4) at the request of any members, require an independent neutral body to police fully the obligations of the conference and its members;

(5) prohibit the conference from engaging in conduct prohibited by section 10(c) (1) or (3) of the Act;

(6) provide for a consultation process designed to promote—

(A) commercial resolution of disputes, and

(B) cooperation with shippers in preventing and eliminating malpractices;

(7) establish procedures for promptly and fairly considering shippers' requests and complaints; and

(8) provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item.

carriage and which provides for: (1) The fixing of and adherence to uniform rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members; (2) the conduct of the collective administrative affairs of the group; and (3) may include the filing of a common tariff in the name of the group and in which all the members participate, or in the event of multiple tariffs, each member must participate in at least one such tariff. The term does not inlcude consortium, joint service, pooling, sailing or transshipment agreements.

In interpreting and applying these definitions, the Commission's policy under the 1984 Act has been to require mandatory provisions only in the case of binding agreements and not in the case of strictly volumtary arrangements. This policy is based on the premise that mandatory provisions were intended to apply only to binding rate agreements, *i.e.*, conferences. The legislative history of the 1984 Act supports this view. The Report of the House Committee on Merchant Marine and Fisheries explains that steamship conferences are generally understood to be "* * * associations of steamship companies *that have authority to bind their members to agreed-upon rates and conditions of service*." H.R. Rep. No. 98–53 (Part I), 98th Cong., 1st Sess. 8 (1983). (Emphasis supplied). The Report also states that the statutory definition of "conference" "* * * codifies the general understanding of the term." *Id.* at 28. The authority to bind its members would therefore appear to be an essential element of a conference.

In light of this legislative history and the Commission's policy under the 1984 Act, it appears that the current definition of "Conference agreement" in the Commission's rules may not be sufficiently precise in that it does not limit its scope to those ocean common carrier agreements which have the authority to enforce adherence, through contractual remedies, to decisions reached under the agreement. In the case of agreements authorizing discussion and agreement upon rates, for example, the current definition may not adequately distinguish between agreements which contractually bind members to agreed-upon rates and those which do not.

Moreover, it appears that no regulatory purpose would be served by requiring that the mandatory provisions be included in voluntary, non-binding rate discussion agreements. For example, in such voluntary agreements, requiring that the agreement provide for a right of independent action would be superfluous since the agreement by its nature only provides for voluntary rate adherence and members may always act independently and change the rate *at any time*.

Based on the legislative history and a reading of the purposes of the mandatory provisions section of the 1984 Act, the Commission's policy not to require mandatory provisions in voluntary non-binding agreements appears well-founded. The Proposed Rule would clearly state and codify this policy by making appropriate changes in the current definition of "Conference agreement."

The Proposed Rule would also make the following revisions in the definition of "Conference agreement." First, because of the amended definition's focus on ocean common carrier "Conference agreements," and because marine terminal conference agreements—unlike ocean common carrier conference agreements—are not required by section 5(b) of the 1984 Act to include mandatory provisions, the current definition's reference to marine terminal operators would be deleted. The definition of the term "Marine terminal conference agreement" established under § 572.307(b) by Docket No. 85–10, *Marine Terminal Agreements*, would be moved to § 572.104, with an appropriate cross-reference in § 572.307(b). Second, the references to "*uniform*" rates, charges and conditions of service, and "*all*" members, would be eliminated because, in the context of contractually-enforceable adherence, they could unduly narrow the definition and make its application less clear. Third, reference to the "conduct of collective administrative affairs" would be eliminated as being an inappropriate criterion for defining a "Conference agreement" given the purposes of the Act. Finally, reference to alternative methods of tariff publication would be removed because it was merely illustrative and, in any event, is no longer necessary given the proposed revised definition.

Both joint service and consortium agreements are excluded from the statutory definition of the term "conference" and therefore are not subject to the obligation to incorporate mandatory provisions under section 5(b). Although the statute identifies these two classes of excluded agreements, it does not define them.

The Commission's rules at § 572.104(n) currently define "Joint service/consortium agreement" as:

an agreement between ocean common carriers operating as a joint venture whereby a separate service is established which: (1) Holds itself out in its own distinct operating name; (2) independently fixes its own rates, charges, practices and conditions of service or chooses to participate in its operating name in another agreement which is duly authorized to define and implement such activities; (3) independently publishes its own tariff or chooses to participate in its operating name in an otherwise established tariff; (4) issues its own bills of lading; and (5) acts generally as a single carrier. The common use of facilities may occur *and there is no competition between members for traffic in the agreement trade;* but they otherwise maintain their separate identities. (Emphasis supplied).

This definition was intended to incorporate the essential elements of what had been commonly understood to constitute a joint service or consortium at the time of the passage of the 1984 Act. *See* former 46 CFR 522.2(a)(4) and *In Re: Agreement No. 9973–3—Johnson ScanStar Service Voting Provision*, 21 F.M.C. 218, 226 (1978). However, the requirement under § 572.104(n) that there be "no competition between members for traffic in the agreement trade" may be unnecessarily restrictive in defining the term for the purposes of the 1984 Act. Moreover, this requirement may reduce the flexibility contemplated by the 1984 Act for parties to fashion joint ventures. Accordingly, the Proposed Rule would amend the definition of the term "joint service/consortium agreement" under § 572.104(n) to remove the current requirement that there be "no competition between members for traffic in the agreement trade."

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, bcause it will not 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) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies pursuant to 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, including small businesses, small organization units or small governmental jurisdictions.

The Federal Maritime Commission has determined that this action does not constitute a major Federal action

significantly affecting the quality of the human environment; therefore no environmental impact statement was prepared.

The Paperwork Reduction Act, 44 U.S.C. 3501–3520, does not apply to this Proposed Rule because the proposed amendments to Part 572 of Title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

List of Subjects in 46 CFR Part 572

Antitrust, Maritime carriers, Administrative practice and procedure, Rates and fares.

Therefore, in order to clarify the Commission's policy concerning mandatory provisions required under section 5(b) of the Shipping Act of 1984, the Commission hereby proposes to amend Part 572 of Title 46 of the Code of Federal Regulations as follows:

PART 572—[AMENDED]

1. The authority citation for Part 572 continues to read as follows:

Authority. 5 U.S.C. 553, 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

2. Section 572.104 is amended by revising paragraphs (f) and (n) to read as follows.

§ 572.104 Definitions.

* * * * *

(f) *Conference agreement* means an agreement which authorizes two or more ocean common carriers, each operating as a single entity in the trade covered by the agreement, to (1) discuss and agree upon common rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo; and (2) enforce adherence to any action or activity agreed upon, by means of liquidated damages, penalties, fines, suspension, expulsion or other contractual remedies. The term does not include joint service, consortium, pooling, sailing or transshipment agreements.

* * * * *

(n) *Joint service/consortium agreement* means an agreement between ocean common carriers operating as a joint venture whereby a separate service is established which: (1) Holds itself out in its own distinct operating name; (2) independently fixes its own rates, charges, practices and conditions of service or chooses to participate in its operating name in another agreement which is duly authorized to determine and implement such activities; (3) independently publishes its own tariff or chooses to participate in its operating name in an otherwise established tariff; (4) issues its own bills of lading; and (5) acts generally as a single carrier. The common use of facilities may occur, but the members otherwise maintain their separate identities.

* * * * *

§ 572.104 [Amended]

3. Section 572.104 is amended by redesignating paragraphs (o) through (ff) as (p) through (gg).

§§ 572.307 and 572.104 [Amended]

4. Section 572.307(b) is redesignated as § 572.104(o).

5. A new paragraph (b) is added to § 572.307 to read as follows:

§ 572.307 Marine terminal agreements-exemption.

* * * * *

(b) *Marine terminal conference agreement* is defined in § 572.104(o) of this part.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88–28045 Filed 12–5–88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF DEFENSE

48 CFR 252

Department of Defense Federal Acquisition Regulation Supplement; Protests, Disputes and Appeals

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Department of Defense is considering a change to the DFARS clause 252.233–7000 to clarify the importance of identifying incurred costs in contractor's proposals for claims, equitable adjustment, relief under Pub. L. 85–804 and other similar requests.

DATE: Comments should be submitted to the DAR Council at the address shown below by January 5, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P) / DARS, c/o OASD (P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062. Please cite DAR Case 87–128 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

A review by the Department of Defense's Inspector General of requests for equitable adjustment submitted against changes to construction contracts, found that contractor's requests were in excess of actual costs incurred. Many of the requests were made after contract performance was substantially completed and actual costs were known. The contractor's cost representations, however, were generally based on estimates because the costs related to the changes were not segregated from the costs of the unchanged portion of the contract. The proposed rule would permit contracting officers to include a clause in construction contracts requiring that contractors separately account for changed work if the estimated cost of the change, or a series of related changes, exceeds $100,000.

B. Regulatory Flexibility Act

The proposed rule does not appear to have a significant impact on a substantial number of small entities because the clause will be included in contruction contracts only when deemed appropriate by the contracting officer and will become operative only if the contractor submits a request due to a change and that change, or series of related changes, equals or exceeds $100,000. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610D in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because contractors are required to maintain separate accounts for changed and unchanged work when the amount of the change, or series of related changes, exceeds $100,000.

List of Subjects in 48 CFR Part 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Part 252 be amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202 DoD Directive 5000.35, and DoD FAR Supplemnent 201.301.

2. Section 252.233–7000 is amended by changing the date of the clause to read "(DEC 1988)" in lieu of "(FEB 1980)"; by revising the certificate in paragraph (a) of the clause; by removing paragraph (b) of the clause; by redesignating the existing paragraphs (c) and (d) of the clause to paragraphs (b) and (c) respectively; by adding in the redesignated paragraph (c) between the number "813" and the word "has" a comma and the statute "Pub. L. 95–485"; to read as follows:

252.233–7000 Certification of requests for adjustment or relief exceeding $100,000.

* * * * *

(a) * * *

I certify that this claim is made in good faith and that to the best of my knowledge and belief, the supporting data are accurate and complete, that all incurred allowable costs have been identified in this claim, that all relevant facts, including cost or pricing data, have been fully disclosed to the government, and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the government is liable.

(Signature)

(Officials's Name)

(Title)

(Date)

* * * * *

[FR Doc. 88–28031 Filed 12–5–88; 8:45 am]

BILLING CODE 3810–01–M

Notices

Federal Register
Vol. 53, No. 234
Tuesday, December 6, 1988

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

Animal and Plant Health Inspection Service

[Docket No. 88-192]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

Place, Dates, and Times of Meeting: The meeting will be held at the United States Department of Agriculture, Conference Room 5066, South Building, 14th and Independence Avenue SW., Washington, DC, on December 13, 1988, from 1 to 4 p.m. The meeting will reconvene the following day, December 14, from 9 a.m. to 4 p.m. in the EPIC Room, 741–A, Federal Building, 6505 Belcrest Road, Hyattsville, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Irvin L. Peterson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, Room 848, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5140.

SUPPLEMENTARY INFORMATION: The General Conference Committee of the National Poultry Improvement Plan (Committee) makes recommendation to the Department concerning the poultry industry and the poultry improvement regulations contained in 9 CFR Parts 145 and 147.

Tentative topics to be discussed at the meeting include:

1. Current *Salmonella enteritidis* research.
2. An update on *Salmonella enteritidis.*
3. National Poultry Improvement Plan activities at the National Veterinary Services Laboratories.
4. The U.S. Sanitation Monitored Program and *Salmonella enteritidis* surveillance activity.
5. Reports on Avian Influenza and Exotic Newcastle Disease surveillance.
6. Avian import/export activity.
7. International poultry disease concerns.
8. The Model State Poultry Disease Prevention Program and its implementation.

The meeting will be open to the public. These interested in expressing their views concerning the above topics or other aspects of the National Poultry Improvement Plan should send their written comments to Dr. Irvin L. Peterson at the address listed under FOR FURTHER INFORMATION CONTACT. The Committee will also accept written comments at the time of the meeting. Please refer to Docket Number 88–192 when submitting your comments.

Written comments received by Dr. Peterson may be inspected in Room 848 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Due to administrative error, less than 15 days notice is being given.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92–463).

Done in Washington, DC, this 2nd day of December 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–28107 Filed 12–2–88; 12:06 pm]

BILLING CODE 3410–34–M

Forest Service

Pacific Crest National Scenic Trail Advisory Council; Meeting

The Pacific Crest National Scenic Trail (PCNST) Advisory Council will meet on January 5, 1989 in Millbrae, California. The meeting will begin at 8:30 a.m. at the El Rancho Inn, 1100 El Camino Real.

The Council provides recommendations for the Secretary of Agriculture on policy, programs, and procedures affecting the PCNST. The Council will discuss the development of a volunteer support organization for the PCNST. The meeting will be open to the public.

Persons who wish additional information about the meeting or dedication should contact Dick Benjamin, Assistant Regional Forester, RW&CR, Pacific Southwest Region, Forest Service, 630 Sansome Street, San Francisco, CA 94111, Phone (415) 556–6986.

Dated: November 28, 1988.

Richard O. Benjamin,

Assistant Regional Forester for Recreation, Wilderness and Cultural Resources.

[FR Doc. 88–27995 Filed 12–5–88; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 81140–8240]

Enforcement Policy for Takings of Marine Mammals Incidental to Commercial Fishing

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Statement of Policy Regarding Enforcement for Takings of Marine Mammals Incidental to Commercial Fishing.

SUMMARY: On November 23, 1988 the President signed into law Pub. L. 100–711 which reauthorizes and amends the Marine Mammal Protection Act (MMPA). Among other things, this legislation requires the Secretary of Commerce to establish, within 240 days, a five-year exemption from the prohibitions on the taking of marine mammals in domestic commercial fisheries and foreign fisheries with fishing permits issued under the Magnuson Fishery Conservation and Management Act (MFCMA). This legislation does not, however, explicitly provide for an interim grace period from prohibitions on takings of marine mammals between the date of enactment and the date the exemption system becomes effective. To address the absence of an explicit interim grace period, NOAA announces a general enforcement policy that it will not seek penalties under the MMPA before the

exemption system becomes effective for certain takings of marine mammals incidental to lawful commercial fishing operations against persons using vessels of the United States or vessels which have valid fishing permits issued in accordance with section 204(b) of the MFCMA.

EFFECTIVE DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Eileen Cooney, Assistant General Counsel for Enforcement and Litigation, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION: Section 2 of Pub. L. 100–711 requires the Secretary of Commerce to establish, within 240 days, a five-year exemption from the prohibitions on the taking of marine mammals in domestic commercial fisheries and foreign fisheries with fishing permits issued under the MFCMA. Incidental taking of marine mammals in the course of commercial yellowfin tuna fishing subject to section 104(h)(2) of the MMPA is expressly excluded from the exemption. Without this exemption, large segments of the commercial fishing industry would be forced to stop fishing or to fish under the risk of prosecution for incidental takings of marine mammals due to the inability of NOAA to issue incidental take permits under an opinion issued by the U.S. Court of Appeals for the D.C. Circuit. Persons engaged in commercial yellowfin tuna fishing subject to section 104(h)(2) are still eligible to be covered by a valid general incidental take permit

The House and Senate Committee Reports accompanying the legislation indicate that Congress intended to grant those persons eligible for the exemption, a grace period from penalties for incidental takings of marine mammals in the 240 days after the effective date of the law, which the new exemption system is being developed. Sen. Rep. No. 100–592, 100th Cong., 2d Sess. (1988) 17; H.R. Rep. 100–970, 100th Cong., 2d Sess. (1988) 22. Despite the clear intent of Congress, the MMPA as amended by Pub. L. 100–711 does not explicitly provide for an interim grace period.

To prosecute fishermen during the interim 240-day period, however, would obviously contradict the purpose of the amendments and the intent of Congress. Therefore, in an attempt to comply with the spirit and intent of the amendments, NOAA adopts, in the exercise of its discretion, the enforcement policy set forth below.

Dated: December 1, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Statement of Policy Regarding Enforcement for Takings of Marine Mammals Incidental to Commercial Fishing

In the exercise of its discretion as the agency with the delegated authority to enforce the MMPA, NOAA adopts the following enforcement policy toward persons using vessels of the United States or vessels which have valid fishing permits issued in accordance with section 204(b) of the MFCMA who take marine mammals incidental to lawful commercial fishing operations between the period after enactment of Pub. L. 100–711 and the date the exemption system required by that law becomes effective:

1. NOAA will not seek penalties under the MMPA for the unintentional takings of marine mammals incidental to lawful commercial fishing operations by persons using vessels of the United States or vessels which have valid fishing permits issued in accordance with section 204(b) of the MFCMA.

2. NOAA will not seek penalties under the MMPA for intentional takings during lawful commercial fishing operations that do not seriously injure or kill marine mammals by persons using vessels of the United States or vessels which have valid fishing permits issued in accordance with section 204(b) of the MFCMA if the taking is necessry to protect gear or catch from damage or depredation, or to protect a person from injury or death.

3. NOAA will not seek penalties under the MMPA for intentional takings during commercial fishing operations that seriously injure or kill marine mammals by persons using vessels of the United States or vessels which have valid permits issued in accordance with section 204(b) of the MFCMA if the taking is necessary to protect a persons from serious injury or death after all other practicable non-injurious steps have been taken.

4. This enforcement policy is designed so as not to allow takings of marine mammals to exceed the level and type of takings that have been authorized previously in general permits issued under the MMPA before it was amended by Pub. L. 100–711. In this respect, the policy is based on the assumption that it will not result in a significant adverse effect on the species or population of marine mammals that may be taken. If NOAA determines that the continuation of certain incidental takings will have a significant adverse effect on an affected species or population, NOAA may revise or amend this policy for any fisherman, group of fishermen or fishery, with prior notice to the affected parties. Notice of any such change will be published in the **Federal Register**.

5. This enforcement policy does not apply to persons engaged in commercial yellowfin tuna fishing subject to section 104(h)(2) of the MMPA because there is still a valid general incidental take permit available to those persons.

[FR Doc. 88–28004 Filed 12–1–88; 12:07 pm]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Brazil

December 1, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 607 is being increased for swing and carryforward.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 53 FR 47745, published on December 16, 1987). A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published

on November 7, 1988). Also see 53 FR 46644, published on November 18, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1988, and extends through March 31, 1989.

Effective on December 1, 1988, the directive of November 15, 1988, is amended to increase to 7,280,000 pounds [1] the current limit for Category 607, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Federative Republic of Brazil.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28023 Filed 12-5-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Japan

December 1, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6583. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limit for Category 611 is being increased by application of swing.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the correction: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49470, published in the **Federal Register** on December 31, 1987.

The letter to the Commissioenr of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Japan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 8, 1988, the directive of December 28, 1987 is hereby amended to increase to 18,244,063 square yards [1] the previously established limit for man-made fiber textile products in Category 611, as provided under the terms of the current bilateral agreement between the Governments of the United States and Japan.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs excpetion to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28024 Filed 12-5-88; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Thailand

December 1, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations held between the Governments of the United States and Thailand have not resulted in a mutually satisfactory limit for Category 369-D, the United States Government has decided to control imports in Category 369-D for the prorated period which began on June 30, 1988 and extends through December 31, 1988.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16,

[1] The limit has not been adjusted to account for any imports exported after March 31, 1988.

[1] The limit has not been adjusted to account for any imports exported after December e1, 1987.

1987). Also see 53 FR 27545, published on July 21, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended and extended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 8, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 369–D [1], produced or manufactured in Thailand and exported during the prorated period which began on June 30, 1988 and extends through December 31, 1988, in excess of 111,292 pounds.[2]

Textile products in Category 369–D which have been exported to the United States prior to June 30, 1988 shall not be subject to the limit established in this directive.

Textile products in Category 369–D which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

You are directed to charge 96,090 pounds to the limit established in this directive. These charges are for goods imported during the period June 30, 1988 thorugh September 30, 1988.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–28025 Filed 12–5–88; 8:45 am]

BILLING CODE 3510–DR–M

[1] In Category 369–D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[2] The limit has not been adjusted to account for any imports exported after May 31, 1988.

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 14, 1988 beginning at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subject of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Indian Rock Water Company—Newtown Artesian Water Company D–80–78 CP (RENEWAL).* An application for the renewal of a ground water withdrawal project to supply up to 12.96 million gallons (mg)/30 days of water from Well No. 21 during periods of normal precipitation. Commission approval of September 14, 1983 was limited to five years. Well No. 21 has not been used since it was approved in 1983. It is planned that the well will be used in the near future. The project is located in Newtown Township, Bucks County, in the Ground Water Protected Area of Southeastern Pennsylvania.

2. *Blue Mountain Consolidated Water Company D–81–50 CP (RENEWAL).* An application for the renewal of a ground water withdrawal project to supply up to 6.48 mg/30 days of water to the applicant's distribution system from the Knauss Road Well. Commission approval on January 25, 1984 was limited to five years and will expire unless renewed. The project is located in Buskkill Township, Northhampton County, Pennsylvania.

3. *Town of Delaware D–82–47 CP.* A sewage treatment project to serve the Callicoon area of the Town of Delaware, also known as Sewer District No. 2, in Sullivan County, New York. The treatment plant will be designed to remove 90 percent BOD and suspended solids from a sewage flow of 0.12 million gallons per day (mgd). Treated effluent will discharge to Callicoon Creek. The project is located within the Upper Delaware National Scenic and Recreational River Area.

4. *Summit Hill Water Authority D–84–3 CP (RENEWAL).* An application for the renewal of a ground water withdrawal project to supply up to 13.8 mg/30 days of water to the applicant's distribution system from Well No. 4. Commission approval on March 28, 1984 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 13.8 mg/30 days. The project is located in Summit Hill Borough, Carbon County, Pennsylvania.

5. *Collegeville-Trappe Joint Water System D–88–3 CP.* An application for the renewal of a ground water withdrawal project to supply up to 3.46 mg/30 days of water to the applicant's existing public water supply system from new Well No. 11. The project is located approximately 700 feet northeast of the intersection of Clamer Avenue and Route 422, in Collegeville Borough, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Horsham Township D–88–17 CP.* An application to construct a sewage treatment plant off Keith Valley Road in Horsham Township, Montgomery County, Pennsylvania. The proposed tertiary treatment plant is designed to process a total average flow of 0.5 mgd from customers in Horsham Township only. Treatment plant effluent will be discharged to Park Creek in the Neshaminy Creek Basin.

7. *Town of Phillipsburg D–88–24 CP.* An application to upgrade a 3.5 mgd sewage treatment plant to provide high quality secondary treatment. The plant is located off Main Street in the Town of Phillipsburg, Warren County, New Jersy. The project involved demolition and modification of some treatment facilities, plus construction of a sequencing batch reactor system. The plant will continue to serve the Town of Phillipsburg and portions of Pohatcong Township, Alpha Borough, and Lopatcong Township. Treatment plant effluent will continue to be discharged to Lopatcong Creek near its confluence with the Delaware River, but a new outfall will be constructed.

8. *Roamingwood Sewer and Water Association, Inc. D–88–45 CP (Revised).* An application to revise the docket approved August 3, 1988, because the applicant mistakenly requested an allocation that is too low to meet projected water demand during the five-year approval period. The applicant requests that decision condition "d." be revised to limit the withdrawal from proposed Well Nos. 4 and 5 to 9.69 mg/30 days, and to limit the withdrawal from all wells to 26.69 mg/30 days. The

project is located in Lake Township, Wayne County, Pennsylvania.

9. *Blue Ridge Real Estate Company D–88–61.* An application to increase seasonal surface water withdrawal from Tobyhanna Creek to serve the Jack Frost Ski Area snowmaking process. The applicant requests approval to withdrawal up to 50 million gallons a month (mgm) during cold weather months as needed for the sole purpose of making snow. The existing snowmaking facilities, described in DRBC Docket No. D–79–71, use up to 30 mgm. The applicant's ski resort is located in Kidder Township, Carbon County, Pennsylvania.

10. *Hansen Properties D–88–62.* An application for a ground water/surface water withdrawal project to supply water for golf course irrigation at the Blue Bell Golf Course and Country Club associated with the Normandy Farms Housing Development in Whitpain Township, Montgomery County, Pennsylvania. The applicant has requested approval to withdraw up to 475,000 gpd for irrigation Streamflow will be used when available: ground water will be used when surface water cannot meet the demand. The surface source will be an intermittent tributary to Stoney Creek in the Schuylkill Watershed. Well Nos. 2 and 3 (combined) will be pumped at rates up to 14.256 mg/30 days into surface storage ponds as needed to supplment storm water runoff. The project is located about 3000 feet southwest of the intersection of Route 202 and Morris Road, Franklinville, in the Southeastern Pennsylvania Ground Water Protected Area.

11. *Hansen Nurseries D–88–66.* An application for approval of a ground water withdrawal project to supply up to 10.02 mg/30 days of water to the applicant's nursery from new Well No. 1. The project is located in Douglas Township, Montgomery County, Pennsylvania. The site is 1800 feet west southwest of the intersection of Green Road and Hoffmansville Road near an unnamed tributary to Schlegel Creek. in the Perkiomen Watershed and is located in the Southeastern Pennsylvania Ground Water Protected Area.

12. *City of Dover D–88–71 CP.* An application for approval of a ground water withdrawal project to supply up to 22.9 mg/30 days of water to the applicant's distribution system from existing Well Nos. 13 and 14 not previously included in the Comprehensive Plan, and to retain the existing withdrawal limit from all wells of 300 mg/30 days. The project is located in the City of Dover, Kent County, Delaware.

13. *Texaco Refining and Marketing, Inc. D–88–73.* An application to replace the withdrawal of water from Well No. P–5A in the applicant's water supply system which has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. P–5B be limited to 17.28 mg/30 days, and that the total withdrawal from all wells remain limited to 180 mg/30 days. The project is located in New Castle County, Delaware.

Susan M. Weisman,

Secretary.

November 29, 1988.

[FR Doc. 88–27998 Filed 12–5–88; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88–55–NG]

Access Energy Corp.; Application To Extend Blanket Authorization to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for extension of blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on September 12, 1988, of an application filed by Access Energy Corporation (Access) requesting that the blanket authorization, previously granted in DOE/ERA Opinion and Order No. 107 (Order No. 107), issued January 29, 1986, be extended for two years beginning January 1, 1989, the expiration of its current authorization, through the period ending December 31, 1990. Authorization is requested to import over this two-year term up to 296 Bcf of natural gas.

Quarterly reports filed with the ERA indicate that Access has imported approximately .7 Bcf of gas under Order No. 107 as of September 30, 1988.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than January 5, 1989.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Order No. 107 was originally issued to Yankee International Company (Yankee) on January 29, 1986; subsequent to the February 8, 1988, purchase by Access of Yankee's business assets, the ERA, on February 24, 1988, approved the transfer of this authority to Access. The existing blanket authorization allows Access to import from Canada a daily maximum of 400 MMcf of domestic natural gas, up to a total of 296 Bcf over a two-year term that ends December 31, 1988.

Access, a Delaware corporation, with its principal office in Dublin, Ohio, intends to continue importing competitively-priced Canadian natural gas produced by reliable Canadian suppliers for sale on a short-term or spot market basis to purchasers in the U.S., including commercial and industrial end-users and local distribution companies. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. According to Access, the transactions will continue to utilize existing pipeline facilities and will not require the construction of new facilities. Access proposes to continue to submit quarterly reports to the ERA giving the specific details of each transaction.

This import application will be reviewed pursuant to section 3 of the Natural Gas Act and DOE's gas import policy guidelines under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive since the transactions are premised upon imported gas being price-competitive with alternate fuels and domestic gas in various U.S. spot-markets. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the ERA approves this request to amend a blanket import, it may designate a total amount of authorized volumes for the term without any daily limit, in order to

provide the applicant with maximum flexibility of operation. In addition, the ERA may permit the import of the gas at any existing point of entry and through any existing transmission system.

Access requests that an authorization be granted on an expedited basis. An ERA decision on Access' request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

NEPA Compliance

On August 9, 1988, the DOE published in the Federal Register (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the agency's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusions in any particular case raises a rebuttable presumption that the ERA's action is not a major Federal action under NEPA. Unless the ERA receives comments indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., January 5, 1989.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Access' application is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC November 30, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-28071 Filed 12-5-88; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-R-79-19]

Annual Reports From States and Non-Regulated Utilities on Progress in Considering the Ratemaking and Other Regulatory Standards Under the Public Utility Regulatory Policies Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of availability of Form ERA-166.

SUMMARY: Sections 116 and 309 of the Public Utility Regulatory Policies Act of 1978 (PURPA) require State regulatory authorities and certain non-regulated utilities to submit to the Department of Energy (DOE) annual reports on their progress in considering ratemaking and other regulatory standards established by Titles I and III of PURPA. Under the present DOE regulations (10 CFR Part 463), as amended, each of the reporting entities must file an annual report by February 28, 1989, covering the calendar year 1988 reporting period. All reports are to be made on Form ERA-166.

DATE: Reports are due by February 28, 1989.

ADDRESS: All completed Forms ERA-166 should be addressed to: Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Form ERA-166, Room 3F-070, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Room 3F-070, Washington, DC 20585, Telephone (202) 586-9506.

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 1979 (44 FR 47264, August 13, 1979), DOE issued a rule (10 CFR Part 463) setting forth the manner in which State regulatory authorities and certain non-regulated gas and electric utilities are required to report on their consideration of the ratemaking and other regulatory standards established by sections 111(d), 113(b), and 303(b) of the Public Utility Regulatory Policies Act of 1978 (PURPA).

On August 4, 1982 (47 FR 33679), DOE amended Part 463 by revising § 463.3 (a) and (c). The revised rule requires the reporting entities to file their annual reports on February 28 of each year. Each annual report must cover the immediately preceding calendar year. For example, the report due by February 28, 1989, shall cover the period January 1, 1988–December 31, 1988.

II. The Report Form

The Form ERA-166 is identical to the form published on December 10, 1987 (52 FR 46823), except for date changes. It was approved by the Office of Management and Budget (OMB Control Number 1903-0060), and is being sent to each electric and gas utility listed in

appendices A and B of the ERA Federal Register notice [Docket No. ERA–R–79–43B] which is published annually at the end of each calendar year. Copies of this form also are available upon request from this office at the address given in this announcement.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); Department of Energy Organization Act, Pub. L. 9591 (42 U.S.C. 7101 *et seq.*)

Issued in Washington, DC on November 30, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–28072 Filed 12–5–88; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) an estimate of the average hours per response; (12) the estimated total annual respondent burden, and (13) a brief abstract describing the proposed collection and the respondents.

