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Presidential Documents

Title 3

The President

Proclamation 5680 of July 17, 1987

Captive Nations Week, 1987

By the President of the United States of America

A Proclamation

For nearly three decades Captive Nations Week has symbolized the American people's solidarity with all throughout the world who courageously seek freedom and independence from Soviet domination. During this week, we recall that the liberties we enjoy are denied to many by the Soviet empire; and we publicly affirm our admiration for captive nations, who keep the light of freedom burning brightly as they oppose military occupation and brutal totalitarian oppression.

Our Nation offers the world a vision of inalienable political, religious, and economic rights. This vision has always been shared among peoples subjugated by Soviet imperialism; and so has resistance, ever the catalyst of liberty. Today, a struggle that began in Ukraine 70 years ago is taking place throughout the Soviet empire. In the last year alone, people have risen up to demand basic human rights in Czechoslovakia, East Germany, Hungary, Poland, Kazakhstan, Latvia, Moldavia, and among the Crimean Tatars. And across the globe, in Afghanistan, Angola, Cambodia, and Nicaragua, courageous freedom fighters battle tyranny. All captive nations deserve and require our special support. For those seeking to enjoy humanity's birthright of liberty, independence, and justice, we serve as guardians of their dream.

Thus, we must and will continue to speak out on the plight of captive nations. We will continue to call for the speedy release of the persecuted and the falsely imprisoned—people such as Gunars Astra, Lev Lukyanenko, Mart Niklus, and Viktoras Petkus. So long as brave individuals suffer because of their nationality, faith, and desire for human rights, the United States of America will demand that every signatory of the United Nations Charter and the Helsinki Accords live up to its obligations and respect the principles and spirit of these international agreements.

So that we who cherish liberty may proclaim our commitment to those to whom its blessings are presently denied, the Congress, by joint resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning July 19, 1987, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities, and I urge them to reaffirm their devotion to the aspirations of all peoples for justice, self-determination, and liberty.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of July, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-16697
Filed 7-20-87; 11:38 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5681 of July 18, 1987

Fiftieth Anniversary of the Animated Feature Film, 1987

By the President of the United States of America

A Proclamation

Fifty years ago, a milestone in our Nation's artistic history was achieved when "Snow White and the Seven Dwarfs" became the first full-length animated feature film, and the movie soundtrack album became the first original soundtrack recording ever released. Since that historic ground-breaking for a new genre in the motion picture art, moviegoers have enjoyed a long and colorful succession of animated films.

As we celebrate the 50th anniversary of the first animated feature-length film, we can be grateful for the art of film animation, which brings to the screen such magic and lasting vitality. We can also be grateful for the contribution that animation has made to producing so many family films during the last half-century—films embodying the fundamental values of good over evil, courage, and decency that Americans so cherish. Through animation, we have witnessed the wonders of nature, ancient fables, tales of American heroes, and stories of youthful adventure. In recent years, our love for technology and the future has been reflected in computer-generated graphic art and animation.

The achievements in the motion picture art that have followed since the debut of the first feature-length animated film in 1937 have mirrored the artistic development of American culture and the advancement of our Nation's innovation and technology. By recognizing this anniversary, we pay tribute to the triumph of creative genius that has prospered in our free enterprise system as nowhere else in the world. We recognize that, where men and women are free to express their creative talents, there is no limit to their potential achievement.

In recognition of the special place of animation in American film history, the Congress, by House Joint Resolution 122, has authorized and requested the President to issue a proclamation calling upon the people of the United States to celebrate the week beginning July 16, 1987, with appropriate observances of the 50th anniversary of the animated feature film.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim that during the week beginning July 16, 1987, marking the 50th anniversary of feature film animation, the people of the United States are encouraged to observe this historic milestone in our Nation's artistic history with appropriate ceremonies, programs, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of July, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-16698
Filed 7-20-87; 11:39 am]
Billing Code 3195-01-M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 87-067]

Amendment To Declare Fiji Free of VVND, Hog Cholera, and Swine Vesicular Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of animals and animal products by adding Fiji to the list of countries declared free of viscerotropic velogenic Newcastle disease (VVND), hog cholera, and swine vesicular disease. This action is necessary to relieve restrictions on the importation from Fiji into the United States of swine; pork and pork products; and carcasses, parts, and products (including certain eggs) of poultry and birds.

EFFECTIVE DATE: August 20, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. R.D. Whiting, Chief Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 prohibit or restrict the importation of certain animals and animal products from specified countries to prevent the introduction into the United States of various diseases, including viscerotropic velogenic Newcastle disease (VVND), hog cholera, and swine vesicular disease.

We published a proposed rule in the Federal Register on March 13, 1987 (52 FR 7885-7887, Docket Number 86-099). We proposed to revise §§ 94.6, 94.9, 94.10, and 94.12 of the regulations by adding Fiji to the list of countries declared free of VVND, hog cholera, and swine vesicular disease. Our proposal invited the submission of written comments on or before May 12, 1987. We received no comments. Based on the rationale set forth in the proposal, we are adopting the proposed rule as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Fiji does not now export any pork or pork products or carcasses, parts, or products (including eggs) of poultry or birds into the United States. Because Fiji's pork and poultry industries are very small, it is unlikely that Fiji will export pork or poultry products into the United States. This final rule removes the prohibition on importing swine from Fiji into the United States; however, because Fiji has a small swine population, it is unlikely that Fiji will export swine into the United States. Any swine that might be imported from Fiji into the United States will be subject to the regulations in 9 CFR Part 92, which include requirements that swine from any part of the world except Canada be quarantined for at least 15 days upon arrival into the United States and, during the quarantine, be subjected to any inspections, disinfections, and tests necessary to determine the animals' freedom from disease.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of 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 94

African swine fever, Animal diseases, Exotic Newcastle disease, Foot-and mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Rinderpest, and Swine vesicular disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, 9 CFR Part 94 is amended as follows:

1. The authority citation for Part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.6 [Amended]

2. In § 94.6, paragraph (a)(2) is amended by adding "Fiji," after "Denmark".

§ 94.9 [Amended]

3. In § 94.9, paragraph (a) is amended by adding "Fiji," after "Dominican Republic," both times "Dominican Republic" appears.

§ 94.10 [Amended]

4. Section 94.10 is amended by adding "Fiji," after "Dominican Republic".

§ 94.12 [Amended]

5. In § 94.12, paragraph (a) is amended by adding "Fiji," after "Dominican Republic".

Done in Washington, DC, on this 15th day of July 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-16506 Filed 7-20-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-CE-7-AD; Amendment 39-4747]

Airworthiness Directives; Embraer Models EMB-110P1 and EMB-110P2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 82-05-01, Amendment 39-4747, applicable to all Embraer Models EMB-110P1 and EMB-110P2 airplanes certificated in any category. This correction is necessary because an error was made in the EEMCO document number set forth in Paragraph (A)7 of the AD when Amendment 39-4747 was published in the Federal Register.

EFFECTIVE DATE: July 27, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. George Carver, ACE-130A, Aerospace Engineer, Systems Branch, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Pkwy., Atlanta, Georgia 30349; telephone (404) 991-3020.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of AD 82-05-01, Amendment 39-4747 (48 FR 48803; October 21, 1983), applicable to Embraer Models EMB-110P1 and EMB-110P2 airplanes, the FAA found that an error had been made in the EEMCO document number stated in Paragraph (A)7 of the AD when this amendment appeared in the Federal Register. Therefore, action is taken herein to make this correction.

PART 39—[CORRECTED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Corrected]

2. By correcting the following AD:

In FR Doc. 83-28697 (48 FR 48803; October 21, 1983), appearing in the Federal Register of October 21, 1983, make the following correction:

Correct the Paragraph (A)7 statement to read as follows:

7. If any of the items inspected in Sections 5 and 6 above are not satisfactory, repair or overhaul the actuator in accordance with EEMCO Service Bulletin 27-53-02, or replace, as necessary.

Issued in Kansas City, Missouri, on July 10, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87-16434 Filed 7-20-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 87-AWA-29]

Alteration of Jet Route and VOR Federal Airways; Harrisburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: These amendments alter the discriptions of Federal Airways V-12, V-162, V-184, V-210 and Jet Route J-152 located in the vicinity of Harrisburg, PA. The Harrisburg very high frequency omni-directional radio range and tactical air navigational aid has been relocated to lat. 40°18'08" N., long. 77°04'12" W., which is 4.1 nautical miles northwest of its current location. This action alters the descriptions of all federal airways and jet routes affected by the relocation.

DATES: Effective date—0901 UTC, September 24, 1987.

Comments must be received on or before August 31, 1987.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWA-29, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although these actions are in the form of a final rule, which involves amending the descriptions of all airways and jet routes affected by the relocation of the Harrisburg VORTAC approximately 4.1 nautical miles northwest of its present location (lat. 40°18'09" N., long. 77°04'12" N.) and were not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of these amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) is to amend the descriptions of VOR Federal Airways V-12, V-162, V-184, V-210 and Jet Route J-152 located in the vicinity of Harrisburg, PA. Due to the relocation of the Harrisburg VORTAC, the descriptions of all airways and jet routes affected by the relocation have been amended. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the descriptions of all airways and jet routes affected by the relocation of the Harrisburg VORTAC. Since this action is the result of the relocation of a navigational aid, which necessitates amendments of airway and jet route descriptions but makes only a minor change in the configuration of the controlled airspace involved, I find that these are minor technical amendments in which the public would not be particularly interested and, therefore, that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways and jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E. O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–12 [Amended]

By removing the words "INT Harrisburg 087° and East Texas, PA, 225° radials;" and substituting the words "INT Harrisburg 092° and East Texas, PA 225° radials;"

V–162 [Amended]

By removing the words "From INT Martinsburg, WV, 130° and Harrisburg, PA, 204° radials; Harrisburg 080° and East Texas, PA, 260° radials;" and substituting the words "From INT Martinsburg, WV, 130° and Harrisburg, PA, 201° radials; Harrisburg 092° and East Texas, PA, 251° radials;"

V–184 [Amended]

By removing the words "INT Harrisburg 132° and Modena, PA, 274° radials;" and substituting the words "INT Harrisburg 135° and Modena, PA, 274° radials;"

V–210 [Amended]

By removing the words "INT Revloc 096° and Lancaster, PA, 286° radials; Lancaster, PA;" and substituting the words "INT Revloc 096° and Harrisburg, PA, 285° radials; Harrisburg; Lancaster, PA;"

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA LOW ROUTES

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. § 75.100 is amended as follows:

J–152 [Amended]

By removing the words "to INT Harrisburg 099° and Westminster, MD, 058° radials." and substituting the words "to INT Harrisburg 102° and Westminster, MD, 058° radials."

Issued in Washington, DC, on July 10, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–16435 Filed 7–20–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 250

Indian Fishing—Hoopa Valley Indian Reservation

July 16, 1987.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Indian Affairs is revising the Indian fishing regulations for the Hoopa Valley Indian Reservation (25 CFR 250). The purpose of these changes is to protect the fishery resources, establish procedures for the Indians to exercise their fishing rights, and promote reasonably equal access to fishery resources by eligible Indians. This interim rule authorizes the Area Director at his/her discretion to permit commercial sales by eligible Indians of a portion of their fish catch in accord with species-specific harvest management plans and pursuant to pre-season or in-season adjustments to the regulations promulgated by him/her.

DATES: Effective on July 21, 1987. Comments are due on or before August 20, 1987.

ADDRESSES: Public comments should be submitted to: Mr. Maurice W. Babby, Area Director, Bureau of Indian Affairs, Sacramento Area Office, 2800 Cottage Way, Sacramento, California 95825, telephone: (916) 978–4691.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Knapp, Area Environmental Quality Specialist, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484–4391.

Individuals wishing additional copies of the proposed regulations should contact the above mentioned individual.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs published final fishing regulations for the Hoopa Valley Indian Reservation on July 29, 1982 (47 FR 32848). These regulations were amended on September 19, 1983 (48 FR 41762).

The Bureau of Indian Affairs is amending the Hoopa Valley Indian Reservation fishing regulations at 25 CFR Part 250. The changes include making provision for an ordinance enacted by the Hoopa Valley Tribe to govern fishing by members of that Tribe on the Square portion of the Hoopa Valley Indian Reservation; allowing the Sacramento Area Director, Bureau of Indian Affairs, to establish pre-season and in-season adjustments to the regulations for protecting fishery resources, for establishing reservation allocation scenarios and for governing commercial fishing by eligible Indians; and making provisions for criminal cases, involving violations of these regulations to be prosecuted in a Federal court.

These interim regulations are intended to promote reasonably equal access to and protection of the fishery resources of the Hoopa Valley Indian Reservation. The fall chinook run usually begins in mid-July. These revisions are needed to respond to a number of recent developments concerning the fishery and should govern the conduct of the fishery on the fall run.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the interim rule, to the location identified in the Addresses section of this preamble. Comments must be received on or before 30 days after publication of this interim rule in the **Federal Register.**

In order to allow the eligible Indians to have an opportunity to harvest their agreed allocation of chinook and be able to sell a portion of it, these regulations are issued on an emergency basis. The run usually begins in mid-July. If the commercial harvest is delayed too far into the run, the harvest could be concentrated excessively on the Trinity

River and other late arriving portions of the run, and cause damage to these stocks that can be avoided if the commercial harvest is spread over more of the total duration of the run. Additionally, if a significant part of the overall run arrives early, Indian fishers may not be able to harvest all of their total allowable catch, thereby causing economic impacts. Given these conservation and economic impact concerns, the Department finds that delaying the effective date until 30 days after publication in the Federal Register and until the public comment period has expired is impracticable and contrary to the public interest and that, in accordance with 5 U.S.C. 553d(3), good cause exists to make these regulations effective immediately.

It has been determined that this interim rule is not a major rule as that term is defined in Executive Order 12291 of February 17, 1981, 46 FR 13193, because it will have a limited economic impact on a small number of people. For the same reason, it has been determined that the interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, Pub. L. 96-354.

The Department of the Interior has determined that this rule does not constitute a major Federal action affecting the quality of the human environment under the National Environmental Policy Act of 1969. (42 U.S.C. 4321, *et seq.*). A final environmental impact statement has been completed with respect to the anticipated authorization of commercial fishing by eligible Indians, and the Environmental Protection Agency has waived the 30-day comment period for this impact statement.

The Office of Management and Budget has informed the Bureau of Indian Affairs that the information collections contained in this regulation need not be reviewed by them under the Paperwork Reduction Act.

This rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Primary Author

The primary author of this document is Donald Knapp, Bureau of Indian Affairs, Sacramento Area Office, 2800 Cottage Way, Sacramento, California 95825, telephone: (916) 484-4361.

List of Subjects in 25 CFR Part 250

Fisheries, Fishing, Indians-lands, Penalties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 25 of the Code of Federal Regulations is amended by revising Part 250 to read as follows:

PART 250—INDIAN FISHING—HOOPA VALLEY INDIAN RESERVATION

Sec.

Authority: 43 U.S.C. 1457; 25 U.S.C. 2, 9, and 13, and the Reorganization Plan No. 3 of 1950 (65 Stat. 1262).

§ 250.1 Purpose.

(a) The regulations contained in this Part govern fishing by eligible Indians on the Hoopa Valley Indian Reservation. The purpose of these regulations is to protect the fishery resources and to establish procedures for the exercise of the fishing rights of Indians of the Reservation until a Reservation-wide management mechanism is established with the capability to manage and regulate the Indian fisheries on the Reservation. The regulations are intended to promote reasonably equal access to the fishery resources by all eligible Indians of the Reservation, and to assure adequate spawning escapement.

(b) The limited extent to which regulation is undertaken by this Part is not intended nor should be construed as a conclusion that the Secretary does not have the authority to take additional measures to protect fishery resources on the Reservation if it is later determined that such measures are necessary for conservation reasons.

(c) The regulations of this Part govern all eligible Indians of the Hoopa Valley Indian Reservation except the members of the Hoopa Valley Tribe, when fishing on the Square portion of the Hoopa Valley Indian Reservation, who will be governed by the ordinances set forth by the Hoopa Valley Business Council, provided, however, that these ordinances restrict harvest not to exceed Reservation Allocation levels established by the Area Director.

(d) Violations of these regulations are punishable in the Court of Indian Offenses or by the filing of criminal charges in the appropriate Federal Court, regardless of whether the offense was committed on or off the Reservation.

§ 250.2 Effect of changes in the regulations.

A person who violates the regulations of this Part may still be prosecuted after the regulations are changed so long as what that person did was a violation of the regulations in effect at the time of the violation.

§ 250.3 Application.

(a) The provisions of these regulations and all pre-season and in-season adjustment orders issued under them apply to the waters within the exterior boundaries of the Hoopa Valley Indian Reservation.

(b) Any person who is not an Indian of the Reservation as determined under § 250.5 is not regulated under this Part at this time.

(c) Children under the age of 10 years are not liable for violations of the provisions of this Part. Such children are not eligible to receive fisher identification cards, but may accompany adult eligible fishers. Adults in the company of such children shall be held liable for actions of such children that are in violation of the provisions of this Part.

(d) All Court of Indian Offenses and enforcement records concerning violations or alleged violations which occurred when the violators or alleged violators were under the age of 18 shall be strictly confidential. Records may only be released to other agencies or persons by petition to and approval of the Court of Indian Offenses. Nothing in this paragraph shall bar the use of statistical compilations of juvenile records or the use of a violator's prior record in the sentencing phase of a Court of Indian Offenses prosecution.

§250.4 Definitions.

"Agency Superintendent" means the Superintendent of the Northern California Agency of the Bureau of Indian Affairs.

"Anadromous fish" includes all species, stocks and races of salmon, steelhead, sturgeon, and eels.

"Angling" means the taking or attempted taking of fish by hook and line with the line held in the hand or closely attended in such a manner that the fish voluntarily takes the hook in its mouth.

"Area Director" means the Area Director of the Sacramento Area Office of the Bureau of Indian Affairs.

"Assist" as used in § 250.5(c) means providing aid to an eligible Indian fisher in placing fishing gear, checking it, removing it from the water, removing any fish caught with the gear or removing fish from the boat.

"Bureau" means the Bureau of Indian Affairs, Department of the Interior.

"Catch site" means the area within 30 feet of the place where the fish is caught.

"Ceremony" means a ritual gathering consisting principally of Indians of the Reservation for any solemn, religious observance on an established traditional basis.

"Channel" means the wetted area from bank to bank.

"Closed" or "closure" refers to waters or areas closed to all fishing unless otherwise authorized.

"Commercial fishing" means the taking of fish or fish parts with the prior or subsequent intent to sell or trade them or profit economically from them.

"Consumptive or subsistence fishing" means the taking of fish to be eaten by Indians of the Reservation or their families.

"Drift-net (pole net)" means a gillnet which is not staked, anchored or weighted, but drifts free.

"Eel" means Pacific lamprey, an anadromous fish.

"Eligible fisher—eligible Indian" means any Indian who is determined to be an Indian of the Reservation under § 250.5.