DATE: January 5, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA–1, 3, 4, 5, 6, 7A, 7A(Supp), and 20
3. 1905–0167
4. Coal Program Package
5. Revision
6. Quarterly, Annually, (Standby Forms, EIA–1, 4, and 20 in the case of a Coal Supply Disruption, and Standby Form, EIA–7A(Supp), As Needed)
7. Mandatory
8. Businesses or other for profit
9. 11,998 respondents annually
10. 15,740 responses annually
11. The estimated average hours per response for each of the Coal Program Package surveys are: EIA–1, 1 hour; EIA–3, .5 hours; EIA–4, 1 hour; EIA–5, 1 hour; EIA–6, 2.5 hours; EIA–7A, 1.21 hours; EIA–7A(Supp), 1 hour; and EIA–20, 1 hour.
12. 23,400 total burden hours
13. The coal surveys collect data on coal production, consumption, stocks, prices, imports and exports. Data are published in various EIA publications. Respondents are manufacturing plants, producers of coke, purchasers and distributors of coal, coal mining operators, and coal-consuming electric utilities.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, November 30, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–28073 Filed 12–5–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 9840–000 Virginia]

Appomattox River Water Authority; Availability of Environmental Assessment

November 30, 1988.

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 the major license for the proposed Appomattox River Project located on the Appomattox River in Chesterfield and Dinwiddie Counties, near Petersburg, VA and has prepared an Environmental Assessment (EA) for the proposed 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, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28010 Filed 12–5–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6549–001 California]

Conway Ranch Partnership; Availability of Environmental Assessment

November 25, 1988.

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 minor license for the proposed Conway Ranch Hydroelectric Project and has prepared an

Environmental Assessment (EA) for the proposed 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, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28011 Filed 12-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6167-004 California]

Ronald E. Rulofson; Availability of Environmental Assessment

November 25, 1988.

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 Eltapom Creek Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed 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, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28012 Filed 12-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-260-000 et al.]

Texas Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Company

[Docket No. CP89-260-000]

November 29, 1988.

Take notice that on November 21, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-260-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for American Central Gas Marketing Company (American Central), a shipper of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

It is stated that Trunkline would transport up to 25,000 dt per day on behalf of American Central pursuant to a Transportation Agreement dated October 6, 1988, between Trunkline and American Central (Transportation Agreement). It is asserted that the transportation Agreement provides for Trunkline to receive gas from various existing points of receipt on its system. Trunkline would then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Natural Gas Pipe Line Company of America in Cameron Parish, Louisiana.

Trunkline further states that the estimated average daily and estimated annual quantities would be 20,000 dt and 7,300,000 dt., respectively. Further, Trunkline states that service under § 284.223(a) commenced on October 11, 1988, as reported in Docket No. ST89-0563.

Comment date: January 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP89-287-000]

November 29, 1988.

Take notice that on November 23, 1988 United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251 filed in Docket No. CP89-287-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 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.

United proposes to transport natural gas for Pennzoil Gas Marketing Company (Pennzoil). United explains that service commenced October 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-391. United Explains that the peak day quantity would be 82,400 MMBtu, the average daily quantity would be 82,400 MMBtu, and that the annual quantity would be 30,076,000 MMBtu. United explains that it would receive natural gas for Pennzoil's account at an existing interconnection between United and Sea Robin Pipeline Company in Vermilion Parish, Louisana. United states that it would redeliver the gas for Pennzoil's account at an existing interconnection between United and Tennessee Gas Pipeline Company in Ouachita Parish, Louisiana, and an existing interconnection between United and Columbia Gulf Transmission in Rapides Parish, Louisiana.

Comment date: January 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP89-286-000]

November 29, 1988.

Take notice that on November 23, 1988 United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89-286-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 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.

United proposes to transport natural gas for Texaco Gas Marketing (Texaco). United explains that service commenced October 14, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-690. United explains that the peak day quantity would be 103,000 MMBtu, and that the average daily quantity would be 103,000 MMBtu, and that the annual quantity would be 37,595,000 MMBtu. United explains that it would receive natural gas for Texaco's account at existing points of receipt in Louisiana, Texas, Offshore Louisiana, and Mississippi. United states that it would redeliver the gas for Texaco's account at existing interconnections located in Florida, Mississippi, and Alabama.

Comment date: January 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP89-284-000]

November 29, 1988.

Take notice that on November 23, 1988 United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89-284-000

a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 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.

United proposes to transport natural gas for Texaco Gas Marketing (Texaco). United explains that service commenced October 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–692. United explains that the peak day quantity would be 206,000 MMBtu, the average daily quantity would be 206,000 MMBtu, and that the annual quantity would be 75,190,000 MMBtu. United explains that it would receive natural gas for Texaco's account at existing points of receipt in Louisiana, Alabama, Offshore Louisiana, and Mississippi. United states that it would redeliver the gas for Texaco's account at existing interconnections located in Florida, Mississippi, and Alabama.

Comment date: January 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89–75–000]

November 29, 1988.

Take notice that on October 21, 1988, as supplemented on November 21, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–75–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northern to increase the currently authorized firm entitlement of six of its utility customers, and to realign the currently authorized firm entitlement sold to one of such six utility customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the utilities for which the requested authorizations are sought are Austin Utilities (Austin), City of Duluth (Duluth), Michigan Gas Company (Michigan Gas), Minnegasco, Inc. (Minnegasco), Natural Gas, Inc., and Northern States Power Company (NSP). It is stated that the total increase in firm entitlement sought by Northern is 21,796 Mcf per day (Mcfd); 18,246 Mcfd is to be served under Rate Schedule SS–1 and 3,550 Mcfd under Rate Schedule CD–1, of its FERC Gas Tariff, Third Revised Volume No. 1. Northern states that the proposed changes are to be effective for the 1989–1990 winter heating season.

Northern states that each of the six utilities has requested Northern to realign and/or increase their firm entitlement in the manner and amount set forth in the following schedules. Schedule I reflects the proposed increase for five of the six utilities.

SCHEDULE I—(VOLUMES IN MCFD)

Utility/community	Existing authority SS–1	Proposed SS–1
Austin	1,276	1,600
Duluth	8,450	11,450
Minnegasco	154,665	156,707
Natural Gas, Inc.	602	1,202
NSP	47,501	57,501
Total	212,494	228,460

Northern states that its requested increase of 2,042 Mcfd in the total firm entitlement of Minnegasco under Rate Schedule SS–1 will be utilized to serve the community of Minneapolis; previously, in Docket No, CP88–781–000, Minnegasco's entitlement for Rate Schedule SS–1 volumes to serve the community of Minneapolis was decreased by 2,042 Mcfd, which was then transferred under the SS–1 Rate Schedule to other communities served by Minnegasco.,

Additionally, Northern states that its requested increase of 10,000 Mcfd in the total firm entitlement of NSP will be utilized to serve the community of St. Paul; previously, in Docket No. CP88–780–000, NSP's entitlement for Rate Schedule SS–1 volumes to serve the community of St. Paul was decreased by 10,000 Mcfd which was transferred under Rate Schedule SS–1 to other communities served by NSP.

It is also stated that by operation of the Commission's prior notice procedures, the authorizations in Docket No. CP88–780–000 and CP88–781–000 were granted on November 7, 1988, after no protests were filed.

Since Michigan Gas is currently realigning the volumes it serves to fifteen communities, Northern states that its proposed increase is set forth separately in Schedule II.

SCHEDULE II—(VOLUMES IN MCFD)

Michigan gas/community	Existing authority		Proposed authority	
	CD–1	SS–1	CD–1	SS–1
Baraga	996	74	500	284
Chassell	165	81	210	119
Hancock-Ripley	922	1,832	1,968	1,118
Houghton	1,744	210	2,245	991
Ishpeming	2,384	3,090	3,965	2,252
L'Anse	904	260	862	490
L'Anse-Celotex Corp.	1,300	0	3,000	0
Marquette	6,285	4,136	8,415	4,780
Marquette-K.I. Sawyer AFB	2,507	0	1,404	797
Nagaunee	1,971	699	2,082	1,183
Ontonagon-Green	1,153	0	1,063	527
Palmer	106	99	154	88
Silver City	47	0	21	12
White Pine Village	373	20	247	140
White Pine Copper Co.	2,986	0	1,200	0
Total	23,786	10,501	27,336	12,781

To summarize, Northern states that it requests authorization to realign the firm entitlement of Michigan Gas under Rate Schedules CD–1 and SS–1, and further, to increase the firm entitlement for six utilities by a total of 21,796 Mcf/d in the individual amounts and under the specific Rate Schedules as set forth in the following table:

PROPOSED VOLUME INCREASE (MCFD)

Utility	CD–1	SS–1	Increase
Austin	0	324	
Duluth	0	3,000	3,000
Michigan Gas	3,550	2,280	5,830
Minnegasco	0	2,042	2,042
Natural Gas, Inc.	0	600	
NSP	0	10,000	10,000
Total	3,550	18.246	21,796

Northern states that such realignment and/or increase in firm entitlement will more effectively serve the natural gas needs of Northern's utility customers and of their individual customers, and is clearly in the public convenience and necessity. It is further stated that Northern's Form 16, Report of Gas Supply and Requirements, filed with the Commission on September 30, 1988, refelcts that Northern has gas supply in excess of its current market requirements to enable it to serve the increased loads proposed herein.

According to Northern, no additional facilities are required to be constructed to accommodate the realigned and increased deliveries of natural gas to the utility customers as proposed herein.

Finally, Northern states that it will utilize its currently effective CD–1 and SS–1 Rate Schedules for the increased level of service proposed, and that at the appropriate time, Northern will file with the Commission the necessary revised Tariff Sheets reflecting the proposed volume increases.

Comment date: December 20, 1988, in accordance with Standard Paragraph F at the end of his notice.

6. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–257–000]

November 29, 1988.

Take notice that on November 21, 1988, Transcontinental Gas Pipe Line Company (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–257–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport gas for Transco Energy Marketing Company (Shipper) under Transco's blanket certificate issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day will be 10,000 dt equivalent of natural gas; on an average day will be 10,000 dt equivalent of natural gas; and on an annual basis will be 3,650,000 dt equivalent of natural gas. It is stated that Transco will receive the gas at points of receipt in Pennsylvania, New Jersey, Alabama, Georgia, Texas, Louisiana, offshore Louisiana and offshore Texas and will deliver the gas at an existing point of interconnection between Transco and Sun Oil Company in Point Coupee Parish, Louisiana (Fordoche). It is stated that Transco will construct no new facilities to provide this transportation service, utilizing instead of existing facilities as reflected in Exhibit A of the transportation agreement. It is stated that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper. Transco states that service for Shipper commenced October 20, 1988, pursuant to the 120-day automatic authorization provided for in § 284.223(a) of the Regulations, as reported in Docket No. ST89–0671. Transco states further that it has verified that transportation hereunder will be pursuant to Subpart F, Part 157 of the Regulations, and Subpart G, Part 284 of the Regulations.

Comment date: January 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Texas Eastern Transmission Corporation

[Docket No. CP87–312–004]

November 30, 1988.

Take notice that on November 10, 1988, Texas Eastern Transmission Corporation (Applicant), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP87–312–004 an application pursuant to section 7(c) of the Natural Gas Act, requesting a certificate of public convenience and necessity authorizing Applicant to render in interstate commerce firm transportation service pursuant to Rate Schedule FTS–5, Phase II and III, and authorizing the construction and operation by Applicant of certain pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that this application is being filed in compliance with the Commission's October 26, 1988 Order in Docket No. CP87–451–013, et al. (45 FERC ¶61,098), which required Applicant to file within 15 days an application in Docket No. CP87–312–004 to provide services related to Phases II and III of CNG Transmission Corporation's (CNG) proposed storage service.

Applicant states that Phases II and III of CNG's storage service were found to be a discrete project by the Commission's September 16, 1988 order in Docket No. CP87–451–009, et al. (44 FERC ¶61,340), which severed from the Open Season proceeding and provides for processing as discrete projects several pipelines' proposed services and facilities relating to implementation of a *Stipulation and Agreement* (APEC Settlement) filed on August 15, 1988 by the Associated PennEast Customer Group (APEC) in Docket No. CP87–451–000, *et al.* In the September 16, 1988 Order, the Commission directed the sponsors of the APEC Settlement to submit, within 15 days, revised applications modified to reflect changes in facilities and services resulting from the severance of the projects.

Applicant proposes to render firm transportation service pursuant to Rate Schedule FTS–5, Phases II and III, up to the following maximum daily transportation quantities (MDTQ):

Buyer	Phase II increase (dt/day equivalent)	Aggregate MDTQ (dt/day equivalent)
Phase II—Commencing 11/15/90:		
Bristol & Warren Gas Co	0	813
Central Hudson Gas & Electric Co	2,000	6,000
Colonial Gas Company	0	2,067
Elizabethtown Gas Company	10,000	10,000
Intercontinental Energy Corp. & Public Service Electric & Gas Co	0	24,508
Long Island Lighting Company	15,000	30,000
Town of Middleborough, MA	52	207
New Jersey Natural Gas Company	10,000	15,000
Penn Fuel Gas, Inc.	1,000	3,000
The Pequot Gas Company	0	125
Public Service Electric & Gas Company	0	45,084
South County Gas Company	0	248
Valley Gas Company	0	1,000
Total Increase—Phase II	38,052	
Total FTS–5—Phase I & II		138,052

Buyer	Phase III increase (dt/day equivalent)	Aggregate MDTQ (dt/day equivalent)
Phase III—Commencing 11/15/91:		
Bristol & Warren Gas Co	0	813
Central Hudson Gas & Electric Co	0	6,000
Colonial Gas Company	0	2,067
Consolidated Edison Co. of NY, Inc	20,000	20,000
Elizabethtown Gas Company	0	10,000
Intercontinental Energy Corp. & Public Service Electric & Gas Co	0	24,508
Long Island Lighting Company	20,000	50,000
Town of Middleborough, MA	52	259
New Jersey Natural Gas Company	20,000	35,000
Penn Fuel Gas, Inc	1,000	4,000
The Pequot Gas Company	0	125
Public Service Electric & Gas Company	0	45,084
South County Gas Company	0	248
Valley Gas Company	0	1,000
Total Increase—Phase III	61,052	
Total Increase—Phase II-III	99,104	
Total FTS-5—Phase I, II & III		199,104

It is indicated that the application implements Applicant's participation in Phase II and III of the restructuring and unbundling of storage services previously proposed to be rendered under the PennEast Gas Service Company (PennEast) Rate Schedule PSS.

Applicant states that, upon the later of November 15, 1990 (Phase II) and November 15, 1991 (Phase III) or the completion of all necessary facilities for each phase, transportation service under Rate Schedule FTS–5 (Phases II and III) would consist of the transportation of gas for the account of Buyer received by Applicant from Buyer for delivery to CNG and the transportation of gas for the account of Buyer received by Applicant from CNG for delivery to or for the account of Buyer. It is indicated that Applicant would receive gas for transportation under Rate Schedule FTS–5 (Phases II and III) from CNG, or deliver gas to CNG for storage for the account of Buyer, at the interconnection of CNG's proposed North Summit storage field pipeline and Applicant's existing system. It is further indicated that Applicant would deliver gas received from CNG to points of delivery with Buyer, or in the case of the Algonquin Gas Transmission Company (Algonquin) customers' volumes, to Algonquin at measuring station 087 near Lambertville, Pennsylvania. Applicant states that it would receive the gas from the Buyers for storage injection at their existing delivery points with Applicant by displacement of quantities otherwise delivered and would redeliver such quantities to CNG at the CNG North Summit facility.

Applicant states that the cost of service associated with the proposed incremental facilities required to render the FTS–5 service (Phase II and III) would be borne by all Buyers receiving the FTS–5 service. It is submitted that, for all gas transported, commencing November 15, 1990 and November 15, 1991, Applicant would charge a demand rate of $7.8326 and $6.8072 per dt respectively, and an authorized daily overrun rate of $0.2575 and $0.2238 per dt respectively.

Applicant indicates that, pursuant to section 11 of Rate Schedule FTS–5, during the interim period beginning on the date of commencement of deliveries under FTS–5 and prior to the in-service date of facilities for firm service, the Buyers may tender gas for transportation for the sole purpose of delivering gas to CNG for injection into storage for the Buyers' account and Buyer would pay the interim rate of $0.1230 per dt for the interim periods 1990 and 1991.

Applicant states that executed precedent agreements between Applicant and each Buyer originally filed in Docket No. CP87–312–000 for PSS service would be modified for FTS–5 service Phases II and III and would be filed as a supplement to this application.

Applicant requests authorization to construct and operate the following facilities:

1990 (Phase II)

Install scraper traps and mainline piping inside yard limits at Compressor Stations 23, 24, 24A and 25.

Replace 8.75 miles of existing 20-inch pipeline No. 2 with 36-inch pipeline between Compressor Stations 25 and 26.

1991 (Phase III)

Replace 4.75 miles of existing 20-inch pipeline No. 2 with 36-inch pipeline between Compressor Stations 25 and 26 (M.P. 1397.97 to M.P. 1402.72).

Applicant states that the facilities proposed would provide capacity to implement the FTS–5 (Phases II and III) transportation to deliver an additional 38,052 dt equivalent per day commencing November 15, 1990 (Phase II) and a total 99,104 dt equivalent per day commencing November 15, 1991 (Phases II and III). Applicant estimates that the capital cost of the proposed facilities would be $24,455,000 for 1990 and $13,521,000 for 1991. Applicant states that the facilities would be financed from funds on hand, funds generated from operations, or short-term borrowing, and would later be financed as part of Applicant's long-term financing.

Comment date: December 21, 1988, in accordance with Standard Paragraph F at the end of this notice.

8. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–292–000]

November 30, 1988.

Take notice that on November 25, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–292–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Texaco Gas Marketing Inc. (Texaco), a marketer, under the blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated October 25, 1988, under its Rate Schedule IT, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas on an interruptible basis for Texaco from points of receipt offshore and in multiple states listed in Appendix "A" of the agreement to numerous redelivery points in multiple states, also listed in Appendix "A". The subject transportation service may involve interconnections between Northern and various transporters.

Northern further states that the average daily and annual quantities would be equivalent to 37,500 MMBtu and 18,250,000 MMBtu, respectively. Northern advises that service has commenced under the provisions of § 284.223(a) as reported in Docket No. ST89–832.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–294–000]

November 30, 1988.

Take notice that on November 25, 1988, Northern Natural Gas Company,

Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–294–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Canterra Natural Gas, Inc. (Canterra), a producer, under the blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated October 22, 1988, under its Rate Schedule IT–1, it proposes to transport up to 20,000 MMBtu per day equivalent of natural gas on an interruptible basis for Canterra from points of receipt listed in Appendix "A" of the agreement to redelivery points also listed in Appendix "A". The subject transportation service may involve interconnections between Northern and various transporters.

Northern further states that the average daily and annual quantities would be equivalent to 15,500 MMBtu and 7,300,000 MMBtu, respectively. Northern advises that service has commenced under the provisions of § 284.223(a) as reported in Docket No. ST89–830.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–283–000]

November 30, 1988.

Take notice that on November 23, 1988, Transcontinental Gas Pipe Line Company (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–283–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport gas for Carnation Company (Shipper) under Transco's blanket certificate issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day will be 1,600 dt equivalent of natural gas; on an average day will be 1,600 dt equivalent of natural gas; and on an annual basis will be 584,000 dt equivalent of natural gas. It is stated that Transco will receive the gas at an existing point of interconnection between Transco and United Gas Pipe Line Company at Holmesville, Pike County, Mississippi, and will deliver the gas at an existing point of interconnection between Transco and City of Danville in Pittsylvania County, Virginia. It is stated that Transco will construct no new facilities to provide this transportation service, utilizing instead existing facilities as reflected in Exhibit A of the service agreement. It is stated that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of the Shipper. Transco states that service for Shipper commenced October 8, 1988, pursuant to the 120-day automatic authorization provided for in § 284.223(a) of the Regulations, as reported in Docket No. ST89–0593.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Tennessee Gas Pipeline Company

[Docket No. CP89–187–000]

November 30, 1988.

Take notice that on November 14, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–187–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas for Citizens Gas Supply Corporation (Citizens), a marketer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87–115–000 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.

Tennessee proposes to transport on an interruptible basis up to 200,000 dekatherm (dkt) of natural gas per day on behalf of Citizens pursuant to a transportation agreement dated October 14, 1988, between Tennessee and Citizens. Tennessee would receive gas at various existing points of receipt on its system in Texas, offshore Texas, Louisiana, offshore Louisiana, Alabama, Kentucky and Pennsylvania and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at existing delivery points in Massachusetts, Alabama, Mississippi, Pennsylvania, New York, New Jersey, West Virginia, Tennessee and Louisiana.

Tennessee further states that the estimated average daily and annual quantities would be 200,000 dkt and 73,000,000 dkt, respectively. Service under § 284.223(a) commenced on October 29, 1988, as reported in Docket No. ST89–577, it is stated.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Tennessee Gas Pipeline Company

[Docket No. CP89–188–000]

November 30, 1988.

Take notice that on November 14, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–188–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas for Houston Gas Exchange Corporation (Houston), a marketer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87–115–000 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.

Tennessee proposes to transport on an interruptible basis up to 80,000 dekatherm (dkt) of natural gas per day on behalf of Houston pursuant to a transportation agreement dated October 13, 1988, between Tennessee and Houston. Tennessee would receive gas at various existing points of receipt on its system in South Pass Block 5, offshore Louisiana and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at existing delivery points in New York, Connecticut, Ohio, Pennsylvania, West Virginia, Alabama, and Louisiana.

Tennessee further states that the estimated average daily and annual quantities would be 80,000 dkt and 29,200,000 dkt, respectively. Service under §284.223(a) commenced on October 13, 1988, as reported in Docket No ST89–597, it is stated.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Tennessee Gas Pipeline Company

[Docket No. CP89–207–000]

November 30, 1988.

Take notice that on November 16, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–207–000 a request pursuant to §157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 1578.205) and the Natural Gas

Policy Act (18 CFR 284.223) for authorization to transport gas for North Atlantic Utilities, Inc. (North Atlantic), a marketer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87–115–000 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.

Tennessee proposes to transport on an interruptible basis up to 15,000 dekatherm (dkt) of natural gas per day on behalf of North Atlantic pursuant to a transportation agreement dated September 29, 1988, between Tennessee and North Atlantic. Tennessee would receive gas at various existing points of receipt on its system in Louisiana, New York, Texas and offshore Louisiana and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at various existing points of interconnection with CNG Transmission Corporation in West Virginia, New York, Ohio and Pennsylvania.

Tennessee further states that the estimated average daily and annual quantities would be 15,000 dkt and 5,475,000 dkt, respectively. Service under § 284.223(a) commenced on November 1, 1988, as reported in Docket No ST89–595, it is stated.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., 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 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the 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. 88–28013 Filed 12–5–88; 8:45am]

BILLING CODE 6717–01–M

[Docket No. CS68–41–000, et al.]

Cass Resources, Inc., et al.; Applications for Small Producer Certificates [1]

December 1, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 15, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS68–41–000	[1] [2] 11–1–88	Cass Resources, Inc., and Frank W. Cass d/b/a Cass Oil Company (Frank W. Cass d/b/a Cass Oil Company), 300 Crescent Court, Suite 1800, Dallas, TX 75201.
CS71–414	[3] 11–17–88	Caspen Oil, Inc. (Summit Energy, Inc.), 300 Crescent Court, Suite 1100, Dallas, TX 75201.
CS77–432	[4] 10–31–88	Petrus Oil Company, L.P. (Petrus Oil Company), 12377 Merit Drive, Suite 1600, Dallas, TX 75251.
CS87–70–001	[5] 10–13–88	American Exploration Company, Ninian Oil Company, Ninian Oil Finance Corp., KEC Acquisition Corp., TES Acquisition Corp., TOC Acquisition Corp. and South States Oil & Gas Company (American Exploration Company), 2100 RepublicBank Center, 700 Louisiana, Houston, TX 77002–2725.
CS88–89–000	[6] 10–28–88	Beartooth Oil & Gas Company, P.O. Box 2564, Billings, MT 59103.
CS89–2–000	[7] 11–21–88	Rife Oil Properties, Inc., 3207 West 4th Street, Forth Worth, TX 76107.
CS89–4–000	11–1–88	Vaughan McElvain Energy Company, c/o Vorys, Sater, Seymour & Pease, P.O. Box 1008, Columbus, OH 43216–1008.
CS89–5–000	11–7–88	Bannon Energy Program 88A, L.P., Bannon Energy Program 88B, L.P., and Bannon Energy Incorporated, 3934 F.M. 1960 West, Suite 240, Houston, TX 77068.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS89-6-000	11-8-88	James M. Collins, 130 South Main Street, Noble, OK 73068.
CS89-7-000	11-21-88	V.C. McClintock, 1125 Ash Street, Broomfield, CO 80020.

Footnotes

[1] Application received October 21, 1988. Filing date is date of receipt of filing fee.
[2] By letters dated October 17, 1988, as supplemented by letter dated October 21, 1988, Applicant requests that the small producer certificate issued in Docket No. CS68-41 under the name of Frank W. Cass d/b/a Cass Oil Company be amended to include Cass Resources, Inc.
[3] Letter dated November 14, 1988, advising that by Certificate of Amendment of Restated Articles of Incorporation of Summit Energy, Inc., executed on August 29, 1988, Summit Energy, Inc., changed its name to Caspen Oil, Inc.
[4] By letter dated September 19, 1988, Applicant requests that the small producer certificate in Docket No. CS77-432 be redesignated from Petrus Oil Company to Petrus Oil Company, L.P. Applicant states the company underwent an organizational change in January 1987.
[5] By letter dated October 6, 1988, American Exploration Company (AEC) requests that its affiliates, Ninian Oil Company, Ninian Oil Finance Corp., KEC Acquisition Corp., TES Acquisition Corp., TOC Acquisition Corp. and South States Oil & Gas Company, be covered as certificate co-holders under its small producer certificate in Docket No. CS87-70-000. AEC states that it acquired Britoil Ventures, Inc., (CS84-60-000) effective January 1, 1987. Effective June 11, 1987, Britoil changed its name to Ninian Oil Company. KEC Acquisition Corp. succeeded to the interests of Kirby Exploration Company of Texas (CS76-926) effective October 1, 1987. South States Oil & Gas Company (CS71-356) was acquired by AEC effective November 14, 1983.
[6] Application received August 1, 1988. Filing date is date of receipt of filing fee. Additional material received September 6, 1988.
[7] Application received October 17, 1988. Filing date is date of receipt of filing fee.

[FR Doc. 88-28014 Filed 12-5-88; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3487-3]

Zenith Chemical Co. Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Zenith Chemical Company Site, Dalton, Georgia, with Trust Company Bank, the Trust of Norman Reints, P-I-E Nationwide, Inc., and ACF Industries. EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or consideration which indicate the proposed settlements are inappropriate, improper or inadequate. Copies of the proposed settlements are available from: Ms. Carolyn McCall, Investigations Support Clerk, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street NE., Atlanta, GA 30365, 404-347-5059.

Written comments may be submitted to the person above by thirty (30) days from the date of publication.

Date: November 28, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-28039 Filed 12-5-88; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-44520; FRL-3487-4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on trichlorobenzene (CAS No. 87-61-6), tetrabromobisphenol A (TBBPA, CAS No. 79-94-7), vinylidene fluoride (CAS No. 75-38-7) and 1,2-dichloropropane (CAS No. 78-87-5), submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for trichlorobenzene was submitted by the Standard Chlorine Chemical Company pursuant to a test rule at 40 CFR 799.1053. It was received by EPA on November 14, 1988. The study report describes chronic toxicity of 1,2,3-trichlorobenzene to mysid shrimp (*Mysidopsis bahia*). Environmental effects testing is required by this test rule.

Trichlorobenzenes are used in organic intermediates, solvents, dye carriers, transformer and dielectric fluids.

Test data for TBBPA was submitted by the Brominated Flame Retardant Industry Panel, pursuant to a test rule at 40 CFR 799.4000. It was received by EPA on November 21, 1988. The submission consists of two studies: (1) Toxicity of TBBPA to the freshwater green alga *Selenastrum capricornutum*; and (2) acute toxicity of TBBPA to fathead minnow (*Pimephales promelas*) under flow-through conditions. Environmental effects testing is required by this test rule.

TBBPA is used primarily as a reactive flame retardant, and to a lesser extent, as an additive flame retardant.

Test data for vinylidene fluoride was submitted by the Pennwalt Corporation, pursuant to the fluoroalkenes test rule at 40 CFR 799.1700. It was received by EPA on November 21, 1988. The submission describes vinylidene fluoride: Assessment of clastogenic action on bone marrow erythrocytes in the micronucleus test. Health effects testing is required by this test rule.

Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

Test data for 1,2-dichloropropane was submitted by the Dow Chemical Company, pursuant to a test rule at 40 CFR 799.1550. It was received by EPA on November 21, 1988. The submission consists of five final reports: (1) Daphnid: chronic toxicity; (2) mysid shrimp: acute toxicity; (3) algae: acute toxicity to diatoms; (4) algae: acute toxicity to *Selenastrum capricornutum*: and (5) neurotoxicity. Health and environmental effects testing are required by this test rule.

1,2-Dichloropropane is used as a captive intermediate in production of perchloroethylene; as a solvent in ion exchange resin manufacture, toluene diisocyanate production, photographic film manufacture, paper coating, and petroleum catalyst regeneration; and in a mixture that is marketed as a soil fumigant.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is

unable to provide any determination as to the submissions' completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44–520). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: November 30, 1988.

Joseph J. Merenda,

Director, Existing Chemicol Assessment Division, Office of Toxic Substonces.

[FR Doc. 88–28038 Filed 12–5–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Revision of a currently approved collection.
Title: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks).
Form Number: FFIEC 031, 032, 033, 034.
OMB Number: 3064–0052.
Expiration Date of Current OMB Clearance: August 31, 1990.
Frequency of Response: Quarterly.
Respondents: Insured state nonmember commercial and savings banks.
Number of Respondents: 8301.
Number of Responses Per Respondent: 4.
Total Annual Responses: 33,204.
Average Number of Hours Per Response: 20.35.
Total Annual Burden Hours: 675,714.
OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.
FDIC Contact: John Keiper, (202) 898–3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before January 5, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is submitting for OMB review a change in the classes of banks that file the quarterly Consolidated Reports of Condition and Income (Call Reports), form FFIEC 031, 032, 033, and 034. To date, only insured state nonmember commercial banks have filed these FFIEC forms. The FDIC plans to have insured state-chartered savings banks begin to file FFIEC Call Report forms (including a supplemental schedule applicable only to savings banks for the purpose of capturing interest rate sensitivity data) while at the same time eliminating the separate FDIC savings bank Reports of Income and Condition (OMB No. 3064–0054), effective as of the March 31, 1989 report date.

Dated: November 18, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretory.

[FR Doc. 88–27999 Filed 12–5–88; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; Richard J. Baker

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 notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 21, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Richard J. Baker,* Rantoul, Illinois; to acquire 88.84 percent of the voting shares of First Rantoul Corporation, Rantoul, Illinois, and thereby indirectly acquire Eagle Bank of Champaign County, N.A., Rantoul, Illinois.

Board of Governors of the Federal Reserve System, November 30, 1988.

James McAfee,

Associote Secretary of the Boord.

[FR Doc. 88–27984 Filed 12–5–88; 8:45 am]

BILLING CODE 6210–01–M

Barnett Banks, Inc.; Proposed Acquisition of Savings and Loan Association

Barnett Banks, Inc. ("Barnett"), Jacksonville, Florida, has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) 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(1) of Regulation Y (12 CFR 225.21(a)) to acquire 100 percent of the voting shares of First Federal Savings and Loan Association of Columbus ("First Federal"), Columbus, Georgia, which are to be issued after the conversion of First Federal from a mutual thrift institution to a stock federal savings bank. Further, Barnett has applied to acquire First Federal's wholly-owned subsidiary, First Columbus Service Corporation, which is primarily engaged in the sale of real estate owned by First Federal. In that regard, Barnett has committed to limit the activities of the acquired thrift to those permissible for a bank holding company.

The Board previously has determined by order that the operation of a thrift institution (including a savings and loan association) is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the Act. *See, e.g., Citicorp,* 72 Federal Reserve Bulletin 724 (1986). However, the Board has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the failing thrift institutions. *Citicorp, supra; The Chase Manhattan Corporation,* 71 Federal Reserve Bulletin 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources,

decreased or unfair competition, conflicts of interest or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

Comments regarding this application must be submitted in writing and must be received at the offices of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Room 2222, Eccles Building, 20th Street and Constitution Avenue NW., Washington, DC 20551, not later than 5:00 p.m. on Tuesday, December 20, 1988. This application is available for immediate inspection at the offices of the Board of Governors and the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, December 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28163 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

B/W Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *B/W Bancshares, Inc.,* Lexington, Kentucky; to acquire Mountain Credit Corporation, Lexington, Kentucky, and engage *de novo* in the consumer finance business pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Govenors of the Federal Reserve System, November 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27985 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

Lakeland 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 December 14, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Lakeland Bancorp, Inc.,* Newfoundland, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Lakeland State Bank, Newfoundland, New Jersey.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Interlachen Development, Inc.,* Milford, Iowa; to acquire 100 percent of the voting shares of Milford Bancorporation, Milford, Iowa, and thereby indirectly acquire Dickinson County Savings Bank, Milford, Iowa.

2. *Interlachen Development, Inc.,* Milford, Iowa; to acquire 100 percent of the voting shares of San Bancorp, Sanborn, Iowa, and thereby indirectly acquire Sanborn Savings Bank, Sanborn, Iowa.

3. *Markesan Bancshares, Inc.,* Markesan, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Markesan State Bank, Markesan, Wisconsin.

Board of Governors of the Federal Reserve System, November 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27986 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

Meridian Bancorp, Inc.; Proposed Acquisition of Savings and Loan Association

Meridian Bancorp, Inc. ("Meridian"), Reading, Pennsylvania, has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) 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(1) of Regulation Y (12 CFR 225.21(a)) to acquire all of the non-voting preferred shares of Horizon Financial, F.A. ("Horizon"), Southampton, Pennsylvania, which are to be issued after the voluntary conversion of Financial from a mutual thrift institution to a stock thrift institution. Meridian also has applied for the Board's approval to acquire all of Horizon's common stock in the event certain events occur. Further, Meridian has applied to acquire six direct and seven indirect subsidiaries of Horizon, which engage in real estate development, private mortgage insurance, title abstract, general insurance activities, unerwriting of credit life and disability insurance to mortgage and consumer loan customers of Horizon, selling tax-deferred annuities, and hold real estate as the result of debts previously contracted. (Meridian has committed that Horizon will: (a) Cease all new

impermissible real estate and insurance activities, (b) liquidate existing real estate development activities, (b) liquidate existing real estate development activities within two years from the date of acquisition, and (c) divest itself of all impermissible insurance activities over the same two-year period. Finally, Meridian seeks approval to purchase all of the preferred stock of a finance subsidiary of Horizon which is to be formed to hold certain assets and to sell its preferred stock to Meridian.

The Board previously has determined by order that the operation of a thrift institution (including a savings and loan association) is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the Act. *See, e.g., Citicorp*, 72 Federal Reserve Bulletin 724 (1986). However, the Board has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the failing thrift institutions. *Citicorp, supra; The Chase Manhattan Corporation*, 71 Federal Reserve Bulleting 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest of unsound banking paractices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

Comments regarding this application must be submitted in writing and must be received at the offices of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Room 2222, Eccles Building, 20th Street and Constitution Avenue, NW., Washington, DC 20551, not later than 5:00 p.m. on Monday, December 19, 1988. This application is available for immediate inspection at the offices of the Board of Governors and the Federal Reserve Bank of Philadelphia.

Board of Governors of the Federal Reserve System, November 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27988 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

MNC Financial, Inc.; Proposed Acquisition of Savings and Loan Association

MNC Financial, Inc. Baltimore, Maryland ("MNC"), has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 USC 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire 100 percent of the voting shares of Virginia Federal Savings and Loan Association, Richmond, Virginia ("Virginia Federal"), which are to be issued after the conversion of Virginia Federal from a mutual thrift institution to a stock federal savings bank. Further, MNC has applied to acquire Virginia Federal's seven wholly-owned service corporation subsidiaries.

The Board previously has determined by order that the operation of a thrift institution (including a savings and loan association) is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the Act. *See, e.g., Citicorp*, 72 Federal Reserve Bulletin 724 (1986). However, the Board has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the failing thrift institutions. *Citicorp, supra; The Chase Manhattan Corporation*, 71 Federal Reserve Bulletin 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition 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 comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

Comments regarding this application must be submitted in writing and must be received at the offices of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Room 2222, Eccles Building, 20th Street and Constitution Avenue NW., Washington, DC 20551, not later than 5:00 p.m. on Tuesday, December 20, 1988. This application is available for immediate inspection at the offices of the Board of Governors and the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, December 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28162 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

Sandwich Banco, Inc., 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 December 29, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Sandwich Banco, Inc.*, Sandwich, Illinois; to acquire Northern Illinois

Finance Company, Plano, Illinois, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y, and in the sale of insurance relating directly to the extensions of credit pursuant to § 225.25(b)(8) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *IntraOklahoma Bancshares, Inc.*, Ponca City, Oklahoma; to acquire Strategic Data Services, Ltd. (SDSL), a limited partnership, and Strategic Data Services, Inc. (SDSI), a general partner of SDSL, and thereby engage in providing data processing and transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y, through a joint-venture arrangement with The First National Bank and Trust Company of Ponca City, Oklahoma.

Board of Governors of the Federal Reserve System, November 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27987 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

Wells Fargo & Co.; Proposed Acquisition of Savings and Loan Association

Wells Fargo & Company ("Wells Fargo"), San Francisco, California, has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) 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(1) of Regulation Y (12 CFR 225.21(a)) to acquire 100 percent of the voting shares of Perpetual Savings Association ("Perpetual"), Santa Ana, California, which are to be issued after the conversion of Perpetual from a mutual thrift institution to a stock federal savings bank.

The Board previously has determined by order that the operation of a thrift institution (including a savings and loan association) is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the Act. *See, e.g., Citicorp*, 72 Federal Reserve Bulletin 724 (1986). However, the Board has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the failing thrift institutions. *Citicorp, supra; The Chase Manhattan Corporation*, 71 Federal Reserve Bulletin 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

Comments regarding this application must be submitted in writing and must be received at the offices of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Room 2222, Eccles Building, 20th Street and Constitution Avenue NW., Washington, DC 20551, not later than 5:00 p.m. on Tuesday, December 20, 1988. This application is available for immediate inspection at the offices of the Board of Governors and the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, December 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28111 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Commission on Nursing; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following national advisory body scheduled to meet during the month of October 1988:

Name: Secretary's Commission on Nursing.

Date: Monday, December 12, 1988.

Time: 11:00 a.m.

Place: Room 800, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

Purpose: The Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will also consider the recruitment and retention of nurses in the U.S. Public Health Service, the Veterans Administration and the Department of Defense. As appropriate for its work, the Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

The agenda for the December 12 meeting will consist of discussion about steps that can be taken to encourage private and public sector organizations to implement the Commission's recommendations and proposed strategies. In addition, the Secretary of the Department of Health and Human Services will be presented with the Commission's report and given an overview of its contents.

Agenda items are subject to change as priorities dictate.

Anyone wishing to attend these meetings who is hearing impaired and requires the services of an interpreter for the deaf should contact the Commission one week before the schedule meeting. All such requests, as well as requests for information, should be addressed to the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 600E, 200 Independence Avenue SW., Washington, DC, 20201, telephone 202/245-0409.

Lillian K. Gibbons,

Executive Director, Secretary's Commission on Nursing.

[FR Doc. 88-28153 Filed 12-5-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 87D-0315]

Oligosaccharide Antibiotic Drugs; Neomycin Sulfate for Prescription Compounding; Withdrawal of Approval of Abbreviated Antibiotic Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of five abbreviated antibiotic drug applications (AADA's) for neomycin sulfate for prescription compounding. AADA 61-579, held by Pharma-Tek, Inc., is not affected by this notice because a hearing requested by the firm is currently under consideration. This withdrawal action is being taken because these products are being used for indications for which they lack evidence of safety and effectiveness, and for which there is clinical evidence of significant risk to the patient.

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret F. Sharkey, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 15, 1988 (53 FR 12662), the Director of the Center for Drug Evaluation and Research offered an opportunity for a hearing on a proposal to withdraw approval of antibiotic applications and abbreviated antibiotic applications for nonsterile neomycin sulfate for prescription compounding not labeled in accordance with applicable amended antibiotic regulations (21 CFR 444.942a). In the same issue (53 FR 12644), FDA amended the regulations governing these products and offered a labeling guideline because the drug was being used for indications for which it lacked evidence of safety and effectiveness, and for which there was clinical evidence of significant risk to the patient. The final rule became effective on June 14, 1988.

The amendments to 21 CFR 444.942a changed the product name from "neomycin sulfate for prescription compounding" to "neomycin sulfate for compounding oral products" and required product labeling to provide information concerning appropriate uses and to warn about the risks associated with inappropriate use.

Manufacturers and suppliers were notified that they would have to supplement their applications within 60 days of the effective date of the final rule to provide for the new product name and package insert labeling. Alternatively, a manufacturer or supplier could request a hearing. No supplements were submitted for any of the applications. One supplier, Pharma-Tek, Inc., requested a hearing.

The sponsors of the five products listed below failed to file a request for a hearing and did not supplement their applications. Accordingly, FDA is withdrawing approval of the following AADA's:

1. AADA 61–043; held by The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001.

2. AADA 61–805; held by Pfizer, Inc., 235 East 42nd St., New York, NY 10017.

3. AADA 61–169; held by S.B. Penick and Co., 540 New York Ave., Lyndhurst, NJ 07071.

4. AADA 61–698; held by Elkins-Sinn, Inc., 2 Esterbrook Lane, Cherry Hill, NJ 08034.

5. AADA 62–385; held by Paddock Laboratories, Inc., 3101 Louisiana Ave. North, Minneapolis, MN 55421.

The Director of the Center for Drug Evaluation and Research, under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 52 Stat. 1052–1053 as amended (21 U.S.C. 355(e))) and under authority delegated to him (21 CFR 5.82), finds that clinical or other experience, tests, or other scientific data show that the drug products listed above are unsafe for use under the conditions of use upon basis for which their applications were approved. Therefore, pursuant to the foregoing finding, approval of the AADA's listed above is hereby withdrawn effective January 5, 1989. Shipment in interstate commerce of the products listed above will then be unlawful.

This notice does not apply to AADA 61–579, held by Pharma-Tek, Inc., P.O. Box AB, Huntington, NY 11743. The product covered by AADA 61–579 is the subject to a pending hearing request and will be the subject of a future **Federal Register** announcement.

Dated: November 28, 1988.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 88–28027 Filed 12–5–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 79N–0151]

Oligosaccharide Antibiotic Drugs; Neomycin Sulfate for Injection; Withdrawal of Approval of Abbreviated Antibiotic Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of four abbreviated antibiotic drug applications (AADA's) for neomycin sulfate in sterile vials for injection. This withdrawal action is being taken because the risks involved in the parenteral use of neomycin sulfate are judged to outweigh any benefits that may be derived from its continued availability.

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret F. Sharkey, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 15, 1988 (53 FR 12664), the Director of the Center for Drug Evaluation and Research offered an opportunity for a hearing on a proposal to withdraw approval of antibiotic applications and abbreviated antibiotic applications for neomycin sulfate in sterile vials for parenteral use. FDA also amended the antibiotic regulations for sterile neomycin sulfate (21 CFR 444.42a) by deleting all provisions for the injectable dosage form so that neomycin sulfate packaged in sterile vials for dispensing could not be certified or released (see 53 FR 12658; April 15, 1988). These actions were deemed necessary because of the toxicity associated with the unapproved use of this drug in the irrigation of wounds. In addition, the Director concluded that the use of this dosage form for the single remaining approved indication, the treatment of urinary tract infection, is no longer acceptable because of the availability of newer, safer antibiotics that are as effective as, or more effective than, parenteral neomycin sulfate and that do not present comparable risks.

In response to the April 15, 1988, **Federal Register** notice, no holders of approved applications requested a hearing. Accordingly, FDA is withdrawing approval of the following applications:

1. AADA 60–366, Neomycin Sulfate for Injection, U.S.P., held by E. R. Squibb & Sons, Inc., P.O. Box 4000, Princeton, NJ 08540.

2. AADA 60–477, Mycifradin Injectable, held by The Upjohn Co., Kalamazoo, MI 49001.

3. AADA 61–084, Neomycin Sulfate for Injection, held by Pfizer Inc., 235 East 42nd St., New York, NY 10017.

4. AADA 61–198, Neomycin Sulfate for Injection, U.S.P., held by Elkins-Sinn, Inc., 2 Esterbrook Lane, Cherry Hill, NJ 08034.

The Director of the Center for Drug Evaluation and Research, under the Federal Food, Drug and Cosmetic Act (sec. 505(e), 52 Stat. 1052–1053 as amended (21 U.S.C. 355(e))) and under authority delegated to him (21 CFR 5.82), finds that clinical or other experience, tests, or other scientific data show that the drug products listed above are unsafe for use under the conditions of use upon the basis for which their applications were approved. Therefore, pursuant to the foregoing finding, approval of the AADA's listed above is hereby withdrawn effective January 5, 1989. Shipment in the interstate commerce of the products listed above will then be unlawful.

Dated: November 28, 1988.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 88-28028 Filed 12-5-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OACT-22-N]

Medicare Program; Employers and Duplicative Medicare Benefits

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

ACTION: Notice.

SUMMARY: This notice announces the national average actuarial value of additional Medicare Part A benefits available in 1989 as a result of the Medicare Catastrophic Coverage Act of 1988. Employers are required to examine the extent to which health benefits they provide to employees and retired former employees entitled to Medicare (including coverage for employees' and retired former employees' dependents entitled to Medicare) duplicate the new Part A and Part B benefits. If the duplicative benefits have a national average actuarial value of at least 50 percent of the value of the new Medicare benefits, the employer must offer a refund, additional benefits, or some combination thereof.

In computing the actuarial values of the duplicative benefits, employers have the option of using national average actuarial values we establish or calculating the actuarial value based on guidelines we establish. This notice contains both the national actuarial values we have determined and the guidelines for employers to use.

EFFECTIVE DATES: The provisions of this notice concerning Part A are effective January 1, 1989. The provisions of this notice concerning Part B are effective January 1, 1990.

FOR FURTHER INFORMATION CONTACT:

Kenneth Leong, (301) 966-7908, concerning the actuarial values and guidelines.

Herbert Pollock, (301) 966-4474, concerning all else.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) was enacted on July 1, 1988. This act, which provides for benefits not previously available under Medicare, protects beneficiaries against costs associated with a catastrophic illness. The Act provides for expanded Part A benefits effective January 1, 1989 and expanded Part B benefits effective January 1, 1990.

Many beneficiaries have private health insurance coverage that supplements Medicare, usually through health benefits plans of current or past employers. Some of these health benefits plans offer protection against the costs of a catastrophic illness by limiting beneficiary out-of-pocket expenses or offering additional benefits, such as a longer period of hospitalization than Medicare covered; some plans may do both. In addition, some plans pay deductibles, coinsurances, the Part A premium where applicable, the Part B premium, or some combination of these benefits.

With the availability of expanded Medicare coverage beginning in 1989, beneficiaries that now are receiving additional benefits through their employers' health benefits plans would find that the coverages are duplicative and they reap little, if any, benefit from the Medicare catastrophic coverage changes. Therefore, Congress included section 421 in Pub. L. 100-360, which ensures that if an employer provided to employees or retired former employees,[1] as of July 1, 1988 (the date of enactment of Pub. L. 100-360) benefits that will be available to Medicare beneficiaries as a result of Pub. L. 100-360, the employer must offer additional benefits, a refund, or a combination thereof, if the duplicative benefits have an actuarial value of at least 50 percent of the national average actuarial value of the benefits added or increased by Pub. L. 100-360. Congress enacted technical amendments to section 421 in section 608(a) of The Family Support Act of 1988 (Pub. L. 100-485 October 13, 1988).

More specifically, under section 421 the employer must (1) provide additional benefits to the employee or retired former employee that are at least equal in actuarial value to the duplicative benefits, (2) refund to the employee or retired former employee an amount of money equal in actuarial value to the duplicative benefits, or (3) provide a combination of additional benefits and refunds that total at least the actuarial value of the duplicative benefits. In computing the actuarial value of the duplicative Part A, benefits (beginning January 1989) and duplicative Part B benefits (beginning January 1990), employers have the option of using national average actuarial values published by the Secretary or calculating the actuarial value based on guidelines published by the Secretary.

[1] Note.—To avoid repetition, the term "employee", when used in this notice, also includes retired former employees.

II. Provisions of This Notice

This notice provides the actuarial values for the benefits added by Pub. L. 100-360; specifies the employers to whom the notice applies; defines "additional benefits;" gives the applicable effective dates; defines duplicative benefits; contains the guidelines for employers to use to compute the actuarial value of duplicative benefits; and lists some of the benefits added by Pub. L. 100-360.

A. National Average Actuarial Value of the Medicare Benefits Added or Increased by Pub. L. 100-360

The national average actuarial value of the Medicare Part A benefits added or increased by Pub. L. 100-360 was $61 as of July 1, 1988. This is the cost of providing the increased Part A benefits for each beneficiary enrolled. Fifty percent of this amount is $30.50 per year. For 1989, the national average actuarial value is $65. The national average actuarial value of the Part B benefits added or increased by Pub. L. 100-360 will be published prior to January 1, 1990.

B. Responsibility of Employers

Employers are responsible for determining if, as of July 1, 1988, they offered to their employees or retired former employees who are covered by Medicare any duplicative Part A benefits (as defined in D. below) and, if so, the actuarial value of any such benefits on July 1, 1988. If the actuarial value of their duplicative Part A benefits was, as of July 1, 1988, 50 percent of the 1989 national average actuarial value of the Medicare benefits added or increased under Pub. L. 100-360 (discounted to the value as of July 1, 1988), the employer is required to offer additional benefits or refunds, or a combination of additional benefits and refunds, equal in actuarial value to the value of the duplicative benefits determined as if they were provided in 1989.

If an employer provides only additional benefits, the benefits must be equal in value at least to the 1989 national average actuarial value of the duplicative Part A benefits that were provided by the employer to employees as of July 1, 1988. Employers may provide a wide range of additional benefits as long as they are equal in value to at least the actuarial value of the duplicative benefits. The additional benefits may consist of health care benefits that do not duplicate the new Medicare benefits and may include payment of the Part B premium, provided the employer was not already

paying Part B premium as of July 1, 1988. If an employer was already paying the Part B premium as of July 1, 1988, that payment does not constitute an additional benefit, even if the payments continue into 1990.

If, before July 1, 1988, an employer had agreed to an increase in benefits or services that were not covered under Medicare and that will become effective July 1, 1988 or later, we do not consider the benefits to be "additional" benefits. Hence, the employer is required to provide additional benefits, refunds, or both, above and beyond any previously agreed-to benefit enhancements.

We interpret the term "actuarial value" as referring to the value of the benefits to the employee rather than their cost to the employer. A contrary interpretation could result in the additional benefits not directly benefiting the employee which would be contradictory to the intent of the statute. Thus, we do not consider administrative or other overhead costs that an employer may incur in establishing the additional benefits or refunds appropriate for consideration by employers in determining the actuarial value of the new benefits or the amount of any refunds.

If an employer decides to make only a refund of money, the refund must be available to the Medicare beneficiary no later than the end of the calendar year in which the duplicative benefits were provided. The amount refunded to each individual should be determined by dividing the actuarial value of the duplicative benefits by the total number of employees and retired former employees enrolled in the plan. Thus, each employee and retired employee will receive an equal refund.

If an employer opts to provide a cash refund, and the employees or retirees contribute, through premiums, to the cost of the health plan, the employer may make all or part of the refund in the form of an offset against current employee premiums or a planned premium rate increase for 1989 or 1990, provided that the employer had notified the employees of the planned premium increase before July 1, 1988. An employer may not increase the cost of plan benefits to employees or retired former employees or reduce the amount of plan benefits to offset the cost of additional benefits and/or refunds required by the maintenance of effort requirement in section 421 of Pub. L. 100–360.

If an employer chooses to provide a package of additional benefits or a combination of additional benefits and refunds, the employer is required to take into account the timing of the change in its calculation of additional benefits and refunds. We believe it was the intent of Congress for employees to have at least a full year's benefit under the "maintenance of effort" requirement in section 421 of Pub. L. 100–360. For example, if an employer establishes its additional benefit package for duplicative Part A benefits on July 1, 1989, the employees under such a plan would be deprived of additional benefits for the first six months of 1989. Using this example, the employer would be required to either provide appropriate refunds to its employees that would cover the period of time during which additional benefits were not provided; i.e., from January 1 to June 30, 1989, or ensure that the additional benefits beginning July 1 equal in value one year's duplicative benefits.

C. Employers Covered by this Notice

For purpose of this provision, "employer" means, in addition to individuals and organizations engaged in a trade or business, other entities exempt from income tax, such a religious, charitable and educational institutions, the governments of the individual States, the Territories, Puerto Rico, the Virgin Islands, Guam, and the District of Columbia, and the agencies, instrumentalities and political subdivision of these governments.

Any employer that provides, as of July 1, 1988, health benefits to a Medicare covered employee or retired former employee that are duplicative Part A benefits or duplicative Part B benefits is subject to this provision with the following exceptions:

1. The Federal Government as an employer;

2. Employers contributing to a multi-employer plan that is maintained under one or more collective bargaining agreements.

D. Duplicative Benefits

1. Part A

Duplicative Part A benefits are benefits provided by an employer as of July 1, 1988 to a Medicare-covered employee (including health coverage for the Medicare-covered dependents of employees and retired former employees) that supplemented the benefits under Part A of Medicare before January 1, 1989, but that, as of January 1, 1989, are covered under Part A of Medicare as amended by Pub. L. 100–360. The following are examples of duplicative Part A benefits:

- Payment of the Medicare inpatient hospital deductible for any but the first spell of illness in a calendar year.
- Payment of a coinsurance amount for the 61st through 150th days of hospitalization.
- Payment for hospitization in excess of 150 days during a spell of illness.
- Payment for more than 100 days of SNF services but for not more than 150 days. In determining the value of this duplicative benefit, the value of any co-payments paid by the employer for the first eight days should be offset against the value of copayments from the 21st day through the 100th day in a benefit period and the value of the payment for any days covered from days 101 through 150.

2. Part B

Duplicative Part B benefits are benefits (excluding benefits with respect to covered outpatient drugs as defined in section 1861(t) (2), (3) and (4), as added by section 202(a) of the Medicare Catastrophic Coverage Act) provided by an employer as of July 1, 1988 to a Medicare-covered employee (including health coverage for the Medicare-covered dependents of employees and retired former employees) that supplemented the benefits under Part B of Medicare before January 1, 1990, but that, as of January 1, 1990, are covered under Part B of Medicare as amended by Pub. L. 100–360. The following are examples of duplicative Part B benefits:

- Payment for mammograms as part of routine breast cancer examinations.
- Payment for home intravenous drug therapy and associated items and service.
- Payment of copayments for covered items and services after an employee has made out-of-pocket part B payments of at least $1,370 in 1990.

3. Applicability When Medicare is Secondary Payer

Employers are not required to provide additional benefits or refunds in the case of any individual for whom Medicare is secondary payer under section 1862(b) (2), (3) and (4) of the Social Security Act. These provisions of the statute require that employer plans be primary payers and that Medicare be secondary payer for employed individuals and spouses age 65 and over if the employer has 20 or more employees, for disabled individuals under age 65 who are enrolled in large group health plans (i.e., plans that cover at least 100 individuals under age 65), and during the first year of an individual's entitlement to Medicare on the basis of end-stage renal disease. When Medicare is secondary, the private insurer pays its benefits before Medicare If the primary insurer does

not pay all of the charges, Medicare may pay secondary benefits to supplement the primary payment.

The purpose of the Medicare secondary payment provisions is to conserve Medicare funds by shifting responsibility for the health care expenses of certain individuals to private insurance plans. If an employer that is required under section 1862(b) to be primary payer were required to provide additional benefits or refunds instead of duplicative benefits, Medicare would become primary payer for the benefits added by Pub. L. 100–360.

This result would contradict the cost saving objectives of section 1862(b) (2), (3), and (4). Section 421 of Pub. L. 100–360 does not change section 1862(b) of the Act or otherwise override it. See H.R. Rep. 998, 100th Cong., 2nd Sess. 197 (1988).

E. Benefits Added or Increased by Pub. L. 100–360

Some of the benefits added by or increased by Pub. L. 100–360 are as follows:

1. Part A

- Unlimited free hospitalization after payment of a single annual deductible of $560 (see 53 FR 38357). After the deductible is met, Medicare will pay 100 percent of all covered hospital services, regardless of the costs, length of stay, or number of times a beneficiary is admitted to the hospital in any one year. This benefit also eliminates all previous copayment requirements. (The previous benefit was 90 days of hospitalization per spell of illness, with 60 "lifetime reserve days," a required copayment for the lifetime reserve days and days 61 through 90, and a deductible for each spell of illness.)
- One hundred fifty days of skilled nursing facility (SNF) care per year (instead of 100 days per benefit period subject to a coinsurance for each of the first 20 days) and without requiring the beneficiary to be hospitalized three days' immediately before entering the SNF. (Under Pub. L. 100–360, when a beneficiary is admitted to an SNF, he or she will be responsible for copayments for the first eight days of care each year. Medicare will pay all other allowable expenses for up to 150 days of care even if the beneficiary is discharged and readmitted to an SNF more than once during a year.)
- Hospice care beyond the previous limit of 210 days when a beneficiary is recertified as terminally ill.
- Decrease in the number of units of blood to be replaced or paid for: The beneficiary will be responsbile for the first three units of whole blood or packed cells furnished each calendar year instead of each benefit period. The Part A deductible will also be reduced to the extent that the Part B blood deductible has been met.
- Recalculation of the Part A monthly premium (for those beneficiaries who buy into Part A of Medicare) as required by section 103 of Pub. L. 100–360. It will equal the estimated actuarial value of the Part A benefit and for 1989 will be $156 a month. (It has been $234 a month in 1988.)
- Effective January 1, 1990, home health care for up to six days a week on an intermittent basis for as long as it is prescribed by a doctor. Beneficiaries requiring home health care seven days a week will be entitled to 38 days of care. The 38-day limit can be extended for a period of time if a doctor certifies that the care is medically necessary.

2. Part B

- Limitation of a beneficiary's out-of-pocket expenses for services and supplies to $1,370 in 1990. (Under the old law there was no limit to a beneficiary's out-of-pocket expenses.) Once that amount is reached, Medicare will pay 100 percent of all allowable charges for the remainder of the year. To reach the out-of-pocket limit, a beneficiary will be required to pay the first $75 (deductible) for covered benefits and 20 percent (copayment) of all additional covered costs up to $1,370. If a physician or supplier who does not accept assignment charges more than Medicare's approved charge, the amount above the approved charge must be paid by the beneficiary and is not counted toward the $1,370 limit in 1990.
- A mammogram benefit that provides Medicare coverage for a breast cancer examination every other year for women aged 65 and older, and at various intervals for younger female beneficiaries.
- A respite care benefit that pays for the temporary services of a home health aide to provide relief for a spouse, relative or friend caring for a Medicare beneficiary who cannot be left alone. Medicare will pay for up to 80 hours per year of home health aide and personal care services.
- Coverage for home intravenous drugs and associated items and services (including supplies, equipment, and nursing and pharmacy services).
- Effective January 1, 1990, home health care for up to six days a week on an intermittent basis for as long as it is prescribed by a doctor. Beneficiaries requiring home health care seven days a week will be entitled to 38 days of care. The 38-day limit can be extended for a period of time if a doctor certifies that the care is medically necessary. This benefit is a Part B benefit only if the beneficiary is not enrolled in Part A.
- The Part B deductible will be reduced to the extent that the Part A blood deductible has been met.