"Enforcement Officer" means:

(a) Any enforcement officer of the Department of the Interior,

(b) Any U.S. Marshal;

(c) Any tribal enforcement officer; or

(d) Any person deputized to enforce these regulations.

"Extension portion of the Reservation" means that portion of the Hoopa Valley Indian Reservation not included within the Square portion of the Reservation.

"Fish or fishing" means the fishing for, catching, or taking, or the attempted fishing for, catching or taking of any anadromous fish within the exterior boundaries of the Reservation. Placement of a net in the water constitutes fishing regardless of whether or not the person who placed the net in the water intended to catch fish.

"Fisher identification card" means the identification (ID) card issued by the Hoopa Valley Tribe to its members or the card issued by the Bureau of Indian Affairs identifying the holder as a person eligible to fish as an Indian of the Reservation. The identification card shall include the name, basis for eligibility to fish, address, birthdate, color of hair, color of eyes, height, weight, identification number, and photograph of the holder and the disclaimer provided in § 250.5.

"Fishing gear" means any gillnet, seine, hook-and-line, or other apparatus used for taking fish.

"Gillnet"means a flat net suspended vertically in the water with meshes that allow the head of the fish to pass through and become entangled.

"Hand dip net" means a section of netting distended by a rigid frame operated by a process commonly recognized as dipping. Such nets may be of any size.

"Identification number" means the identification number assigned by the Bureau identifying the eligible fisher by number. This number is to be obtained by the eligible fisher and placed on his or her fishing gear where required by these regulations.

"Reservation" means the Hoopa Valley Indian Reservation as extended, including those portions known as the "Extension" and the "Hoopa Square."

"Reservation Allocation" means a set of Indian harvest quotas established by the Area Director for designated areas of the Reservation.

"Secretary" means the Secretary of the Interior or his/her designated representative.

"Set-net" means a gillnet which is staked or anchored or weighted on at least one end so that it does not drift free.

"Snag gear" means any hooking implement to catch or hold fish, with or without handles making possible the taking of fish in such a manner that the fish does not take the hook voluntarily in its mouth.

"Square portion of the Reservation" means that portion of the Hoopa Valley Indian Reservation established by Executive Order of June 23, 1876.

"Stretched measure" means the distance between the inside of one knot and the outside of the opposite (vertical) knot on one mesh of a gillnet. Measurement shall be taken when the mesh is stretched vertically while wet, by using a tension of ten (10) pounds on any three (3) consecutive meshes, then measuring the middle mesh of the three while under tension.

"Subsistence or consumptive fishing" means the taking of fish to be eaten by Indians of the Reservation or their families.

"Take" means the pursuing, capturing, killing, or the attempted pursuit, capturing or killing of fish.

§ 250.5 Eligible fisher or eligible Indian.

(a) The following persons may exercise fishing rights under the authority of this part:

(1) Enrolled members of the Hoopa Valley Tribe,

(2) Plaintiffs in the case entitled *Jessie Short et al. v. United States*, Ct. Cls. No. 102–63, and

(3) Persons who are allottees or direct descendants of allottees on the Reservation, who currently and for eight of the past 10 years have resided on the Reservation or within 60 miles thereof.

(b) Disclaimer: Determination of eligibility to fish under paragraph (a) of this section shall not be considered evidence of entitlement or lack of entitlement or in any way affect eligibility for enrollment or other tribal benefits or rights on the Reservation.

(c) Except as provided under § 250.3(c) an eligible Indian who allows an ineligible person to assist in an Indian fishery on the Reservation is subject to the penalties set out in § 250.15.

§ 250.6 Information collection.

The Office of Management and Budget has determined that the information collection requirement contained in this Part need not be submitted for clearance pursuant to 44 U.S.C. 3516 and 5 CFR 1320.20.

§ 250.7 Fisher identification cards required.

(a) Persons qualifying as an "eligible fisher" or "eligible Indian" under § 250.5 shall obtain an Indian fisher identification card and have it on his/her person before exercising any Indian fishing rights or transporting fish taken on the Reservation in the exercise of Indian fishing rights.

(1) Upon the demand of a law enforcement official, each eligible Indian fisher shall immediately produce for examination his/her Indian fisher identification card. The failure to produce such card shall be subject to the penalties set out in § 250.16.

(2) If the fisher does not present an eligible Indian fisher identification card upon demand, but the law enforcement official believes the person is eligible to fish from other evidence presented to him/her at the catch site by the person, no seizure of fish or gear shall occur at

that time. However, that fisher shall be issued a citation requiring him/her to appear within seven days and offer proof that he/she possesses an identification card. If that person does not appear within the time specified on the citation, that person's tribal fishing rights are suspended until proof of compliance is presented to the court and he or she shall be subject to the penalties specified in § 250.16.

(3)(i) If the law enforcement official does not believe upon other evidence presented by the fisher that the fisher has a current identification card, the officer shall issue that person a citation and shall seize any fish and gear within that person's possession.

(ii) If any fish are seized they shall be frozen and stored by the Bureau for seven (7) days.

(iii) If the fisher appears within the seven (7) days and presents proof of issuance of a valid fisher identification card, any gear or fish seized shall be returned to him/her.

(iv) If the fisher does not appear within seven (7) days the fisher shall forfeit any fish seized and may be subject to the penalties prescribed in § 250.16.

(4) Repeated violators of § 250.7 are subject to penalties prescribed in § 250.15.

(b) *Fisher identification card.* Fisher identification cards may be obtained by contacting the Agency Superintendent, P.O. Box 494879, Redding, California, 96049, telephone number (916) 246–5150, or the Hoopa Valley Tribal Office. The identification card shall include the name, basis for eligibility to fish, address, birthdate, color of hair, color of eyes, height, weight, identification number, and photograph of the holder and the disclaimer provided in § 250.5. Cards shall be signed by the persons to whom they are issued, and countersigned by the authorized official of the Bureau or the Hoopa Valley Tribe, certifying that the cardholders are recognized as eligible to exercise Indian fishing rights on the Reservation.

§ 250.8 Identification of gear.

(a) Each eligible Indian shall indelibly and conspicuously mark the fisher identification card number assigned to him/her on a float or cork attached to either end of the net being used so that the number is obvious without removing the gear from the water.

(b) Only one number may be on a net at one time. Any net not marked in conformity with these regulations shall be presumed not to be used in the exercise of the fishing rights of Indians of the Reservation and will be subject to seizure and forfeiture together with any fish contained therein.

(c) Except as may be provided for elsewhere in this Part, no eligible Indian fisher may intentionally allow his/her identification number to be used on a net that he or she is not attending or fishing.

(d) Except as may be provided for elsewhere in this Part, no eligible Indian fisher may attend or fish a net that is not marked with his/her own identification number unless he/she is accompanied by the eligible fisher whose identification number is on the net.

(e) The person whose number is on the net shall conclusively be presumed liable if the net is used in a manner that violates the regulations of this Part. This presumption shall only apply to the liability of the person whose number is found on the net. The presumption shall not act to relieve another person of liability for the conduct charged.

(f) Nothing in the regulations of this Part prohibits an eligible Indian fisher from requesting or giving assistance to another eligible fisher where the person needing assistance is faced with an emergency situation that could lead to loss of gear or life.

§ 250.9 Permissible and prohibited fishing.

(a) Except as otherwise prohibited by these regulations, the Reservation is open to the taking of anadromous fish by eligible Indians for subsistence and ceremonial purposes unless specifically closed by the regulations of this Part or by properly adopted pre-season or in-season adjustments to the regulations.

(2) Fishing with gillnets is prohibited from 9 a.m. Monday until 9 a.m. Tuesday of each week during the months of August and September of each year. Except as provided elsewhere in this Part, fishing with gillnets is permitted at all other times.

(c) From October 1, through July 31 of the following year, fishing with gillnets is permitted seven days per week and 24 hours per day except that all nets must be out of the water between the hours of 9 a.m. and 5 p.m. on Monday of each week.

(d) The total take of each species of anadromous fish for subsistence, ceremonial and commercial purposes shall not exceed designated Reservation Allocation levels, as determined by the Area Director.

(e)(1) Anadromous fish not needed for subsistence and ceremonial purposes may be taken for commercial purposes if provided for in pre-season or in-season adjustments to the regulations of this Part. Any eligible fisher who, for commercial purposes, takes, possesses or sells fish in violation of pre-season or in-season regulations promulgated by the Area Director shall be subject to the penalties set out in § 250.16.

(2) The Area Director shall act in lieu of the unorganized Yurok Tribe in managing and regulating subsistence, ceremonial, and commercial fishing by eligible Yurok fishermen.

(3) The Area Director shall publish a notice describing plans permitting any commercial fishing on or before June 15 of each year in the Eureka Times Standard Newspaper. The notice shall specify Reservation Allocation levels for the Extension and Square portions of the Reservation.

(f) Ceremonial fishing may be conducted during closed hours pursuant to a special permit issued by the Agency Superintendent. The Agency Superintendent may impose any conditions on the permittee that are necessary to protect fishery resources or to assure that all fish caught are used exclusively for ceremonial purposes.

(g) Drift netting is prohibited from the top of Blake's Riffle to the mouth of the Klamath River.

(h) No eligible fisher may use more than two gillnets, the combined length of which may not exceed one hundred (100) feet.

(i) Set-nets or drift-nets may be joined end-to-end so as to form a single straight-line net as long as the new length does not exceed one hundred (100) feet. One (1) or more eligible fishers may not place set-nets or drift-nets within thirty (30) feet of each other if the combined lengths of the nets is more than 100 feet measured in a straight line from the end of the net that is closest to the shore.

(j) At least one end of a set-net shall be anchored or staked at all times it is in use.

(k) The anchoring of nets to any boat dock or placement of nets in such a manner as to impede boat traffic from docking at or departing from any boat dock is prohibited.

(l) No set-net or combination of set-nets, staggered or joined, may be placed in such a way that it or they cover more than one-third (⅓) of the distance across any channel.

(m) No set-net may be placed in any tributary creek of either the Klamath or Trinity River or within one hundred (100) feet of the mouth of any of the following creeks:

(1) Bear Creek
(2) Blue Creek
(3) Campbell Creek
(4) Cappell Creek
(5) Hostler Creek
(6) Hunter Creek
(7) Johnson Creek

(8) Omagar Creek
(9) Panther Creek
(10) Pecwan Creek
(11) Pine Creek
(12) Richardson Creek
(13) Roach Creek
(14) Salt Creek
(15) Supply Creek
(16) Surpur Creek
(17) Tectah Creek
(18) Terwer Creek
(19) Tish-Tang Creek
(20) Tully Creek

(n) No set-nets may be placed within five-hundred (500) feet in any direction of the confluence of the Klamath and Trinity Rivers.

(o) The use of or possession of traps, wire, fencing material, snag gear, explosives, stunning agents or caustic or lethal chemicals in any form, that will assist in the taking of any fish is prohibited. Eels may be caught by snag gear or traps made for that purpose. Any material, device or substance used or possessed in violation of this subsection shall be subject to seizure and forfeiture as provided in § 250.16.

(p) No set-net may be placed within 400 feet of the test seining operation conducted by either the U.S. Fish and Wildlife Service or the California Department of Fish and Game. Set-nets placed in an area normally used for test seining may be removed by law enforcement officers and held for the owner to claim if their removal is necessary in order to permit test seining operations to be conducted.

(q) Any eligible Indian who uses another eligible Indian's identification number shall be subject to the penalties set out in § 250.16.

(r) Set-net locations: Set-net locations shall be determined by the individual Indian fishers in accordance with tradition and custom and in a manner consistent with the provisions of § 250.9. Disputes over set-net locations are to be resolved among the parties. Unresolved disputes are to be referred by the parties to elders or knowledgeable adults of the community for the particular area in which the dispute takes place.

(s) Dip net and hook-and-line fishing: Eligible Indians may engage in dip net fishing or angling at all times on the Reservation except when fishing is prohibited for all the eligible fishers by pre-season or in-season regulations adopted for conservation purposes. A fisher identification card shall be carried by each eligible Indian when engaged in dip net fishing or angling.

(t) Test fisheries: Test fisheries including trapping, netting and electrofishing may be conducted by biologists of fisheries management agencies working on the Reservation for resource management purposes. Indians of the Reservation may observe test fishery operations upon making arrangements with the agency conducting the activity.

(u) Any eligible fisher who catches and allows a fish taken to become inedible is subject to the penalties set out in § 250.16.

(v) Eels may be taken only by snag gear or traps made for the taking of eels.

§ 250.10 Catch marking and transportation of fish.

(a) *Marking.* Eligible fishers shall mark each fish by removing the dorsal fin prior to removing it from the catch site and/or prior to placing it in a motor vehicle or other land transportion device.

(b) *Off-Reservation transportation of fish.* No eligible fisher or combination of fishers may transport at one time fifteen (15) or more fish taken on the Reservation without having in his, her or their possession a valid transportation permit. A transportation permit may be obtained from the Agency Superintendent, or his/her designee. Violations of this section shall be subject to the penalties set forth in § 250.16. The permit so issued shall state the following:

(1) The name and address of the person to whom the permit is issued.
(2) The date of issue.
(3) License number of the vehicle to be used to transport the fish.
(4) The name and address of the person to receive the fish.
(5) The estimated time of arrival.
(6) The quantity of fish to be transported.
(7) The name of the issuing officer and agency.

§ 250.11 Consultation.

The Agency Superintendent or his/her designee shall hold meetings as deemed necessary by the Agency Superintendent to consult with Indians of the Reservation about the status of the resources and fisheries, to discuss pre-season and in-season adjustments to the regulations and to discuss other relevant matters. At the end of each presentation, comments will be received from those in attendance. A recorded summary of those comments shall be maintained by the Agency Superintendent.

§ 250.12 Pre-season and in-season adjustments to regulations.

(a) The Area Director may make pre-season and in-season changes to the regulations for resource conservation and harvest management purposes.

(b) Changes to the regulations authorized by paragraph (a) of this section are effective 24 hours after publication in the "Eureka Times Standard." They remain in effect until modified or rescinded by the Area Director or until they expire by their own terms. Failure to comply with the provisions of paragraph (c) of this section shall not invalidate any such change.

(c) Notification of pre-season and in-season adjustments:

(1) The Agency Superintendent is responsible for having each pre-season or in-season adjustment to the fishing regulations published in the Eureka Times Standard Newspaper as a legal notice at least twenty-four (24) hours before it is to become effective, and in the Del Norte Triplicate within a reasonable time.

(2) The Area Director shall have each pre-season or in-season adjustment published in the **Federal Register** as promptly as possible.

(3) The Agency Superintendent shall attempt to post each pre-season and in-season adjustment at least twenty-four (24) hours before it is to become effective at each of the following locations:

(i) Hoopa Post Office;
(ii) Northern California Agency, Bureau of Indian Affairs;
(iii) Weitchpec Bulletin Board, Pierson's Store;
(iv) Pecwan Elementary School;
(v) Klamath Post Office; and
(vi) Klamath Field Office, Bureau of Indian Affairs.

§ 250.13 Fish catch reporting.

(a) Each eligible Indian shall display all fish he or she has taken upon the demand of any authorized biologist, law enforcement official or Indian trainee for the purpose of monitoring the harvest or to check for compliance with the provisions of this Part. The failure to immediately so display any fish taken shall subject the Indian fisher to seizure and forfeiture of any gear or any fish in his/her possession, and to all other penalties set out in § 250.16.

(b) The Area Director shall arrange to have a catch data compiled, summarized and made available upon request.

(c) In-season catch data will be compiled from information obtained through spot checks, landing counts, net census work and from other sources.

§ 250.14 Identification of persons fishing.

Each eligible fisher shall produce for examination the applicable Indian fisher identification card required under these regulations upon demand of an enforcement officer.

§ 250.15 Enforcement.

(a) Eligible Indians who violate this Part or any pre-season or in-season adjustment promulgated under this Part are subject to prosecution before the Court of Indian Offenses or before an appropriate Federal Court. The Indian Civil Rights Act and, except as modified by this Part, 25 CFR 11.5(a) and (b), 11.6 and 11.8, 11.11, 11.12(a), 11.14 through 11.19, 11.21 and 11.33 through 11.37, apply.

(b) Citations. Law enforcement officers may issue citations to any eligible Indian believed to have committed a violation of the regulations of this Part. Such citation shall state when and where the person cited is expected to appear in court and the offense with which the person is charged.

(c) Search of Transportation vehicles. Any law enforcement officer who with probable cause, believes that any transportation vehicle contains fish taken on the Reservation by an eligible Indian fisher may demand access to said fish for inspection, and may search the vehicle to see if fish are possessed in violation of the regulations of this Part.

(1) Any net or other fishing gear used in violation of this Part and any fish taken or possessed in violation of this Part may be seized by a law enforcement officer. Fish and gear so seized shall be held pending disposition by court order except as specifically provided in these regulations. The prosecutor may authorize law enforcement officers to release, without a court order, any gear or fish seized when the prosecutor declines to prosecute an eligible fisher for the suspected violation for which the gear and/or fish were seized.

(2) When a net or other fishing gear is seized and the owner is unknown to the enforcement officer, the prosecutor shall, without unreasonable delay, commence proceedings in the Court of Indian Offenses by petitioning the Court for a judgment forfeiting the fishing gear and/or fish. When a net or other fishing gear is seized, the prosecutor shall, without unreasonable delay, notify by registered mail the holder of the identification number that his/her fishing gear has been seized. The notice of seizure shall state the date, place and time of the seizure, and shall direct the person whose gear was seized to notify the court directly to arrange to have the matter placed on the court's calendar.

(3) Upon filing of such petition, the enforcement officer shall set out details of the seizure, citing time, place, and location of such seizure. A notice of seizure shall be left at the site where the fishing gear and/or fish were confiscated. The court, upon receipt of the petition, shall set the matter on its calendar for the next quarterly hearing after all procedural requirements have been completed and shall cause notices for unidentified gear and/or fish to be posted and published. A notice shall be posted at least 10 days prior to the forfeiture hearing of the Court of Indian Offenses. The Clerk of the Court shall publish notices in at least one (1) local news medium having circulation on the Reservation. Such notice shall be published at least once five (5) days or more before said hearing and shall set forth the reason for the hearing. The Court shall hold hearings once each three months to determine the disposition of the unmarked gear and fish seized.

(4) Any fishing gear forfeited shall be sold at public sale as directed by the Agency Superintendent.

(5) One or more eligible Indians may appear at the forfeiture proceeding and intervene prior to the Court's disposition of the gear and/or fish confiscated. In order to claim the gear and/or fish, the intervenor must present evidence, under oath, subject to the cross-examination of the prosecutor, and satisfy the Court with proof beyond a reasonable doubt that the intervenor is the owner of the gear claimed and an eligible fisher. If the Court finds that the intervenor is the owner of the gear, then the gear and/or fish shall be held pending prosecution of the person responsible for the violation.