D. Determining the Actuarial Value of Duplicative Benefits

Under section 421 of Pub. L. 100–360, the employer has two options for computing the amount of additional benefits or refunds to account for duplicative Part A or Part B benefits: (1) It may determine that their value is equal to the national average actuarial value of the duplicative Part A or Part B benefits, respectively, as determined by the Secretary, or (2) it may determine their actuarial value based on the guidelines below.

Regardless of the method the employer uses, the employer must determine the value of the duplicative Part A or Part B benefits net of any premiums paid by the employees or retired former employees. This means that the employer first determines the value of the duplicative benefits on a per capita basis for the year in question (1989 for duplicative Part A benefits and 1990 for duplicative Part B benefits). The employer then subtracts from the per capita value of the duplicative benefits any premiums the employee pays toward the duplicative benefits. When the employer and employee both contribute toward the cost of the total employer health benefits package, the employee is considered to be contributing the same proportion of the premium attributable to the duplicative portion of the benefit package as the employee contributes toward the overall health benefits package. For example, if the per capita cost of an employer's entire health benefit plan is $200 per year, of which the employee contributes $50 (25 percent), and the cost of the duplicative portion of the benefit plan is $60, the employee is considered to be contributing $15 toward the cost of the duplicative benefits (25 percent of $60).

If an employer provides duplicative benefits under more than one plan, it must determine the value of duplicative benefits for *each* benefit plan it offers individually and provide additional benefits, refunds, or both, to its employees accordingly.

For example, if an employer determines that one of its benefit plans, as of July 1, 1988, provides duplicative benefits that have an actuarial value equal to only 40 percent of the actuarial value of the benefits added or increased by Pub. L. 100–360, it need not provide additional benefits, refunds, or both, to

its employees enrolled in that particular plan. However, if another of the employer's plans provides duplicative benefits that have an actuarial value equal to 50 percent or more of the actuarial value of the benefits added or increased by Pub. L. 100–360, the employer will be required to provide the employees enrolled in that plan with additional benefits, refunds, or both, that total at least the actuarial value of the duplicative benefits provided by that plan. The employer may not sum the values and determine an average.

If a collective bargaining agreement provides that certain company-paid health benefits are vested upon retirement of the employee, the employer is not required to provide additional benefits beyond the time periods stated above, i.e. until the later of 12/31/89 or the date of the expiration of the agreement for duplicative Part A benefits and until the later of 12/31/90 or the date of the expiration of the agreement for duplicative Part B benefits.

G. Applicability to HMOs/CMPs

Section 1876(g) of the Act provides that the Medicare program may contract with health maintenance organizations and competitive medical plans (HMOs) on a risk basis. Payments made to HMOs on behalf of Medicare beneficiaries enrolled in HMOs are fixed and not adjusted based on the enrollees' actual use of services. An HMO contracting on a risk basis is required to submit to the Health Care Financing Administration (HCFA) for approval, before each contract period, its adjusted community rate (ACR). The ACR is the HMO's cost of furnishing Medicare covered services to Medicare enrollees. If the ACR is less than the average payment that HCFA Pays to the HMO, then the HMO is required, under section 1876(g)(2) of the Act, to: (1) Provide additional benefits not covered under Medicare; (2) reduce premiums or other charges; (3) return the difference to HCFA, or a combination of the above three actions. Therefore, a Medicare beneficiary enrolled in a risk contracting HMO may be receiving benefits beyond the scope of Medicare, which are funded from HCFA's payment to the HMO.

An employer may contract with an HMO that has a risk contract with HCFA to provide health benefits under the employer's group health plan. An employer that has a contract with a risk HMO has the same responsibility under the maintenance of effort requirements as any other employer to determine if, as of July 1, 1988, the benefits the employer was providing through the HMO to its employees or retired former employees, constitute duplicative benefits. Duplicative benefits could result in a windfall to the HMO. If the actuarial value of any duplicative benefits being provided by a risk HMO with which the employer has a contract is at least 50 percent of the national average actuarial value of the new or improved benefits provided under Pub. L. 100–360, the employer is expected to negotiate with the HMO for the provision of additional benefits and/or refunds equal in actuarial value to the value of the duplicative benefits. These additional benefits under maintenance of effort must be in addition to the additional benefits that the HMO already provides based on the difference between its average payment rate and its ACR.

H. Guidelines

To determine whether the provisions of section 421 of Pub. L. 100–360 apply to an employer plan, the employer must first determine the cost of the duplicative Part A benefits in 1988. This cost should then be compared to the national average actuarial value of the duplicative Part A benefits valued as of July 1, 1988. The national average actuarial value of duplicative Part A benefits as of July 1, 1988 is $61. If the employer plan cost for 1988 is at least $30.50, then the employer plan is subject to the provisions of section 421.

In calculating the cost to the employer plan, the employer must add together the cost of all of the duplicative benefits in its plan. The sum of the employer's cost is then compared to the national average actuarial value of duplicative Part A benefit as of July 1, 1988; i.e., $61. If the employer does not know the cost of the duplicative benefits in 1988, but knows the costs in some prior year, the employer may use the factors in Table 1 to arrive at the costs in 1988.

The factors in Table 1 and Table 2 are based on the increases in Medicare reimbursement per person enrolled in Part A of Medicare. The factors for skilled nursing care might seem unusual at first glance because the factor for adjusting costs from 1986 to 1988 is larger than the factor for adjusting from 1985 to 1988. This is due to the fact that these factors reflect the increase in Medicare reimbursement per person, not total cost per person. Due to a large increase in the skilled nursing care coinsurance rate in 1986, the actual Medicare reimbursement per person was less in 1986 than in 1985. All of the factors in Table 1 and Table 2 are provided as guidelines. An employer does not have to use these tables. If an employer can determine the costs of its plan by other means which conform to generally accepted actuarial practices, the employer can do so.

The following example will illustrate how to use Table 1 to determine whether, as of July 1, 1988, an employer meets the requirements of section 421: The employer knows the costs for duplicative Part A benefits in the plan for calendar year 1986 are:

Duplicative inpatient hospital benefits cost $40 per person;

Duplicative skilled nursing care benefits cost $5 per person; and

There are no other duplicative benefits. Using Table 1, the employer may now determine the 1988 value of these costs as follows:

1. The factor from Table 1 to adjust inpatient hospital costs from 1986 to 1988 is 1.052. The employer would then calculate $40×1.052 to ge $42.08, the 1988 value of the duplicative inpatient hospital benefits.

2. The adjustment factor from Table 1 to adjust skilled nursing care costs from 1986 to 1988 is 1.114. The employer would then calculate $5×1.114 to get $5.57, the 1988 value of the duplicative skilled nursing care costs.

3. The employer then sums the costs of the individual parts. In this example it would be $42.08+$5.57=$47.65.

4. The total of $47.65 is now divided by the national average duplicative Part A benefits valued in 1988 ($61) to get 79% ($47.65/$61).

5. Since this percentage is greater than 50%, the employer is subject to the provisions of section 421.

6. In lieu of steps 4 and 5 the employer could compare the dollar value of the duplicative benefits $47.65 with $30.50.

If an employer is subject to the provisions of section 421, then the employer must determine the value of the Part A duplicative benefits for 1989. The employer then has the option of using this 1989 value or the national average actuarial value of duplicative Part A benefits for 1989 ($65) in determining the amount of refund, or additional benefits, or combination of refund and additional benefits. The employer may use Table 2 to adjust the employer plan costs to 1989. Using the same example as above, the following will illustrate how the 1989 value of the Part A duplicative benefits may be determined:

1. The adjustment factor from Table 2 to adjust the inpatient hospital duplicative benefits from 1986 to 1989 is 1.117. The employer would then calculate $40×1.117=$44.68 to get the 1989 value of the duplicative inpatient hospital costs.

2. The adjustment factor from Table 2 to adjust the skilled nursing care

duplicative benefits from 1986 to 1989 is 1.188. The employer would then calculate $5 \times 1.88 = \$5.94$ to get the 1989 value of the duplicative skilled nursing care costs.

3. The employer then sums the individual parts to get $50.62 ($44.68 + $5.94).

4. The employer then has the option of using the computed value ($50.62) or the 1989 national average actuarial value ($65) of the duplicative Part A benefit.

TABLE 1.—TO DETERMINE THE VALUE OF DUPLICATIVE BENEFITS IN 1988

[Factors to adjust given year to 1988]

Type of benefit	1984	1985	1986	1987	1988
Inpatient hospital	1.125	1.076	1.052	1.034	1.000
Skilled nursing	1.095	1.069	1.114	1.073	1.000

TABLE 2.—TO DETERMINE THE VALUE OF DUPLICATIVE BENEFITS IN 1989

[Factors to adjust given year to 1989]

Type of benefit	1984	1985	1986	1987	1988
Inpatient hospital	1.194	1.142	1.117	1.098	1.062
Skilled nursing	1.168	1.140	1.188	1.145	1.067

III. Tax Questions

Questions relating to taxability of refunds paid and benefits received under section 421 of Pub. L. 100–360 fall within the purview of the Internal Revenue Service. Any inquiries on this subject should be addressed to that agency. The address is: Internal Revenue Service, P.O. Box 7704, Benjamin Franklin Station, Washington, DC 20044. Inquirers should refer to section 59(B) in their letters.

IV. Effective for Period for Provision of Additional Benefits, Refunds or Both

Employers are required to provide to their employees and retired former employees additional benefits, refunds, or both, at least equal to the actuarial value of: (1) Duplicative Part A benefits (determined as if they were provided in 1989) by January 1, 1989 but no later than December 31, 1989, and (2) duplicative Part B benefits (determined as if they were provided in 1990) by January 1, 1990 but no later than December 31, 1990. However, where there is a collective bargaining agreement in effect as of July 1, 1988, the employer requirement to provide additional benefits, refunds, or both, stays in effect until the later of December 31, 1989 for Part A benefits and December 31, 1990 for Part B benefits, or the date of the expiration of the agreement, determined without regard to any extension of the agreement agreed to after July 1, 1988.

V. Regulatory Impact Statement and Flexibility Analysis

A. Executive Order 12291

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

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, certain employers are considered small entities.

This notice does not contain rules. Rather it announces certain actuarial values and guidelines under section 421 on Pub. L. 100–360, which specifies that if, as of July 1, 1988, an employer provided employees or retired former employees benefits that were added or increased by Pub. L. 100–360, the employer must offer additional benefits, a refund, or a combination thereof, if the duplicative benefits have an actuarial value of at least 50 percent of the benefits added by Pub. L. 100–360. We are nevertheless evaluating the effects of the statute under the criteria of E.O. 12291 and the RFA.

As of July 1, 1988, those beneficiaries who are receiving duplicative benefits from an employer health benefit plan that have an actuarial value of at least 50 percent of the benefits added by Pub. L. 100–360 will benefit from this notice. Specifically, they will be eligible to receive additional benefits or refunds or a combination thereof. Those receiving duplicative benefits valued at less than 50 percent of the actuarial value of benefits added by the provisions of Pub. L. 100–360 will not be eligible for any refunds or additional benefits or combination thereof.

The provisions of section 421 of Pub. L. 100–360 may nominally increase the administrative burden on those employers who are required by that section to determine their obligations to provide additional benefits or refunds equal to the value of duplicative Part A benefits they provided as of July 1, 1988. However, we do not estimate that these administrative costs will result in a significant economic impact on a substantial number of small entities. Therefore, we have determined that this notice is not a major rule under E.O. 12291, and an initial regulatory impact analysis is not required. Also, the Secretary certifies that this notice will not have a significant economic impact on a substantial number of small entities.

B. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

Although this document does not contain rules, we have evaluated the effect of section 421 of Pub. L. 100–360 under the criteria of section 1102(b) of the Act. We are not preparing a rural impact statement since we have determined, and the Secretary certifies that section 421 will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

(**Authority:** 42 U.S.C. 1395b note (Section 421 of Pub. L. 100–360))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: November 21, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 23, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–27766 Filed 12–2–88; 8:45 am]

BILLING CODE 4120–01–M

Health Resources and Services Administration

Announcement and Proposed Criteria for Rural Health Medical Education Demonstration Projects

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) in coordination with the Health Care Financing Administration announces its intent to implement section 4038 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) (the Act), authorizing Rural Health Medical Education Demonstration Projects.

This is a demonstration to assist physicians to develop clinical experience in rural areas using reimbursement for graduate medical education under the Social Security Act. For the purposes of these projects, payments made for the indirect costs of graduate medical education, pursuant to section 1886(d)(5)(B) of the Social Security Act, for any part of a year that a resident works at a small rural hospital, shall be treated as if the resident was working at the sponsoring hospital on September 1 of that year, and shall not be treated as if the resident was working in the small rural hospital.

Medicare's share of the direct graduate medical education costs of the sponsoring hospital will be increased for the duration of the project to meet any reasonable additional direct costs incurred for the education and training of resident physicians at the rural site. The sponsoring hospital will be required to separately accumulate the costs of the demonstration project. Medicare will reimburse the sponsoring hospital for Medicare's share of the additional costs the hospital incurs in connection with the project under the reasonable cost authority in section 1861(v) of the act. Reimbursement for these costs will be in addition to the hospital's payment under section 1886(h).

It should be noted that direct costs may only be claimed once and will not be reimbursed under both section 1886(h) and 1861(v).

In this demonstration an emphasis is being placed on cost effectiveness of the projects. Sponsors of proposed projects must describe areas of additional costs associated with the project which they feel would be reimbursed under section 1861(v). These costs are to be estimated for each of the three years of the demonstration project. The cost and the cost effectiveness of a proposed project will be considered during the review of applications.

Additional costs may include arrangements for supervision of the residents at the rural site, housing of the residents, and travel by residents and supervisors from the sponsoring hospital. Any reimbursement requests for additional costs will require review by the Medicare intermediaries to determine the accuracy and reasonableness of the claim. Teaching hospitals wishing to apply should note that Medicare will only reimburse the sponsoring hospitals for Medicare's share of cost. The sponsoring hospital will have to seek reimbursement from other payers for costs of the demonstration related to non-Medicare patients. Sponsoring teaching hospitals should note that residents participating in the project may be counted as "on-site" or "off-site" personnel for purposes of determining direct medical education cost, however, each resident may only be counted once.

Rural hospitals should note that there will be no reimbursement directly to them. All reimbursement associated with the demonstration projects will be made to the sponsoring hospital.

This Notice invites interested persons to comment on the proposed criteria for the projects which are intended to assist resident physicians in developing field experience in rural cases. The Notice also requests that hospitals interested in entering into an agreement with the Department should notify the Health Resources and Services Administration.

DATES: (1) Written comments from interested persons must be received by January 5, 1989 in order to be considered.

(2) To receive consideration, to enter into an agreement with the Department to conduct a demonstration project, an expression of interest should be received by January 5, 1989. Materials regarding entry into an agreement will only be sent to those programs and hospitals making a request.

ADDRESSES: Written comments and requests for information on entering into an agreement and other questions should be directed to: Chief, Special Projects and Data Analysis Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–04, 5600 Fishers Lane, Rockville, Maryland 20857. For more information call the Chief, Special Projects and Data Analysis Branch on (301) 443–3626.

SUPPLEMENTARY INFORMATION: On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 was signed into law. Section 4038, authorizing, Rural Health Medical Education Demonstration Projects, requires the Secretary of Health and Human Services to enter into agreements with four teaching hospitals, which currently receive payments for direct and indirect graduate medical education costs as defined under Medicare, as sponsors of the demonstration projects. Eligible hospitals may be public or private entities, non-profit or for profit. These projects will be for a three year period and are intended to assist resident physicians in developing field experience in rural areas. These agreements will be entered into only after proposals for participation are received and a review is conducted by the Department. The review of proposals under this demonstration are not subject to requirements of the Executive Order 12372.

Under these agreements, each of the sponsoring hospitals will make arrangements with a small rural hospital to provide for resident rotations for a period of one to three months for physicians who have completed at least one year of residency training in family practice, osteopathic general practice, primary care internal medicine, or primary care pediatrics. The number of physicians and the duration of the rotation is to be a part of the arrangements between the sponsoring hospital and the rural hospital.

The Act requires that the rural hospitals must meet the following geogrpahic criteria:

(1) Two must be in rural counties of more than 2,700 square miles, one of which is east of, and one west of, the Mississippi River; and

(2) Two must be in rural counties with a severe shortage of physicians (as determined by the Secretary), one of which is east of, and one west of, the Mississippi River.

Proposed Project Criteria

The Department is proposing to establish the following criteria for the Rural Health Education Demonstration projects.

(1) Only residents from family medicine, osteopathic general practice, primary care internal medicine, or primary care pediatric residency programs would be eligible for participation in the demonstration projects. The Department views these primary care specialties as most relevant to the needs of rural, underserved areas, and accordingly proposes to limit eligible residency programs to those listed above. All residents participating in the project must have completed at least one year of resident training.

(2) For the purpose of this

demonstration, a small rural hospital is defined as a general hospital of 100 or fewer inpatient beds available for the lodging of patients, excluding newborn beds (except those in intensive care units), skilled nursing beds and beds in any distinct part of the hospital not subject to the Medicare prospective payment system, e.g., psychiatric beds and post operative beds. The hospital must be located in a county that is not included in either a Metropolitan Statistical Area or a New England County Metropolitan Area as determined by the Office of Management and Budget. The Department considers hospitals of 100 beds or fewer as offering training opportunity significantly different from experience offered at most hospitals which sponsor graduate medical education.

(3) For the purpose of the projects, "rural counties with severe shortages of physicians" would be defined as any rural county wholly designated by the Secretary as a Health Manpower Shortage Area (HMSA) under section 332 of the Public Health Services Act (42 U.S.C. 254e). The Department views HMSA designation as the most relevant indicator of physician shortage at the county level.

Interested persons are invited to comment on the proposed criteria for the demonstration projects. Normally, the comment period would be 60 days. However, due to the need to implement the projects as quickly as possible, the comment period has been reduced to 30 days. All comments received by January 5, 1989 will be considered before final project criteria are established.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Dated: November 30, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-28026 Filed 12-5-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1899]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within seven days.

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collecton requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 30, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Interim Rule implementing the rehabilitation component of the Section 8 Certificate Project-Based Assistance Program. With one addition, the information collection requirements in the rule are the same as those set out in the draft HUD field notice that was printed with the Notice of Submission of Proposed Information Collection to OMB, published at 53 FR 45162 (November 8, 1988). The interim rule adds a requirement that the PHS must obtain HUD Field Office approval of contract rents, if the PHA proposes to provide project-based assistance for fifty or more units. In addition, the reporting burden has been revised.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This program Interim Rule establishes the procedures under which a Public Housing Agency (PHA) may, at its sole option, choose to provide Section 8 project-based assistance with funds provided to the PHS for its Section 8 Certificate Program. The Interim Rule implements a 1987 law which directs the Department to permit a PHA to attach to structures up to 15 percent of the Section 8 Assistance by the PHA under the Certificate Program.

Respondents: State or Local Governments, Businesses or Other Non-Profit and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
PHAs	200		1		9.73		1,947.05
(Projects)	(200)		(1)		(.4085)		81.70
Total Burden							2,038.75
Owners Total Burden	200		1		40.6		8,110.00
Total							10,138.75

Total Estimated Burden Hours: 10,138.75

Status: New Collection.

Contact: Louise Hunt, HUD, (202) 755–6887; John Allison, OMB, (202) 395–6880.

Dated: November 30, 1988.

[FR Doc. 88–28001 Filed 12–5–88; 8:45 am]

BILLING CODE 4210–01–M

Government National Mortgage Association

[Docket No. N–88–1864; FR–2548]

GNMA Mortgage-Backed Securities Program; Revision of Mortgage and Security Interest Rate Requirements

AGENCY: Government National Mortgage Association, HUD.

ACTION: Notice of intent to remove requirement for a specific "spread" between mortgage and security interest rates in the mortgage-backed securities program.

SUMMARY: Currently, the Government National Mortgage Association (GNMA) requires that the interest rate on mortgage-backed securities be a predetermined amount lower than the interest rate or rates on the underlying mortgages. GNMA proposes to remove these administrative restrictions on interest rates. As a consequence, there would be a significant change in the terms of contracts entered into between GNMA and issuers in connection with future mortgage-backed security issuances. Because of the nature of this policy change and its impact upon program participants, GNMA is publishing its intentions in the Federal Register and inviting comment from the public and from program participants on the contemplated change.

DATES: *Comment Due Date:* February 6, 1989.

ADDRESSES: Interested persons are invited to submit comments on the Notice to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John E. Vihstadt, Executive Assistant to the President, Government National Mortgage Association, Room 6100, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–5926. (This is not toll-free number).

SUPPLEMENTARY INFORMATION: Lenders servicing GNMA mortgage-backed securities (MBS) earn a certain servicing fee according to the type of pools serviced. For GNMA I single family pools, including pools of GPM and GEM mortgages, that amount is .5 percent below the interest rate on the mortgages in the pool (Handbook GNMA 5500.1 at 10–2). For GNMA I manufactured home loan pools, the amount ranges from 3.5 percent to 2.25 percent, depending upon the type of loan. (Handbook GNMA 5500.1 at 15–5(b)). For Project loan and Construction loan pools, the amount is .25 percent or .45 percent, depending upon whether FHA insurance benefits are payable in cash or debentures (Handbook GNMA 5500.1 at 16–7 and 17–4).

Similar "spread" requirements are contained in the GNMA II instructions—see Handbook GNMA 5500.2 at 5–3(b) and 5–6(c)(2).

From this required spread, the issuer may pay the required GNMA guarantee fee (Handbook GNMA 5500.1 at 5–2(b), 15–5(c), 16–6 and 17–6; Handbook 5500.2 at 4–4(c)), with the remainder to be used as compensation for the issuer's servicing activities.

These servicing fees have remained constant since the inception of the MBS program in 1970. While little or no historical information exists as to how the amounts of the servicing fees were determined, it appears that the principal consideration was to encourage lenders to participate in the program by ensuring that they could profitably service GNMA MBS pools.

By all accounts, the servicing spreads have done their job. As of July 1988, there were approximately 1,200 GNMA-approved lenders headquartered in 49 States and in Puerto Rico. Since 1970, over $490 billion in GNMA MBS have been issued, with over $330 billion outstanding as of August 1988. The $490 billion represents over 200,000 separate MBS pools. The GNMA MBS is the most widely held and traded mortgage-backed security in the world.

The Administration and GNMA now believe that the program is mature enough that the servicing fee may be safely deregulated, with the market setting the rate, whether higher or lower. A deregulated fee is a more natural indicator of the true value of mortgage servicing in a free market economy, and would encourage lenders to become more efficient and responsive to industry and borrower demands. Lenders would have the freedom to set fees that more closely reflect their costs of servicing mortgages in the various government insured and guaranteed loan programs participating in the GNMA-MBS program. At the same time, GNMA is not unmindful of the potential ramifications of deregulation, including its potential impact on the market for GNMA MBS, its effect on the GNMA investor base, and on lenders and borrowers of FHA-insured and VA-guaranteed home mortgages.

Because of the significant consequences that any deregulation of the servicing fee could have, GNMA seeks comments on the following possible courses GNMA could take. Subject to compelling public comment to the contrary, GNMA contemplates that all options would involve the deregulation of servicing fees for all programs and that a minimum six months notice would be provided to lenders. Commenters should also base their comments on the assumption that the guarantee fee that GNMA charges issuers will remain the same for the foreseeable future and subject to legislative requirements set forth in Pub. L. 100–14, "An Act to amend the National Housing Act to limit the fees that may be charged by the Government National Mortgage Association for the guarantee of mortgage-backed securities." Approved March 24, 1987.

Option 1. This option would be a complete deregulation of all servicing fees, beginning with all new pools issued after a date certain. GNMA seeks comments as to whether a floor, below which the fee could not drop, should be set, and at what level. (For example, GNMA could require that the servicing fee for the single family program, now 44 basis points, be allowed to float freely but in no event lower than, say, 36 points or 32 points.)

Option 2. GNMA requests comments on deregulating with set increments or gradations, rather than free-floating the fee. (For example, GNMA issuers could issue single family pools with servicing

fees of 48, 44 or 40 points, or according to some other set menu of points.)

Option 3. A companion proposal to this proposal to deregulate the GNMA servicing fee would establish new net worth requirements for GNMA issuers. (*See* the proposed rule entitled "Eligible Issuers Under Mortgage-Backed Securities Program," published October 17, 1988, 53 FR 40458). The new net worth requirements are designed, in part, to ensure that issuers will have higher capital resources in order to guard against potential increased risk to GNMA caused by any reduction in servicing value of affected pools. While the changes to GNMA net worth requirements are intended to be made effective, following consideration of public comment on the proposed rule, regardless of the outcome of this proposal to deregulate servicing fees, GNMA requests comments concerning whether the ability to issue pools with new servicing fee levels should be limited to a special class of issuers meeting still higher net worth requirements (or meeting other qualifications), or whether all issuers in good standing should be allowed to issue pools with deregulated spreads.

GNMA also seeks views on the following concerns raised in connection with deregulation:

1. *Impact on the GNMA program.* GNMA has defaulted some issuers at various times for failure to comply with certain statutory, regulatory and administrative requirements. When a default occurs, and there is little prospect of a cure, GNMA assumes the issuer/servicer's servicing responsibilities, enters into a subservicing agreement with an approved GNMA issuer, and attempts, as soon as possible, to sell and transfer the portfolio to another issuer in order to avoid administrative and budget burdens associated with subcontracting. GNMA seeks comments on whether, and at what level, a servicing fee for a particular pool might operate to discourage purchase by an issuer in good standing, thereby increasing GNMA's own administrative and fiscal costs.

2. *Competitive Effects.* GNMA believes that many companies will be able to service for less than current servicing fee levels and still make a profit. While lenders have certain special responsibilities and costs as servicers of FHA and VA loans, they also realize certain savings in dealing in government, as opposed to conventional loans. GNMA seeks comments on the possible competitive effects of deregulation on the issuer universe.

3. *Market Impact on GNMA Securities.* Deregulation may result in odd coupon securities, *i.e.*, securities bearing coupon rates in other than half-point increments. While any new security takes time to be fully accepted by investors, GNMA seeks comments concerning the market appeal of securities with odd-coupon rates, and their likely overall effect on the acknowledged high liquidity of GNMA MBS in general. Could impact on liquidity be minimized by allowing only quarter-point coupon increments?

4. *Impact on Consumers.* Numerous factors contribute to a lender's decision to offer FHA and VA loans and a borrower's decision to take one. What impact would a deregulated servicing fee have on availability and cost of a government loan?

Procedural Requirements

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order.

Currently, GNMA requires that the interest rate on mortgage-backed securities be a predetermined amount lower than the interest rate(s) on the underlying mortgages. In this Notice, GNMA announces its intention to remove these administrative restrictions. Any removal will result in a change in the terms upon which GNMA contracts with issuers of mortgage-backed securities. It will not, however, effect a fundamental change in the established relationship between lender-issuers and GNMA.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family,* has determined that this Notice does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The function of this Notice is limited to inviting public comment on the intention of GNMA to revise certain administrative restrictions that currently govern contractural relations it has with issuers of mortgage-backed securities.

Dated: November 28, 1988.

Mark Buchman,

President, Government National Mortgage Association.

[FR Doc. 88-27981 Filed 12-5-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-010-09-4410-08]

Environmental Statements; Washakie Resource Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management (BLM) announces the availability of the Record of Decision for the Washakie Resource Management Plan/Environmental Impact Statement (RMP/EIS) and the Approved RMP for the Washakie Resource Area. The Record of Decision and the Approved Washakie RMP were signed by the BLM Wyoming State Director. They were distributed on October 20, 1988.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the National Environmental Policy Act, the Wyoming State Director of the Bureau of Land Management has issued the Approved Washakie Resource Management Plan and a record of decision on the environmental impact statement for that plan.

FOR FURTHER INFORMATION CONTACT: Roger D. Inman, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, telephone (307) 347-9871.

SUPPLEMENTARY INFORMATION: The Approved RMP for the Washakie Resource Area provides guidance to resource managers for the comprehensive management and use of the BLM administered public lands and resources in the Washakie Resource Area.

The Approved RMP describes the future management direction for 1,234,000 acres of public land surface and 1,603,000 acres of Federal mineral estate administered by the BLM in the Washakie Resource Area, Worland District. The Resource Area includes portions of Big Horn, Washakie, and Hot Springs counties in the Big Horn Basin of north central Wyoming. The Record of Decision formalizes and records the decision to select the Approved Resource Management Plan. The livestock grazing portion of the RMP includes the Range Program Summary, which informs the public of the BLM's rangeland resource management objectives for the grazing allotments in the Washakie Resource Area, and of the actions intended to achieve those objectives.

Four special management area designations have been made in the approved plan:

—Approximately 11,200 acres are designated as the Spanish Point Karst Area of Critical Environmental Concern (ACEC).
—Approximately 241,000 acres on portions of the west slope of the Bighorn Mountains are designated as a Special Recreation Management Area (SRMA).
—Approximately 59,000 acres along the Bighorn River from the Wedding of the Waters downstream to Shell Creek are designated as an SRMA.
—The remainder of the resource area (about 934,000 acres) is designated as an Extensive Recreation Management Area (ERMA).

Copies of the document may be obtained from Roger Inman, at the address listed above.

Date: November 23, 1988.

Hillary A. Oden,

State Director.

[FR Doc. 88-27994 Filed 12-5-88; 8:45 am]

BILLING CODE 4310-22-M

[ID-030-09-4211-14, 4333-12, 4351-11]

Motor Vehicle Use Restrictions; Idaho

AGENCY: Bureau of Land Management.

ACTION: Cancellation of restricted vehicle use closure order.

In accordance with a July 12, 1988 order issued by IBLA (IBLA-88-383), this office issued a closure order affecting the Egin-Hamer road in Idaho. The order extended the closure of the Egin-Hamer road from November 1 through April 30 and was published in the Federal Register on September 29, 1988, Vol. 53, No. 189, pp. 38092 and 38093.

On November 8, 1988, the Secretary of the Interior issued an order which overruled the IBLA order of July 12, 1988. Therefore, the order of closure issued by this office which affected the Egin-Hamer road is hereby cancelled. The Egin-Hamer road will be closed to motor vehicles between December 1 and March 31 of each year as set forth in a notice published in the Federal Register on November 27, 1987, Vol. 52, No. 228, pp. 45385 and 45386.

EFFECTIVE DATE: This cancellation is effective immediately.

FOR FURTHER INFORMATION CONTACT: Lloyd H. Ferguson, District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, (208) 529-1020.

Dated: November 28, 1988.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 88-27992 Filed 12-5-88; 8:45 am]

BILLING CODE 4130-GG-M

[OR-933-09-4332-09; GP9-025]

Public Review Period for USGS/USBM "Mineral Survey Reports" Prepared for BLM Wilderness Study Areas; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Oregon Bureau of Land Management (BLM) is requesting public review of combined U.S. Geological Survey (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" for the following Wilderness Study Areas (WSAs). These WSAs have been preliminarily recommended suitable for inclusion into the National Wilderness Preservation System:

1. Orejana Canyon WSA (OR-1-78), Harney County, Oregon (USGS Bulletin 1738-B);
2. Abert Rim WSA (OR-1-101), Lake County, Oregon (USGS Bulletin 1738-C);
3. Fish Creek Rim WSA (OR-1-117), Lake County, Oregon (USGS Open File Report 88-442);
4. Guano Creek WSA (OR-1-132), Lake County, Oregon (USGS Open-File Report 88-0297);
5. Sheepshead Mountains WSA (OR-2-72C), Wildcat Canyon WSA (OR-2-72D), and Table Mountain WSA (OR-2-72I), Malheur and Harney Counties, Oregon (USGS Bulletin 1739-A);
6. Rincon WSA (OR-2-82), Harney County, Oregon (USGS Bulletin 1740-E);
7. Disaster Peak WSA (OR-3-153/NV-020-859), Harney and Malheur Counties, Oregon, and Humboldt County, Nevada (USGS Bulletin 1742-A);
8. Upper West Little Owyhee WSA (OR-3-173), Malheur County, Oregon (USGS Bulletin 1719-H);
9. Lower John Day WSA (OR-5-6), and Thirtymile WSA (OR-5-1) Sherman and Gilliam Counties, Oregon (USGS Bulletin 1743-A);
10. South Fork WSA (OR-5-33), and Sand Hollow WSA (OR-5-34) Crook County, Oregon (USGS Bulletin 1744-A);
11. Sheep Mountain WSA (OR-6-3), Baker County, Oregon (USGS Bulletin 1741-B); and
12. Zwagg Island WSA (OR-12-14), Curry County, Oregon (USGS Open File Report 88-257).

If the public provides a new interpretation of the data presented in the mineral reports or submits new mineral data for consideration, BLM will send these comments to USGS/USBM. Significant new findings, if any, will be documented in the BLM "Wilderness Study Report" which will be reviewed by the Secretary, the President, and by Congress before final decisions on wilderness designation are made.

Copies of the mineral survey reports are available for review in BLM offices in Portland, Salem, Eugene, Roseburg, Medford, Coos Bay, Lakeview, Burns, Prineville, Vale, and Spokane. These copies are not available for sale or removal from BLM offices. Copies, however, may be purchased from the following address: Books and Open-File Report Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225, (303) 236-7476.

DATE: The public review of the mineral survey reports named in this notice shall conclude on February 17, 1989.

ADDRESS: Send comments and information to: State Director (920), BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Durga N. Rimal, Division of Mineral Resources at (503) 231-6951 or David Harmon, Division of Lands and Reneweable Resources at (503) 231-6823, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable by BLM for inclusion into the wilderness system to determine the mineral values, if any, that may be present in such areas. There are about 2.8 million acres of Wilderness Study Areas identified by BLM in Oregon, of which about 1.3 million acres have been preliminarily recommended as suitable. These 12 reports are part of approximately 45 combined mineral survey reports that will be prepared by USGS/USBM. The next batch of mineral survey reports will be available for public review during the spring of 1989.

The BLM Oregon State Director is providing this public review and comment period in order to insure that all available minerals data are

considered by Congress prior to making its final wilderness suitability decisions. BLM will review the public comments and will forward to USGS/USBM any significant new minerals data or new interpretations of the minerals data submitted by the public.

The information requested from the public via this invitation is not limited to any specific energy or mineral resource. Comments should be provided in writing and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and USGS/USBM Mineral Survey Report.
2. Mineral(s) of interest.
3. A map or land description by legal subdivision of the public land survey grid or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area.
4. Information and documents that depict the new data or reinterpretation of data.
5. The name, address, and phone number of the person who may be contacted by technical personnel of the BLM, USGS, or USBM assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc. should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and *marked confidential* will be treated as proprietary data and will not be released to the public without consent.

Charles W. Luscher,

State Director.

Dated: November 23, 1988.

[FR Doc. 88-28050 Filed 12-5-88; 8:45 am]

BILLING CODE 4310-33-M

Bureau of Reclamation

[INT-DES-88-56]

Kellogg Unit Reformulation Study, Delta Division, Central Valley Project, Contra Costa County, CA

AGENCY: Bureau of Reclamation (USBR), Interior.

ACTION: Notice of availability of planning report/draft environmental statement (PR/DES).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Reclamation (Reclamation) has prepared a planning report/draft environmental statement (PR/DES) on a proposed project to improve water quality and water system reliability for the Contra Costa Water District, California. The report presents an evaluation and comparison of six alternatives for relocating the Contra Costa Canal intake from its present location at Rock Slough on the Sacramento-San Joaquin Delta.

DATES: A 90-day public review period commences with the publication of this notice. Written comments on the report may be submitted to the Regional Director at the address below within the 90-day review period.

ADDRESSES: Single copies of the PR/DES may be requested from Reclamation's Regional Office at the address below. Copies of the PR/DES and its seven appendices are available for inspection at the following locations:

Director, Public Affairs Office, Department of the Interior, Bureau of Reclamation, Room 7644, Washington, DC 20240; Telephone: (202) 343-4662.

Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, CO 80225; Telephone: (303) 236-6963.

Regional Director, Bureau of Reclamation, Mid-Pacific Regional Office, 2800 Cottage Way, Attention: MP-720, Sacramento, CA 95825-1898; Telephone: (916) 978-4957.

Contra Costa Water District Headquarters, 1331 Concord Avenue, Concord, CA 94524

Libraries

Contra Costa County Libraries: Antioch, Brentwood, Concord, Dublin, Lafayette, Martinez, Moraga, Oakley, Orinda, Pacheco, Pittsburg, Pleasant Hill, San Ramon Valley (Danville), Walnut Creek, and Ygnacio Valley, CA

California State Library, Sacramento, CA

California State University Libraries, Hayward and Sacramento, CA

Contra Costa Center Library, Pleasant Hill, CA

Diablo Valley College Library, Pleasant Hill, CA

Los Medanos College Library, Pittsburg, CA

University of California, Water Resources Center, Berkeley Archives Collection, Berkeley, CA

University of California, Water Resources Center, Main Library, Government Documents Section, Davis, CA

University of California, Water Resources Archives, Los Angeles Archives Collection, Los Angeles, CA

FOR FURTHER INFORMATION CONTACT: Mr. Richard M. Johnson (Team Leader, Mid-Pacific Region), (916) 978-4957; or Dr. Wayne O. Deason (Manager, Environmental Services, Denver Federal Center), (303) 236-9336.

SUPPLEMENTARY INFORMATION: Under the recommended plan, the existing intake of the canal would be relocated to Clifton Court Forebay. The proposed 19-mile-long Highlane Canal located in eastern Contra Costa County, would connect the existing Contra Costa Canal to Clifton Court Forebay. Implementation of the proposed project would improve the quality of water Contra Costa Water District receives and would provide an added degree of water system reliability. Full resolution of the district's water quality and water system reliability problems, however, would also require construction of an offstream storage reservoir. The recommended plan includes a mitigation package to offset any negative effects on the environment.

Date: November 25, 1988.

B.E. Martin,

Acting Deputy Commissioner.

[FR Doc. 88-28007 Filed 12-5-88; 8:45 am]

BILLING CODE 4310-09-M

Competitive Sale of Federal Land

ACTION: Notice of realty action.

SUMMARY: The following described land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), at no less than the appraised fair market value. The Bureau of Reclamation will accept bids on the land described below and will reject any bids for less than $43,000.00, the appraised value.

DATE: February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Ed Taylor, Realty Specialist, Bureau of Reclamation, Mountain House and Kelso Roads (10 miles west of Tracy), Tracy, California 95378, telephone (209) 836-6238.

SUPPLEMENTARY INFORMATION: A tract of land in the east half of section 5 and the northeast quarter of Section 8, all in Township Four (4) South, Range Six (6) East, Mount Diablo Meridian, San Joaquin County, State of California, containing an area of 25.35 acres, more or less.

Said above tract shall be subject to easements or rights-of-way existing or of record in favor of the public or to third parties.

The land will be offered for sale through the competitive bidding process. A sealed bid sale will be held at the Bureau of Reclamation, Mountain House

and Kelso Roads, Tracy, California on February 8, 1989, at which time the sealed bids will be opened. Sealed bids will be accepted at the Tracy Office until close of business on February 7, 1989. Reclamation may accept or reject any and all offers, or withdraw any land or interest in land for sale if, in the opinion of the Regional Director, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), or other applicable laws. In order to promote full and free competition, the bid form required for this sale contains a statement that the purchase price has been determined independently by the bidder; this statement must accompany each sealed bid.

The sale of the land is consistent with the Bureau of Reclamation land use planning and it was determined that the public interest would best be served by offering this land for sale.

Resource clearances consistent with the National Environmental Policy Act requirements have been completed and approved. A Categorical Exclusion Checklist is available for public review at the Tracy office.

The quitclaim deed issued for the land sold will be subject to easements or rights-of-way existing or of record in favor of the public or third parties, and shall also make the land subject to conditions and covenants pursuant to E.O. 11988.

For a period of 60 days from the date of this notice, interested parties may submit comments to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825. Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determination of the Department of the Interior.

Date: November 9, 1988.

Neil W. Schild,

Assistant Regional Director, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 88-27879 Filed 12-5-88; 8:45 am]

BILLING CODE 4310-09-M

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change in discount rate for water resources planning.

SUMMARY: This notice sets forth that the discount rate to be used in Federal water resources planning for fiscal year 1989 is 8⅞ percent.

DATE: This discount rate is to be used for the period October 1, 1988 through and including September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Sam Kennedy, Bureau of Reclamation, Department of the Interior, Denver, CO 80225. Telephone (303) 236-8388.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 8⅞ percent for fiscal year 1989.

This rate has been computed in accordance with section 80(a) Pub. L. 93-251 (88 Stat. 34) and 18 CFR 704.39, which (1) specify that the rate shall be based upon the average yield during the preceding fiscal year on interest bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity; and (2) provide that the rate shall not be raised or lowered more than one-quarter of one percent for any year.

The Treasury Department calculated the specific average yield to be 9.2 percent. Since the rate must be a multiple of one-eighth of 1 percent nearest that average, and in fiscal year 1988 was 8⅝ percent, the rate for fiscal year 1989 is 8⅞ percent.

The rate is 8⅞ percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs, and otherwise converting benefits and costs to a common time basis.

C. Dale Duvall,

Commissioner.

November 25, 1988.

[FR Doc. 88-28008 Filed 12-5-88; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Concession Contract Negotiations; Fletcher's Boat House, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Fletcher's Boat House, Inc., authorizing it to continue to provide rowboat, canoe and bike rental, and snack bar facilities and services for the public at C&O Canal National Historical Park, Maryland, for a period of five (5) years from January 1, 1989, through December 31, 1993.

EFFECTIVE DATE: February 6, 1989.

ADDRESS: Interested parties should contact the Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Ronald N. Wrye,

Acting Regional Director, National Capital Region.

Date: September 22, 1988.

[FR Doc. 88-28015 Filed 12-5-88; 8:45 am]

BILLING CODE 4310-70-M

National Capital Region; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, December 13, 1988, at 1:30 p.m., in the Executive Conference Room at the National Capital Planning Commission, 1325 G Street NW., Washington, DC.

The Commission was established by Pub. L. 99-652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's

Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

William Penn Mott, Jr., Chairman, Director, National Park Service, Washington, DC.
George M. White, Architect of the Capitol, Washington, DC.
Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC.
J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC.
Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC.
Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC.
John Alderson, Administrator, General Services Administration, Washington, DC.
Honorable Frank Carlucci, Secretary of Defense, Washington, DC.

The purpose of the meeting will be to review and take action on the following:

I. Kahlil Gibran Memorial, authorized by Pub. L. 98–537, October 19, 1984.

—Review of Preliminary Design Plan.

II. Korean War Memorial, authorized by Pub. L. 99–572, October 28, 1986.

—Review of Criteria for the Design Competition:

a. Memorial Design Requirements and Limitations.

b. Presentation Requirements.

Date: November 30, 1988.

John G. Parsons,

Acting Regional Director, National Capital Region.

[FR Doc. 88–28016 Filed 12–5–88; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 25, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 21, 1988.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Pima County

Calonia Solana Residential Histaric District, Roughly bounded by Broadway Blvd., S. Randolph Way, Camino Campestre, and S. Country Club, Tucson, 88002963

CONNECTICUT

Hartford County

Southington Center Histaric District, Roughly N. Main St. N. from Vermont Ave., and Berlin St. from Main St. to Academy Ln., Southington, 88002961

Litchfield County

Downtown Torrington Historic District, Roughly bounded by Church and Alvord Sts., Center Cemetery, Willow St., E. Main St., Litchfield St., and Propsect St., Torrington, 88002978

Tolland County

Talcattville Historic District, 13–44 Elm Hill Rd. and 11—132 Main St., Vernon, 88002959

FLORIDA

Dade County

Algonquin Apartments (Downtown Miami MRA), 1819–1825 Biscayne Blvd., Miami, 88002985
Brickell Mausaleum (Dawntawn Miami MRA), 501 Brickell Ave., Miami, 88002977
Central Baptist Church (Downtown Miami MRA), 500 N.E. 1st Ave., Miami, 88002988
Chaille Block (Downtawn Miami MRA), 401–447 N. Miami Ave., Miami, 88002964
City National Bank Building (Dawntawn Miami MRA), 121 S.E. 1st St., Miami, 88002975
City of Miami Cemetery (Downtawn Miami MRA), 1800 N.E. 2nd Ave., Miami 88002960
Dade County Courthouse (Dawntown Miami MRA), 73 W. Flagler St., Miami, 88002983
Darsey, D. A., Hause (Downtown Miami MRA), 250 N.W. 9th St., Miami, 88002966
DuPant, Alfred I., Building (Dawntown Miami MRA), 169 E. Flagler St., Miami 88002984
Ebenezer Methodist Church (Downtown Miami MRA), 1042 N.W. 3rd Ave., Miami 88002972
Fire Station No. 2 (Downtown Miami MRA), 1401 N. Miami Ave., Miami, 88002971
First Presbyterian Church (Downtown Miami MRA), 609 Brickell Ave., Miami, 88002979
Greater Bethel AME Church (Downtown Miami MRA), 245 N.W. 8th St., Miami, 88002987
Hahn Building (Downtown Miami MRA), 140 N.E. 1st Ave., Miami, 88002989
Huntington Building (Downtawn Miami MRA), 168 S.E. 1st St., Miami, 88002976
Ingraham Building (Downtown Miami MRA), 25 S.E. 2nd Ave., Miami, 88002958
J & S Building (Downtown Miami MRA), 221–233 N.W. 9th St., Miami, 88002967
Kentucky Home (Downtown Miami MRA), 1221 and 1227 N.E. 1st Ave., Miami, 88002969
Lyric Theater (Dawntown Miami MRA), 819 N.W. 2nd Ave., Miami, 88002965
Martina Apartments (Dawntawn Miami MRA), 1023 S. Miami Ave., Miami, 88002981
Meyer-Kiser Building (Downtawn Miami MRA), 139 N.E. 1st Building, Miami, 88002991
Miramar Public School (Dawntawn Miami MRA), 109 N.E. 19th St., Miami, 88002974
Old US Past Office and Courthouse (Downtown Miami MRA), 100–118 N.E. 1st Ave., Miami, 88002962
Palm Cottage (Downtown Miami MRA), 60 S.E. 4th St., Miami, 88002957
Priscilla Apartments (Dawntawn Miami MRA), 318–320 N.E. 19th St. and 1845 Biscayne Blvd., Miami, 88002986
S & S Sandwich Shop (Downtown Miami MRA), 1757 N.E. 2nd St., Miami, 88002994
Security Building (Dawntown Miami MRA), 117 N.E. 1st Ave., Miami, 88002990
Shoreland Arcade (Dawntawn Miami MRA), 120 N.E. 1st St., Miami, 88002992
Southside School (Dawntawn Miami MRA), 45 S.W. 13th St., Miami, 88002980
St. John's Baptist Church (Downtawn Miami MRA), 1328 N.W. 3rd Ave., Miami, 88002970
Walgreen Drug Stare (Downtawn Miami MRA), 200 E. Flagler St., Miami, 88002982

INDIANA

Fountain County

Milford, Marshall M., House, 414 E. Main St., Attica, 88003037

Hamilton County

Craycraft, Daniel, Hause, 1095 E. Conner St., Noblesville, 88003040

Huntington County

Kline, John and Minerva, Farm, 2715 East 400 North, Huntington vicinity, 88003038

Lake County

Lake Caunty Sheriff's House and Jail, 232 S. Main St., Crown Point, 88003039

Marion County

Attucks, Crispus, High School, 1140 N. Martin Luther King, Jr. St., Indianapolis, 88003043

Montgomery County

Yaunt's Woolen Mill and Baarding Hause, 3729 Old SR 32 West, Crawfordsville, 88003041

Posey County

Posey Caunty Caurthause Square, 300 Main St., Mounty Vernon, 88003042

KANSAS

Reno County

Plevna General Stare, 3rd and Main, Plevna, 88002968

MAINE

Aroostook County

Fort Fairfield Public Library (Maine Public Libraries MPS), Main St., Fort Fairfield, 88003021

Cumberland County

Davis, Daltan Holmes, Memorial Library (Maine Public Libraries MPS), Main St., Bridgton, 88003020

Deertrees Theatre, Deertrees Rd., Harrison vicinity, 88003002

Franklin County

Gaadspeed Memarial Library (Maine Public Libraries MPS), 104 Main St., Wilton, 88003019

Knox County

Vinalhaven Public Library (Maine Public Libraries MPS), Carver St., Vinalhaven, 88003014

Oxford County

Mann, Arthur L., Memorial Library (Maine Public Libraries MPS), Main St., West Paris, 88003016
Paris Public Library (Maine Public Librories MPS), 3 Main St., South Paris, 88003015
Rumford Public Library (Maine Public Libraries MPS), Rumford Ave., Rumford, 88003023

Piscataquis County

Mila Public Library (Maine Public Libraries MPS), 4 Pleasant St., Milo, 88003017

Sagadahoc County

Riggs, Benjamin, House, Robinhood Rd., Georgetown vicinity, 88003008
Riggs—Zarach House, Off Robinhood Rd., Georgetown vicinity, 88003007

Somerset County

Madisan Public Library (Maine Public Libraries MPS), Old Point Ave., Madison, 88003022

Waldo County

Islesbara Free Library (Maine Public Libraries MPS), Main Rd., Islesboro, 88003018

York County

Canway Junctian Railraad Turntable Site, Fife Ln. and Rt. 236, South Berwick vicinity, 88003001

MICHIGAN

Washtenaw County

Ypsilanti Histaric District (Baundary Increase), Roughly Michigan, Summit, W. Cross, W. Forest, and Ballard; S. Adams and Woodward; Forest, Grove, Cross, and River, Ypsilanti, 88003055

MINNESOTA

Becker County

Sargent, Hamer E., Hause, 1036 Lake Ave., Detroit Lakes, 88003005

Clay County

Park Elementary Schaal, 121 6th Ave. South, Moorhead, 88003013

Crow Wing County

Northern Pacific Railraad Shops Histaric District, Roughly bounded by the Burlington Northern Railroad tracks, Laurel and 13th Sts., Brainerd, 88003024

Mahnomen County

Mahnamen City Hall, 104 W. Madison Ave., Mahnomen, 88003011

Wadena County

Cammercial Hatel, Jefferson St. South, Wadena 88003010
Northern Pacific Possenger Depot, Off 1st St. Southwest, Wadena, 88003012

NORTH CAROLINA

Mecklenburg County

Elizabeth Histaric District, Roughly bounded by Central Ave., Seaboard Coast Line Railroad, E. 5th St. Kenmore Ave., Park Dr., and E. Independence, Charlotte, 88003003

Rowan County

Lyerly Building far Bays, Crescent Rd./Rt. 3, Gold Hill Township, 88003006

Wake County

Oakwood Historic District (Baundary Increase), Roughly bounded by E. Franklin St., Wautauga St., Boundary St., and N. Bloodworth St., Raleigh, 88003044

PENNSYLVANIA

Berks County

Hunter's Mill Complex, Forgedale Rd., Herreford Twnshp., 88003045

Bucks County

Mechanicsville Villoge Historic District, Jct. Mechanicsville Rd. and Rt. 413, Mechanicsville, 88003049

Dauphin County

Smith, Henry, Farm, 950 Swatara Creek Rd., Middletown, 88003050

Delaware County

Collen Brook Farm, Off Mansion and Marvine Rds., Upper Darby Twnshp., 88003048

Lancaster County

Andrews Bridge Histaric District, Jct. of Rt. 896 and Sproul and Creeks Rds., Colerain Twnshp., 88003046

Montgomery County

Strawbridge and Clatheir Stare, Old York Rd. N of Rydal Rd., Jenkintown, 88003047

SOUTH DAKOTA

Codington County

Adams, E. C., Hause (North End Neighbarhaad MPS), 604 N. Maple, Watertown, 88003032
Cartford, Benjamin H., Hause (Narth End Neighbarhood MPS), 803 N. Maple, Watertown, 88003025
Davis, Amy A., Hause (North End Neighbarhaad MPS), 20 Fourth Ave., NW, Watertown, 88003030
DeGraff, Curt E., Hause (North End Neighborhaad MPS), 603 N. Park, Watertown, 88003033
Evangelical United Brethren Church (North End Neighbarhaad MPS), 409 N. Maple, Watertown, 88003026
Ferris, James W., Hause (North End Neighbarhaad MPS), 619 N. Park, Watertown, 88003034
Freeburg, Dr. H. M., House (Narth End Neighbarhaad MPS), 501 N. Park, Watertown, 88003035
Gulruth, A. C., Hause (Narth End Neighbarhood MPS), 218 Second Ave. NE, Watertown, 88003031
Jahnson, A Einar, House (Narth End Neighborhood MPS), 803 First St. NW, Watertown, 88003029
Mojerus, E. M., Hause (Narth End Neighborhood MPS), 802 First St. NW, Watertown, 88003036
Mauseth, Peter, House (Narth End Neighborhaad MPS), 703 N. Maple, Watertown, 88003028
William, Walter, House (Narth End Neighborhaad MPS), 702 Second St. NE, Watertown, 88003027

UTAH

Emery County

Green River Presbyterian Church, 134 W. Third Ave., Green River, 88002998

Millard County

Scipia Tawn Holl, UT 63, Scipio, 88002999

Sevier County

Sudden Shelter (42SU6), Address Restricted, Salina vicinity, 88003009

Summit County

Echa Church and Schaal, Temple Ln., Echo, 88003000

WASHINGTON

Kitsap County

Haspital Reservotian Histaric District (Puget Sound Naval Shipyord Share Facilities TR), Roughly bounded by Mahan Ave., Hoogewerf Rd., Decatur Ave., and Dewey St., Bremerton, 88003052
Marine Reservatian Histaric District (Puget Sound Naval Shipyard Shore Facilities TR), Bounded by Cole St., Dewey St., Decatur Ave., and Doyen St., Bremerton, 88003051
Officers' Raw Histaric District (Puget Saund Naval Shipyord Share Facilities TR), Roughly bounded by Mahan Ave., Decatur Ave., and Coghlan Rd., Bremerton, 88003054
Puget Saund Radia Statian Histaric District (Puget Sound Naval Shipyard Share Facilities TR), Roughly bounded by Mahan Ave., Coghlan Rd., and Cottman Rd., Bremerton, 88003053

The following property is also being considered for listing in the National Register:

TEXAS

Angelina County

Texas Highway Department Complex, Angelina County MRA, 110 Forest Park, Lufkin 88002769

[FR Doc. 88–28017 Filed 12–5–88; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-405 (Final)]

Sewn Cloth Headwear From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-405 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of sewn cloth headwear, provided for in items 702.06, 702.08, 702.12, 702.14, 702.20, 702.32, 703.05, 703.10, and 703.16 and various items in part 6F of schedule 3 of the Tariff Schedules of the United States,[1] that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Commerce will make its final LTFV determination on or before March 17, 1989 and the Commission will make its final injury determination by May 1, 1989 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673(a) and 1673(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 8, 1988.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-252-1177), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of sewn cloth headwear form the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673). The investigation was requested in a petition filed on May 26, 1988 by counsel for the Headwear Institute of America, New York, NY. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 27409, July 20, 1988).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d)) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on March 14, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 29, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 21, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 22, 1989 at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 24, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rules requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 4, 1989. In addition, any person who has

[1] Such headwear is also provided for in subheadings 6114.20.00, 6114.30.30, 6114.90.00, 6204.22.30, 6204.23.00, 6204.29.20, 6204.29.40, 6209.20.50, 6209.30.30, 6209.90.30, 6209.90.40, 6211.32.00, 6211.33.00, 6211.39.00, 6211.42.00, 6211.43.00, 6211.49.00, and 6505.90 (except 6505.90.30 and 6505.90.40), of the Harmonized Tariff Schedule of the United States (USITC Pub. 2030, as supplemented).

not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 4, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of § 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than April 10, 1989. Such additional comments must be limited to comments on business proprietary information recieved in or after the posthearing briefs.

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 29, 1988.

[FR Doc. 88-28005 Filed 12-5-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 277X)]

CSX Transportation, Inc.; Abandonment Exemption; St. Clair County, MI

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 9.82-mile line of railroad between milepost 73.46 at Avoca, MI, and milepost 83.28 at Port Huron, MI, in St. Clair County, MI.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective January 5, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by December 16, 1988. Requests for stays [2] regarding environmental issues and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 27, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 11, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE, at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 30, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-28066 Filed 12-5-88; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C.2d 400 (1988).

DEPARTMENT OF JUSTICE

Joint Newspaper Operating Arrangement; Manteca News and Manteca Bulletin

Notice is hereby given that the Attorney General, by Order of November 28, 1988, has extended the period for public comment on the application for a Joint Operating Arrangement between the Manteca *News* and the Manteca *Bulletin* filed pursuant to the Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.* The period for public comment has been extended until January 19, 1989. The period in which persons may reply in writing to the report of the Antitrust Division and to other comments is extended until February 18, 1989. Comments should be filed by mailing or delivering five copies to the Assistant Attorney General, Justice Management Division, Department of Justice, Washington, DC 20530.

Date: November 29, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 88-27996 Filed 12-5-88; 8:45 am]

BILLING CODE 4410-01-M

Pollution Control; Consent Judgment; Atlantic Richfield Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that on November 22, 1988, a proposed Consent Decree in *United States* v. *Atlantic Richfield Company, Inc.,* Civil Action Number was lodged with the United States District Court for the Western District of New York. The Complaint filed by the United States alleged violations of the Comprehensive Environmental Response,

Compensation, and Liability Act, as amended, 42 U.S.C. 9601 *et seq.* Defendant Atlantic Richfield Company, Inc. is the successor in interest to Sinclair Refining Company, which owned and operated an oil refinery facility in Wellsville, Alleghany County, New York. The former refinery and an adjacent landfill, operated for the disposal of hazadous wastes generated by the refinery, are two portions of the Sinclair Refinery Superfund Site, registered on the National Priorities List, 40 CFR Part 300, Appendix B.

The Consent Decree provides that the defendant shall design and perform the clean-up of the landfill portion of the Site. This clean-up includes partial channelization of the Genesee River.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Atlantic Richfield Company, Inc.*, D.J. No. 90–11–3–298.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 502 U.S. Courthouse, Court and Franklin Streets, Buffalo, New York 14202, at the Region II office of the Environmental Protection Agency, Office of Regional Counsel, 26 Federal Plaza, New York, New York 10278, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *Atlantic Richfield Company, Inc.*, D.J. No. 90–11–3–298, and include a check for $8.00 (10 cents per page reproduction charge) payable to the United States Treasury.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–27997 Filed 12–5–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–21,166]

Charles E. Mayfield Co., Princeton, LA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), an investigation was initiated on October 3, 1988 in response to a worker petition dated September 20, 1988 and filed on behalf of workers and former workers at Charles E. Mayfield Company, Princeton, Louisiana. The workers produce crude oil and natural gas.

The retroactive provisions of section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 (OTCA) do not apply to workers who were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

No layoffs occured at the Charles E. Mayfield Company since September 20, 1987, one year prior to the date of the petition and the earliest possible impact date. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 25th day of November, 1988.

Marvin M. Fooks,

Director, Officer of Trade Adjustment Assistance.

[FR Doc. 88–28060 Filed 12–5–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,210]

North American Oil and Gas, Inc., Austin, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 19, 1988 in response to a worker petition which was filed on behalf of workers at North American Oil and Gas, Incorporated, Austin, Texas.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

All workers were separated from North American Oil and Gas, Incorporated, Austin, Texas more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed 25th day of November, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–28061 Filed 12–5–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,236]

Sun Exploration and Production Co., Dallas, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), an investigation was initiated on October 3, 1988 in response to a worker petition which was filed on behalf of workers at Sun Exploration and Production Company, Dallas, Texas. The workers are engaged in activities related to the exploration and production of crude oil and natural gas.