(6) If there is no objection by the seizing agency, nor any Federal statutory or regulatory prohibition, all fish seized may be sold by the Agency Superintendent. Proceeds may be held pending a Court determination that fish were taken in violation of these regulations. In the event of such a determination, proceeds will be transferred to a special Hoopa-Yurok Fund in the U.S. Treasury. Nothing in this section shall be construed to prevent undercover law enforcement officers from selling fish as part of their duties or to make legal the purchase of fish from such officers.

(d) Complaint procedures: Any person regulated under this Part may file a complaint, in writing, against a law enforcement officer. The Agency Superintendent shall, without unreasonable delay, conduct an investigation into any allegation of misconduct by a Bureau law enforcement officer in carrying out the duties of that office. Upon completion of the investigation the Agency Superintendent shall make available to the complainant, upon written request, the findings of the investigation.

§ 250.16 Penalties.

(a) Any eligible Indian who violates the time closure provisions in paragraph (a), (b), or (c) of § 250.9, shall be subject to the following penalties:

(1) *First Violation.* If any person is convicted without any previous conviction(s) of any of the regulations of this Part within seven (7) years, that person shall be punished by forfeiture of all fish seized and by a fine of not less than fifty dollars ($50) nor more than one hundred dollars ($100).

(2) *Second Violation.* If a person is convicted within seven (7) years of another conviction for violation of any regulation contained in this Part, that person shall be punished by forfeiture of all fish seized and by a fine of not less than one hundred dollars ($100) nor more than two hundred fifty dollars ($250), or three (3) months in jail, or suffer suspension of tribal fishing rights for ninety (90) days during the fall salmon run, or suffer forfeiture of any fishing gear, or any combination of the above.

(3) *Third or subsequent violations.* If a person is convicted within seven (7) years of two (2) or more violations of the regulations contained in this Part, the offender shall be punished by forfeiture of all fish seized and by a fine of not less than two hundred dollars ($200) nor more than five hundred dollars ($500), or six (6) months in jail, or suffer suspension of tribal fishing rights for one hundred eighty (180) days during the fishing season, or suffer forfeiture of any fishing gear, or any combination of the above.

(b) Any eligible Indian fisher who violates § 250.8, § 250.6(c), or § 250.22 of this Part shall be subject to the following penalties:

(1) *First Violation.* If any person is convicted without any previous conviction of the regulations of this part within seven (7) years, that person shall be punished by fine of not less than fifty dollars ($50) nor more than one hundred dollars ($100), or forfeiture of the fish or fishing gear, or thirty (30) days suspension of tribal fishing rights during the fall salmon run, or any combination of the above.

(2) *Second Violation.* If the offense occurred within seven (7) years of a separate violation of any regulation contained in this Part, the offender shall be punished by a fine of not less than one hundred dollars ($100) nor more than two hundred dollars ($200), or forfeiture of fish or fishing gear, or sixty (60) days suspension of tribal fishing rights during the fall salmon run, or any combination of the above.

(3) *Third or subsequent violations.* If the offense occurred within seven (7) years of two or more separate violations of any regulations contained in the Part, the offender shall be punished by a fine of not less than two hundred dollars ($200) nor more than four hundred dollars ($400), or forfeiture of fish or fishing gear, or ninety (90) days suspension of tribal fishing rights during the fall salmon run, or any combination of the above.

(c) Any eligible fisher who violates § 250.8(g), § 250.8(h), § 250.8(i), § 250.9(j), § 250.9(l), § 250.9(m), § 250.9(n), § 250.9(p) or § 250.9(s) shall be subject to the following penalties:

(1) *First Violation.* If any person is convicted of any violation of the above regulations without any previous conviction of any of the regulations of the Part within seven (7) years, that person shall be punished by a fine of not less than one hundred dollars ($100) nor more than two hundred dollars ($200), or forfeiture of fish or fishing gear, or suffer thirty (30) days suspension of tribal fishing rights during the fall salmon run, or any combination of the above.

(2) *Second Violation.* If the offense occurred within seven (7) years, of two (2) or more violations of any of the regulations contained in this Part, the offender shall be punished by a fine of not less than one hundred dollars ($100), or fifteen (15) days in jail, or forfeiture of fish or fishing gear, or suffer sixty (60) days suspension of tribal fishing rights during the fall salmon run, or any combination of the above.

(3) *Third or subsequent violations.* If the offense occurred within seven (7) years of two (2) or more violations of any of the regulations contained in the Part, the offender shall be punished by a fine of not less than two hundred dollars ($200) nor more than five hundred dollars ($500), or forty (40) days in jail, or forfeiture of fish or fishing gear, or suffer one hundred twenty (120) days suspension of tribal fishing rights during the fall salmon run, or any combination of the above.

(d) If an eligible Indian fisher fails to appear after being issued a citation pursuant to § 250.7 and offer proof that he/she has an identification card, the court shall order suspension of the fisher's fishing right pending the presentation of the required proof.

(e) If an eligible fisher violates § 250.7, a penalty shall be imposed of a fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500) or twenty (20) days in jail, or forfeiture of fish or fishing gear, or shall suffer sixty (60) days suspension of tribal fishing rights during the fall salmon run, or any combination of the above.

(f) If any eligible Indian violates the provisions of § 250.9(e), § 250.9(f), § 250.9(o), § 250.9(q), § 250.9(v), or any provision of § 250.10, or § 250.13, that person shall be punished by a fine of not less than two hundred fifty dollars ($250) nor more than five hundred dollars ($500), or sentenced to jail for a period of not more than six (6) months, or have his/her tribal fishing rights suspended for not more than one hundred eighty (180) days during the fishing season including the fall salmon run, or shall suffer forfeiture of all fish and/or fishing gear seized, or any combination of the above.

(g) Any eligible Indian who violates the prohibition against impeding boat and dock traffic contained in § 250.9(k) shall be fined not more than twenty-five dollars ($25), or sentenced to perform no more than two (2) days community service as directed by the Court of Indian Offenses or Federal court.

(h) Any eligible Indian who refuses to obey a lawful order of the Court of Indian Offenses shall be fined not more than five hundred dollars ($500), or suffer suspension of fishing rights for a period not to exceed 365 days, or any combination thereof.

(i) Any eligible Indian who violates a lawful order of the Court of Indian Offenses suspending that person's tribal fishing rights shall be fined not less than Three Hundred Dollars ($300) nor more than Five Hundred Dollars ($500); or sentenced to jail for a period not to exceed ninety (90) days; or suffer further suspension of tribal fishing rights during the fishing season fall salmon run, not to exceed one hundred eighty (180) days, and forfeiture of all fish and gear seized; or any combination of the above.

(j) Except as otherwise provided for in this Part, for purposes of determining imposition of fines and sentences under this Part, the number of prior violations shall include all violations occurring in the previous seven (7) years. The court shall not suspend any fine, or portion thereof for the purpose of avoiding the mandatory fines as stated in the regulations of this Part.

§ 250.17 Forcible assault and impeding a law enforcement officer.

Any person who forcibly assaults or resists, impedes, delays, gives false information to, or interferes with a law enforcement officer engaged in the enforcement of the regulations of this Part shall be prosecuted in the Federal Courts under 18 U.S.C. 111 or in the Court of Indian Offenses under this section. Such violators shall be fined not less than Two Hundred Fifty Dollars ($250) nor more than Five Hundred Dollars ($500) and have his/her tribal fishing rights suspended for not less than thirty (30) days nor more than one hundred eighty (180) days, or be sentenced to jail for a period not to exceed six (6) months, or both.

§ 250.18 Hoopa Valley Indian Reservation Court of Indian Offenses.

The Hoopa Valley Indian Reservation Court of Indian Offenses established under 25 CFR Part 11 has jurisdiction which is limited to trying persons accused of violating these regulations and determining whether nets, or other fishing gear and fish are forfeited.

§ 250.19 Execution of judgments pending appeals.

Notwithstanding the provisions of § 11.6 of this title, the judgment of the trial court is not automatically stayed upon the filing of an appeal. A judgment may be stayed only by the order of the trial court or the court of appeals.

§ 250.20 Juries.

(a) A jury trial shall be provided upon demand by the defendant in any case in which the court determines, assuming all allegations are proved true, that a jail sentence may be imposed.

(b) No juror may be seated unless the court concludes beyond a reasonable doubt that he/she is able to render a fair and impartial verdict.

(c) The judge shall instruct the jury in the law governing the case and the jury shall reach a verdict of guilt or innocence as to each count charged.

(d) Verdicts shall be rendered by unanimous vote.

(e) The jury shall return a verdict of guilty if it concludes beyond a reasonable doubt that the defendant committed the offense with which he/she is charged.

§ 250.21 Bail forfeiture or no contest plea.

A plea of no contest to, or forfeiture of bail from, a charge of a violation, of the regulations of this Part, or order made or adopted under these regulations, is a conviction of a violation thereof for purpose § 250.16 of this Part.

§ 250.22 Notification of address change.

(a) Whenever any person, after applying for or receiving an identification card, acquires an address different from the address shown on the fisher identification card issued, he/she shall, within ten (10) days, notify the Agency Superintendent of his/her old and new addresses. The Bureau may thereupon take such action as necessary to insure that the identification card reflects the proper address of the identification card holder.

(b) All notices, demands and requests under this part by the Court of Indian Offenses and the Prosecutor shall be hand delivered or sent by United States Mail, First Class Mail, addressed to the defendant at the address supplied by the eligible fisher.

(c) Notices, demands and requests delivered in the above manner shall be considered sufficiently given or served for all purposes under these regulations at the time the notice, demand, or request is hand delivered or the execution of a proof of service to the address shown.

§ 250.23 Immunity.

Each Judge and prosecutor of the Court of Indian Offenses has the immunity of a Judicial Officer and Prosecutor, respectively, from civil liability while performing his/her duties as a judge or prosecutor.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8147]

Income Tax; Taxable Years Beginning After December 31, 1953; Business Energy Investment Credit for Solar, Wind, and Geothermal Energy Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under the Internal Revenue Code relating to the business energy investment credit ("business energy credit") for solar, wind, and geothermal energy property. These amendments will allow certain equipment that uses solar, wind, or geothermal energy ("qualified energy") to be eligible for the business energy credit to the extent of its basis or cost allocable to its annual use of qualified energy so long as the use of non-qualified energy does not exceed 25 percent of the total energy input of the equipment in an annual measuring period. The regulations provide the public with needed guidance.

DATES: These amendments are effective as of October 1, 1978.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (202-566-3458, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to the Income Tax Regulations (26 CFR Part 1) under section 48 of the Internal Revenue Code of 1954. These amendments were published in proposed form in the Federal Register on December 9, 1986 (51 FR 44315). There was no public hearing. After consideration of comments regarding the proposed amendments, those amendments are adopted, as revised by this Treasury Decision.

Section 48(l) and § 1.48-9 define energy property (which is eligible for the business energy credit) as including solar, wind, and geothermal energy property. The regulations, as in effect before amendment by this document, required that for equipment to qualify as solar, wind, or geothermal property, it must use only qualified energy. If property used both qualified and non-qualified energy ("dual use property"), it was not considered solar, wind, or geothermal property.

Upon reconsideration of the legislative history, it has been determined that, while Congress did not intend that property that does not use qualified energy be eligible for the business energy credit as solar, wind, or geothermal property, Congress also did not intend to adopt an all or nothing rule for dual use solar, wind, or geothermal energy property.

Therefore, the regulations under § 1.48-9 relating to solar, wind, and geothermal property are amended to allow dual use property to qualify to the extent of its basis or cost allocable to its use of qualified energy during an annual measuring period so long as its use of non-qualified energy does not exceed 25 percent of its total energy input in an annual measuring period. This allocation may be made by comparing, on a Btu basis, energy input to dual use property from qualified sources with energy input from other sources. However, the Commissioner may accept any other method that, in his opinion, accurately establishes the relative annual use of energy from qualified sources and energy from other sources. If, for a taxable year subsequent to the taxable year that dual use property was placed in service, the basis or cost allocable to its use of qualified energy is reduced, recapture may be required in whole or in part under section 47 and § 1.47-1(h).

The amendments adopted by these final regulations differ from those in the notice of proposed rulemaking in minor respects. The final regulations modify the notice's proposed requirement that input to dual use property from non-qualified sources not exceed 25 percent of its total energy input *in any calendar year* by providing that such input not exceed 25 percent of total input *in an annual measuring period*. Under the final regulations, an annual measuring period is also the period during which the portion of dual use equipment's basis or cost allocable to use of energy from a qualified source is measured. An "annual measuring period" for an item of dual use property is defined as the 365 day period beginning with the day it is placed in service or a 365 day period beginning the day after the last day of the immediately preceding annual measuring period. Dual use property placed in service toward the end of a calendar year that would not have qualified for the business energy credit under the notice because of a greater than 25 percent input from non-qualified sources during the relatively short period between the date placed in service and the end of that calendar year will, nonetheless, qualify under the final regulation's amendment, provided that there is no more than 25 percent non-qualified input during the 365 day period beginning with the date the property is placed in service.

Examples concerning geothermal and solar energy property were modified and expanded to illustrate (A) the determination of the portion of the basis or cost of dual use property that is attributable to energy input from a qualified source and (B) the allowance or recapture of credit for dual use property based on that determination.

A commentator suggested the adoption of a "safe-harbor" test for meeting the notice's threshold requirement that, in any calendar year, no more than 25 percent of dual use property's energy input be from non-qualified sources. Basically, it was suggested that dual use property be considered to meet that threshold requirement as long as it is part of a facility certified by the Federal Energy Regulatory Commission (FERC) as a "qualifying small power production facility" under FERC regulations (18 CFR Part 292). One of the criteria for a qualifying small power production facility, as set forth at 18 CFR 292.204(b), is that 75 percent or more of its total energy input be from biomass, waste, renewable resources, geothermal resources, or any combination thereof and that the facility's use of oil, natural

gas, and coal not exceed, in the aggregate, 25 percent of its total energy input during any calendar year period. Even if the notice's calendar year threshold requirement had been adopted, the FERC criterion would not have been narrow enough to justify adopting the suggested "safe harbor," primarily because a facility can be certified under these requirements even though its energy input is predominantely from a source other than solar, wind, or geothermal, such as a biomass or waste source. Thus, there would have been no assurance, based on such certification alone, that at least 75 percent of the energy input of dual use property during a calendar year was from a geothermal, a solar, or a wind source. Although it would have been possible to provide a series of narrowly drawn safe harbors based on FERC certification, such safe harbors would probably have been of little benefit to either the Service or to taxpayers because it would still have been necessary to establish the relative energy input to dual use property from qualified and non-qualified sources if more than 75 percent of the basis or cost of that property were to qualify as energy property.

The commentator also suggested that, if the threshold requirement is met, then, for purposes of determining the portion of the property's basis or cost that qualifies for the energy credit, that property's basis or cost should be multiplied by the ratio of the cost of the qualified source property to the cost of all property providing energy input to that dual use property. The final regulations, however, generally adopt the approach taken in the notice of proposed rulemaking. Under this approach, the portion of the basis or cost of dual use property that is allocable, for a particular year, to its use of energy from a qualified source generally is the basis or cost multiplied by the ratio of the energy input from the qualified source for that year to the total amount of energy input for that year. Because, however, the final regulations provide that the Commissioner may accept any allocation method that, in his opinion, accurately reflects the relative annual amount of input to dual use equipment from its various sources, it is possible that the method suggested by the commentator would be accepted in appropriate circumstances, even though that method does not reflect actual, relative energy inputs.

The final regulations to not reflect amendments made by the Crude Oil Windfall Profit Tax Act of 1980 or subsequent legislation.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these final regulations is Keith E. Stanley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.01 through 1.58–8

Income taxes, Tax liability, Tax rates, Credits.

Adoption of amendments to the regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 1.48–9 is also issued under 26 U.S.C. 38(b) (as in effect before the amendments made by Subtitle F of the Tax Reform Act of 1984). * * *

Par. 2. Paragraphs (c)(10), (d), and (e) of § 1.48–9 are revised to read as set forth below.

§ 1.48–9 Definition of energy property.

* * * * *

(c) Alternative energy property * * *

(10) *Geothermal equipment*—(i) Alternative energy property includes equipment (geothermal equipment) that produces, distributes, or uses energy derived from a geothermal deposit (as defined in § 1.44C–2(h)).

(ii) In general, production equipment includes equipment necessary to bring geothermal energy from the subterranean deposit to the surface, including well-head and downhole equipment (such as screening or slotting liners, tubing, downhole pumps, and associated equipment). Reinjection wells required for production also may qualify. Production does not include exploration and development.

(iii) Distribution equipment includes equipment that transports geothermal steam or hot water from a geothermal deposit to the site of ultimate use. If geothermal energy is used to generate electricity, distribution equipment includes equipment that transports hot water from the geothermal deposit to a power plant. Distribution equipment also includes components of a heating system, such as pipes and ductwork that distribute within a building the energy derived from the geothermal deposit.

(iv) Geothermal equipment includes equipment that uses energy derived both from a geothermal deposit and from sources other than a geothermal deposit (dual use equipment). Such equipment, however, is geothermal equipment (A) only if its use of energy from sources other than a geothermal deposit does not exceed 25 percent of its total energy input in an annual measuring period and (B) only to the extent of its basis or cost allocable to its use of energy from a geothermal deposit during an annual measuring period. An "annual measuring period" for an item of dual use equipment is the 365 day period beginning with the day it is placed in service or a 365 day period beginning the day after the last day of the immediately preceding annual measuring period. The allocation of energy use required for purposes of paragraph (c)(10)(iv) (A) and (B) of this section may be made by comparing, on a Btu basis, energy input to dual use equipment from the geothermal deposit with energy input from other sources. However, the Commissioner may accept any other method that, in his opinion, accurately establishes the relative annual use by dual use equipment of energy derived from a geothermal deposit and energy derived from other sources.

(v) The existence of a backup system designed for use only in the event of a failure in the system providing energy derived from a geothermal deposit will not disqualify any other equipment. If geothermal energy is used to generate electricity, equipment using geothermal energy includes the electrical generating equipment, such as turbines and generators. However, geothermal equipment does not include any electrical transmission equipment, such as transmission lines and towers, or any equipment beyond the electrical transmission stage, such as transformers and distribution lines.

(vi) *Examples.* The following examples illustrate this subparagraph (10):

Example (1). On October 1, 1979, corporation X, a calendar year taxpayer, places in service a system which heats its office building by circulating hot water heated by energy derived from a geothermal deposit through the building. Geothermal equipment includes the circulation system, including the pumps and pipes which circulate the hot water through the building.

Example (2). The facts are the same as in Example (1), except that corporation X also places in service a boiler to produce hot water for heating the building exclusively in the event of a failure of the geothermal equipment. Such a boiler is not geothermal equipment, but the existence of such a backup system does not serve to disqualify property eligible in Example (1).