All Sun Exploration and Production Company workers at all company locations were certified as eligible to apply for trade adjustment assistance benefits on June 26, 1987. The impact date was April 21, 1986, one year prior to the date of the petition, which was April 21, 1987. The certification remains in effect until June 26, 1989.

Since an active certification covering the petitioning group of workers remains in effect (TA–W–19,643), further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 18th day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–28062 Filed 12–5–88; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act; Native American Programs; Proposed Total Allocations and Allocation Formulas for Program Year 1989 Regular Program and Calendar Year 1989 Summer Youth Employment and Training Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor is publishing the proposed Native American allocations, distribution formulas and rationale, and individual grantee planning estimates for Program Year (PY) 1989 (July 1, 1989–June 30, 1990) for regular programs funded under Title IV–A of the Job Training Partnership Act, and for Calendar Year 1989 for Summer Youth Employment and Training Programs (SYETP) funded under Title II–B of the JTPA.

DATE: Written comments on this proposal are invited and must be received on or before January 1, 1989.

ADDRESS: Send written comments to: Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. William McVeigh. Phone: 202–535–0507.

SUPPLEMENTARY INFORMATION: Pursuant to section 162 of the Job Training Partnership Act (JTPA), the Employment and Training Administration of the Department of Labor publishes below for review and comment the proposed allocations and distribution formulas for areas to be served by Native American grantees to be funded under JTPA section 401, and JTPA Title II, Part B. The amounts to be distributed are $58,996,000 for the JTPA section 401 programs for Program Year (PY) 1989 (July 1, 1989–June 30, 1990); and $13,058,321 for the JTPA Title II, Part B, Summer Youth Employment and Training Program (SYETP) for the Summer of Calendar Year 1989. The planning estimates reflect the existing grantees and their currently assigned areas, and are subject to change for such reasons as Administrative Law Judge decisions, the possibility that a grantee will want to have its designation withdrawn, legislative changes, et al.

The formula for allocating JTPA Section 401 funds provides that 25 percent of the funding will be based on the number of unemployed Native Americans in the grantee's area, and 75 percent will be based on the number of poverty-level Native Americans in the grantee's area.

The formula for allocating SYETP funds divides the funds among eligible recipients based on the proportion that the number of Native American youths in a recipient's area bears to the total number of Native American youths in all eligible recipients' areas.

The rationale for the above formulas is that the number of poverty-level persons, unemployed persons, and youths among the Native American population is indicative of the need for training and employment funds.

Statistics on youths, unemployed persons, and poverty-level persons among Native Americans used in the above programs are derived from the Decennial Census of the Population, 1980.

Signed at Washington, DC this 18th day of November 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1989 TITLE IV–A AND PY 1988 II–B (SUMMER 1989) PLANNING ESTIMATES FOR NATIVE AMERICAN GRANTEES, OCT. 19, 1988

	PY 1989 IV–A			PY 1988 II–B		
	Total	Program	Cost pool	Total	Program	Cost pool
Poarch Band of Creek Indians, Route 3, Box 243A, Atmore, Alabama 36502. Grant Number: 99–7–0648–55–104–02	384,452	307,562	76,890	0	0	0
Aleutian/Pribilof Islands Assoc. Inc., 1689 C Street, Anchorage, Alaska 99501. Grant Number: 99–7–0117–55–071–02	45,853	36,682	9,171	34,985	27,988	6,997
Assoc. of Village Council Presidents, P.O. Box 848, Bethel, Alaska 99559. Grant Number: 99–7–2713–55–135–02	545,040	436,032	109,008	262,905	210,324	52,581
Bristol Bay Native Association, P.O. Box 189, Dillingham, Alaska 99576. Grant Number: 99–7–0116–55–070–02	135,110	108,088	27,022	79,829	63,863	15,966
Central Council of Tlingit and Haida Indian Tribe, 320 W. Willoughby, Suite 300, Juneau, Alaska 99801. Grant Number: 99–7–0114–55–068–02	210,978	168,782	42,196	169,518	135,614	33,904
Cook Inlet Tribal Council, 670 West Fireweed Lane, Anchorage, Alaska 99503. Grant Number: 99–7–3402–55–188–02	350,125	280,100	70,025	202,227	116,782	40,445
Kawerak Incorporated, P.O. Box 948, Nome, Alaska 99762. Grant Number: 99–7–0123–55–073–02	212,885	170,308	42,577	92,913	74,330	18,583
Kenaitze Indian Tribe, P.O. Box 988, Kenai, Alaska 99611. Grant Number: 99–7–0089–55–067–02	29,043	23,234	5,809	17,634	14,107	3,527
Kodiak Area Native Association, 402 Center Avenue, Kodiak, Alaska 99615. Grant Number: 99–7–0115–55–069–02	61,556	49,245	12,311	33,752	27,002	6,750
Maniilaq Manpower, P.O. Box 725, Kotzebue, Alaska 99752. Grant Number: 99–7–0124–55–074–02	167,053	133,642	33,411	89,500	71,600	17,900
Metlakatla Indian Community, P.O. Box 8, Metlakatla, Alaska 99926. Grant Number: 99–7–0064–55–053–02	15,157	12,126	3,031	18,393	14,714	3,679
North Pacific Rim, 300 C Street, Anchorage, Alaska 99503. Grant Number: 99–7–0118–55–072–02	55,595	44,476	11,119	26,357	21,086	5,271
Tanana Chiefs Conference, Inc., 201 First Avenue—Doyon Bldg., Fairbanks, Alaska 99701. Grant Number: 99–7–3109–55–150–02	371,420	297,136	74,284	217,492	173,994	43,498
Affiliation of Arizona Ind. Cntrs. Inc., 333 West Indian School Road, Suite 210, Phoenix, Arizona 85013. Grant Number: 99–7–0268–55–089–02	245,680	196,544	49,136	0	0	0
American Indian Assoc. of Tucson, P.O. Box 7246, Tucson, Arizona 85725. Grant Number: 99–7–0492–55–096–02	320,585	256,468	64,117	0	0	0
Colorado River Indian Tribes, Route 1, Box 23–B, Parker, Arizona 85344. Grant Number: 99–7–0498–55–097–02	78,516	62,813	15,703	31,477	25,182	6,295
Gila River Indian Community, Box 97, Sacaton, Arizona 85247. Grant Number: 99–7–0054–55–049–02	469,469	375,575	93,894	135,577	108,462	27,115

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1989 TITLE IV-A AND PY 1988 II-B (SUMMER 1989) PLANNING ESTIMATES FOR NATIVE AMERICAN GRANTEES, OCT. 19, 1988—Continued

	PY 1989 IV-A			PY 1988 II-B		
	Total	Program	Cost pool	Total	Program	Cost pool
Hopi Tribal Council, Box 123, Kykotsmovi, Arizona 86039. Grant Number: 99-7-0057-55-050-02	367,883	294,306	73,577	107,893	88,314	21,579
Indian Dev. Dist. of Arizona, Inc., 1777 W. Camelback Road, Suite D-102, Phoenix, Arizona 85015. Grant Number: 99-7-0053-55-048-02	107,287	85,830	21,457	43,991	35,193	8,798
Native Americans for Community Action, 2717 North Steves Boulevard, Suite 11, Flagstaff, Arizona 86004. Grant Number: 99-7-1777-55-119-02	109,356	87,485	21,871	0	0	0
Navajo Tribe of Indians, P.O. Box 1899, Window Rock, Arizona 85515. Grant Number: 99-7-0059-55-052-02	6,520,025	5,216,020	1,304,005	2,379,135	1,903,308	475,827
Pasqua Yaqui Tribe, 7474 S. Camino De Oeste, Tucson, Arizona 85748. Grant Number: 99-7-3289-55-160-02	36,862	29,490	7,372	9,386	7,509	1,877
Phoenix Indian Center, Inc., 1337 North 1st Street, Phoenix, Arizona 85004. Grant Number: 99-7-0195-55-084-02	674,521	539,617	134,904	0	0	0
Salt River Pima-Maricopa Ind. Commun., Route 1, Box 216, Scottsdale, Arizona 85256. Grant Number: 99-7-0476-55-094-02	91,782	73,426	18,356	47,120	37,696	9,424
San Carlos Apache Tribe, P.O. Box '0', San Carlos, Arizona 85550. Grant Number: 99-7-0173-55-081-02	299,431	239,545	59,886	118,606	94,885	23,721
Tohomo O'Odham Nation, P.O. Box 837, Sells, Arizona 85634. Grant Number: 99-7-0181-55-083-02	409,211	327,369	81,842	128,277	102,622	25,655
White Mountain Apache Tribe, P.O. Box 700, White River, Arizona 85941. Grant Number: 99-7-0174-55-186-02	318,024	254,419	63,605	133,017	106,414	26,603
Am. Indian Center of Arkansas, Inc., 2 Van Circle, Suite 7, Little Rock, Arkansas 72207. Grant Number: 99-7-1778-55-120-02	445,452	356,362	89,090	0	0	0
California Indian Manpower Csrt., 4153 Northgate Boulevard, Sacramento, California 95834. Grant Number: 99-7-2058-55-181-02	2,639,997	2,111,998	527,999	154,728	123,782	30,946
Candalaria American Indian Council, 2635 Wagon Wheel Road, Oxnard, California 93030. Grant Number: 99-7-0086-55-066-02	440,863	352,690	88,173	0	0	0
Csrt. of United Indian Nations, 1404 Franklin Street, Suite 202, Oakland, California 94612. Grant Number: 99-7-2310-55-133-02	614,563	491,650	122,913	0	0	0
Fresno American Indian Council, 283 North Fresno Street, Fresno, California 93701. Grant Number: 99-7-0079-55-193-02	268,783	215,028	53,757	0	0	0
Hoopa Valley Business Council, P.O. Box 815, Hoopa, California 95546. Grant Number: 99-7-1142-55-114-02	49,524	39,619	9,905	22,849	18,279	4,570
Indian Center of San Jose, Inc., 935 The Alameda, San Jose, California 95126. Grant Number: 99-7-0499-55-098-02	228,295	181,036	45,259	0	0	0
Indian Human Resources Center, 4040 30th Street, Suite A, San Diego, California, 92104. Grant Number: 99-7-2441-55-134-02	431,594	345,275	86,319	0	0	0
Northern Calif. Ind. Dev. Council, Inc., 241 F Street, Eureka, California 95501. Grant Number: 99-7-0686-55-015-02	310,876	248,701	62,175	15,549	12,439	3,110
Orange County Indian Center, Inc., 12755 Brookhurst Street, Garden Grove, California 92642-2550. Grant Number: 99-7-0170-55-172-02	1,905,900	1,524,720	381,180	0	0	0
Tule River Tribe, Dept. of Health, Safety & Welfare, P.O. Box 589, Porterville, California 93258. Grant Number: 99-7-3219-55-153-02	127,869	102,295	25,574	4,266	3,413	853
Ya-Ka-Ama Indian Educ. and Dev., Inc., 6215 Eastside Road, Healdsburg, California 95448. Grant Number: 99-7-0082-55-065-02	126,584	101,267	25,317	0	0	0
Denver Indian Center, Inc., 4407 Morrison Road, Denver, Colorado 80219. Grant Number: 99-7-0076-55-062-02	590,353	472,282	118,071	0	0	0
Southern Ute Indian Tribe, P.O. Box 800, Ignacio, Colorado 81137. Grant Number: 99-7-2714-55-136-02	54,615	43,692	10,923	15,454	12,363	3,091
Ute Mountain Ute Tribe, P.O. Box 30, Towaoc, Colorado 81334. Grant Number: 99-7-1143-55-115-02	65,850	52,680	13,170	18,677	14,942	3,735
American Indians for Development, Inc., P.O. Box 117, Meriden, Connecticut 06450. Grant Number: 99-7-0361-55-091-02	183,860	147,088	36,772	0	0	0
Nulc d/b/a Delaware Indian Council, 2258 S. Broadway, Denver, Colorado 80210. Grant Number: 99-7-3403-55-187-02	37,974	30,379	7,595	0	0	0
Fla. Governors Council on Ind. Affairs, 521 E. College Avenue, Tallahassee, Florida 32301. Grant Number: 99-7-0692-55-107-02	832,713	666,170	166,543	0	0	0
Miccosukee Corporation, P.O. Box 440021, Tamiami Station, Miami, Florida 33144. Grant Number: 99-7-0052-55-047-02	116,961	93,569	23,392	40,199	32,159	8,040
Seminole Tribe of Florida, JTPA Department, 6073 Stirling Road, Hollywood, Florida 33024. Grant Number: 99-7-0004-55-009-02	65,872	52,698	13,174	7,869	6,295	1,574
Nuic d/b/a Georgia Association of Native Ameri, 2258 S. Broadway, Denver, Colorado 80210. Grant Number: 99-7-3406-55-190-02	333,689	266,951	66,738	0	0	0
Alu Like, Inc., 1024 Mapunapuna Street, Honolulu, Hawaii 96819-4417. Grant Number: 99-7-1179-55-116-02	2,426,082	1,940,868	485,216	2,086,934	1,669,547	417,387
American Indian Services Corporation, 1405 North King Street, Suite 302, Honolulu, Hawaii 96817. Grant Number: 99-7-3404-55-189-02	85,540	68,432	17,108	0	0	0
Kootenai Tribe of Indians, P.O. Box 1269, Bunnersferry, Idaho 83805. Grant Number: 99-7-3334-55-161-02	31,596	25,277	6,319	1,327	1,062	265
Nez Perce Tribe, P.O. Box 365, Lapwai, Idaho 83540-0305. Grant Number: 99-7-0065-55-054-02	79,036	63,229	15,807	12,420	9,936	2,484
Shoshone-Bannock Tribes, Fort Hall Indian Reservations, P.O. Box 306, Fort Hall, Idaho 83203. Grant Number: 99-7-1780-55-121-02	234,683	187,746	46,937	40,294	32,235	8,059
American Indian Business Association, 4735 North Broadway, Suite 700, Chicago, Illinois 60640. Grant Number: 99-7-0809-55-109-02	1,063,617	850,894	212,723	0	0	0
Mid America All Indian Center, Inc., 660 N. Seneca, Wichita, Kansas 67203. Grant Number: 99-7-0168-55-078-02	158,591	126,873	31,718	0	0	0

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1989 TITLE IV–A AND PY 1988 II–B (SUMMER 1989) PLANNING ESTIMATES FOR NATIVE AMERICAN GRANTEES, OCT. 19, 1988—Continued

	PY 1989 IV-A			PY 1988 II-B		
	Total	Program	Cost pool	Total	Program	Cost pool
United Tribes of Kansas and S.E. Neb., P.O. Box 29, Horton, Kansas 66439. Grant Number: 99–7–0178–55–082–02	484,971	387,977	96,994	9,860	7,888	1,972
Inter-Tribal Council of Louisiana, Inc., 5425 Galeria Drive—Suite A, Baton Rouge, Louisiana 70816. Grant Number: 99–7–0026–55–026–02	439,485	351,588	87,897	5,499	4,399	1,100
Central Maine Indian Association, Inc., P.O. Box 2280, Bangor, Maine 04401. Grant Number: 99–7–2719–55–182–02	89,498	71,598	17,900	0	0	0
Tribal Governors, Inc., 93 Main Street, Orono, Maine 04473. Grant Number: 99–7–0001–55–167–02	102,956	82,365	20,591	27,589	22,071	5,518
Baltimore American Indian Center, 113 So. Broadway, Baltimore, Maryland 21231. Grant Number: 99–7–3405–55–192–02	309,446	247,557	61,889	0	0	0
Boston Indian Council, Inc., 105 S. Huntington Avenue, Jamaica Plain, Massachusetts 02130. Grant Number: 99–7–0494–55–174–02	232,970	186,376	46,594	0	0	0
Mashpee-Wampahoag Indian Tribal Council, P.O. Box 1048, Mashpee, Massachusetts 02649. Grant Number: 99–7–0408–55–093–02	81,252	65,002	16,250	0	0	0
Grand Rapids Inter-Tribal Council, 45 Lexington Ave. N.W., Grand Rapids, Michigan 49504. Grant Number: 99–7–0694–55–108–02	116,280	93,024	23,256	0	0	0
Grand Traverse Band of Ottawa and Chippewa Indians, Route 1, Box 135, Suttons Bay, Michigan 49682. Grant Number: 99–7–2721–55–137–02	53,872	43,098	10,774	2,465	1,972	493
Inter-Tribal Council of Michigan, Inc., 405 East Easterday Avenue, Sault Ste. Marie, Michigan 49783. Grant Number: 99–7–0172–55–080–02	64,535	51,628	12,907	30,623	24,498	6,125
Michigan Indian Employment and Training Service, 2405 East Mount Hope, Lansing, Michigan 48910. Grant Number: 99–7–1144–55–179–02	777,630	622,104	155,526	0	0	0
North American Indian Assoc. of Detroit, 22720 Plymouth Road, Detroit, Michigan 48239. Grant Number: 99–7–0695–55–176–02	391,793	313,434	78,359	0	0	0
Potawatomi Indian Nation, 53237 Townhall Road, Dowagiac, Michigan 49047. Grant Number: 99–7–3339–55–164–02	148,827	119,062	29,765	0	0	0
Sault Ste. Marie Tribe of Chippewa Indians, 2151 Shunk Road, Sault Ste. Marie, Michigan 49783. Grant Number: 99–7–0507–55–100–02	228,887	183,110	45,777	42,948	34,358	8,590
Southeastern Michigan Indians, Inc., P.O. Box 861, Warrren, Michigan 48090. Grant Number: 99–7–3220–55–154–02	63,073	50,458	12,615	0	0	0
American Indian Fellowship Assn., 8 East Fourth Street, Duluth, Minnesota 55802. Grant Number: 99–7–0254–55–087–02	132,945	106,356	26,589	2,086	1,669	417
American Indian Opportunities Ctr., 2495–18th Avenue South, Minneapolis, Minnesota 55404. Grant Number: 99–7–3221–55–155–02	511,075	408,860	102,215	0	0	0
Bois Forte R.B.C., P.O. Box 698, Wett Lake, Minnesota 55772. Grant Number: 99–7–0010–55–0140–02	37,964	30,371	7,593	9,007	7,206	1,801
Fond Du Lac R.B.C., 105 University Road, Cloquet, Minnesota 55720. Grant Number: 99–7–0009–55–013–02	38,799	31,039	7,760	6,447	5,158	1,289
Leech Lake R.B.C., Route 3, Box 100, Cass Lake, Minnesota 56633. Grant Number: 99–7–0012–55–017–02	175,402	140,322	35,080	49,206	39,365	9,841
Mille Lacs Band of Chippewa Indians, Star Route-Box 194, Onamia, Minnesota 56359. Grant Number: 99–7–0008–55–012–02	32,020	25,616	6,406	8,912	7,130	1,782
Minneapolis American Indian Center, 1530 East Franklin Avenue, Minneapolis, Minnesota 55404. Grant Number: 99–7–0204–55–085–02	299,245	239,396	59,849	12,420	9,936	2,484
Red Lake Tribal Council, P.O. Box 310, Red Lake, Minnesota 56671. Grant Number: 99–7–0017–55–020–02	140,449	112,359	28,090	63,427	50,742	12,685
White Earth R.B.C., Box 418, White Earth, Minnesota 56591. Grant Number: 99–7–0011–55–016–02	157,219	125,775	31,444	50,628	40,502	10,126
Mississippi Band of Choctaw Indians, Route 7, Box 21, Philadelphia, Mississippi 30350. Grant Number: 99–7–0005–55–010–02	304,495	243,596	60,899	52,240	41,792	10,448
Region VII American Indian Council, Inc., 310 Armour Road, Suite 205, Kansas City, Missouri 64116. Grant Number: 99–7–0967–55–177–02	564,167	451,334	112,833	0	0	0
Assiniboine and Sioux Tribes; Fort Peck Indian Reservation, P.O. Box 1027, Poplar, Montana 59255. Grant Number: 99–7–0033–55–031–02	210,085	168,068	42,017	77,174	61,739	15,435
Blackfeet Tribal Business Council, P.O. Box 1090, Browning, Montana 59417. Grant Number: 99–7–0006–55–011–02	243,696	194,957	48,739	92,723	74,178	18,545
Chippewa Cree Tribe, Rocky Boys Reserv., Rocky Boy Route—P.O. Box 580, Box Elder, Montana 59521. Grant Number: 99–7–0035–55–033–02	98,065	78,452	19,613	29,865	23,892	5,973
Confederated Salish & Kootenai Tribes, P.O. Box 278, Pablo, Montana 59855. Grant Number: 99–7–0031–55–030–02	246,561	197,249	49,312	72,813	58,250	14,563
Crow Indian Tribe, P.O. Box 159, Crow Agency, Montana 59022. Grant Number: 99–7–0030–55–029–02	207,081	165,665	41,416	81,441	65,153	16,288
Fort Belknap Indian Community, P.O. Box 249, Harlem, Montana 59526. Grant Number: 99–7–0032–55–168–02	79,058	63,246	15,812	36,596	29,277	7,319
Montana United Indian Association, P.O. Box 6043, Helena, Montana 59601. Grant Number: 99–7–0074–55–060–02	425,177	340,142	85,035	0	0	0
Northern Cheyenee Tribe, P.O. Box 368, Lake Deer, Montana 59043. Grant Number: 99–7–0034–55–032–02	164,096	131,277	32,819	54,610	43,688	10,992
Indian Center, Inc., 1100 Military Road, Lincoln, Nebraska 68502. Grant Number: 99–7–2722–55–183–02	169,227	135,382	33,845	0	0	0
Nebraska Indian Inter-Tribal Dev. Corp., Route 1—Box 66–A, Winnebago, Nebraska 68071. Grant Number: 99–7–0087–55–171–02	306,929	245,543	61,386	55,084	44,067	11,017
Inter-Tribal Council of Nevada, P.O. Box 7440, Reno, Nevada 89510. Grant Number: 99–7–0058–55–051–02	329,426	263,541	65,885	69,400	55,520	13,880
National American Indian Center, Inc., 2300 West Bonanza Road, Las Vegas, Nevada 89106. Grant Number: 99–7–0687–55–105–02	92,191	73,753	18,438	0	0	0

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1989 TITLE IV–A AND PY 1988 II–B (SUMMER 1989) PLANNING ESTIMATES FOR NATIVE AMERICAN GRANTEES, OCT. 19, 1988—Continued

	PY 1989 IV-A			PY 1988 II-B		
	Total	Program	Cost pool	Total	Program	Cost pool
Shoshone Paiute Tribes, P.O. Box 219, Owyhee, Nevada 89832. Grant Number: 99–7–2723–55–138–02	162,332	129,866	32,466	19,341	15,473	3,868
Powhattan Renape Nation, Rankokus Reservation—P.O. Box 225, Rankokus, New Jersey 08073. Grant Number: 99–7–3222–55–156–02	291,671	233,337	58,334	0	0	0
Alamo Navajo School Board, P.O. Box 907, Magdalena, New Mexico 87825. Grant Number: 99–7–2724–55–139–02	76,239	60,991	15,248	17,919	14,335	3,584
All Indian Pueblo Council, Inc., 1015 Indian School Rd., NW., P.O. Box 6507, Albuquerque, New Mexico 87197. Grant Number: 99–7–3341–55–165–02	146,960	117,568	29,392	79,829	63,863	15,966
Eight Indian Pueblo Council, P.O. Box 969, San Juan Pueblo, New Mexico 87566. Grant Number: 99–7–3223–55–157–02	57,440	45,952	11,488	24,366	19,493	4,873
Five Sandoval Indian Pueblos, Inc., P.O. Box 580, Bernalillo, New Mexico 87004. Grant Number: 99–7–3336–55–162–02	118,193	94,554	23,639	68,642	54,914	13,728
Jicarilla Apache Tribe, P.O. Box 507, Dulce, New Mexico 87528. Grant Number: 99–7–2725–55–140–02	53,175	42,540	10,635	31,382	25,106	6,278
Mescalero Apache Tribe, P.O. Box 176, Mescalero, New Mexico 88340. Grant Number: 99–7–3100–55–149–02	74,254	59,403	14,851	30,528	24,422	6,106
National Indian Youth Council, 318 Elm Street Se, Albuqueque, New Mexico 87102. Grant Number: 99–7–0077–55–063–02	705,631	564,505	141,126	0	0	0
Pueblo of Acoma, P.O. Box 469, Pueblo of Acoma, New Mexico 87034. Grant Number: 99–7–2199–55–128–02	99,677	79,742	19,935	41,621	33,297	8,324
Pueblo of Laguna, P.O. Box 194, Laguna, New Mexico 87026. Grant Number: 99–7–1583–55–117–02	74,812	59,850	14,962	58,308	46,646	11,662
Pueblo of Taos, P.O. Box 1846, Taos, New Mexico 87571. Grant Number: 99–7–2200–55–129–02	32,085	25,668	6,417	12,704	10,163	2,541
Pueblo of Zuni, Zuni Tribal Council, P.O. Box 339, Zuni, New Mexico 87327. Grant Number: 99–7–0021–55–023–02	286,114	228,891	57,223	128,845	103,076	25,769
Ramah Navajo School Board, Inc., Drawer G, Pine Hill, New Mexico 87321. Grant Number: 99–7–0146–55–075–02	91,358	73,086	18,272	23,513	18,810	4,703
Santa Clara Indian Pueblo, P.O. Box 580, Espanola, New Mexico 87532. Grant Number: 99–7–3224–55–158–02	19,128	15,302	3,826	5,689	4,551	1,138
Santo Domingo Tribe, General Delivery, Santo Domingo, New Mexico 87052. Grant Number: 99–7–1781–55–122–02	124,548	99,638	24,910	41,621	33,297	8,324
American Indian Community House, Inc., 842 Broadway, 8th Floor, New York City, New York 10003. Grant Number: 99–7–0348–55–090–02	763,833	611,066	152,767	3,129	2,503	626
Native American Cultural Center, Inc., 2115 East Main Street, Rochester, New York 14609. Grant Number: 99–7–3407–55–191–02	88,149	70,519	17,630	0	0	0
Native American Community Services of Erie and Vicinity 1047 Grant Street (Rear)—P.O. Box 86, Buffalo, New York, 14207–0086. Grant Number: 99–7–0689–55–106–02	227,487	181,990	45,497	10,239	8,191	2,048
The North Am. Ind. Club of Syracuse and Vicinity, P.O. Box 851, Syracuse, New York 13201. Grant Number: 99–7–2201–55–130–02	192,350	153,880	38,470	7,300	5,840	1,460
St. Regis Mohawk Tribe, Community Building, Hogansburg, New York 13655. Grant Number: 99–7–0522–55–103–02	162,268	129,814	32,454	27,779	22,223	5,556
Seneca Nation of Indians, P.O. Box 231, Salamanca, New York 14779. Grant Number: 99–7–0169–55–079–02	301,742	241,394	60,348	54,705	43,764	10,941
Cumberland County Assoc. For Ind. People 102 Indian Drive, Fayetteville, North Carolina 28301. Grant Number: 99–7–1782–55–123–02	123,498	98,798	24,700	0	0	0
Eastern Band of Cherokee Indians, P.O. Box 481, Cherokee, North Carolina 28719. Grant Number: 99–7–0003–55–008–02	232,763	186,210	46,553	87,224	69,779	17,445
Guilford Native American Assoc., P.O. Box 5623, 400 Prescott Street, Greensboro, North Carolina 27403. Grant Number: 99–7–2727–55–142–02	93,871	75,097	18,774	0	0	0
Lumbee Reg. Dev. Assoc., P.O. Box 68, Pembroke, North Carolina 28372. Grant Number: 99–7–0067–55–02	1,268,699	1,014,959	253,740	0	0	0
Metrolina Native American Assn., 6407 Idlewild Road—Suite 103, Charolotte, North Carolina 28212. Grant Number: 99–7–2726–141–02	95,941	76,753	19,188	0	0	0
North Carolina Comm. of Ind. Affairs, P.O. Box 27228, Raliegh, North Carolina 27611–7228. Grant Number: 99–7–0070–55–p057–02	378,182	302,546	75,636	0	0	J
Devils Lake Sioux Tribe, P.O. Box 300, Fort Totten, North Dakota 58335. Grant Number: 99–7–0037–55–034–02	116,885	93,508	23,377	38,777	31,022	7,755
Standing Rock Sioux, Box D, Fort Yates, North Dakota 58538. Grant Number: 99–7–0046–55–041–02	244,610	195,688	48,922	94,240	75,392	18,848
Three Affiliated Tribes, Box 597, New Town, North Dakota 58763. Grant Number: 99–7–0062–55–170–02	165,319	132,255	33,064	56,032	44,826	11,206
Turtle Mountain Band of Chippewa Ind., P.O. Box 900, Belcourt, North Dakota 58316. Grant Number: 99–7–0075–55–061–02	332,405	265,924	66,481	109,504	87,603	21,901
United Tribes—Ed. Tech. Cntr., 3315 University Drive, Bismarck, North Dakota 58501. Grant Number: 99–7–0206–55–173–02	167,685	134,148	33,537	0	0	0
North American Indian Cultural Center, 1062 Triplette Boulevard, Akron, Ohio 44306. Grant Number: 99–7–3349–55–166–02	709,287	567,430	141,857	0	0	0
Caddo Tribe of Oklahoma, P.O. Box 487, Binger, Oklahoma 73009. Grant Number: 99–7–1783–55–124–02	27,314	21,851	5,463	12,420	9,936	2,484
Central Tribes of the Shawnee Area, Inc., 624 North Broadway, Shawnee, Oklahoma 74801. Grant Number: 99–7–0038–55–035–02	79,131	63,305	15,826	49,490	39,592	9,898
Cherokee Nation of Oklahoma, P.O. Box 948, Tahlequah, Oklahoma 74465. Grant Number: 99–7–0027–55–027–02	1,382,457	1,105,966	276,491	743,018	594,414	148,604
Cheyenne-Arapaho Tribes, P.O. Box 67, Concho, Oklahoma 73022. Grant Number: 99–7–0048–55–043–02	185,654	148,523	37,131	93,008	74,406	18,602

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1989 TITLE IV–A AND PY 1988 II–B (SUMMER 1989) PLANNING ESTIMATES FOR NATIVE AMERICAN GRANTEES, OCT. 19, 1988—Continued

	PY 1989 IV–A			PY 1988 II–B		
	Total	Program	Cost pool	Total	Program	Cost pool
Chickasaw Nation of Oklahoma, P.O. Box 1548, Ada, Oklahoma 74820. Grant Number: 99–7–0042–55–038–02	370,645	296,516	74,129	190,092	152,074	38,018
Choctaw Nation of Oklahoma, Drawer 1210, Durant, Oklahoma 74702. Grant Number: 99–7–0041–55–037–02	754,840	603,872	150,968	333,917	267,134	66,783
Citizens Band Potawatomi Ind. of Okla., Rt. 5, Box 151, Shawnee, Oklahoma 74801. Grant Number: 99–7–2202–55–131–02	187,064	149,651	37,413	156,056	124,845	31,211
Comanche Tribe of Oklahoma, P.O. Box 908, Lawton, Oklahoma 73502. Grant Number: 99–7–3150–55–151–02	153,948	123,158	30,790	120,218	96,174	24,044
Creek Nation of Oklahoma, P.O. Box 580, Okmulgee, Oklahoma 74447. Grant Number: 99–7–0025–55–025–02	562,493	449,994	112,499	359,136	287,309	71,827
Four Tribes Consortium of Oklahoma, P.O. Box 1193, Anadarko, Oklahoma 73005. Grant Number: 99–7–2728–55–143–02	70,563	56,450	14,113	37,260	29,808	7,452
Inter-Tribal Council of N.E. Oklahoma, P.O. Box 1308, Miami, Oklahoma 74355. Grant Number: 99–7–1135–55–110–02	49,313	38,450	9,863	36,217	28,974	7,243
Kaw Tribe of Oklahoma, Drawer 50, Kaw City, Oklahoma 74641. Grant Number: 99–7–2729–55–144–02	2,700	2,160	540	1,422	1,138	284
Kiowa Tribe of Oklahoma, P.O. Box 361, Carnegie, Oklahoma 73015. Grant Number: 99–7–0047–55–042–02	199,885	159,908	39,977	85,992	68,794	17,198
Oklahoma Tribal Assistance Program, Inc., P.O. Box 2841, Tulsa, Oklahoma 74101. Grant Number: 99–7–0072–55–058–02	326,329	261,063	65,266	197,297	157,838	39,459
Osage Tribal Council, P.O. Box 147—Osage Agency Campus, Pawhuska, Oklahoma 74056. Grant Number: 99–7–0022–55–024–02	99,629	79,703	19,926	77,080	61,664	15,416
Otoe-Missouria Indian Tribe of Okla., P.O. Box 68, Red Rock, Oklahoma 74074. Grant Number: 99–7–2730–55–145–02	35,360	28,288	7,072	21,048	16,838	4,210
Pawnee Tribe of Oklahoma, P.O. Box 470, Pawnee, Oklahoma 74058. Grant Number: 99–7–1785–55–126–02	22,492	17,994	4,498	16,402	13,122	3,280
Ponca Tribe of Indians, White Eagle—Box 2, Ponca City, Oklahoma 74601. Grant Number: 99–7–0029–55–028–02	53,033	42,426	10,607	48,447	38,758	9,689
Seminole Nation of Oklahoma, P.O. Box 1498, Wewoka, Oklahoma 74884. Grant Number: 99–7–0051–55–046–02	141,976	113,581	28,395	67,504	54,003	13,501
Tonkawa Tribe of Oklahoma, P.O. Box 70, Tonkawa, Oklahoma 74653. Grant Number: 99–7–1136–55–111–02	39,187	31,350	7,837	46,077	36,862	9,215
United Urban Indian Council, 1501 Classen Blvd., Suite 100, Oklahoma City, Oklahoma 73106–5435. Grant Number: 99–7–2731–55–146–02	293,995	235,196	58,799	221,569	177,255	44,314
Confed. Tribes of Siletz Indians, P.O. Box 549, Siletz, Oregon 97380. Grant Number: 99–7–3153–55–152–02	585,902	468,722	117,180	13,937	11,150	2,787
Confed. Tribes of the Umatilla Ind. Res., P.O. Box 638, Pendleton, Oregon 97801. Grant Number: 99–7–3065–55–148–02	43,466	34,773	8,693	16,497	13,198	3,299
Confederate Tribes of Warm Springs, P.O. Box C—Tenino road, Warm Springs, Oregon 97761. Grant Number: 99–7–0256–55–088–02	91,728	73,382	18,346	42,854	34,283	8,571
Organization of Forgotten Americans, P.O. Box 1257, 4509 South 6th Street, Rm. 206, Klamath Falls, Oregon 97601–0276. Grant Number: 99–7–2732–55–147–02	426,622	341,298	85,324	4,172	3,338	834
Council of Three Rivers, 200 Charles Street, Pittsburgh, Pennsylvania 15238. Grant Number: 99–7–0642–55–175–02	433,153	346,522	86,631	0	0	0
United Am. Indians of the Del. Valley, 225 Chestnut Street, Philadelphia, Pennsylvania 19106. Grant Number: 99–7–0477–55–095–02	193,645	154,916	38,729	0	0	0
Rhode Island Indian Council, 444 Friendship St., Providence, Rhode Island 02907. Grant Number: 99–7–0510–55–101–02	141,406	113,125	28,281	0	0	0
Palmetto Indian Affairs Commission, Employment and Training Division, 13 Pickson Street—Suite 200, Columbia, South Carolina 29201. Grant Number: 99–7–0403–55–092–02	258,661	206,929	51,732	11,567	9,254	2,313
Cheyenne River Sioux Tribe, P.O. Box 768, Eagle Butte, South Dakota 57625. Grant Number: 99–7–0039–55–036–02	221,306	177,045	44,261	83,337	66,670	16,667
Lower Brule Sioux Tribe, P.O. Box 187, Lower Brule, South Dakota 57548. Grant Number: 99–7–0073–55–059–02	56,084	44,867	11,217	14,601	11,681	2,920
Oglala Sioux Tribe, P.O. Box G, Pine Ridge, South Dakota 57770. Grant Number: 99–7–0043–55–039–02	698,422	558,738	139,684	228,964	183,171	45,793
Rosebud Sioux Tribe, Box 430, Rosebud, South Dakota 57570. Grant Number: 99–7–0044–55–040–02	413,698	330,958	82,740	116,425	93,140	23,285
Sisseton-Wampeton Sioux Tribe, P.O. Box 509, Agency Village, South Dakota 57262. Grant Number: 99–7–0045–55–169–02	161,127	128,902	32,225	49,301	39,441	9,860
United Sioux Tribes Dev. Corp., P.O. Box 1193, Pierre, South Dakota 57501. Grant Number: 99–7–0165–55–077–02	684,412	547,530	136,882	64,280	51,424	12,856
Uset Incorporated, 1101 Kermit Drive, Suite 800, Nashville Tenessee 37217. Grant Number: 99–7–2737–55–184–02	614,237	491,390	122,847	0	0	0
Alabama-Coushatta Indian Tribal Council, Route 3—Box 645, Livingston, Texas 77315. Grant Number: 99–7–1784–55–125–02	641,216	512,973	128,243	5,404	4,323	1,081
Dallas Inter-Tribal Center, 209 East Jefferson Blvd., Dallas, Texas 75203–2690. Grant Number: 99–7–0078–55–064–02	263,150	210,520	52,630	0	0	0
Tigua Indian Tribe, P.O. Box 17579—Ysleta Station, El Paso, Texas 79917. Grant Number: 99–7–2099–55–127–02	437,991	350,393	87,598	11,851	9,481	2,370
NIBC d/b/a United Tribes Service Center, Inc., 1164 South Foulger Street, Salt Lake City, Utah 84111. Grant Number: 99–7–3337–55–163–02	402,059	321,647	80,412	0	0	0
Ute Indian Tribe, P.O. Box 190, Fort Duchesne, Utah 84026. Grant Number: 99–7–0049–55–044–02	72,258	57,806	14,452	35,743	28,594	7,149
Abenaki Self-Help Assn./N.H. Ind. Counc., Box 276, Swanton, Vermont 05488. Grant Number: 99–7–3064–55–185–02	107,069	85,655	21,414	0	0	0

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1989 TITLE IV-A AND PY 1988 II-B (SUMMER 1989) PLANNING ESTIMATES FOR NATIVE AMERICAN GRANTEES, OCT. 19, 1988—Continued

	PY 1989 iV-A			PY 1988 II-B		
	Total	Program	Cost pool	Total	Program	Cost pool
Mattaponi Pamunkey Monacan Consortium, Route 2-P.O. Box 280, West Point, Virginia 23181. Grant Number: 99-7-3227-55-159-02	232,367	185,894	46,473	1,612	1,290	322
American Indian Community Center, East 801 Second Ave., Spokane, Washington 99202. Grant Number: 99-7-1138-55-112-02	690,872	552,698	138,174	119,744	95,795	23,949
Colville Confederated Tribes, P.O. Box 150, Nespelem, Washington 99155. Grant Number: 99-7-1726-55-118-02	195,988	156,790	39,198	50,723	40,578	10,145
Lummi Indian Business Council, 2616 Kwina Road, Bellingham, Washington 98225. Grant Number: 99-7-2204-55-338-02	43,001	34,401	8,600	20,099	16,079	4,020
N.W. Inter-Tribal Council, P.O. Box 115, Nean Bay, Washington 98357. Grant Number: 99-7-0069-55-056-02	44,620	35,696	8,924	33,183	26,546	6,637
Puyallup Tribe, 2002 East 28th St., Tacoma, Washington 98404. Grant Number: 99-7-1137-55-178-02	158,231	126,585	31,646	20,194	16,155	4,039
Seattle Indian Center, 611 12th Avenue South-Suite 100, Seattle, Washington 98144. Grant Number: 99-7-0511-55-102-02	414,513	331,610	82,903	0	0	0
Western Wash. Ind. Empl. and Trng. Prog., 4505 Pacific Highway East, Suite C-5, Tacoma, Washington 98424. Grant Number: 99-7-1933-55-180-02	833,851	667,081	166,770	132,448	105,958	26,490
Lac Courte Oreilles Tribal Governing Board, Route 2, Box 2700, Hawyard, Wisconsin 54843. Grant Number: 99-7-0018-55-021-02	93,936	75,149	18,787	25,883	20,708	5,177
Lac du Flambeau, P.O. Box 67, Lac Du Flambeau, Wisconsin 54538. Grant Number: 99-7-1139-55-113-02	45,227	36,182	9,045	19,910	15,928	3,982
Memominee Indian Tribe, P.O. Box 397, Keshena, Wisconsin 54135-0397. Grant Number: 99-7-0013-55-018-02	71,747	57,398	14,349	48,542	38,834	9,708
Milwaukee Area Am. Ind. Manpower Counc., 3121 W. Wisconsin Ave., Milwaukee, Wisconsin 53208. Grant Number: 99-7-0227-55-086-02	222,408	177,926	44,482	0	0	0
Oneida Tribe of Indians of Wis., Inc., P.O. Box 365, Oneida, Wisconsin 54115. Grant Number: 99-7-0015-55-019-02	197,165	157,732	39,433	32,140	25,712	6,428
Stockbridge-Munsee Community, Route 1, Bowler, Wisconsin 54416. Grant Number: 99-7-0500-55-099-02	59,926	47,941	11,985	9,576	7,661	1,915
Wisconsin Indian Consortium, P.O. Box 181, Odanah, Wisconsin 54861. Grant Number: 99-7-2207-55-132-02	88,094	70,475	17,619	27,021	21,617	5,404
Wisconsin-Winnebago Business Committee, P.O. Box 311, Tomah, Wisconsin 54660. Grant Number: 99-7-0019-55-022-02	191,268	153,014	38,254	15,359	12,287	3,072
Shoshone/Arapahoe Tribes, P.O. Box 920, Fort Washakie, Wyoming 82514. Grant Number: 99-7-0050-55-045-02	215,497	172,398	43,099	72,434	57,947	14,487
National total	58,996,000	47,196,803	11,799,197	13,058,321	10,446,659	2,611,662

[FR Doc. 88-27826 Filed 12-5-88; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-17-M]

B&J Crushing; Petition for Modification of Application of Mandatory Safety Standard

B&J Crushing, 229 County Road 11, No. 21, Gunnison, Colorado 81230 has filed a petition to modify the application of 30 CFR 57.4533 (mine opening vicinity) to its Lucky Strike Mine and Mill (I.D. No. 05-03845) located in Gunnison County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that buildings within 100 feet of intake mine openings be constructed of fire-resistant materials or equipped with an automatic fire suppression system.

2. As an alternate method, petitioner proposes that the mill building be located 53 feet away from the main mine shaft.

3. In support of this request, petitioner states that—

(a) The main mine shaft has a concrete collar running down to the bedrock, which is a distance of 38 feet, and has a steel building located over it;

(b) There are no flammable materials located anywhere near the main mine shaft;

(c) There is natural ventilation out of the main mine shaft resulting from the second escapeway being 30 feet lower in elevation than the main mine shaft. This is assisted by a 10-horsepower electric fan in the second escapeway building;

(d) The underground mine is equipped with direct telephone connections, stench warning systems and signals set up with electric flashing lights;

(e) All underground areas have compressed air provided from the engine house, which is over 100 feet from the main mine shaft;

(f) The mill building was constructed with fiberglass insulation which does not burn easily. The insulation would not emit fumes should a fire occur. The building has a 60 gauge steel exterior and is fully equipped with three high-pressure water fire hoses and seven fire extinguishers located throughout the building; and

(g) Whenever persons are working underground there is a hoist operator stationed at the hoist controls and additional miners are working in the mill building.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1989. Copies of the petition are available for inspection at that address.

Date: November 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-28053 Filed 12-5-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-88-210-C]

Cyprus Emerald Resources Corp.; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Emerald Resources Corporation, Route 218 South, Box 871, Waynesburg, Pennsylvania 15370 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Emerald No. 1 Mine (I.D. No. 36-05466) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. The longwall mining equipment in use at the mine is powered by 950-volt, a.c. electricity. The circuit breakers and cables used in this medium-voltage system are at the practical limits of safe and efficient operation.

3. This equipment is subject to unacceptable voltage drops across the system which causes a decrease in the working torques of the drive motors and leads to excessive strain on equipment and high current loads in the electric circuitry. In order to maintain compliance with overcurrent protection in low- or medium-voltage systems, it is necessary to split the loads and increase the number of cables. This increases the amount of cable handling and electrical connections that must be made and would expose miners to unnecessary hazards.

4. As an alternate method, petitioner proposes to use 2400-volt a.c. cables and equipment to power permissible longwall mining equipment within 150 feet of pillar workings, such as the longwall gob, or inby the last open crosscut with specific conditions as outlined in the petition.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1989. Copies of the petition are available for inspection at that address.

Date: November 30, 1988.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-28054 Filed 12-5-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-88-218-C]

R & F Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

R & F Coal Company, 538 N. Main Street, Cadiz, Ohio 43907 has filed a petition to modify the application of 30 CFR 77.216-5 (water, sediment or slurry impoundments and impounding structures; abandonment) to its Hart No. 2 and No. 3 Mine (I.D. No. 33-02688), (Impoundment No. 1211-OHO8-02688-01) located in Guernsey County, Ohio and its Furbay-Beem Mine (I.D. No. 33-03929) Impoundment No. 1211-OH8-3929-01) located in Tuscarawas County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that prior to abandonment of any water, sediment, or slurry impoundment and impounding structure, the person owning, operating, or controlling such an impounding structure submit to and obtain approval of the District Manager a plan for abandonment based on current, prudent engineering practices which shall contain provisions to preclude the probability of future impoundment of water, sediment or slurry, provide for major slope stability, and include a schedule for the plan's implementation.

2. The sediment ponds are not on property owned by R & F Coal Company, and the property has been completely reclaimed in the watershed areas in which the ponds are located. Petitioner proposes to permanently leave the ponds, in lieu of conducting the weekly inspections, as requested by the landowners. In support of this request, petitioner states that—

(a) The landowners have agreed to take care of the impoundments, take over full responsibility regarding the necessary equipment and to be aware of contractors availability to do any necessary work;

(b) It will not reduce the safety of the miners due to the fact that the work has been completed in these areas and there are no miners working near the watershed areas; and

(c) The dams are stable and will remain stable. The stillways were designed to pass a 100 year storm with adequate free board. These are low hazard areas with very little potential danger to anyone or anything.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1989. Copies of the petition are available for inspection at that address.

Dated: November 30, 1988.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-28055 Filed 12-5-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-88-221-C]

Rhen Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Rhen Coal Company, R.D. No. 3, Box 21, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Skidmore Slope (I.D. No. 36-08031) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are

nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. The mine is damp and dust concentrations are low.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1989. Copies of the petition are available for inspection at that address.

Date: November 30, 1988.

Patricia W. Silvey,

Director, Office of Standards Regulations and Variances.

[FR Doc. 28056 Filed 12–5–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–16–M]

Southwestern Portland Cement Co.; Petition for Modification of Application of Mandatory Safety Standard

Southwestern Portland Cement Company, P.O. Box 1547, Odessa, Texas 79760 has filed a petition to modify the application of 30 CFR 56.14107 (moving machine parts) to its Odessa Plant (I.D. No. 41–00060) located in Ector County, Texas. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that moving machine parts be guarded to protect persons from gears, sprockets, shafts, and similar moving parts that can cause injury.

2. As an alternate method, petitioner proposes to weld expanded metal grating to the interal structural steel of the building, in a vertical position, to enclose the gears, sprockets and drives. This unit is seven feet in height, measuring from the floor, and is supported at the bottom and top with angle iron. Angle iron is also used as support at approximate four-foot vertical intervals. A section of this vertical guard is used as the door to get into the equipment, it is secured with a hasp and is padlocked. The key is kept by the quarry manager.

3. In support of this request, petitioner states that—

(a) There are no regular employees that work in this area. The crusher operator's station is located in the first floor overlooking the truck dumping area;

(b) There are no regular cleanup or maintenance employees at the quarry crusher building; and

(c) All grease fittings or oil tubes have been extended from the equipment to the outer edge of the guard.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1989. Copies of the petition are available for inspection at that address.

Date: November 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–28057 Filed 12–5–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–223–C]

Summit Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Summit Coal Company, R.D. No. 1, Box 12–A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Summit Slope (I.D. No. 36–07981) located in Schuykill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet a minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet a minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1989. Copies of the petition are available for inpection at that address.

Date: November 29, 1988.

Patricia W. Silvey,

Director, Office of Standard, Regulations and Variances.

[FR Doc. 88–28058 Filed 12–5–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–15–M]

Sunshine Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Sunshine Mining Company, P.O. Box 1080, Kellogg, Idaho 83837 has filed a petition of modify the application of 30 CFR 57.16017 (hoisting heavy equipment or material) to its Sunshine Mine (I.D. No. 10–00089) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that where the stretching or contraction of a hoist rope could create a hazard, chairs or other suitable blocking are required to be used to support conveyances at shaft landings before heavy equipment or material is loaded or unloaded.

2. Petitioner states that application of the standard would result in a diminution of safety to the personnel traveling in the shaft because:

(a) The conveyance, moving at a normal man-hoisting speed, could strike a chair or similar arresting device while passing a shaft station; and

(b) The use of chairs or similar devices requires great skill and concentration on the part of hoistmen.

3. As an alternate method, petitioner proposes to utilize forklifts, tuggers, or overhead crawl hoists in a manner that removes personnel from exposure to sudden movement of heavy loads.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 30, 1988.

[FR Doc. 88–28059 Filed 12–5–88; 8:45 am]

BILLING CODE 4510–43–M

Occupational Safety and Health Administration

[Docket No. NRTL–1–88]

MET Electrical Testing Co., Inc.; Variance Application

AGENCY: Occupational Safety and Health Administration, Labor.

ACTIONS: Notice of application for recognition as a nationally recognized testing laboratory, and preliminary finding.

SUMMARY: This notice announces the application of the MET Electrical Testing Company, Inc., for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The late date for interested parties to submit comments is February 6, 1989.

ADDRESS: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, at the above address, Telephone: (202) 523–7193.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that the MET Electrical Testing Company, Inc., has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 9–83 (48 FR 35763), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory.

The address of the place of employment that will be affected by the application is as follows: MET Electrical Testing Company, Inc., Laboratory Division, 916 West Patapsco Avenue, Baltimore, Maryland 21230.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition in the areas of testing which it has specified.

The MET Electrical Testing Company, Inc., further states that it has inhouse the complete equipment, facilities, capabilities and personnel to perform accurate tests and produce creditable findings, objectively and without bias, as well as the facilities and personnel which are necessary to inspect production runs, conduct field (follow-up) inspections, implement control procedures and assure initial and continued compliance with the referenced standard on the listed equipment. In addition, MET states that it has effective procedures for handling complaints and disputes of all interested parties under a fair and reasonable system.

The applicant states that it is completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested. Further, it asserts that no single client, with the exception of the U.S. Government, produces revenues greater than 3% of its total revenue.

Background

MET Electrical Testing Company, Inc. (MET) was incorporated in Baltimore, Maryland in October, 1959, as Eastern Electrical Testing Laboratories, according to the applicant. The name was changed one year later to Maryland Electrical Testing Company to eliminate confusion between the acronym "EETL" and similar acronyms of other laboratories. In 1973, the applicant states that the Company's expansion into Pittsburgh, Pennsylvania necessitated an additional name change to the present one of MET Electrical Testing Company, which removed the restrictive "Maryland" from the Company's name. However, according to the applicant, MET has been corporately the same organization since its inception in 1959. Since that time, MET has expanded further by purchasing the Burlington Testing Company of Burlington, New Jersey.

MET also has, according to the applicant, sought and gained recognition in each particular area of service where

recognition and accreditation of independent laboratories was available, including the National Voluntary Laboratory Accreditation Program (NVLAP) for telecommunications and computing equipment, and the American Association of Laboratory Accreditation (A2LA). It has also received additional accreditations from numerous jurisdictions including states, cities, municipalities, and federal government agencies including the U.S. Coast Guard, the U.S. Navy, the U.S. Army and the Nuclear Regulatory Commission.

The applicant also states that it is active on many national standards committees.

The Laboratory Division, which is located at the Baltimore, Maryland address of the applicant, consists of 21 employees, as follows: 1—Laboratory Director, 3—Project Engineers, 2—Engineers, 2—Junior Engineers, 4—Senior Technicians, 4—Test Technicians, 2—Group Administrators, 1—Sales Engineer, 1—Clerical, 1—Machinist.

MET has submitted copies of the job responsibilities and qualifications for each of the technical positions listed above.

The applicant has submitted the following list of equipment where accreditation is requested for the MET Laboratory Division. It has also stated that all of the standards listed for Laboratory Listing and Labeling may be used in commerical or industrial products that are within the OSHA jurisdiction. All of the test standards that the applicant has indicated it will use are appropriate test standards within the meaning of 29 CFR 1910.7(c).

The listing is by MET product category.

(1) Audio/Video Equipment

ANSI/UL #1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL #1410—Television Receivers and High-Voltage Video Products

(2) Energy Monitoring Equipment

ANSI C12.1—Code for Electricity Meters
IEEE/ANSI C57.13—Terminology and Test Code for Instrument Transformers

(3) Food Preparation Equipment

ANSI/UL #197—Commercial Electric Cooking Appliances
ANSI/UL #471—Commercial Refrigerators and Freezers
ANSI/UL #982—Motor-Operated Household Food Preparing Machines

(4) Heating, Ventilation

ANSI C33.76—Industrial Control Equipment
ANSI B191.1—Heat Pumps
ANSI/UL #465—Central Cooling Air Conditioners
ANSI/UL #484—Room Air Conditioners
ANSI/UL #499—Electric Heating Appliances
ANSI/UL #559—Heat Pumps
ANSI/UL #883—Fan-Coil Units and Room Fan-Heater Units
ANSI/UL #1025—Electric Air Heaters
ANSI/UL #1042—Electric Baseboard Heating Equipment

(5) Industrial Control Equipment

ANSI/UL #508—Electric Industrial Control Equipment

(6) Lighting Fixtures

ANSI/UL #153—Portable Electric Lamps
ANSI/UL #676—Underwater Lighting Fixtures
ANSI/UL #1670—Fluorescent Lighting Fixtures
ANSI/UL #1571—Incandescent Lighting Fixtures

(7) Medical and Dental Equipment

ANSI C33.100—Medical and Dental Equipment
ANSI/UL #187—X-Ray Equipment
ANSI/UL #544—Electric Medical and Dental Equipment
ANSI/UL #1069—Hospital Signaling and Nurse-Call System

(8) Motor Operated Equipment

ANSI C33.36—Motor Operated Appliances
ANSI C33.76—Industrial Control Equipment
ANSI/UL #507—Electric Fans
ANSI/UL #705—Power Ventilators

(9) Office/Business Equipment

ANSI/UL #114—Electric Office Appliances and Business Equipment
ANSI/UL #478—Information-Processing and Business Equipment
ANSI/UL #1459—Telephone Equipment

(10) Residential Appliances

ANSI/UL #73—Electric Motor-Operated Appliances
ANSI/UL #507—Electric Fans

Components Standards

ANSI/UL #73—Electric Motor-Operated Equipment
ANSI/UL #94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL #507—Electric Fans
ANSI/UL #746C—Polymeric Materials—Use in Electrical Equipment Evaluation
ANSI/UL #796—Electrical Printed-Wiring Boards

Note.—Component Standards. Several component standards may be used in an evaluation of a particular product. This will depend upon the listing status of the components. If a component is currently listed by Underwriters' Laboratories, Inc. (UL) or, in the future, other OSHA acccredited NRTL's, then it will be accepted by MET. The components will, however, be evaluated for use in the particular application.

Note.—Specific Product Standards. Many American National Standard Institute (ANSI) standards have been adopted for the evaluation of specific products. MET may use such standards as necessary in conjunction with various component standards in order to evaluate the particular products.

Preliminary Finding

Based upon all of the foregoing, and on the results of an on-site review of the applicant's testing facilities and administrative and technical practices, the Assistant Secretary has made a preliminary finding that MET electrical Testing Company, Inc., can meet the requirements for recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements of a Nationally Recognized Testing Laboratory, listed in 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than February 6, 1989, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210. Copies of the MET application, the written staff recommendation and accompanying laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–1–88), are available for inspection and duplication at the Docket Office, Room N2634, Occupation Safety and Health Administration, U.S. Department of Labor, at the above address.

Signed at Washington, DC, this 29th day of November 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88–28064 Filed 12–5–88; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological, Behavioral, and Social Sciences; Renewal

The Advisory Committee for Biological, Behavioral, and Social Sciences is being renewed for an additional two years.

The Assistant Director for Biological, Behavioral, and Social Sciences has determined that the renewal of this Committee is necessary and in the

public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

December 1, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-28018 Filed 12-5-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-440, 50-441]

Cleveland Electric Illuminating Co., et al., Perry Nuclear Power Plant, Units 1 and 2; Issuance of Final Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC), has issued a final director's decision concerning a petition dated September 22, 1987, filed by Ms. Connie Kline, Ms. Theresa Burling, Mr. Russ Bimber, and Mr. Ron O'Connell, on behalf of Concerned Citizens of Lake County, Concerned Citizens of Geauga County, and Concerned Citizens of Ashtabula County (petitioners). Supplements to the petition were submitted on October 8, 1987, and April 8 and July 25, 1988. Among other things, the petitioners requested that the NRC issue an order to the Cleveland Electric Illuminating Company, et al., to correct alleged deficiencies in a public information handbook on emergency planning for the Perry Nuclear Power Plant. The petitioners alleged that this handbook contained false and misleading information concerning nuclear power and nuclear accidents at power plants that was likely to persuade those reading it to minimize or disregard the need for emergency planning.

The Director has now determined that most of the petitioners' requests in their July 25, 1988 supplemental petition should be denied for the reasons explained in the "Final Director's Decision Under 10 CFR 2.206" (DD-88-19), which is available for inspection in the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the local Public Document Room for the Perry Nuclear Power Plant at the Perry Public Library, 2753 Main Street, Perry, Ohio 44081.

A copy of the decision will be filed with the Secretary of the Commission for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission twenty-five (25) days after issuance, unless the Commission on its own motion institutes review of the decision within that time.

Dated at Rockville, Maryland, this 29th day of November 1988.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 88-28021 Filed 12-5-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co., Point Beach Nuclear Plant, Units Nos. 1 and 2; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Facility Operating License Nos. DPR-24 and DRP-27, issued to the Wisconsin Electric Power Company (the licensee), for operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2, located at the licensee's site in Manitowoc County, Wisconsin.

The proposed amendment would revise the provisions in the Point Beach Nuclear Plant, Unit Nos. 1 and 2, Technical Specifications (TS's) relating to the design and operation of the Point Beach fuel cycle with upgraded core features and at higher core power peaking factors (F_Q and F_H) than are currently permitted by the plant TS.

Specifically, the proposed amendment would incorporate higher core power peaking factors. The higher peaking factors will allow the use of a low-low leakage loading pattern (L4P) fuel management strategy, which will result in decreased neutron fluence to the reactor vessel. This fluence reduction will help address reactor vessel irradiation damage issues such as pressurized thermal shock, low upper shelf material toughness and pressure-temperature restrictions on heatup and cooldown. The higher core power peaking factors will allow additional fluence reduction measures, such as the use of peripheral power suppression assemblies, to be pursued.

In addition to the increase in core power peaking factors, the proposed changes and reanalysis supporting them would permit the use of an upgraded fuel product features package. The upgraded fuel product features include: Removable top nozzles, integral fuel burnable absorbers, axial blankets, extended burnup geometry, and inclusion of a debris filter bottom nozzle. Finally, the reanalysis for this proposed amendment supports the removal of the fuel assembly thimble plugging devices and the elimination of the third line segment of the K(z) curve.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 5, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its propsoed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 26, 1988 as supplemented October 28, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 30th day of November 1988.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–28022 Filed 12–5–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26327; File No. SR–NSCC–88–9]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Securities Clearing Corporation Relating to Securities Clearing Group

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is filed as Exhibit "A".[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to set forth in a Statement of Policy to be added to NSCC's rules, the basis for NSCC's ability to enter into an information sharing agreement with other SEC registered clearing agencies. The agreement is the formalization of the efforts of the Securities Clearing Group, which is comprised at the present time of seven clearing agency self-regulatory organizations. The goal of the group is to identify and create procedures to minimize risks posed by participants in more than one clearing agency self-regulatory organization. The key method for achieving this goal, will be the sharing of appropriate financial, operational and clearing data on common participants among members of the SCG for regulatory purposes.