Example (3). The facts are the same as in Example (1), except that the water heated by energy derived from a geothermal deposit is not hot enough to provide sufficient heat for the building. Therefore, the system includes an electric boiler in which the water is heated before being circulated in the heating system. Assume that, on a Btu basis, eighty percent of the total energy input to the circulating system during the 365 day period beginning on October 1, 1979, is energy derived from a geothermal deposit. The boiler is not geothermal equipment. For the 1979 taxable year, eighty percent of the circulating system is geothermal equipment because eighty percent of its basis or cost is allocable to use of energy from a geothermal deposit. If, in a subsequent taxable year, the basis or cost allocable to use of energy from a geothermal deposit falls below eighty percent, recapture may be required under section 47 and § 1.47–1(h). Thus, if, on a Btu basis, only 70 percent of the total energy input to the circulating system for the 365 day period beginning October 1, 1980, is energy derived from a geothermal deposit, then there will be complete recapture of the credit during the 1980 taxable year. If, however, for that 365 day period, the portion of the total energy input that is derived from a geothermal deposit is less than 80 percent but greater than or equal to 75 percent, then only a proportional amount of credit will be recaptured during the 1980 taxable year. No additional credit is allowable in a subsequent taxable year, however, if the portion of the basis or cost allocable to use of energy from a geothermal deposit increases above what it was for a previous taxable year (see § 1.46–3 (d)(4)(i)).

Example (4). Corporation Y acquires a commercial vegetable dehydration system in 1981. The system operates by placing fresh vegetables on a conveyor belt and moving them through a dryer. The conveyor belt is powered by electricity. The dryer uses solely energy derived from a geothermal deposit. The dryer is geothermal equipment while the equipment powered by electricity does not qualify.

(d) *Solar energy property*—(1) *In general.* Energy property includes solar energy property. The term "solar energy property" includes equipment and materials (and parts related to the functioning of such equipment) that use solar energy directly to (i) generate electricity, (ii) heat or cool a building or structure, or (iii) provide hot water for use within a building or structure. Generally, those functions are accomplished through the use of equipment such as collectors (to absorb sunlight and create hot liquids or air), storage tanks (to store hot liquids), rockbeds (to store hot air), thermostats (to activate pumps or fans which circulate the hot liquids or air), and heat exchangers (to utilize hot liquids or air to create hot air or water). Property that uses, as an energy source, fuel or energy derived indirectly from solar energy, such as ocean thermal energy, fossil fuel, or wood, is not considered solar energy property.

(2) *Passive solar excluded*—(i) Solar energy property excludes the materials and components of "passive solar systems," even if combined with "active solar systems."

(ii) An active solar system is based on the use of mechanically forced energy transfer, such as the use of fans or pumps to circulate solar generated energy.

(iii) A passive system is based on the use of conductive, convective, or radiant energy transfer. Passive solar property includes greenhouses, solariums, roof ponds, glazing, and mass or water trombe walls.

(3) *Electric generation equipment.* Solar energy property includes equipment that uses solar energy to generate electricity, and includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. In general, this process involves the transformation of sunlight into electricity through the use of such devices as solar cells or other collectors. However, solar energy property used to generate electricity includes only equipment up to (but not including) the stage that transmits or uses electricity.

(4) *Pipes and ducts.* Pipes and ducts that are used exclusively to carry energy derived from solar energy are solar energy property. Pipes and ducts that are used to carry both energy derived from solar energy and energy derived from other sources are solar energy property (i) only if their use of energy other than solar energy does not exceed 25 percent of their total energy input in an annual measuring period and (ii) only to the extent of their basis or cost allocable to their use of solar energy during an annual measuring period. (See paragraph (d)(6) of this section for the definition of "annual measuring period" and for rules relating to the method of allocation.)

(5) *Specially adapted equipment.* Equipment that uses solar energy beyond the distribution stage is eligible only if specially adapted to use solar energy.

(6) *Auxiliary equipment.* Solar energy property does not include equipment (auxiliary equipment), such as furnaces and hot water heaters, that use a source of power other than solar or wind energy to provide usable energy. Solar energy property does include equipment, such as ducts and hot water tanks, which is utilized by both auxiliary equipment and solar energy equipment (dual use equipment). Such equipment is solar energy property (i) only if its use of energy from sources other than solar energy does not exceed 25 percent of its total energy input in an annual measuring period and (ii) only to the extent of its basis of cost allocable to its use of solar or wind energy during an annual measuring period. An "annual measuring period" for an item of dual use equipment is the 365 day period beginning with the day it is placed in service or a 365 day period beginning the day after the last day of the immediately preceding annual measuring period. The allocation of energy use required for purposes of paragraph (d)(6) (i) and (ii) of this section may be made by comparing, on a Btu basis, energy input to dual use equipment from solar energy with energy input from other sources. However, the Commissioner may accept any other method that, in his opinon, accurately establishes the relative annual use by dual use equipment of solar energy and energy derived from other sources.

(7) *Solar process heat equipment.* Solar energy property does not include equipment that uses solar energy to generate steam at high temperatures for use in industrial or commercial processes (solar process heat).

(8) *Example.* The following example illustrates this paragraph (d).

Example. (a) In 1979, corporation X, a calendar year taxpayer, constructs an apartment building and purchases equipment to convert solar energy into heat for the building. Corporation X also installs an oil-fired water heater and other equipment to provide a backup source of heat when the solar energy equipment cannot meet the energy needs of the building. For purposes of this example, all equipment is placed in service on October 1, 1979. On a Btu basis, eighty percent of the total energy input to the dual use equipment during the 365 day period beginning October 1, 1979, is from solar energy.

(b) The items purchased, in addition to the water heater, include a roof solar collector, a heat exchanger, a hot water tank, a control component, pumps, pipes, fan-coil units, and valves. Assume the fan-coil units could be

used with energy derived from an oil or gas substance without significant modification. All items are depreciable and have a useful life of three years or more. The use of the equipment to heat the building is the first use to which the equipment has been put.

(c) Water is pumped from the basement through pipes to the roof solar collector. Heated water returns through pipes to a heat exchanger which transfers heat to the water in the hot water tank.

(d) The hot water tank and the oil-fired water heater utilize the same distribution pipe. Pumps and valves at the points of connection between the hot water tank, the oil-fired water heater, and the distribution pipe regulate the auxiliary energy supply use. They also prevent the oil-fired water heater from heating water in the hot water tank.

(e) An integrated control component determines whether hot water from the hot water tank or from the oil-fired water heater is distributed to fan-coil units located throughout the building.

(f) The roof solar collector is solar energy property. The pump that moves the water to the roof collector and the pipes between the roof collector and the hot water tank qualify because they are solely related to transporting solar heated water. The hot water tank qualifies because it stores water heated solely by solar radiation. The heat exchanger also qualifies.

(g) The oil-fired water heater does not qualify as solar energy property because it is auxiliary equipment.

(h)(i) Because the distribution pipe, the control component, and the pumps and valves serve the oil-fired water heater as well as the solar energy equipment; they qualify only to the extent of eighty percent of their cost or basis, the portion allocable to use of solar energy. If, in a subsequent taxable year, the basis or cost allocable to their use of solar energy falls below eighty percent, recapture may be required under section 47 and § 1.47–1(h). Thus, if, on a Btu basis, only 70 percent of the total energy input to that equipment for the 365 day period beginning October 1, 1980, is from solar energy, then there will be complete recapture of the credit during the 1980 taxable year. If, however, for that 365 day period, the portion of that equipment's total energy input that is from solar energy is less than 80 percent but greater than or equal to 75 percent, then only a proportional amount of credit will be recaptured during the 1980 taxable year. No additional credit is allowable for the equipment in a subsequent taxable year, however, if the portion of its basis or cost allocable to use of solar energy increases above what it was for a previous taxable year (see § 1.46–3 (d)(4)(i)).

(ii) The fan-coil units do not qualify as solar energy property because they are not specially adapted to use energy derived from solar energy.

(e) *Wind energy property*—(1) *In general.* Energy property includes wind energy property. Wind energy property is equipment (and parts related to the functioning of that equipment) that performs a function described in paragraph (e)(2) of this section. In general, wind energy property consists of a windmill, wind-driven generator, storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. Wind energy property does not include equipment that transmits or uses electricity derived from wind energy. In addition, limitations apply similar to those set forth in paragraph (d) (5), (6), and (8) of this section. For example, if equipment is used by both auxiliary equipment and wind energy equipment, such equipment is wind energy property only if its use of energy other than wind energy does not exceed 25 percent of its total energy input in an annual measuring period and only to the extent of its basis or cost allocable to its use of wind energy during an annual measuring period.

(2) *Eligible functions.* Wind energy property is limited to equipment (and parts related to the functioning of that equipment) that—

(i) Uses wind energy to heat or cool, or provide hot water for use in, a building or structure, or

(ii) Uses wind energy to generate electricity (but not mechanical forms of energy).

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved:

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 87–16551 Filed 7–20–87; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Medical Reports as Informal Claims/ Recoupment of Separation Pay

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration is amending its adjudication regulations concerning the acceptability of certain medical reports as informal claims and the withholding of compensation to recoup separation pay and readjustment pay. These amendments are necessary to implement certain provisions of the Defense Officer Personnel Management Act and two unpublished opinions of the VA General Counsel. The effect of these amendments will be to clarify the circumstances under which medical reports may constitute informal claims for benefits and to prevent duplication of payments of compensation and military separation and readjustment pay.

DATES: This regulation is effective August 20, 1987, with the exception of the amendment concerning recoupment of separation pay (38 CFR 3.700(a)(5) which is effective September 15, 1981, as provided by law.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: On pages 3286–3288 of the Federal Register of February 3, 1987, the VA published proposed regulatory amendments on medical reports as informal claims and on recoupment of separation pay. Interested persons were invited to submit comments, suggestions or objections by March 3, 1987. No comments were received.

Upon further review of our regulatory amendment, we have determined that, for clarity, § 3.155 should be cross-referenced to § 3.157 for instructions regarding circumstances under which a report of examination or hospitalization may be accepted as an informal claim. The proposed regulations as amended are adopted as final.

Regulatory Flexibility Act (RFA)

The Administrator hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected.

Executive Order 12291

In accordance with Executive Order 12291, Federal Regulation, we have determined that these regulations are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have 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.

List of Subjects in 38 CFR Part 3

Administrative practices and procedures, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

Approved: June 24, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 3, ADJUDICATION, is amended as follows:

PART 3—[AMENDED]

1. The authority citation for Part 3, Subpart A, continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210.

2. In § 3.155, paragraph (c) is revised and a cross-reference added to read as follows:

§ 3.155 Informal claims.

* * * * *

(c) When a claim has been filed which meets the requirements of § 3.151 or § 3.152, and informal request for increase or reopening will be accepted as a claim.

Cross-Reference: State Department as agent of VA. See § 3.108. Report of examination or hospitalization—as claim for increase or to reopen. See § 3.157.

3. In § 3.157(a), remove the words "Pub. L. 87–825" from the citation at the end of the paragraph, so that the complete citation reads "(38 U.S.C. 3010(a))".

4. In § 3.157, paragraph (b)(1) is revised to read as follows:

§ 3.157 Report of examination or hospitalization as claim for increase or to reopen.

* * * * *

(b) * * *

(1) *Report of examination or hospitalization by VA or uniformed services.* The date of outpatient or hospital examination or date of admission to a VA or uniformed services hospital will be accepted as the date of receipt of a claim. The date of a uniformed service examination which is the basis for granting severance pay to a former member of the Armed Forces on the temporary disability retired list will be accepted as the date of receipt of claim. The date of admission to a non-VA hospital where a veteran was maintained at VA expense will be accepted as the date of receipt of a claim, if VA maintenance was previously authorized; but if VA maintenance was authorized subsequent to admission, the date the VA received notice of admission will be accepted. The provisions of this paragraph apply only when such reports relate to examination or treatment of a disability for which service-connection has previously been established or when a claim specifying the benefit sought is received within one year from the date of such examination, treatment or hospital admission. (38 U.S.C. 210(c))

* * * * *

5. In § 3.700, paragraph (a)(2) is revised, a citation is added at the end of paragraph (a)(3) and paragraph (a)(5) is added to read as follows:

§ 3.700 General.

* * * * *

(a) * * *

(2) *Lump-sum readjustment pay.* (i) Where entitlement to disability compensation was established prior to September 15, 1981, a veteran who has received a lump-sum readjustment payment under former 10 U.S.C. 687 (as in effect on September 14, 1981) may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of lump-sum readjustment payment subject to deduction of an amount equal to 75 percent of the amount received as readjustment payment. (38 U.S.C. 210(c))

(ii) Readjustment pay authorized under former 10 U.S.C. 3814(a) is not subject to recoupment through withholding of disability compensation, entitlement to which was established prior to September 15, 1981. (38 U.S.C. 210(c)).

(iii) Where entitlement to disability compensation was established on or after September 15, 1981, a veteran who has received a lump-sum readjustment payment may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of the lump-sum readjustment payment, subject to recoupment of the total amount of the readjustment payment. (38 U.S.C. 210(c))

(iv) The receipt of readjustment pay does not affect the payment of disability compensation based on a subsequent period of service. Compensation payable for service-connected disability incurred or aggravated in a subsequent period of service will not be reduced for the purpose of offsetting readjustment pay based on a prior period of service. (10 U.S.C. 1174(h)(2))

(3) *Serverance pay.* * * * (10 U.S.C. 1212(c))

(4) * * *

(5) *Separation pay.* (i) A veteran who has received separation pay may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of separation pay subject to recoupment of the total amount received as separation pay.

(ii) The receipt of separation pay does not affect the payment of disability compensation based on a subsequent period of service. Compensation payable for service-connected disability incurred or aggravated in a subsequent period of service will not be reduced for the purpose of offsetting separation pay based on a prior period of service. (10 U.S.C. 1174)

* * * * *

[FR Doc. 87–16450 Filed 7–20–87; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Nurse Practitioner Training Programs

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule amends existing regulations governing the Grants for Nurse Practitioner Training Programs authorized by section 822(a) of the Public Health Service Act (the Act) by adding the definition of "Nurse midwife" to the regulations and the guidelines published at the Appendix and by further amending the Appendix to revise the interpretation of the student enrollment requirement from eight full-time students to eight full-time equivalent students. This rule also amends the existing regulations and Appendix to conform with amendments made to section 822(a) by Pub. L. 99–92, the Nurse Education Amendments of 1985, enacted on August 16, 1985, and by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985, enacted October 22, 1985; and the Compact of Free Association Act of 1985 (Pub. L. 99–239), enacted on January 14, 1986.

EFFECTIVE DATE: These regulations are effective on July 21, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Eleanor Elliott, Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Room 5C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–5786.

SUPPLEMENTARY INFORMATION: On October 30, 1986, the Assistant Secretary for Health, Department of Health and Human Services, with the

approval of the Secretary, published in the **Federal Register** (51 FR 39669), a Notice of Proposed Rulemaking (NPRM) to amend existing regulations governing the Grants for Nurse Practitioner Training Programs authorized by section 822(a) of the Public Health Service Act (the Act) by adding the definition of "Nurse midwife" to the regulations and the guidelines published at the Appendix and to further amend the Appendix to revise the interpretation of the student enrollment requirement from eight full-time students to eight full-time equivalent students.

In the NPRM, the Department also proposed the following revisions to the existing regulations and Appendix to conform to amendments made to section 822(a) by Pub. L. 99–92 and by Pub. L. 99–129:

1. Revise the title of 42 CFR Part 57, Subpart Y from "Nurse Practitioner Training Programs" to "Nurse Practitioner and Nurse Midwifery Programs," and strike out the word "training" and insert in lieu thereof "education" wherever it appears in the text. Also, the words "or nurse midwife" and "or nurse midwives" are to be inserted immediately following the words "nurse practitioner" or "nurse practitioners" throughout the text of the regulations and the Appendix.

2. Review § 57.2401, "*Applicability.*", to limit the eligibility of schools of medicine to those that received grants prior to October 1, 1985, and to delete the words "significantly" and "existing" when referring to a project to expand or maintain programs for the education of nurse practitioners and nurse midwives.

3. Revise § 57.2402, "*Definitions.*", to change the following terms:

(a) The definition of "State"by striking out "the Canal Zone" and inserting in lieu thereof "the Commonwealth of the Northern Mariana Islands";

(b) The definition of "Programs for the training of nurse practitioners" to "Programs for the education of nurse practitioners or nurse midwives"; and

(c) The definition of "Primary health care" to include nurse midwifery services.

4. Revise § 57.2403, "*Eligibility.*", to:

(a) Limit grants to schools of medicine which received grants prior to October 1, 1985; and

(b) Delete the words "significantly" and "existing" when referring to a project to expand or maintain programs for the education of nurse practitioners and nurse midwives.

5. Revise § 57.2406, "*Evaluation and grant awards.*", to provide that the Secretary will give special consideration to applications for grants for programs emphasizing the education of nurse practitioners which prepare them to meet the needs of patients confined to their homes, and for programs for the education of nurse practitioners which emphasize education regarding the special problems of geriatric patients particularly those problems in the delivery of preventive care, acute care, and long-term care (including home health care and institutional care).

It was also proposed to amend § 57.2406 to emphasize the national need to train more minority and financially needy students by providing special consideration to those applicants with programs in place to recruit and retain minority students.

The public comment period on the proposed regulations closed on December 29, 1986. The Department received 64 comments on this NPRM from schools, professional associations, hospitals, students and other interested individuals. A summary of the comments received on the proposed rules and the Department's response to the comments are set forth below.

All of the respondents were supportive of the two major proposed amendments to the regulations and the guidelines: (1) The addition of the definition of "Nurse midwife" to mean a registered nurse who has completed a formal program of study designed to prepare registered nurses to perform in an expanded role in the delivery of primary health care to women and babies including the management of normal antepartum, intrapartum, and postpartum care as well as family planning and gynecology; and (2) the revision of the interpretation of the student enrollment requirement from eight full-time students to eight full-time equivalent students in the guidelines at the Appendix to the regulations.

One respondent requested a revision of the definition of "School of medicine" to include schools of osteopathy so that such schools would be eligible for grants under section 822. The term "School of medicine" is defined in the Public Health Service Act (section 701(f)) as a school which offers training leading to the degree of doctor of medicine. The Department believes that it is inappropriate to include schools of osteopathy in the definition, since schools of osteopathy do not offer such training but rather training leading to the degree of doctor of osteopathy. The Department, therefore, has not made the requested change. It should be noted, however, that this change is not necessary to establish the eligibility of schools of osteopathy for grants under section 822, since the statute provides that public or nonprofit private entities are eligible for support. Therefore, the amendments set out in the October 30, 1986, NPRM are adopted as proposed.

In addition, this regulation includes a number of revisions to the regulations governing the Grants for Nurse Practitioner and Nurse Midwifery Programs, codified at 42 CFR Part 57, Subpart Y. These revisions are necessary to conform the regulations to amendments made by Pub. L. 99–92, Pub. L. 99–239, and to incorporate current departmental boilerplate language. Since the amendments are technical and ministerial in nature, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures. The revisions are summarized below according to the section numbers and the titles of the regulations.

1. Revise § 57.2402, *"Definitions."*, to change the following terms:

(a) The definition of "School of medicine" to reflect the current title of the Secretary of Education;

(b) The definition of "School of public health" to reflect the current title of the Secretary of Education:

(c) The definition of "State" by inserting after the "Trust Territory of the Pacific Islands" those entities which, for purposes of this grant program, are viewed as a State, "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia," in accordance with Pub. L. 99–239.

2. Revise § 57.2404, *"Application."*, to delete a requirement to provide information regarding the cost of providing nurse faculty members with clinical preparation, in accordance with Pub. L. 99–92 which repealed this provision.

3. Revise § 57.2406, *"Evaluation and grant awards."*, to reflect current departmental boilerplate language in paragraph (b)(1).

4. Revised § 57.2408, *"Expenditure of grant funds."*, to delete the allowance of the expenditure of funds granted for the cost of providing clinical education of nurse faculty members, in accordance with Pub. L. 99–92 which repealed this provision, and to reflect current departmental boilerplate language.

5. Delete § 57.2409, *"Nondiscrimination."*, in its entirety and substitute a new § 57.2409 specifying

additional Department regulations that apply to grantees.

6. Delete § 57.2410, *"Human subjects."*, § 57.2411, *"Grantee accountability."*, §57.2412, *"Publications and copyright."*, and § 57.2413, *"Applicability of 45 CFR Part 74."* in their entirety.

7. Redesignate § 57.2414, *"Additional conditions."*, as § 57.2410.

8. Cite the Office of Management and Budget (OMB) approval number in those sections which contain recordkeeping and reporting requirements.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a "major rule" under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

The recordkeeping and reporting requirements in § 57.2404 and § 57.2405 of the regulations governing Grants for Nurse Practitioner and Nurse Midwifery Programs and the application forms and instructions for this grant program have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (OMB Approval Numbers 0915–0060 for the competing application form and 0915–0061 for the continuation application form).

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study program, Emergency medical services, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships, Grant programs—education, Grant programs—health, Student aid.

Accordingly, 42 CFR Part 57, Subpart Y is amended as set forth below:

(*Catalog of Federal Domestic Assistance*, No. 13.298, Grants for Nurse Practitioner and Nurse Midwifery Programs)

Dated: April 30, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: June 30, 1987.

Otis R. Bowen,

Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. The heading for 42 CFR Part 57, Subpart Y is revised to read as follows:

Subpart Y—Grants for Nurse Practitioner and Nurse Midwifery Programs

2. The authority citation for Subpart Y is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 822(a) of the Public Health Service Act, 89 Stat. 361, as amended by 99 Stat. 394–395 and 548 (42 U.S.C. 296m).

3. Section 57.2401 is revised to read as follows:

§ 57.2401 Applicability.

The regulations of this subpart are applicable to the award of grants to public or nonprofit private schools of nursing and public health, public or nonprofit private schools of medicine which received grants under section 822(a) of the Public Health Service Act (42 U.S.C. 296m) prior to October 1, 1985, public or nonprofit private hospitals, and other public or nonprofit private entities under section 822(a) to meet the cost of projects to (a) plan, develop, and operate, (b) expand, or (c) maintain programs for the education of nurse practitioners or nurse midwives.

4. Section 57.2402 is amended by revising paragraphs (e), (h), (i), (k), (l), and (o); by redesignating and revising paragraph (q) as (r); and by adding a new paragraph (q) to read as follows:

§ 57.2402 Definitions.

* * * * *

(e) "Collegiate school of nursing" means a department, division, or other administrative unit in a college or university which provides primarily or exclusively a program of education in professional nursing and allied subjects leading to the degree of bachelor of arts, bachelor of science, bachelor of nursing, or to an equivalent degree, or to a graduate degree in nursing, and including advanced education related to such program of education provided by such school, but only if such program, or such unit, college or university is accredited as provided in section 853(6) of the Act.

* * * * *

(h) "School of medicine" means a school which provides education leading to a degree of doctor of medicine and which is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education.

(i) "School of public health" means a school which provides education leading to a graduate degree in public health and which is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education.

* * * * *

(k) "State" means a State, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

(l) "Program director" means a qualified individual designated by the grantee and approved by the Secretary who is to be functionally responsible for the education program being supported under this subpart.

* * * * *

(o) "Programs for the education or nurse practitioners or nurse midwives" means full-time educational programs for registered nurses (irrespective of the type of school of nursing in which the nurses received their training) which meets the guidelines prescribed by the Secretary in the Appendix to this subpart and which has as its objective the education of nurses (including pediatric and geriatric nurses) who will, upon completion of their studies in such programs, be qualified to effectively provide primary health care, including primary health care in homes and in ambulatory care facilities, long-term care facilities (where appropriate), and other health care institutions.

* * * * *

(q) "Nurse-midwife" means a registered nurse who has completed a formal program of study designed to prepare registered nurses to perform in an expanded role in the delivery of primary health care to women and babies including the management of normal antepartum, intrapartum, and postpartum care as well as family planning and gynecology.

(r)(1) "Primary health care" means care which may be initiated by the client or provider in a variety of settings and which consists of a broad range of personal health care services including:

(i) Promotion and maintenance of health;

(ii) Prevention of illness and disability;

(iii) Basic care during acute and chronic phases of illness;

(iv) Guidance and counseling of individuals and families;

(v) Referral to other health care providers and community resources when appropriate; and

(vi) Nurse midwifery services (when appropriate).

(2) In providing such services—

(i) The physical, emotional, social, and economic status, as well as the cultural and environmental backgrounds, of individuals, families, and communities (where applicable) are considered;

(ii) The client is provided access to the health care system; and

(iii) A single provider or team of providers, along with the client, is responsible for the continuing coordination and management of all aspects of basic health services needed for individual and family care.

4. Section 57.2403 is amended by revising (a)(1), (b)(1), (b)(2) introductory text, (b)(2)(iii), and (b)(3) to read as follows:

§ 57.2403 Eligibility.

(a) * * *

(1) Be a public or nonprofit private school of nursing or public health, a public or nonprofit private school of medicine which received grants under this subpart prior to October 1, 1985, public or nonprofit private hospital; or other public or nonprofit private entity; and

* * * * *

(b) * * *

(1) A project to plan, develop, and operate a program for the education of nurse practitioners or nurse midwives (which will be in operation no later than 12 months after the award of a grant under this subpart);

(2) A project to expand a program for the education of nurse practitioners or nurse midwives through one or a combination of the following activities;

* * * * *

(iii) The addition of a new education site for the total program; or

(3) A project to maintain a program for the education of nurse practitioners and nurse midwives.

5. Section 57.2404 is amended by removing paragraph (c)(8); by redesignating paragraph (c)(9) as (c)(8); by revising paragraphs (c)(1)(ii), (c)(1)(viii), (c)(1)(ix), (c)(1)(xii), and (d); and by adding the OMB approval number at the end of the section to read as follows:

§ 57.2404 Application.

* * * * *

(c) * * *

(1) * * *

(ii) A description of the setting in which the education program will be conducted and the primary health care needs to which such program will be responsive.

* * * * *

(viii) A plan and methodology for evaluating the education program in accordance with the requirements of § 57.2405(c).

(ix) Where the education includes a preceptorship, a description of such preceptorship, including length, type of practice, and amount of faculty supervision.

* * * * *

(xii) In the case of a project to expand a nurse practitioner or nurse midwifery education program, a description of the manner in which the program is to be expanded and a plan for achieving such expansion during the project period.

* * * * *

(d) The application shall contain an assurance satisfactory to the Secretary that—

(1) In the case of a project to plan, develop, and operate a program for the education of nurse practitioners or nurse midwives, such program will upon its development meet the guidelines set forth in the Appendix of this subpart, or

(2) In the case of a project to expand or maintain a program for the education of nurse practitioners or nurse midwives, such program meets the guidelines set forth in the Appendix to this subpart.

(Approved by the Office of Management and Budget (OMB) under control number 0915–0060)

6. Section 57.2405 is amended by revising paragraphs (a), (b), and (c) introductory text, and by adding the OMB approval number at the end of the section to read as follows:

§ 57.2405 Project requirements.

* * * * *

(a) The project shall conduct its program for the education of nurse practitioners or nurse midwives in accordance with the guidelines prescribed by the Secretary and set forth in the Appendix to this subpart.

(b) The program director shall be responsible for the conduct of the education program unless replaced by another individual found by the Secretary to be qualified to carry out such responsibilities. Where the program director becomes unable to function in such capacity, the Secretary shall be notified as soon as possible.

(c) In accordance with the plan set forth in its approved application, the project shall collect, evaluate, and make available to the Secretary data concerning the education program being conducted. Such data collection and evaluation shall include, at a minimum:

* * * * *

(Approved by the Office of Management and Budget (OMB) under control number 0915–0060)

7. Section 57.2406 is amended by revising paragraphs (a)(1)(ii), (a)(2)(i), (a)(2)(ii), (a)(3), and (b)(1) to read as follows:

§ 57.2406 Evaluation and grant awards.

(a) * * *

(1) * * *

(ii) The potential effectiveness of the proposed project in carrying out the education purposes of section 822 of the Act and this subpart;

* * * * *

(2) * * *

(i) Projects for programs for the education of nurse practitioners or nurse midwives who will practice in health manpower shortage areas (designated under section 332 of the Act); and

(ii) Projects for education programs which emphasize education respecting the special problems of geriatric patients (particularly problems in the delivery of preventive care, acute care, and long-term care, including home health care and institutional care to such patients) and education to meet the particular needs of nursing home patients and patients confined to their homes.

(3) The Secretary will also give special consideration to:

(i) Projects for nurse practitioner or nurse midwifery programs which will award academic credit to students who successfully complete the education program; and

(ii) Applicants with programs in place to recruit and retain minority students.

(b) *Grant awards.* (1) The Secretary will determine the amount of any award on the basis of his or her estimate on the sum necessary for the cost (including both direct and indirect costs) of the project.

* * * * *

8. Section 57.2408 is amended by removing paragraph (b); by redesignating paragraph (c) as (b); and by revising newly redesignated paragraph (b) to read as follows:

§ 57.2408 Expenditure of grant funds.

* * * * *

(b) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period

may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

9. Section 57.2409 is revised to read as follows:

§ 57.2409 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited to:

45 CFR Part 50, Subpart D—*Public Health Service Grant Appeals Procedure.*

45 CFR Part 16—*Procedures of the Departmental Grant Appeals Board.*

45 CFR Part 46—*Protection of Human Subjects.*

45 CFR Part 74—*Administration of Grants.*

45 CFR Part 75—*Informal Grant Appeals Procedures.*

45 CFR Part 80—*Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964.*

45 CFR Part 81—*Practice and Procedure for Hearings Under Part 80 of This Title.*

45 CFR Part 83—*Regulation for the Administration and Enforcement of Sections 799A and 845 of the Public Health Service Act.*[1]

45 CFR Part 84—*Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance.*

45 CFR Part 86—*Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting From Federal Financial Assistance.*

45 CFR Part 91—*Nondiscrimination on the Basis of Age in HHS Programs Activities Receiving Federal Financial Assistance.*

[1] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94-484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94-63.

§§ 57.2410, 57.2411, 57.2412, 57.2413 [Removed]

10. Sections 57.2410 *Human subjects,* 57.2411 *Grantee accountability,* 57.2412 *Publications and copyright,* and 57.2413 *Applicability of 45 CFR Part 74* are removed in their entirety.

§ 57.214 [Redesignated as § 57.2410]

11. Section 57.2414 is redesignated as 57.2410.

1. The heading of the appendix to 42 CFR Part 57, Subpart Y is revised to read as follows:

Appendix—Guidelines for Nurse Practitioner and Nurse Midwifery Programs

2. Section A. *Definitions* is amended by revising paragraph 1; by redesignating paragraph 3 as paragraph 4; by revising newly redesignated paragraph 4e; and by adding new paragraphs 3 and 4f to read as follows:

A. *Definitions.* 1. "Programs for the education of nurse pactitioners or nurse midwives" means a full-time educational program for registered nurses (irrespective of the type of school of nursing in which the nurses received their training) which meets the guidelines prescribed herein and which has as its objective the education of nurses (including pediatric and geriatric nurses) who will, upon completion of their studies in such program be qualified to effectively provide primary health care, including primary health care in homes and in ambulatory care facilities, long-term care facilities, where appropriate, and other health care institutions.

* * * * *

3. "Nurse-midwife" means a registered nurse who has completed a formal program of study designed to prepare registered nurses to perform in an expanded role in the delivery of primary health care to women and babies including the management of normal antepartum, intrapartum, and postpartum care as well as family planning and gynecology.

4. * * *

e. Referral to other health care providers and community resources when appropriate; and

f. Nurse midwifery services (where appropriate).

* * * * *

3. Section B. *Organization and administration* is amended by revising paragraph 1 to read as follows:

B. *Organization and administration.* 1. A nurse practitioner or nurse-midwifery education program shall have active collaboration with nurses and physicians who have expertise relevant to the nurse practitioner or nurse midwife role and primary health care, to assist in the planning, development, and operation of such a program. In addition, where the institution or organization conducting the program is other than a school of nursing, medicine, or public health, such collaboration shall be with nurses and physicians who are affiliated with either a collegiate school of nursing, school of medicine, or school of public health.

* * * * *

4. Section C. *Student enrollment* is revised to read as follows:

C. *Student enrollment.* 1. A nurse practitioner or nurse midwifery education program shall have an enrollment of not less than eight full-time equivalent students in each class.

2. All students enrolled in a nurse practitioner or nurse midwifery education program must be licensed to practice nursing (a) at the time of enrollment, or (b) in the case of a program leading to a graduate degree in nursing, at or prior to the time of completion of a program.

3. The policies for the recruitment and selection of students shall be consistent with the requirements of the sponsoring institution and developed in cooperation with the faculty responsible for conducting the education. Admission criteria shall take into consideration the educational background and work experience of applicants.

5. Section D. *Length of program* is revised to read as follows:

D. *Length of program.* A nurse practitioner or nurse midwifery education program shall be a minimum of one academic year (or nine months) in length and shall include at least four months (in the aggregate) of classroom instruction.

6. Section E. *Curriculum* is revised to read as follows:

E. *Curriculum.* 1. A nurse practitioner or nurse midwifery education program shall be a discrete program consisting of classroom instruction and faculty-supervised clinical practice designed to teach registered nurses the knowledge and skills needed to perform the functions of a nurse practitioner or nurse midwife specified in the defintion of that term as set forth in these guidelines. The curriculum shall be developed and implemented cooperatively by nurse educators, physicans, and appropriate representatives of other health disciplines. The following are examples of broad areas of program content which should be included: Communications and interviewing (history taking); basic physical examination including basic pathophysiology; positive health maintenance; care during acute and chronic phases of illness; management of chronic illness; health teaching and counseling; role realignment and establishment of collaborative roles with physicians and other health care providers; and community resources. The program content, both classroom instruction and clinical practice, should be developed so that the nurse practitioner or nurse midwife is prepared to provide primary health care as defined in these guidelines.

2. The curriculum may include a preceptorship, in which the student is assigned to a designated preceptor (a nurse practitioner, nurse midwife, or physician) who is responsible for teaching, supervising, and evaluating the student and for providing

the student with an environment which permits observation and active participation in the delivery of primary health care. If a preceptorship is included, it shall be under the direction and supervision of the faculty.

7. Section F. *Faculty qualifications* is revised to read as follows:

F. *Faculty qualifications.* A nurse practitioner or nurse midwifery education program shall have a sufficient number of qualified nursing and medical (and other related professional) faculty with academic preparation and clinical expertise relevant to their areas of teaching responsibility and with demonstrated ability in the development and implementation of educational programs.

8. Section G. *Resources* is amended to revise paragraphs 1 and 2 to read as follows:

G. *Resources.* 1. A nurse practitioner or nurse midwifery education program shall have available sufficient educational and clinical resources including a variety of practice settings, particularly in ambulatory care.

2. Clinical practice facilities shall be adequate in terms of space and equipment, number of clients, diversity of client age, and need for care, number of students enrolled in the program, and other students using the facility for education purposes.

* * * * *

[FR Doc. 87-16507 Filed 7-20-87; 8:45 am]
BILLING CODE 4160-15-M

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42 CFR Part 57

Grants for Advanced Nurse Training Programs

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: These final regulations amend existing regulations governing the program of Grants for Advanced Nurse Training, authorized by section 821 of the Public Health Service Act (the Act) by revising the eligibility criteria to specify that up to 1 year of planning time be allowed for all projects to plan, develop and operate an advanced nurse education program. These regulations also revise the regulations to incorporate the amendments made to section 821 of the Act by Pub. L. 99-92, the Nurse Education Amendments of 1985, enacted on October 22, 1985; by Pub. L. 99-129, the Health Professions Training Assistance Act enacted on October 22, 1985; and by Pub. L. 99-239, the Compact of Free Association Act of 1985, enacted on January 14, 1986.

EFFECTIVE DATE: These regulations are effective on July 21, 1987, except § 57.2504(c)(14) and (c)(15) which will be effective upon OMB approval.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Eleanor Elliott, Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Room 5C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number 301 443-5786.

SUPPLEMENTARY INFORMATION: On November 28, 1986, the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, published in the **Federal Register** (51 FR 43048), a Notice of Proposed Rulemaking (NPRM) to amend the existing regulations governing the Grants for Advanced Nurse Training authorized by section 821 of the Public Health Service Act (the Act), by specifying under the eligibility criteria (§ 57.2503) that up to 1 year of planning time be allowed for grants to plan, develop and operate an advanced nurse education program.

In the NPRM, the Department also proposed the following clarifying and ministerial changes to conform the existing regulations with Pub. L. 99-92 and with Pub. L. 99-129 as follows:

1. Revise the title of 42 CFR Part 57, Subpart Z from "Grants for Advanced Nurse Training Programs" to "Grants for Advanced Nurse Education Programs," and strike out the word "training" and insert in lieu thereof "education" wherever it appears in the text.

2. Revise § 57.2501, "*Applicability.*", to include as eligible the projects which prepare nurse researchers and substitute "public and private nonprofit" for "public and nonprofit private" when referring to collegiate schools of nursing.

3. Revise § 57.2502, "*Definitions.*", to change the following terms:

(a) the definition of "State" by striking out "the Canal Zone" and inserting in lieu thereof "the Commonwealth of the Northern Mariana Islands";

(b) the definition of "Advanced nurse education program" to specify the level of education in nursing from "graduate degree" to "masters' and doctoral degrees", and add "researchers" to the fields of nurse specialties that require advanced education; and

(c) the definition of "Collegiate school of nursing" to specify the level of education in nursing from "graduate degree" to "masters' and doctoral degrees."