(b) NSCC derives the authority to join the SCG and sign the agreement from both its own rules and the Securities Exchange Act of 1934 ("the Act"). NSCC is currently authorized, to share clearing data with other SEC regulated self-regulatory organizations pursuant to NSCC's Rule 49. In addition, Rule 15 allows NSCC to examine members' financial and operational conditions, and to receive information from other self-regulatory organizations relevant to such examinations. The standards for confidentiality of the information are those maintained by the members' regulatory organization. Further, section 17A(b)(3) of the Act itself requires, among other things, that rules of clearing agency self-regulatory organizations must be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to protect investors and the public interest. Section 19(g)(1) of the Act requires clearing agencies to enforce compliance by their members with their rules.

Therefore, the Statement of Policy reiterates NSCC's existing rules and the sections of the Securities Exchange Act which allow NSCC to share information as contemplated by both the agreement and the SCG. In addition, the Statement

[1] For a copy of the text of the proposed rule change, *see* Securities Exchange Act Release No. 26300 (November 21, 1988), 53 FR 48353 (November 30, 1988).

of Policy will provide a framework for possible future information sharing projects as contemplated by the Act. This information will (1) help the members of the Securities Clearing Group to recognize conditions of a participant which could indicate failure and (2) contribute to NSCC's safeguarding of securities and funds in its custody or control.

The actions of NSCC and/or the SCG are not intended as, nor shall they be deemed to be, a limitation on the rights of NSCC or other registered clearing agencies to continue to share data on dual or sole members with other self-regulatory organizations for regulatory purposes. For the foregoing reasons, the Statement of Policy is consistent with the requirements of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule change will have an impact on or 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 comments have been solicited or received. NSCC will notify the Securities and Exchange Commission of any written comments received.

III. Data 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 its 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NSCC–88–09 and should be submitted by December 27, 1988. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 30, 1988.

[FR Doc. 88–28047 Filed 12–5–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16666; 812–7120]

Growth Industry Shares, Inc., et al.; Application

November 30, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Growth Industry Shares, Inc. ("GIS"), William Blair Ready Reserves, Inc. ("WBRR") and any future fund for which William Blair & Company serves as distributor or investment adviser.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 32(a)(1).

Summary of Application: Applicants seek an order to permit them to file with the SEC financial statements signed or certified by an independent public accountant selected at a board of directors meeting held within thirty days before or ninety days after the beginning of each Applicant's respective fiscal year.

Filing Date: The application was filed on September 16, 1988, and amended on November 21, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o William Blair & Company, 135 South LaSalle Street, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272–2847, or H. R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Each Applicant is a diversified, open-end management company registered under the Act and incorporated under the laws of the State of Maryland.

2. GIS has typically held annual meetings of its shareholders during each fiscal year. Generally, the board of directors has selected independent public accountants at a meeting held subsequent to the fiscal year end and prior to the annual meeting of shareholders, and the selection was ratified by the shareholders. WBRR has not held a shareholders meeting since the public offering of its shares commenced in June of 1988. WBRR anticipates holding its first meeting of shareholders in 1989. Because the corporate law of Maryland does not require annual shareholders meetings, Applicants do not intend to hold shareholders meetings unless stockholder action is needed. Accordingly, under the provisions of section 32(a)(1), Applicants would be required to select their independent public accountants within thirty days before or after the beginning of each Applicant's respective fiscal year.

3. The selection of the independent public accountants for each Applicant is predicated on the recommendations of its audit committee ("Committee"). The Committees are composed of disinterested directors serving on the board of directors of each Applicant.

The Committees meet formally once a year with the independent public accountants to discuss the audit plan, significant audit procedures to be implemented, and projected costs. Upon completion of each Applicant's audit, the Committees review the results. Based on the meeting and the results of the prior year's audits, the Committees formulate recommendations for consideration by the respective boards of directors with respect to the selection of the independent public accountants.

4. Applicants presently employ the same independent public accountant and expect to continue such practice in the future. Absent the payment of extraordinary fees it is unlikely that the audits would be completed in time for the directors to review the accountant's performance and fees for the previous year prior to the selection of auditors for the next year. In addition, the more limited time period prescribed by the section 32(a)(1) in situations where there is no annual meeting would make it more difficult for the directors to coordinate their schedules to enable them to attend meetings.

5. Permitting the request for expansion of the aforementioned time period to ninety days after the beginning of each Applicant's fiscal year would allow for review procedures that would provide the Committees with a more realistic time frame for a detailed review of the services and results furnished by the independent public accountants and enable the directors to give sufficient consideration to all of the information submitted by the Committees prior to making their selection. Accordingly, Applicants believe that expanding the thirty day period under section 32(a)(1) will permit a more efficient and thorough consideration of the independent public accountants.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28048 Filed 12-5-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24764; 70-7383 and 31-838; Administrative Proceeding File No. 3-7097]

Noverco Inc. et al.; Order for Hearing on Proposed Acquisition of Securities of Exempt Holding Company and on Application for Exemption

December 1, 1988.

Noverco Inc. ("Noverco"), 1170 Peel Street, Suite 410, Montreal, Quebec H3B 4P2, Canada, has filed an application pursuant to sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 ("Act") to acquire certain securities and an application for exemption pursuant to section 3(a)(5) of the Act. The two matters have been consolidated. A notice of the filing of the two applications was issued by the Commission on April 7, 1988 (HCAR No. 24619). No requests for a hearing were filed, but comments have been received from the Vermont Public Service Board, the Vermont Department of Public Service, Senator Patrick Leahy of Vermont, and Northeast Utilities, a registered holding company.

2425 Quebec Inc. ("Quebec Inc."), a Quebec corporation, and SOQUIP, a Quebec joint stock company created by statute whose sole shareholder is the Quebec Government, respectively own 19.88% and 15.36% of the common stock of Noverco. Caisse de depot et placement du Quebec ("Caisse"), a Quebec corporation created by statute and an agent of the Quebec government, owns 2.38% of the common stock of Noverco and exercises the voting rights attached to an additional 13.21% of such stock. These three companies are claiming exemption from the Act as holding companies in accordance with Rule 10(a)(4) under the Act, which rule exempts them since they have a subsidiary company (Noverco) which is a holding company that has a pending application for an order of exemption under section 3(a)(5). They have joined the Noverco's application under sections 9(a)(2) and 10 of the Act.

Noverco is a Canadian public-utility holding company and is temporarily exempt from the Act by virtue of having filed an application for exemption pursuant to section 3(a)(5) on June 24, 1987. It is a publicly held corporation with 51,933,615 shares of capital stock outstanding at September 30, 1987. Noverco has not issued or sold its capital stock or any other of its securities in the United States, nor is its stock publicly traded in the United States. Its principal subsidiary, wholly owned, is Gaz Metropolitan, Inc. ("GMI"), a Quebec corporation that distributes natural gas in Quebec, including Montreal. In fiscal year 1987, GMI accounted for about 95% of Noverco's consolidated revenues of approximately $743 (U.S.) million. Noverco's consolidated assets at year-end were about $1 (U.S.) billion, and net property, plant, and equipment totaled about $697 (U.S.) million. Noverco has certain nonutility subsidiary companies doing business in Canada.

Noverco proposes to acquire the outstanding common stock of Northern New England Gas Corporation ("NNEG"), a Vermont corporation which owns the outstanding common stock of Vermont Gas System Inc. ("VGS") a gas utility company and a Vermont corporation. VGS provides gas distribution service to communities in the northwest part of Vermont, including the greater Burlington area. It currently owns and operates 55 miles of transmission mains, extending from the Canadian border at Phillipsburg, Quebec/Highgate Springs, Vermont, to Burlington, and 266 miles of distribution lines. It holds an exclusive franchise to provide natural gas throughout the entire state of Vermont. Its exclusive supplier is TransCanada Pipelines, Ltd., which also is the major supplier of GMI. For the fiscal year 1987, VGS' utility revenues were about $24.3 million, its total assets at year-end were about $24.6 million, and its net utility plant was about $17.2 million.

VGS has outstanding 100 shares of common stock, $1 par value, all owned by NNEG, which was organized in 1983 to acquire the VGS common stock. The VGS acquisition was financed by loans of $12 million to NNEG and by the sale by NNEG of 5,000 shares of its common stock, $1 par value, to Energy Future Limited Partnership ("EFLP"), a Vermont limited partnership, for $750,000. Both NNEG and EFLP are exempt intrastate holding companies under section 3(a)(1) of the Act in accordance with Rule 2 under the Act. The limited partnership interests in EFLP constitute 99% of the partnership interests of EFLP. On December 30, 1986, the limited partnership interests were acquired by Noverco from its owners for $10,395,000. It is proposed that upon the contemplated dissolution of EFLP and upon payment of $105,000 to the general partner of EFLP for his interest, Noverco will acquire and own directly the common stock of NNEG.

It appears to the Commission that it is appropriate in the public interest and in the interest of investors and consumers that a public hearing be held with respect to the proposed acquisition and the application for exemption and that interested persons be afforded an opportunity to be heard at such hearing with respect to such matters. Accordingly,

It is ordered, pursuant to section 19 of the Act, that a hearing be held on the applications under the applicable provisions of the Act and the Rules of the Commission at a time and place to be fixed by further order, as provided by Rule 6 of the Commission's Rule of Practice (17 CFR 201.6), and that an Administrative Law Judge, to be designated by further order, preside at

said hearing. Any person, other than Noverco, Quebec Inc., SOQUIP, and Caisse, desiring to be heard or otherwise wishing to participate in that proceeding is directed to file with the Secretary of the Commission, on or before December 27, 1988, an application, as provided by Rule 9 of the Commission's Rule of Practice (17 CFR 201.9), setting forth the nature and extent of such person's interest in the proceeding and any issues deemed to be raised by this Notice and Order or by the applications. A copy of that request shall be served personally upon Noverco, Quebec, SOQUIP, and Caisse at the address noted above, and proof of such service (by affidavit or, in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. Persons filing an application to participate or to be heard will receive notice of the date and place of the hearing and any adjournments thereof, as well as of other actions of the Commission involving the subject matter of this proceeding.

The Division of Investment Management has advised the Commission that it has examined the applications and the comment letters received by the Commission and that, upon the basis thereof, the following questions are presented for consideration, without prejudice to the Commission's specifying additional questions upon further examination:

(1) Whether the proposed acquisition by Noverco of the common stock of NNEG meets the standards of section 10 of the Act, particularly subsection (c)(2).

(2) Whether Noverco should be granted an exemption from the Act in accordance with section 3(a)(5), particularly in light of the size of VGS' gas utility business.

(3) What terms or conditions, if any, the Commission should impose if the proposed acqusition and/or exemption requests are approved.

(4) Generally, whether the proposed acqusition and exemption are in all respects compatible with the provisions and standards of the applicable sections of the Act and of the rules promulgated thereunder.

It is further ordered that attention should be given to the foregoing questions at the hearing.

It is further ordered that the Division of Investment Management shall be party to the proceeding.

It is further ordered that the Secretary of the Commission shall give notice of the hearing by mailing copies of this Notice and Order by certified mail to Noverco, Quebec Inc., SOQUIP, and Caisse at the address noted above, to the Vermont Public Service Board and the Vermont Department of Public Service both located at 120 State Street, State Office Building, Montpelier, Vermont 05602, Senator Patrick Leahy, United States Senate, Washington, DC 20549, and Northeast Utilities, P.O. Box 270, Hartford, Connecticut 06141–0270; that notice to all other persons be given by publication of this Notice and Order in the **Federal Register**; that a copy of this Notice and Order shall be published in the "SEC Docket"; and that an announcement of the hearing shall be included in the "SEC News Digest."

By the Commission.

Dated: December 1, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28049 Filed 12–5–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region II Advisory Council; Public Meeting; Puerto Rico

The Small Business Administration Region II Advisory Council located in the geographical area of Hato Rey, Puerto Rico, will hold a public meeting at 9:00 a.m., Tuesday, December 6, 1988, at Room 691, Federal Building, Carlos Chardón Avenue, Hato Rey, Puerto Rico, to discuss such matters as may be presented by members, staff of the Small Business Administration or others attending.

For further information, write or call Carlos E. Chardón, District Director, Small Business Administration, Federal Building, Room 691, Carlos Chardón Avenue, Hato Rey, Puerto Rico 00918—(809) 766–5002.

Jean M. Nowak,

Director, Office of Advisory Councils

November 25, 1988.

[FR Doc. 88–27989 Filed 12–5–88; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 06/06–0296]

Live Oak Capital Partners, Ltd.; Application for License to Operate as a Small Business Investment Company

An application for a License to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*). has been filed by Live Oak Capital Partners, Ltd., 4900 First City Center, 1700 Pacific Avenue, Dallas, Texas 75201, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988). The company is being organized as a limited partnership.

The general partners and the sole limited partner of Live Oak Capital Partners, Ltd. are as follows:

Name and address, and title	Percent of ownership
Live Oak Capital Advisors, Inc., 4900 First City Center, 1700 Pacific Avenue, Dallas, Texas 75201; Corporate General Partner (CGP)	0.90
Joseph F. Langston, Jr., Route 3, Box 185, Kaufman, Texas 75142; Individual General Partner	0.10
John Hancock Mutual Life Insurance Company, 200 Clarendon Street, Boston, Massachusetts 02117; Sole Limited Partner	99.00

The officers, directors and sole stockholders of the CGP are:

Name and address, and position	Ownership (percent)
Joseph F. Langston, Jr.; President and Director	100
F. Lee Robinson, 745 Gilpin Street, Denver, Colorado 80218; Director	0
Robert L. Simmons, 3517 Hilltop Lane, Plano, Texas 75023; Secretary and Director	0

The Applicant will begin operations with a capitalization of $1,050,000. The source of initial capital of the Applicant will be $1,039,500 from John Hancock and $10,500 from the corporate and individual general partners. The applicant will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant intends to invest in general manufacturing, technology and service industries. The Applicant intends to operate in Texas, but may expand its activities to Oklahoma, Louisiana and other areas in the mid-continent region of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Act and the Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Dallas, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 29, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-27991 Filed 12-5-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 45959]

United States-Mexico All-Cargo Service Proceeding; Prehearing Conference

The prehearing conference in this proceeding will be held on Thursday, January 5, 1989 at 10:00 a.m. in Room 5332, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC.

On or before December 28, 1988, the parties shall submit one copy to each other and four copies to the Judge of (1) any proposals for changes in the evidence request contained in Appendix C to Order 88-11-37; (2) proposed procedural dates; (3) proposed stipulations; and (4) a statement of position.

Dated at Washington, DC, November 30, 1988.

Burton S. Kolko,

Administrative Law Judge.

[FR Doc. 88-28051 Filed 12-5-88; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 45959]

United States-Mexico All-Cargo Service Proceeding; Assignment of Proceeding

November 30, 1988.

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street, Washington 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 88-28052 Filed 12-5-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Customs Service

Overstatement of Charges on Entry Documentation

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of Customs investigations of overstatement of charges on entry documentation.

SUMMARY: Entry documentation covering merchandise imported into the U.S. is required by law to set forth all charges upon merchandise. The actual amounts paid to freight and insurance companies, less any discounts, bonuses or rebates paid by the freight and insurance companies to the seller, must be reflected on the documents. It has come to the attention of Customs that many invoices set forth overstated freight and insurance charges as the invoices do not reflect the discounts, commissions, bonuses or rebates received by the shippers or manufacturers from the freight and insurance companies. This document notifies the public that Customs is currently investigating such practices.

EFFECTIVE DATE: December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Fischer, Office of Enforcement, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-6188).

SUPPLEMENTARY INFORMATION:

Background

All invoices for imported merchandise are required by 19 U.S.C. 1481(a)(8), and § 141.86(a)(8), Customs Regulations (19 CFR 141.86(a)(8)), to set forth all the charges upon the merchandise itemized by name and amount, including freight, insurance, commission, cases, containers, coverings, and cost of packing. Pursuant to 19 U.S.C. 1481(a)(9), and § 141.86(a)(9), Customs Regulations (19 CFR 141.86(a)(9)), invoices must also set forth all rebates allowed upon exportation of the merchandise.

The importer of record is required by 19 U.S.C. 1484(a)(1)(B) to file such documentation as is necessary to enable the appropriate Customs officer to assess the proper duties on merchandise, collect accurate statistics with respect to merchandise, and determine whether other applicable requirements of law are met. Such documents required by Customs include the entry summary, Customs Form 7501. Pursuant to § 141.61(e)(1), Customs Regulations (19 CFR 141.61(e)(1)), the applicable information required by the General Statistical Headnotes, Tariff Schedules of the U.S. (TSUS), shall be shown on the entry summary. General Statistical Headnote 1(a)(xiv) provides that when persons making customs entry of articles imported into the customs territory of the U.S. complete the entry summary, they shall include the aggregate cost, in U.S. dollars, of freight, insurance and all other charges, costs and expenses incurred in buying the merchandise from alongside the carrier at the port of exportation in the country of exportation and placing it alongside the carrier at the first U.S. port of entry.

It has come to the attention of Customs that some importers are overstating freight and insurance charges on entry documentation by not reflecting accurately discounts, commissions, bonuses or rebates received by the shippers or manufacturers from freight and insurance companies. This has resulted in undervaluation of imported merchandise as the value of the merchandise is determined pursuant to 19 U.S.C. 1401a as the total payment made by the buyer, exclusive of any costs, charges or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise. Customs has further learned that some shippers and manufacturers are receiving the excess monies and/or discounts in CIF and FOB prepaid transactions.

Pursuant to 19 U.S.C. 1485(a), every consignee making an entry is required to declare on the entry that the prices set forth in the invoice are true to the best of his knowledge and belief; that all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct; and that he will produce at once to the appropriate Customs officer any invoice, paper, letter, document or information received showing that any such prices or statements are not true or correct. Accordingly, overstating freight and insurance charges is a violation of 19 U.S.C. 1485(a). Violation of 19 U.S.C. 1485(a) could result in a penalty under 19 U.S.C. 1592.

The purpose of this notice is to notify the importing public that Customs is currently investigating the practice of overstating freight and insurance charges on import documents. Manufacturers, exporters, and importers who have engaged in the aforementioned practices are encouraged to make duty tenders and provide all pertinent information to U.S. Customs. These actions may be considered an extraordinary mitigating factors with respect to any possible civil

penalty action that might be commenced against the importer.

William von Raab,

Commissioner of Customs.

Approved: November 10, 1988.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 88-27983 Filed 12-5-88; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Youth Exchange Program

The Bureau of Educational and Cultural Affairs, Youth Exchange Staff of the U.S. Information Agency announces its intention to fund a series of educational and cultural projects during 1989 and seeks written expressions of interest and capability on the part of private sector organizations that wish to be considered for grants to conduct these projects. This is not a request for proposals. Interested, potentially qualified organizations will be sent letters inviting them to submit detailed proposals and guidelines for these submissions once the Agency has developed specific solicitations. In each instance at the time of solicitation a limited number of organizations will be competing with each other in bidding on a project design. The list of competing organizations will include, but not necessarily be limited to, those that respond to this invitation and will be developed based on professional staff assessment of relevant qualifications.

Unless otherwise indicated below, the typical project is a short-term (4–6 week) group activity for participants identified by USIS posts overseas to be conducted during the summer months of 1989. The components of the programs will vary, depending on the theme, age of participants, length of stay, and other specifications. These projects are also primarily designed for international youth, not Americans, unless otherwise indicated.

Programs are authorized under Pub. L. 87–256, the Mutual Educational and Cultural Exchange Act of 1961, whose "purpose is to increase mutual understanding between the people of the United States and the people of other countries." Programs under the authority of the Bureau must be balanced and representative of the diversity of American political, social, and cultural life.

Respondents are hereby notified that budgetary constraints may prevent some of these projects from being funded in the final analysis.

Eligibility

To be eligible for consideration organizations must be incorporated in the U.S., have not-for-profit status as determined by the IRS, and be able to demonstrate expertise in a field relevant to the nature of the project on which they are bidding. Organizations in existence less than four years will only be eligible for grants under $60,000. Experience programming international visitors is desirable.

Western Europe

Germany

A. Congressional interns—a program for 8 West German youth aged 20–25 to provide them with a two-month experience in national and regional legislative affairs in the U.S., including internships in congressional offices and exposure to various regions of the U.S.

B. Journalists—a 6-week program for 6 young West German journalists to experience living in the U.S. and serving as interns in media organizations.

France

A. A project in France on the theme of the Bicentennial of the French Revolution for a group of American high school youth. A reciprocal project for a group of French youth on the theme of liberty and equality will also be conducted. The French Government will share in the cost of the projects.

B. A project to send a delegation of policically active American youth aged 18–25 to Paris in the summer of 1989 for a youth conference entitled "Paris '89" organized by youth wings of international political movements.

Spain

A project for a group of university student leaders from Spain on the theme of the 500th anniversary of Columbus' first voyage to the New World. The project will focus on the creation of "the American" culture and the contributions of various ethnic groups to its development.

Portugal

A project for university student leaders on the theme of leadership development.

United Kingdom

A. A project for student union university leaders to learn about the structure of the U.S. Government, higher education, democracy in a pluralistic society, and the foreign policy process, with special emphasis on international security affairs.

B. As two-way exchange project for top U.S. and U.K. students of one or more leading university drama departments.

A regional European project on the theme of "Challenge of Federalism" for leaders of youth wings of political parties.

Africa (Sub-Saharan)

A. American Studies—A 2-way 4–6 week project for African students of American studies in universities that have links with American universities.

B. Constitutional Law—A 4-week project for students of law in anglophone countries focusing on the U.S. Constitution and the practice of law in the U.S.

C. Arts—A 4-week project for young performing and visual artists from francophone African countries to explore the arts in America. Program will be conducted in French.

D. Sciences—A 4-week project for gifted students in science and math (upper high school level), preferably to attend a summer enrichment activity focusing on science and math.

American Republics (Latin America/the Caribbean)

Mexico

A. Arts and Crafts—A 4-week project for young folk artists and craftsmen to learn about the U.S. crafts heritage and to demonstrate their skills.

B. Political Process—a 4-week project for university students and politically active youth leaders on U.S. political processes, with special reference to the transition from one administration to another; also U.S.-Mexican relations.

C. U.S.-Mexican Relations—A 3-week project to send a group of U.S. university students interested in U.S.-Mexican relations to Mexico to meet with Mexican university students. The USIA grant will be primarly for international travel and partial per diem, with modest additional funding for the organization's administrative expenses.

Uruguay

The Agency will sponsor a 6-week program for American students in community colleges to attend classes in Spanish, history and culture at the Binational Center (BNC) in Montevideo during summer 1989. The Agency grant will be primarily for international travel only for 20–25 students, with modest additional funding for the organization's administrative expenses. Hosting will be provided by the BNC.

Regional Projects

A. Young Diplomats—A 4-week project for students from Latin

American diplomatic academies with a focus on the U.S. foreign policy process.

B. Community Development/Youth Leaders—A project to expose young community leaders to grass-roots development activities in the U.S. the Program should accommodate non-English speakers.

C. Arts—A project for young talented visual artists focusing on the arts and art education in the U.S. The program will be designed for Spanish speakers.

East Asia/Pacific

Korea

A project to bring ten Korean graduate students in political science to the United States for a period of six weeks with a focus on bilateral political, security and economic issues. Part of the program should be at a college or university. Other foci will be on such institutions as the mass media, community action groups, consumer organizations, and organized labor.

The Philippines

A five-week project to bring six to eight young political leaders to the United States to study the development of political institutions in the United States, the diversity of American culture and issues in the bilateral relationship. They will also examine the particular role of the mass media in formulating popular opinion.

Thailand

A 3-week project for ten to twelve leaders of Thai University student unions with a focus on the American political process and issues facing American young people, especially those on university campuses. The students would observe how Americans actively participate in the political process, the workings of federalism, the role of lobbyists and the meaning of the separation of powers at the federal level.

Regional Projects

A. A project to bring twelve to sixteen young leaders from the fields of business and economics to the United States to become familiar with American perspectives on international trade issues. They will examine U.S. economic history with a particular focus on the varied patterns of development which existed in different regions of the country.

B. A project to bring six to eight young leaders from the Pacific Island nations to the United States for four to five weeks to study the American political process, with a particular focus on the development of regional governmental institutions. They would participate in leadership seminars and have homestays with American families.

Near East and South Asia

Egypt

A project to bring eight Egyptian students and young professionals from the fields of museum management and archeology to the United States for five weeks. The program would expose the young Egyptians to the latest information on museum management as well as preservation and restoration techniques and technology in the field of archeology.

India

A project to bring five Indian high school students, who are outstanding in the fields of science and mathematics, to the United States for six weeks.

Israel

A two-way exchange project for ten young journalists from each country. They will be introduced to the practice of journalism, including issues of ethics and censorship, through visits to media and governmental institutions. The program will include cultural visits and homestays.

Morocco

A project to bring ten graduate students and junior faculty in the field of American Studies to the United States for five weeks. The project would concentrate on the development of American literature, and expose the students to the diversity of American civilization and American institutions of higher education. American graduate students and junior faculty in North African Studies would travel to Morocco to complete this exchange.

Pakistan

A project to bring two Pakistani high school students, who are outstanding in the fields of science and mathematics, to the United States for about six weeks for summer enrichment activities.

Regional Project

A project for ten university students from various countries in the Near East and South Asia with a focus on the issue of ethnicity in American society. The participants will attend seminars on American cultural and religious diversity and visit sites of particular interest in this regard.

Multiregional Projects

These are projects for participants nominated by USIS posts worldwide.

A. Writers and animators of popular culture through graphic story-telling—A 4-week project for 15 professionals who create popular culture—comic books, comic strips and animated films.

B. International political affairs—American organizations with resources to put together diverse, well-balanced delegations of American youth interested in politics and international issues to participate in international youth activities and to program incoming delegations of leaders of similar youth, are invited to identify themselves.

Interested organizations are requested to respond in writing by December 30, 1988, so that they may be included in limited solicitations for project designs now being prepared.

A separate announcement is being published inviting proposals for exhanges of young people between the U.S. and the USSR and Eastern Europe. For further information on that program and on the projects listed above, please write to the Young Exchange Staff, U.S. Information Agency, Rm. 357, 301 4th St. SW., Washington, DC 20547, or call 202–485–7299.

Robert D. Persiko,

E/YX—Deputy Director.

[FR Doc. 88–28006 Filed 12–5–88; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INSTITUTE OF PEACE

Jennings Randolph Program for International Peace; Fellowship Availability

The United States Institute of Peace announces the 1988–89 cycle of its annual international competition for fellowships from the Jennings Randolph Progam for International Peace. These followships enable professionals and scholars to undertake research and education projects that will increase knowledge and spread awareness on the part of the public and policymakers regarding the nature of violent international conflicts and the full range of ways to deal with them peacefully. Fellowships are awarded in three categories: Distinguished Fellow, Peace Fellow, and Peace Scholar.

Applications must be postmarked by February 1, 1989 in order to be considered in the current review cycle. For further information or application materials, please call or write: Jennings Randolph Program for International Peace, United States Institute of Peace, 1550 M Street NW., Suite 700, Washington, DC 20005–1708, (202) 457–1706.

Contact: Michael Lund, Director, Jennings Randolph Progam for International Peace.

Date: November 22, 1988.

Samuel W. Lewis,

President.

[FR Doc. 88–28029 Filed 12–5–88; 8:45 am]

BILLING CODE 3155–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 234
Tuesday, December 6, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, Monday, December 12, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: December 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28152 Filed 12-2-88; 3:49 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 5, 12, 19, and 26, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 5

Friday, December 9

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Meeting with Public Officials Having Responsibility for Emergency Planning for Pilgrim Nuclear Power Plant (Public Meeting)

Week of December 12—Tentative

Thursday, December 15

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 19—Tentative

Monday, December 19

10:00 a.m.
Briefing on Status of NUREG-1150 (Public Meeting)

Tuesday, December 20

10:00 a.m.
Briefing on Current Status of Possible Use of Substandard Components in Nuclear Power Plants (Public Meeting)

2:00 p.m.
Briefing by DOE on High Level Waste Program (Public Meeting)

Wednesday, December 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

Week of December 26—Tentative

Friday, December 30

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) was held on December 1.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

December 1, 1988.

[FR Doc. 88-28124 Filed 12-2-88; 3:42 pm]

BILLING CODE 7590-01-M

POSTAL SERVICE

Board of Governors

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 47613, November 23, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: December 6, 1988.

CHANGE: Amend agenda by rescheduling Item 7b "Capital Investment—Multiline Optical Character Reader and Bar Code Sorter Automation" from December 6 Open Session to December 5 Closed Session.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 88-28116 Filed 12-2-88; 1:56 pm]

BILLING CODE 7710-12-M

POSTAL SERVICE

Board of Governors

Vote To Close Meeting

By telephone on December 2, 1988, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for December 5, 1988, at the Hyatt Regency Westshore, 6200 Courtney Campbell Causeway, Tampa, Florida. The meeting will involve consideration of a capital investment for Multiline Optical Character Reader and Bar Code Sorter Automation.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Nevin, Pace, Ryan and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Cox.

The Board determined that, pursuant to section 552(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information, the premature disclosure of which would likely significantly frustrate implementation of a proposed procurement action.

In accordance with section 552(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(9)(B) of title

5, United States Code, and § 7.3(i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 88–28117 Filed 12–2–88; 1:56 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 5, 1988.

A closed meeting will be held on Tuesday, December 6, 1988, at 2:00 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 6, 1988, at 2:00 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive action.

Settlement of administrative proceedings of an enforcement nature.

Formal orders of investigation.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daughtery at (202) 272–2200.

Jonathan G. Katz,

Secretary.

December 1, 1988.

[FR Doc. 88–28108 Filed 12–2–88; 8:45 am]

BILLING CODE 8010–01–M