4. Revise § 57.2503, "*Eligibility.*", to:

(a) clarify the applicant eligibility criteria by substituting "public or private nonprofit" for "public or nonprofit private" when referring to collegiate schools of nursing; and

(b) clarify the project eligibility criteria by deleting the words "significantly" and "existing" when referring to a project to expand or maintain an advanced nurse education program and add research as a specialty area for project eligibility.

5. Revise § 57.2506, "*Evaluation and grant awards.*", (b) *Funding preference.* to clarify the method for funding applications and to add a funding priority for education projects in geriatric and gerontological nursing.

It was also proposed to amend the existing regulations to emphasize the national need to train more minority and financially needy students, and to require that applicants include as part of their applications a plan for sustaining a project beyond the period during which Federal support is available. These amendments were proposed as follows:

1. Revise § 57.2504, "*Application.*", to include two additional application requirements for: (a) A plan to attract and retain a higher than average number of minority and financially needy students; and (b) a plan to sustain the project beyond the period during which Federal assistance is available.

2. Revise § 57.2506, "*Evaluation and grant awards.*", (a) *Evaluation.* to include among other evaluation factors the degree to which the applicant proposes to attract, retain and graduate minority and financially needy students; and (b) *Funding preference.* to add a special consideration for projects which include a plan to attract and retain minority and financially needy students.

The public comment period on the proposed regulations closed on January 27, 1987. The Department received no comments. Therefore, the amendments set out in the November 20, 1986, NPRM are adopted as proposed.

These final regulations include a number of additional technical and ministerial amendments to the existing regulations. These revisions are necessary in order to conform the regulations to amendments made by Pub. L. 99-239, and to incorporate current departmental boilerplate language. Since the amendments are of a ministerial and technical nature, the Secretary has determined pursuant to 5 U.S.C. 533 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures. The revisions are summarized below according to the section numbers and titles of the regulations:

1. Revise § 57.2502, "*Definitions.*", to amend the definition of "State" by inserting after the "Trust Territory of the Pacific Islands" those entities which, for purposes of this grant program, are viewed as a State, "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of

Micronesia.", in accordance with Pub. L. 99-239.

2. Revise § 57.2506, "*Evaluation and grant awards.*", paragraph (c)(1) to reflect current departmental boilerplate language.

3. Revise § 57.2508, "*Expenditure of grant funds.*", paragraph (b) to reflect current departmental boilerplate language.

4. Delete § 57.2509, "*Nondiscrimination.*", in its entirety and substitute a new § 57.2509 specifying Department regulations that apply to grantees.

5. Delete § 57.2510, "*Human subjects.*", § 57.2511, "*Grantee accountability.*", § 57.2512, "*Publications and copyright.*", and § 57.2513, "*Applicability of 45 CFR Part 74.*" in their entirety.

6. Redesignate § 57.2514, "*Additional conditions.*" as § 57.2510.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

The information collection requirements currently contained in § 57.2504 have been approved by the Office of Management and Budget (OMB) under control number 0915-0060.

Sections 57.2504 (c)(12) and (c)(13) contain new information collection requirements which are subject to OMB review. We will be submitting an information request to OMB for approval of these requirements under section 3504(h) of the Paperwork Reduction Act of 1980. These requirements will not be effective until the Department obtains OMB approval, at which time a notice will be published in the Federal Register to notify the public of such action.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study program, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, 42 CFR Part 57, Subpart Z is amended as set forth below.

(*Catalog of Federal Domestic Assistance*, No. 13.299, Grants for Advanced Nurse Training Programs)

Dated: May 21, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: June 30, 1987.

Otis R. Bowen,

Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. The title of 42 CFR Part 57, Subpart Z is revised to read as follows:

Subpart Z—Grants for Advanced Nurse Education Programs

2. The authority for Subpart Y is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 stat. 35 (42 U.S.C. 216); sec. 821 of the Public Health Service Act, 89 Stat. 361; as amended by 95 Stat. 930, and by 99 Stat. 394 and 548 (42 U.S.C. 296l).

3. Section 57.2501 is revised to read as follows:

§ 57.2501 Applicability.

The regulations of this subpart apply to the award grants to public and private nonprofit collegiate schools of nursing under section 821 of the Public Health Service Act (42 U.S.C. 296l) to meet the costs of projects to: (a) Plan, develop, and operate, (b) expand, or (c) maintain programs which lead to masters' and doctoral degrees and which prepare nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialties determined by the Secretary to require advanced education.

4. Section 57.2502 is amended by alphabetizing the definitions in the section and revising the definitions for "Advanced nurse education program", "Collegiate school of nursing", and "State" to read as follows:

§ 57.2502 Definitions.

* * * * *

"Advanced nurse education program" means a program of study in a collegiate school of nursing which leads to masters' and doctoral degrees and which prepares nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialties determined by the Secretary to require advanced education.

"Collegiate school of nursing" means a department, division, or other administrative unit in a college or university which provides primarily or exclusively a program of education in professional nursing and allied subjects leading to the degree of bachelor of arts, bachelor of science, bachelor of nursing, or to an equivalent degree, or to masters' and doctoral degrees in nursing, and including advanced education related to this type of educational program provided by the school, but only if the program, or unit, college or university is accredited.

"State" means a State, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federal States of Micronesia.

* * * * *

5. Section 57.2503 is amended by revising paragraphs (a)(1), (b)(1), (b)(2) introductory text, (b)(2)(i), (b)(2)(iii), and (b)(3) to read as follows:

§ 57.2503 Eligibility.

(a) * * *

(1) Be a public or private nonprofit collegiate school of nursing.

* * * * *

(b) * * *

(1) A project to plan, develop, and operate an advanced nurse education program. The planning period of this project is limited to one year. The project must enroll students before the end of the project period;

(2) A project to expand an advanced nurse education program through one or more of the following activities:

(i) The addition to the masters' or doctoral program of a new clinical, research, or functional (administration or teaching) specialty area,

* * * * *

(iii) The addition of a new educational site for the program; or

(3) A project to maintain an advanced nurse education program.

6. Section 57.2504 is amended by revising paragraphs (c)(1), (c)(11), and (d); by removing the periods after paragraphs (c)(1) through (c)(11) and substituting semicolons; by adding new paragraphs (c)(12) and (c)(13); and by revising the OMB approval number at the end of the section to read as follows:

§ 57.2504 Application.

* * * * *

(c) * * *

(1) A proposal for a project to:

(i) Plan, develop, and operate,

(ii) Expand, or

(iii) Maintain an advanced nurse education program;

* * * * *

(11) Information concerning the source and number of potential students for the education program and a description of plans, if any, to encourage graduates of the education program to practice in States in need of nurses prepared in the specialty in which education is to be provided;

(12) A plan to sustain the project beyond the period during which Federal assistance is available; and

(13) A plan to attract and retain a higher than average number of minority and financially needy students.

(d) In the case of a project to expand or to maintain an advanced nurse education program, the application shall contain an assurance satisfactory to the Secretary that the applicant will expend, in carrying out the program during the fiscal year for which a grant under this subpart is sought, an amount of non-Federal funds (excluding costs of construction) at least as great as the average amount of non-Federal funds (excluding expenditures of a nonrecurring nature, including costs of construction) expended for this purpose during the 3 fiscal years immediately preceding the fiscal year for which the grant is sought.

(Approved by the Office of Management and Budget under control number 0915-0060)

7. Section 57.2505 is amended by revising paragraph (b) to read as follows:

§ 57.2505. Project requirements.

* * * * *

(b) A project supported under this subpart shall enroll professional nurses, as defined in § 57.2502, or students who will be professional nurses, as defined in § 57.2502, at or prior to completion of the advanced nurse education program.

8. Section 57.2506 is amended by revising (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(8), (b) and (c)(1); and be adding paragraph (a)(9) to read as follows:

§ 57.2506 Evaluation and grant awards.

(a) * * *

(1) The need for the proposed project including, with respect to projects to provide education in professional nursing specialists determined by the Secretary to require advanced education:

(i) The current or anticipated need for professional nurses educated in the specialty; and

(ii) The relative number of programs offering advanced education in the specialty;

(2) The need for nurses in the specialty in which education is to be provided in the State in which the education program is located, as compared with the need for these nurses in other States;

(3) The degree to which the applicant proposes to recruit students from States in need of nurses in the specialty in which education is to be provided, and to promote their return to these States following education;

(4) The degree to which the applicant proposes to encourage graduates to practice in States in need of nurses in the specialty in which education is to be provided;

(5) The potential effectiveness of the proposed project in carrying out the educational purposes of section 821 of the Act and this subpart;

* * * * *

(8) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(9) The degree to which the applicant proposes to attract, retain and graduate minority and financially needy students.

(b) *Funding preference.* In determining the priority for funding applications approved under paragraph (a) of this section, the Secretary will consider:

(1) The relative merit of the proposed project based upon the factors in paragraph (a) of this section; and

(2) Whether a proposed project contains any of the following elements; (i) An educational program in geriatric and gerontological nursing; (ii) a plan to attract and retain minority and financially needy students (the project will be given special consideration); and (iii) special funding preferences as announced by the Secretary by notice in the **Federal Register**, should specific needs warrant such action.

(c) *Grant awards.* (1) The Secretary will determine the amount of any award on the basis of his or her estimate on the sum necessary for the cost (including both direct and indirect costs) of the project.

* * * * *

9. Section 57.2508 is amended by revising paragraph (b) to read as follows:

§ 57.2508 Expenditure of grant funds.

* * * * *

(b) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

10. Section 57.2509 is revised to read as follows:

§ 57.2509 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—*Public Health Service Grant Appeals Procedure.*

45 CFR Part 16—*Procedures of the Departmental Grant Appeals Board.*

45 CFR Part 46—*Protection of Human Subjects.*

45 CFR Part 74—*Administration of Grants.*

45 CFR Part 75—*Informal Grant Appeals Procedures.*

45 CFR Part 80—*Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964.*

45 CFR Part 81—*Practice and Procedure for Hearings Under Part 80 of This Title.*

45 CFR 83—*Regulation for the Administration and Enforcement of Section 799A and 845 of the Public Health Service Act.*[1]

45 CFR Part 84—*Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance.*

45 CFR Part 86—*Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting From Federal Financial Assistance.*

45 CFR Part 91—*Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance.*

§§ 57.2510, 57.2511, 57.2512, 57.2513 [Removed]

11. Sections 57.2510, "*Human subjects*", 57.2511, "*Grantee*

[1] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94-484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94-63.

accountability", 57.2512, "*Publications and copyright*", and 57.2513, "*Applicability of 45 CFR Part 74*", are removed in their entirety.

§ 57.2514 [Redesignated as § 57.2510]

12 Section 57.2514, "*Additional conditions*" is redesignated as § 57.2510.

[FR Doc. 87-16508 Filed 7-20-87; 8:45 am]
BILLING CODE 4160-15-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[CC Docket No. 86-241; FCC 87-216]

Charges for Aviation Radiotelephone Service

AGENCY: Federal Communications Commission.

ACTION: Order eliminating uniform nationwide rates.

SUMMARY: The order eliminates uniform, nationwide rates for air-ground service. In this Order the Commission determined that prescribed uniform rates for airground were not no longer warranted and that rates for airground service should be carrier-specific and cost-based.

EFFECTIVE DATE: August 10, 1987.

ADDRESS: 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jacqueline Holmes, Tariff Division, Common Carrier Bureau, (202) 632-6917.

SUPPLEMENTARY INFORMATION: This is a Summary of the Commission's Report and Order in CC Docket No. 86-241, FCC 87-216, adopted June 15, 1987, released June 29, 1987.

The full text of this decision is available for public inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The Order may also be obtained from the Commission's contract copiers, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. This Report and Order eliminates the prescription of rates for air-ground services. In 1957, American Telephone and Telegraph Company (AT&T) introduced air-ground radiotelephone service on an experimental basis. In 1969, the Federal Communications Commission amended its rules to establish an integrated nationwide air-ground radiotelephone service interconnected with the public switched network. The service allows passengers in suitably equipped private airplanes to be connected by radio with the public network in order to complete ordinary telephone calls. This service was to be provided by the air-ground licensee at a single, uniform rate. On July 7, 1986, the Commission released a *Notice of Proposed Rulemaking* (*Notice*) in CC Docket No. 86-241, *Charges for Aviation Radiotelephone Service*, 51 FR 25723 (July 16, 1986), to consider whether its prescription of uniform, nationwide aviation radiotelephone (air-ground) rates should be vacated. In the *Notice*, the Commission tentatively concluded that deaveraged, cost-based rates for air-ground service were appropriate. In addition, the *Notice* solicited comments concerning alternate proposals to maximize efficient provision of air-ground service while ensuring cost recovery by carriers providing the service.

2. Since the 1969 proceeding in which the Commission prescribed uniform nationwide air-ground rates, there have been substantial changes in the circumstances of the carriers which provide this service and in the applicable technology. Prior to the January 1, 1984 divestiture of the Bell Operating Companies (BOCs) by AT&T, air-ground service was provided by all authorized air-ground carriers at rates established in AT&T's Tariff No. 263. After divestiture, the BOCs filed their own tariffs rather than participating as concurring carriers in AT&T's Tariff No. 263. Rates for air-ground service contained in the BOCs' tariffs, however, were identical to those contained in AT&T's Tariff No. 263.

3. The Bell System divestiture has radically altered the context in which air-ground service is provided. Before the divestiture, the BOCs essentially participated in a joint venture as part of the Bell System, sharing the costs and revenues. Because costs will differ among individual companies, maintaining a uniform, cost-based national rate in the current post-divestiture environment would require development of a new mechanism to transfer revenues from low cost to high cost companies, and the appointment of some organization to calculate and file the average rate. This administrative mechanism would certainly add to the costs of the service while also reducing incentives for individual companies to reduce their costs and rates. If costs and revenues are pooled among a number of carriers, the efforts of any individual company would have a minimal effect on the rates it charges its customers. The carrier thus has little incentive to operate more efficiently.

4. Based on these considerations, the Order concludes that air-ground service should be charged in the same manner as most other exchange access services, at rates based on the individual carrier's costs.

Ordering Clauses

5. After carefully considering the comments submitted in response to our *Notice*, the Commission have decided to eliminate the prescription that the rates for aviation radiotelephone service be uniform nationwide. This action comports with the Commission's overall regulatory philosophy to let the marketplace determine the efficacy and cost effectiveness of a particular service offering.

6. Therefore, *It Is Ordered* that the tariff prescription for nationwide, uniform rates for aviation radiotelephone service as established in *Public Air-Ground Radiotelephone Service*, 22 FCC 2d 716, 721 (1969) is *Hereby Vacated.*

7. *It is Further Ordered* that the carriers providing the service are free to file tariff revisions, pursuant to the applicable rules, at any time subsequent to August 10, 1987.

8. *It is Further Ordered*, that CC Docket No. 86-241 is *Hereby Terminated.*

List of Subjects in 47 CFR Chapter 1.

Communications common carriers, Terms and conditions Just and reasonable terms and conditions.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-16480 Filed 7-20-87; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-270; RM-5253]

Radio Broadcasting Services; Ocilla, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 253A to Ocilla, Georgia, as a second local FM service, at the request of A&M Broadcasting. With this action, this proceeding is terminated.

DATES: Effective Date: August 31, 1987; the window period for filing applications will open on September 1, 1987, and close on October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–270, adopted June 25, 1987, and released July 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended for Georgia by adding Ocilla, Channel 253A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–16487 Filed 7–20–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 83–493; RM–4393]

Radio Broadcasting Services; Gulf Breeze, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a Petition for Reconsideration filed by Capitol Broadcasting Corporation of the *Report and Order* which allotted FM Channel 237A to Gulf Breeze, Florida. By this action we substitute FM Channel 291A for Channel 237A at Gulf Breeze, Florida and terminate this proceeding.

EFFECTIVE DATE: August 27, 1987.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 83–493, adopted June 22, 1987, and released July 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended in the entry for Gulf Breeze, Florida, by adding Channel 291A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 16490 Filed 7–20–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–231]

Radio Broadcasting Services; Florida and Mississippi

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the FM Table of Allotments by substituting Channel 254C2 for Channel 254A, in Pensacola, Florida and reallotting Channel 233A from Bay St. Louis, Mississippi to Long Beach, Mississippi. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 26, 1987.

FOR FURTHER INFORMATION CONTACT: Arthur Scrutchins, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 84–231, adopted January 5, 1987, and released February 27, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC.

Summary of Memorandum Opinion and Order

1. The Commission substituted FM Channel 254C2 for FM Channel 254A, Pensacola, Florida. The Pensacola substitution was made in accordance with the Commission's policy of allotting the highest class channel available to each community. The substitution also permits Station WKSJ–FM, Mobile, Alabama, to relocate its transmitter site and achieve full Class C facilities.

2. EJM Broadcasting, licensee of Station WDLT–FM, Chickasaw, Alabama and Triple H Broadcasting, licensee of Station WKYD–FM, Andalusia, Alabama filed petitions for reconsideration of the allotment of Channel 254A to Pensacola alleging that it would preclude the upgrading of their stations to higher classes of channels. They argued that the Commission failed to provide adequate notice in the proceeding and improperly relied on extra record information. The petitioners further argued that the Pensacola allotment failed to provide city grade coverage. The Commission denied the petitions on the ground that the requests for higher classes of channels at Chickasaw and Andalusia in this proceeding were untimely and failed to specify one of the acceptance criteria to be considered as valid counterproposals. In addition, the Commission found that it did provide sufficient notice to warrant channels changes at Pensacola and that a Class C2 channel was available thus resolving the city grade coverage question. The higher class allotment has been made available by subsequent application filings by stations in Pascagoula, Mississippi, Panama City, Florida and another station in Pensacola. Accordingly, the allotment will be made available after these events are finalized by the issuance of licenses. Applications for the Pensacola channel will be accepted during the window period for the No. 54 channel in a future Public Notice. We also note that in the Federal Register Summary in Docket 84–231, 51 FR 36401, published October 10, 1986, it was mistakenly reported that a Second Further Notice was forthcoming in this proceeding. Instead, this is the Commission's final action regarding the Pensacola allotment.

3. In a related part of this proceeding the Commission reallotted Channel 233A from Bay St. Louis, Mississippi, to Long Beach, Mississippi. This allotment was made possible and conditioned on the Mobile station's site change also

becoming finalized. Long Beach was favored under the Commission's criteria for providing a first local service whereas Bay St. Louis already has daytime AM service. Applications for this channel will be accepted during the window period for the No. 26 channel.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202, the Table of FM Allotments, is amended by adding Channel 233A to Long Beach, Mississippi and deleting Channel 233A from Bay St. Louis, Mississippi; revising the entry for Pensacola, Florida to substitute FM Channel 254C2 for FM Channel 254A.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-16479 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-385; RM-5451]

Radio Broadcasting Services; Redfield, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Victoria Broadcasting System, Inc., this document substitutes Channel 279C1 for Channel 279 at Redfield, South Dakota, as the community's third local FM service. Channel 279C1 can be allocated to Redfield in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: August 31, 1987; the window period for filing applications for open on September 1, 1987, and close on October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-385, adopted June 25, 1987, and released July 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments for Redfield, South Dakota is amended by adding Channel 279C1 and removing Channel 279.

Bradley P. Holmes,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 87-16488 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-382; RM-5467]

Radio Broadcasting Services; Merkel, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 274C1 for Channel 272A at Merkel, Texas, and modifies the license of Station KFQX-FM to specify operation on the new frequency, at the request of Fox Communications, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 27, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-382, adopted June 16, 1987, and released July 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Texas, by adding Channel 274C1 and removing Channel 272A for Merkel.

Mark N. Lipp,

Chief, Allocations Branch Mass Media Bureau.

[FR Doc. 87-16485 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-391; RM-5354]

Radio Broadcasting Services; Windsor, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 299A to Windsor, Virginia, at the request of Communi-Com, Inc., as that community's first FM service. A site restriction of 2.9 kilometers (1.8 miles) east of the community is required. With this action, this proceeding is terminated.

DATES: Effective Date: August 27, 1987; the window period for filing applications will open on August 28, 1987, and close on September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-391, adopted June 16, 1987, and released July 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, in the entry for Windsor, Virginia, Channel 299A is added.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-16483 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1043

[Ex Parte No. MC-5 (Sub-No. 8)]

Property Broker Security for the Protection of the Public

AGENCY: Interstate Commerce Commission.

ACTION: Interim rule and request for comments.

SUMMARY: The Commission is adopting procedures for property brokers to file other evidence of security as an alternative to filing a surety bond, Form BMC 84. This will permit a broker to file evidence of financial responsibility in the form of an acceptable trust agreement or other security in the amount required under 49 CFR 1043.4. Since a broker cannot operate without a surety bond on file with the Commission, and because many brokers have had serious problems obtaining or renewing surety bonds, the rules set forth below are adopted as interim guidelines. We recognize the benefits of public comment and do not lightly take action without soliciting input from the public. However, the emergency nature of the current insurance crisis requires that the procedures become effective immediately as interim rules, prior to receipt of comments. These interim rules are administratively sound and will serve the interest of brokers as well as other related parties within the interstate surface transportation industry. Adopting interim rules without public comments is permissible because these rules are interpretative (*See* 5 U.S.C. 553(b)(A)) The interim rules set forth below are effective immediately. The Commission will adopt final rules after evaluating the comments received. Comments also are invited on the acceptability of other types of security that would provide protection equivalent to a surety bond or a trust fund, including, but not limited to: insurance policy, irrevocable letter of credit, pledged certificate of deposit, or escrow account.

DATES: This interim rule is effective on July 21, 1987. Comments from interested persons are due by August 20, 1987.

ADDRESS: An original and, if possible, 15 copies of the comments should be sent to:

Ex Parte No. MC-5 (Sub-No. 8), Office of the Secretary, Interstate Commerce Commission, Room 1324, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Alice K. Ramsay (202) 275-0854

Heber P. Hardy (202) 275-7148

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, 12th & Constitution Avenue, NW., Washington, DC 20423, or call (202) 275-7428.

Energy and Environmental Considerations

This action does not appear to affect significantly the quality of the human environment or the conservation of energy resources. Comments are welcome on these issues.

Regulatory Flexibility Analysis

The Commission certifies that the adoption of these interim rules will not have a significant impact on a substantial number of small entities. Although a substantial number of small entities will be affected by these interim rules, the impact will be beneficial because the costs to brokers for complying with our security requirements should not increase while availability of coverage will increase.

List of Subjects in 49 CFR Part 1043

Insurance, Motor carriers, Surety bonds.

Decided: July 10, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, the ICC amends 49 CFR 1043 as follows:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for Part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

2. Section 1043.4 is revised to read as follows:

§ 1043.4 Property broker surety bond or other security.

(a) *Security.* A property broker must have a surety bond or other security in effect for $10,000. The Commission will not issue a property broker license until a surety bond or other security for the full limits of liability prescribed herein is in effect. The broker license shall remain in effect only as long as a surety bond or other security remains in effect and shall ensure the financial responsibility of the broker.

(b) *Evidence of security.* Evidence of a surety bond must be filed using the Commission's prescribed Form BMC-84. Other security may be evidenced by the filing of an agreement with a financial institution, licensed or qualified to do business in a state or the District of Columbia, establishing a trust fund or other security in the amount of $10,000. The surety bond, the trust fund, or other acceptable security shall ensure the financial responsibility of the broker by providing for payments to shippers or motor carriers if the broker fails to carry out its contracts, agreements, or arrangements for the supplying of transportation by authorized motor carriers.

(c) *Trust fund agreement provisions.* The trust fund agreement must include, but not be limited to, the following provisions:

(1) The names and addresses of all trustees and the nature of any relationship to the broker must be disclosed;

(2) Payments from the trust fund must be made up to the limit of protection ($10,000), regardless of financial responsibility or lack thereof or insolvency or bankruptcy of the broker;

(3) Payments must be made exclusively and directly to shippers or motor carriers that are parties to contracts, agreements, or arrangements for authorized motor carrier service arranged by the broker;

(4) Protection afforded shippers and motor carriers must continue until all legally cognizable claims have been settled or until the fund has been exhausted, whichever comes first; and

(5) If the trust fund is drawn upon, the broker must, within 30 days, replenish the fund up to $10,000, and the trustee (trustees) must give written notice forthwith to the Commission of all lawsuits filed, judgments rendered, and payments made under the trust agreement and, of any failure by the broker to replenish the fund as required.

(d) *Cancellation.* The trust fund agreement filed with the Commission will remain in effect until cancelled. It may be cancelled only upon 30 days'

written notice by the trustee (trustees) to the Commission. The notice period commences upon receipt of the notice at the Commission's Washington, DC office. The notice must state that the trust fund agreement is cancelled, without qualification, on a specified date at least 30 days after the notice is received at the Commission's office.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Zones in Which Lead Shot Will Be Prohibited for the Taking of Waterfowl, Coots and Certain Other Species in the 1987-88 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Spent lead shot from waterfowl hunting poses an unnecessary risk to certain migratory birds because when consumed it often produces lead poisoning and death. As lead poisoning is a significant annual mortality factor in these birds, the process of deciding whether, where, and how migratory bird hunting will be allowed under the Migratory Bird Treaty Act must take into account where further curtailment of lead shot deposition is necessary to protect these species from lead shot exposure and the resultant mortality. Accordingly, this final rule describes the zones in which the use of lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1987-88 season. The zones described consist of (1) the same areas that were already identified as nontoxic shot zones for waterfowl and coot hunting in sec. 20.108 of Title 50 of the Code of Federal Regulations (50 CFR) for the 1986-87 hunting season, (2) the added counties identified for 1987-88 in Appendix N of the Final Supplemental Environmental Impact Statement (SEIS) on the Use of Lead Shot for Hunting Migratory Birds in the United States (see Table 1 in Supplementary Information), and (3) those additional areas identified by the States where acceleration of the nontoxic shot phase-in schedule is considered appropriate because of potential administrative, enforcement and/or lead poisoning problems. States that have declared a statewide ban on the use of lead shot for waterfowl and coot hunting are so noted, as well as those that have not provided implementation and enforcement authority for nontoxic shot regulations and will, therefore, not have an open 1987-88 waterfowl season in the counties identified for 1987 implementation. In addition, this final rule amends existing regulations to prohibit, within designated nontoxic shot zones, lead shot use for waterfowl hunting in all firearms, including muzzleloaders, in the 1988-89 waterfowl hunting season. This final rule also adds to the number of species covered by nontoxic shot restrictions in nontoxic shot zones where the hunted species are affected by aggregate bag limits.

EFFECTIVE DATE: July 21, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240 (202/254-3207).

SUPPLEMENTARY INFORMATION: The problem of lead poisoning in waterfowl resulting from the deposition of lead shot while hunting has been known for at least the last 100 years. Over the past 2-3 decades, because of an unacceptably high annual lead poisoning-related mortality in waterfowl, wildlife managers and others have recognized and espoused a need to find an acceptable nontoxic substitute for lead shot to alleviate the lead poisoning problem. In 1976, the Fish and Wildlife Service (FWS), Department of the Interior, published a Final Environmental Statement (FES-76) on the proposed use of steel shot for hunting waterfowl in the United States. The preferred action presented at that time, and followed since, sought to limit further deposition of lead shot in areas used by waterfowl in order to eliminate lead poisoning from ingested lead shot as a significant mortality factor among these birds. Thus, since 1976, nontoxic shot has been required for hunting waterfowl at numerous locations throughout the United States.

Since the completion of FES-76, it has become apparent that lead poisoning from waterfowl hunting is manifesting itself in the endangered and threatened bald eagle populations of the United States. Because of this additional and important finding, and because of the Secretary of the Interior's (Secretary) responsibilities under the Migratory Bird Treaty Act (MBTA), as amended (16 U.S.C. 703 *et seq.*; 40 Stat. 755), and the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543; 87 Stat. 884), the FWS has completed a Final SEIS on the Use of Lead Shot for Hunting Migratory Birds in the United States (FES 86-16, June 1986). In this Final SEIS, a complete review and analysis of the lead poisoning problem in migratory birds is made. Evidence is presented in the SEIS that lead poisoning among waterfowl and bald eagles is of sufficient magnitude that a program to ban the use of lead shot for waterfowl and coot hunting nationwide is necessary for compliance with the Secretary's statutory requirements in deciding whether, where, and how migratory bird hunting will be allowed under the MBTA.

The strategy selected in the Final SEIS to remedy the lead poisoning problem in waterfowl and bald eagles is to phase-in nationwide a ban on the use of lead shot for hunting waterfowl and coots over a 6-year period of time. In the initial year of implementation of this strategy (1986-87), nontoxic shot zones were established utilizing criteria to protect both waterfowl and bald eagles. In the 1986-87 hunting season approximately 49 percent of the waterfowl harvest nationwide occurred in nontoxic shot zones in 44 States. Nontoxic shot zones for the 1986-87 waterfowl hunting season were published in the **Federal Register** on September 3, 1986 (51 FR 31429). For the remaining 5 years of the strategy, use of lead shot for waterfowl hunting will progressively be eliminated on a zone (county or county-plus) basis utilizing criteria for waterfowl only. Counties scheduled to convert in their entireties to nontoxic shot in the 1987-88 waterfowl season are those counties having had an average annual waterfowl harvest of 20 or more per square mile over the 10-year period 1971-80. More than 70 percent of the waterfowl harvest nationwide will occur in nontoxic shot zones in the 1987-88 waterfowl hunting season.

The 5-year component of the 6-year strategy to phase out the use of lead shot for waterfowling was adopted by the FWS on the recommendation of the International Association of Fish and Wildlife Agencies (IAFWA), a recommendation supported by a majority of the member States. The salient feature of the criteria and schedule for the 5-year component of the lead shot phaseout is that the ban begins with zones having the highest levels of waterfowl harvest (20 or more birds/square mile) and proceeds decrementally to those having the lowest levels (less than 5 birds/square mile). In addition, beginning in the 1988-89 season, zones scheduled for conversion to nontoxic shot may be deferred through monitoring, but not beyond the hunting season of 1991-92 when nontoxic shot will be required for

use in waterfowling nationwide. The final rule on the criteria and schedule for implementation of this 5-year component of the lead phaseout strategy was published in the **Federal Register** on November 21, 1986 (51 FR 42103).

Information detailing the development of this Final SEIS strategy to eliminate lead toxicity as a major mortality factor in waterfowl and bald eagles, including discussions of the issues for and against lead/steel shot, appears in the preamble to the proposed rule on the criteria and schedule for implementing nontoxic shot zones for 1987–88 and subsequent years published in the **Federal Register** on June 27, 1986 (51 FR 23444). The final rule for that proposed rule was published, as noted above, in the **Federal Register** on November 21, 1986 (51 FR 42103). Information on the justification for selecting this strategy has also been set out in the Final SEIS (Alternative VII_2), the June 27, 1986, proposed rule and in the Record of Decision (ROD) confirming the preferred alternative and published in the **Federal Register** on August 20, 1986 (51 FR 29673). In compliance with 40 CFR 1505.2, the ROD was signed by the Director, FWS, and the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, on August 11, 1986.

This rule implements the first year (1987–88) of the 5-year component of the strategy to phase-in a nontoxic shot requirement nationwide by 1991–92, as set out by the preferred alternative of the Final SEIS on the Use of Lead Shot for Hunting Migratory Birds in the United States. In addition, this rule modifies existing regulations to the extent that: (a) in the 1988–89 waterfowl hunting season, all persons taking waterfowl with firearms are subject to a prohibition on the use of lead shot in nontoxic shot zones and (b) there is now in effect an expansion of the coverage of migratory bird species hunted in nontoxic shot zones where there exists a condition of aggregate bag limits and concurrent seasons, when one or more of the species involved would not ordinarily be covered by the strictures for using nontoxic shot.

In the final rule published November 21, 1986 (51 FR 42103), as well as in the proposed rule for this final rule, the FWS briefly addressed the use of lead shot in muzzleloading shotguns for hunting waterfowl. It was stated that "The FWS believes that a 'fairness' principle should be a primary consideration," meaning that all waterfowl hunting should be included under the developing nationwide ban on the use of lead shot because all lead pellet sources, including muzzleloading, contribute to the lead poisoning problem. On the basis of responses and other current information, discussed later, there appears to be no valid ballistics or human health and safety reasons to permanently exempt muzzleloaders from a lead shot use ban in nontoxic shot areas. However, it has been pointed out that many existing State statutes would be in conflict with an immediate change, leaving inadequate opportunity for reconciliation with Federal regulations before the advent of the 1987–88 waterfowl hunting seasons. The FWS believes it reasonable to delay implementation of this restriction on muzzleloaders to bring State statutes into full compliance with Federal Government regulations. The pertinent regulation, 50 CFR 20.21(j), is rewritten to cover all shot, including loose shot, used in nontoxic shot zones so as to prohibit the possession and/or use of lead shot while taking waterfowl, coots and/or other species covered by aggregate bag limits and concurrent seasons beginning in the 1988–89 waterfowl hunting season. For this current hunting year (1987–88), a contradiction within the regulations, those at 50 CFR 20.108 and those in the "taking" section (20.21), will still allow muzzleloading waterfowl hunters to use lead shot in nontoxic shot zones.

In the proposed rule an additional concern was raised with regard to nontoxic shot zones that could lead to potential management/enforcement problems for State and Federal authorities if allowed to go unaddressed. This concern was characterized as having arisen from the situation that, given only Federal regulations, there have been nontoxic shot zones in which it was legal to take common moorhens (*Gallinula chloropus*) with lead shot, although they were allowed to be taken in an aggregate limit with coots. Coots, however, could only be taken with nontoxic shot in nontoxic shot zones. The FWS, therefore, proposed that species other than waterfowl and coots, when taken in an aggregate bag with waterfowl and coots, must be subject to the same shot restrictions. There has been no general public or State opposition to this proposal, and the FWS is, in this rulemaking, establishing that if nontoxic shot is required for taking one or more species of an aggregate bag limit, it must be used for taking all species in the same aggregate.

Summary of General Public Comments on the Proposed Rule

Not considering official State responses, 48 letters of comment were received on the proposed rule (52 FR 1636) during the 30-day comment period that closed on February 16, 1987. Thirty of the 48 letters received pertain almost exclusively to the muzzleloading issue, and are in substantial opposition to the proposal to include muzzleloading hunters in the developing nationwide ban on the use of lead shot for hunting waterfowl. Of the 30, 24 are form letters. These form letters referenced the expansion of both the firearm and species coverage but object only to the former, i.e., muzzleloading, aspect of the proposed rule. Fifteen of the 24 letters have no return addresses but appear to be from private citizens. Of the remaining 9, 1 is from Connecticut, 1 is from Florida, and the others are from Georgia; a form letter from a Connecticut Valley Arms employee would seem to be the only industry-related response in this group of 24. The other 6 responses are from: the National Muzzle Loading Rifle Association; the shotgun editor of Muzzzleloader Magazine; the New York State Muzzle-Loaders Association, Inc.; the Hodgdon Powder Company, Inc.; the Colorado State Muzzle Loading Association; and a private citizen in Colorado.

Thirteen of the 48 general public letters address, exclusively, the appropriateness of the FWS' adopted plan to implement nontoxic shot restrictions for waterfowl and coot hunting nationwide by the 1991–92 season. Eleven of the 13 opposed the FWS' actions with regard to the implementation and enforcement of nontoxic shot restrictions; the other 2 responses were in support of the FWS' actions. The National Rifle Association of America and the Migratory Waterfowl Hunters, Inc., letters address the appropriateness of nontoxic shot restrictions, as currently being imposed, and the muzzleloading issue. The National Wildlife Federation letter addresses all of the proposals in the proposed rule, and also raises the issue of timeliness of rulemaking. Only one private individual commented on a zone addition—that comment, from the State of Tennessee, is considered in the State-specific responses. The remaining comment, of the 48, was received from the Hoover Group, Ball and Roller Division, and advised that an improvement in production capacity has allowed in-place capacity that exceeds steel shot poundage requirements for 1987–88 and beyond—steel shot availability will not be a problem as more zones are converted.

There were no general public comments received that opposed the proposal to extend nontoxic shot

restrictions to species other than waterfowl or coots where other species may be taken as part of an aggregate bag limit with waterfowl and/or coots.

Some of the general public comments provided (e.g., the 13 addressing nontoxic shot information generally) are within the scope of earlier rulemakings and will not be responded to in this final rule as they are similar, if not identical, to comments received from the general public on the proposed rule titled "Zones in which lead shot will be prohibited for waterfowl and coot hunting in the 1986–87 hunting season" of January 6, 1986 (51 FR 409), and were responded to as a preliminary final rule in Appendix O of the Final SEIS on the use of lead shot for hunting migratory birds in the United States completed in June of 1986 and announced in the **Federal Register** on June 27, 1986 (51 FR 23444), and July 11, 1986 (51 FR 25249). Responses in this group include those from the California Waterfowl Habitat Owners Alliance, Fishing and Hunting News, and Idaho Hunter's Association, Inc., the Migratory Waterfowl Hunters, Inc., the National Rifle Association of America, and the Wildlife Legislative Fund of America.

The preliminary final rule referenced above (Appendix O), with comments and responses, was published as a final rule on September 3, 1986 (51 FR 31429).

Most of the subjects listed below are treated in the Final SEIS and referenced accordingly so that the reader may obtain and review scientific studies upon which this final rule action is taken. The list of issues (with the September 3, 1986 [51 FR 31429] 1986–1987 nontoxic shot zone rule Issues and/or SEIS reference) is as follows:

—Arguments against the lead shot-lead poisoning connection in waterfowl and bald eagles, including situations involving shooting over fields and over deep water, observers noting absence of carcasses, perceived documentation deficiencies, etc. (see, for example, Issues 1, 2, 7, and 6 and Chapter III of the SEIS);

—Relative merits of the "hotspots" approach vs. the current phase-in strategy (see, for example, Issue 5 and Chapters II and IV of the SEIS);

—Crippling and shooting performance of lead vs. steel shot (see, for example, Issue 12 and Chapter III, page 86, of the SEIS);

—Cost of steel shot vs. lead shot and availability of steel shot (see, for example, Issue 14 and Chapter III, page 90, of the SEIS);

—Compatibility of steel shot with weapons and safety (see, for example, Issue 13 and Chapter IV, pages 11–15, of the SEIS);

—Feasibility of implementing a nationwide ban earlier than the 1991–1992 hunting season (see, specifically, pages S–3 and Chapter IV of the SEIS);

—General allegations of arbitrariness in FWS' actions to eliminate lead poisoning as a mortality factor in waterfowl and coot (see, for example, Issue 3);

—Enforcement concerns (see Chapter IV, page 57, of the SEIS);

—Proposed adoption of alternatives which were discussed in the SEIS (see page S–3 and Chapter IV of the SEIS);

—Proposal that the FWS should redouble efforts to find a suitable nontoxic alternative to lead (see, for example, Issue 14 and Chapter III, page 90, of the SEIS);

—An argument that the FWS, through this and other actions establishing nontoxic (steel) shot zones, is violating the Stevens amendment to the Interior Department Annual Appropriations Act (see, for example, Issue 22).

Other substantive issues raised by commentors and not previously publicly analyzed by the Service are responded to as follows:

Responses to General Comments on the Proposed Rule

Issue 1: Informally, early in the comment period on the proposed rule for this final rule, the Florida Game and Fresh Water Fish Commission staff requested clarification of the "aggregate bag limits in concurrent seasons" terminology for that aspect of the rule. There has been feedback on the proposed rule, to the Office of Migratory Bird Management staff from other States, that indicates the concept of "aggregate bag limits" is not widely or well understood.

Response: The definition of "aggregate daily bag limits" provided in 50 CFR 20.11 does not incorporate the meaning of "aggregate bag limits" as used in this final rule; this may be the cause of current confusion with the terms. In short, the 50 CFR 20.11 definition addresses geographic, not species, considerations. In the coming year, the FWS will propose to amend the § 20.11 definition to include both the species and geographic aggregate bag limit concepts. The scope of the present rule can be clarified by the following explanation.

As used in this rulemaking, "aggregate bag limits" describes a condition of taking in which 2 or more usually similar species may be bagged (reduced to possession) by the hunter in predetermined or unpredetermined quantities to satisfy a maximum take limit. Thus, to borrow from the species and bag limit situation that prompted this particular part of the rulemaking, if a maximum bag limit for coots and/or moorhens is set at 25, then one may not take in combination, or separately, quantities of the 2 species that exceed 25. Accordingly, a person hunting moorhens in an area with this aggregate bag limit must use steel shot.

The "concurrent season" part of the condition seems almost superfluous but it further defines when the aggregate limit of the species may be taken. "Concurrent seasons," in the context of this rule, does not apply to situations in which one hunts different species in seasons that simply overlap or that are concurrent *without* the condition of aggregate bag. For example, a hunter may hunt rails (or even pheasants) in season in a nontoxic shot zone with lead shot although a simultaneous season for waterfowl in that same zone requires nontoxic shot. (However, a hunter possessing lead in such a zone may not hunt waterfowl as well. The hunter that opportunistically hunts ducks and rails simultaneously in a nontoxic shot zone with lead-loaded shotshells, or even lead- and steel-loaded shotshells, in his/her *possession* is inviting a charge of illegal taking if it can be reasonably established that the hunter is hunting waterfowl and coots. More briefly stated, it is against the law to have in possession lead-loaded shotshells while waterfowl or coot hunting in a nontoxic shot zone.) Beginning with the 1988–89 waterfowl hunting season, this regulation will apply to possession of lead pellets by muzzleloading waterfowl hunters as well.

Issue 2: The earlier referenced 24 form letters received from commentors objected to expansion of the nontoxic shot coverage to include muzzleloading waterfowlers. These commentors cited a lack of data/evidence to support a conclusion that lead shot use in muzzleloading shotguns is a problem, and believed that the "fairness principle" is incorrectly applied since the muzzleloading hunter severely limits his/her lead usage. Too, the commentors stated that the FWS could act when and if the use of lead in muzzleloading shotguns becomes a problem to bald eagles.

The National Rifle Association of America (NRA) states that muzzleloading shotguns should be exempt from steel shot requirements, adding that original damascus steel-barreled, muzzleloading shotguns are not suitable for steel shot under any circumstances. The NRA also cited difficulties related to obtaining proper

components for reloading modern replica muzzleloading shotguns, and state the conviction that the muzzleloading segment of the shotgunning community should not be required to, in effect, give up their shotguns for migratory bird hunting. Similarly, the Migratory Waterfowl Hunters, Inc., believes that the FWS' muzzleloading proposal would effectively eliminate muzzleloading hunters from hunting waterfowl. In this regard, a commentor from Colorado, who uses a replica 1750 English fowling piece for waterfowl hunting, requests a delay in implementing this change for muzzleloaders on the basis that he and many others will have their muzzleloading guns ruined by steel shot, and the guns may be dangerous to shoot. This commentor referenced problems with loading components that do not facilitate using steel shot. The National Muzzle Loading Rifle Association (NMLRA) argues that original shotguns (those made prior to approximately 1898) are not as strong as modern shotguns and the use of nontoxic shot in these weapons is unsafe. The NMLRA advances a separate point that the proposed rule would ". . . eliminate entirely a large part of our American heritage in the use of firearms," and another that the negligible amount of lead deposited by hunters with original shotguns can be of no harm to wildlife. In summary, the NMLRA requests an exemption only for original, muzzleloading shotguns. The Colorado State Muzzle Loading Association (COSMLA) expressed opposition to the inclusion of muzzleloading waterfowlers in nontoxic shot restrictions because: (1) Steel shot cannot be used in 90 percent of muzzleloading shotguns; (2) black powder cannot drive steel shot fast enough to make it even marginally effective; (3) the numbers of muzzleloading shotguns in use is small so the amount of lead deposited in wetlands from this source is practically negligible; and (4) muzzleloading shotguns could not handle the pressures needed to drive steel shot at the velocities necessary to make steel shot practical for hunting. This commentor then stated we should not expect a swing from modern to muzzleloading shotguns if the latter are exempted from steel shot regulations. The New York State Muzzle-Loaders Association, Inc. (NYSMLA), protested the proposed ". . . wording change in the federal regulations, for the taking of waterfowl on federal lands" that would expand nontoxic shot restrictions to waterfowl hunters using muzzleloading shotguns. The NYSMLA members feel that a ban on the use of lead shot for all hunters taking watefowl would eliminate the use of "muzzleloaders" for sport hunting, and requests that the ban be postponed until a safe, nontoxic shot substitute can be developed. The NYSMLA listed reasons for their request for postponement as: (1) Loose steel shot is not readily available; (2) steel shot damages barrels even when used with plastic wads; (3) plastic wads are not practical for all muzzleloading shotguns because many are odd-sized gauges; (4) manufacturers recommend against reloading with steel shot; and (5) the excessive pressures associated with steel shot, and the related health and safety considerations, make its use in muzzleloaders unacceptable. The shotgun editor for Muzzleloader magazine also requested that the FWS consider a postponement in implementing the proposed rule on muzzleloading nontoxic shot ". . . until such time as muzzleloaders have had the opportunity to scientifically study the safety and efficacy of steel shot in their arms," and noted that modern shotgun shooters had the benefit of time and testing before the imposition of current nontoxic shot regulations. This commentor also quoted Federal Cartridge Corporation's recommendation against reloading steel shot and, because the muzzleloading hunter essentialy hand-loads in the field, argued against asking these sportsmen to hand-craft untested steel shot loads in firearms which have not been prooftested for steel shot. Too, this commentor is of the opinion that the FWS is concerned about waterfowlers turning to muzzleloading shotguns to avoid using steel shot if muzzleloading hunters are exempted from the nontoxic shot rule.

The Hodgdon Powder company, Inc. (HPC), maker and distributor of Pyrodex, strongly protested the FWS' proposed action with regard to muzzleloading shotguns. The HPC repeats common criticisms of steel shot, i.e, it is unsafe for reloading and is inferior as a killing tool when compared with lead loads, but then concedes that neither Hodgdon nor the Goex Corporation (manufacturer of black powder) has done extensive testing with steel shot in muzzleloaders and, therefore, is not ina position to publish recommended procedures on loads. HPC cites a probable health and safety problem in the use of steel shot for muzzleloading and, because of the nature of communication among those in the muzzleloading sport, believes the learning curve for education of this body of sportsmen is much longer than with modern users—the result being that many will injure themselves because of the lack of adequate information on steel shot use.

Of the 9 State wildlife agencies commenting on the muzzleloading proposed rule, 5 States simply provided a statement of support specifically for implementation of a regulation that covers all waterfowl hunters in nontoxic shot zones, including muzzleloaders. The Indiana Department of Natural Resources stated its position that, because the popularity of this sport has increased considerably in recent years, a 1-year delay in implementation of this regulation would allow shooters to locate the necessary components and better prepare for steel shot use in their weapons, and would also allow dealers to evaluate the demand for components.

The Minnesota Department of Natural Resources (MNDNR) expressed concern with the muzzleloading proposal, as it would probably eliminate the use of muzzleloading shotguns in waterfowl hunting. The MNDNR states its belief that a shot suitably soft for use in muzzleloaders is unavailable, and also that ". . . considering the information on which the entire steel shot program was based, the assumption was that steel shot would not be required for muzzleloader shotguns." The MNDNR rejects any idea that increasing numbers of hunters will turn to muzzleloading to avoid having to use steel shot if muzzleloading is exempted from nontoxic shot requirements.

The Tennessee Wildlife Resource Agency (TNWRA) said that on the basis of the limited use of muzzleloading shotguns for waterfowl in that State, and the overall lead poisoning problem, the imposition of nontoxic shot on this segment of the waterfowl hunting community is not justified. Further, TNWRA feels that this is a lesser issue and the FWS should not be "sidetracked" from concentrating on the overall support and subsequent success of the central phaseout program. Also mentioned by TNWRA were ballistics and safety considerations that need to be addressed before implementation of regulations regarding nontoxic shot for muzzleloading.

The Wisconsin Department of Natural Resources (WIDNR) strongly objected to this proposal on the grounds that it would eliminate the use of muzzleloaders for waterfowling because of barrel damage from the use of steel shot. The WIDNR feels that the FWS describes the nature of the existing and anticipated problem inappropriately, and states that the majority of modern weapons users are not faced with an

equivalent use-no-use proposition. Further, the WIDNR believes the FWS' ". . . use of the 'fairness principal' is not a 'fair' representation of this issue." The WIDNR also expressed a concern that, if promulgated for the 1987–88 waterfowl season, the Federal regulation would be in conflict with the Wisconsin State statute that addresses only the use of shotshells.

Lastly, the National Wildlife Federation (NWF) supports the FWS' proposal to prohibit muzzleloading waterfowl hunters from using lead shot in nontoxic shot zones because: (1) to do less would compromise the FWS' goal of securing a complete lead shot ban and (2) the burden of reducing lead shot deposition into wetlands would not otherwise be shared by all waterfowl hunters.

Response: In the proposed rule for this final rule (at 52 FR 1638), the following statement was made: "It is anticipated that, with the increasing popularity of the muzzleloading sport, there will be a growing number of waterfowlers who will use muzzleloading shotgun firearms." As previously noted, some have interpreted that statement to mean the FWS is apprehensive that modern shotgun users will switch to muzzleloading shotguns for waterfowling if hunters employing loose shot are not brought under the nontoxic shot restrictions. The proposed rule statement was made only to establish that certain hunting activity with muzzleloading shotguns is a factor in the overall waterfowl lead poisoning equation, and that the influence of this factor will inevitably become greater as the popularity of the sport grows. The statement was not meant to imply that a substantial switch from modern to muzzleloading shotguns would occur as a result of a failure to preclude the use of loose lead shot for waterfowling in nontoxic shot zones.

Various commentors trivialized the importance of muzzleloading as a source of lead shot deposition in wetlands; those commentors responding in form letters apparently believe that bald eagles have not been impacted by lead shot from muzzleloaders, but say the FWS can act when and if they are. However, consequences to birds ingesting lead shot from muzzleloaders are the same as those from shotshell-type shotguns, and it has been scientifically established that significant numbers of both bald eagles and waterfowl are dying from ingestion of lead shot. The goal of the FWS, and others, is to eliminate lead poisoning deaths in migratory birds that result from waterfowl and coot hunting—whatever the source of the lead. The FWS agrees with the NWF that the burden of reducing lead shot deposition into wetlands is one that should be shared by all hunters, to exempt this group would be unfair to others utilizing waterfowl resources through sport hunting. Also, the request that original muzzleloading shotguns (approximately 1898 or earlier) should be exempt because of the rich tradition of use of these weapons, and for other reasons, must be considered in the context of the earlier debate with regard to "antiques" vs "modern" shotguns. In answer to requests for exemption for these "antique" modern shotguns, the FWS has consistently said that the new regulation must be applied equally to all parties involved, and that *all* sources of lead shot affecting waterfowl must be eliminated. Too, grandfathering or otherwise exempting certain categories of shotguns would place an impossible administrative burden on the FWS and the States. This regulatory action does not close the options for using a muzzleloader, if it is of modern manufacture. However, just as with the older modern shotguns, thin-barreled muzzleloading shotguns cannot be used with steel shot—which means that their use in waterfowl hunting also must end.

Human health and safety, ballistics, effectiveness in the field and loading procedures with regard to steel shot muzzleloading are other concerns that many commentors addressed. With reference to the above considerations, early in the regulatory process, the FWS made a special effort to inform the muzzleloading community about the proposed change in anticipation that if real, documentable problems exist they would be surfaced before final rule publication. In addition, the FWS has responded to letters of concern over this regulatory change by challenging commentors to provide support for their contentions that the use of steel shot in muzzleloaders, for a variety of reasons, is not feasible.

In summary, although many strong opinions have been voiced by commentors with regard to problems that will be visited upon muzzleloaders (both the hunter and the weapon), none of the statements provided has been backed up with documentation. Thus, the FWS has no basis for believing that an unusually great health and safety problem exists for muzzleloading hunters using steel shot in modern construction muzzleloading shotguns, no basis for believing that shooting steel shot will harm the modern muzzleloading shotgun that steel shot is used in, provided the appropriate loading components are used, and no basis for expecting steel shot to be a less-than-effective tool for harvesting waterfowl when used in a muzzleloading shotgun at ranges commonly accepted by muzzleloading hunters as effective for lead shot.

In response to the criticism that the implementation of this muzzleloading-related rule will catch the States with too little time to bring State statutes into compliance with Federal regulations for the 1987–88 season, the FWS believes that to be a legitimate concern and has postponed the effective date until September 1, 1988. This 1-year delay will not measurably affect the benefits to be derived from the steel shot phase-in, and will also permit the development and dissemination of steel shot loading information for muzzleloaders.

Issue 3: The NWF stated that the FWS is ". . . once again far behind schedule in proposing and finalizing its 1987–88 nontoxic shot zone regulations," and observed also that the time remaining before the upcoming waterfowl season to accomplish this is unacceptable for industry (which has consistently requested a 12 to 14 month lead time), the States and sportsmen. The NWF urged the FWS to expedite next year's (1988–89) regulatory process through a schedule that would set the final rulemaking in place no later than July of 1987.

Response: The FWS does not share the concern that the rulemaking process, in this instance, has and will in the future work to the disadvantage of industry, the States and sportsmen in carrying out and/or accommodating actions essential to the successful phaseout of lead shot nationwide for waterfowl hunting by the 1991–92 waterfowl hunting season. The FWS has made every effort to inform those impacted by nontoxic shot regulations of the lead shot phaseout schedule. The listing of counties scheduled for conversion to nontoxic shot during the phase-in of the scheduled nationwide ban appeared in Appendix N of the SEIS on the Use of Lead Shot in Hunting Migratory Birds in the United States that was completed in late June of 1986, and distributed in early July of 1986. The rule on implementation of the preferred alternative of the SEIS was published in the **Federal Register** on June 27, 1986 (51 FR 23444), and provided to all of the State Wildlife Directors and others. Further, Appendix N of the SEIS was sent to all of the States by the FWS; this mailing has been passed on by the States to hunters and other interested persons. These notices have given the States, ammunition manufacturers,

hunters and others a period of approximately 15 months over which to get the word out and to prepare for the expanded 1987–88 nontoxic shot zone restrictions. Even greater notice has been given for the waterfowl seasons beyond 1987–88. Changes will, of course, be made because of the acceleration feature of the implementation strategy. States such as Minnesota, Mississippi and Wisconsin, that have chosen to opt for the accelerated course of action, have already informed hunters and others of their intent. Too, this final rule contains intended State changes of schedule that will give those affected groups timely notice.

Other factors argue against attempting to meet such a fast-track regulatory process. Negotiations between the FWS and the States to finalize nontoxic shot zone descriptions take place during the interval of time between comment period closure and publicaton of the final rule. Delay in finalization of zones often results from the necessity of States to obtain Commission or other governing body approval, the scheduled meetings for which may occur considerably after comment period closure. To the extent possible, the FWS intends to reasonably accommodate delays resulting from State schedules and for other legitimate reasons. Publishing final rules simply to expedite the process, without regard for State review and approval schedules, would only result in a series of final rule amendments that waste time and human resources. The FWS is committed to the schedule to phase out the use of lead shot for waterfowl hunting by the 1991–92 season, and believes there is nothing to be gained by unnecessary replication of schedule approvals.

Issue 4: The Kansas Fish and Game Commission, in their State-specific comments, requested that the action to impose nontoxic shot restrictions be accompanied by an intensive information and education (I&E) effort by the FWS. Other State wildlife organizations, in SEIS comments and elsewhere, have voiced the belief that the FWS should be the lead agency for lead/steel shot I&E production and dissemination during the course of the lead shot phaseout period.

Response: The strategy to phase out the use of lead shot for waterfowl hunting was adopted by the FWS on the recommendation of the IAFWA. Further, the commitment to nationwide conversion to nontoxic shot for waterfowl hunting by the 1991–92 season is shared by the FWS, the IAFWA, many conservation and other wildlife oriented organizations, and a large part of the general public. Thus, the FWS' position on the nontoxic shot phase-in I&E is that the FWS, the States, hunting organizations, and the ammunition manufacturers should be equal partners in this effort. The FWS believes that a coalition of representatives of the States, the shooting industry, the hunting and conservaton communities, and the FWS should determine what needs to be done, what the content should be, and how the necessary funding should be shared. As such a community effort always necessitates a coordinating element, the FWS supports the Cooperative Lead Poisoning Control Information Program (CLPCIP) group as the appropriate one to provide that coordination. Nonetheless, the FWS has not abdicated its substantial responsibilities in respect to the I&E thrust that must accompany the lead shot phaseout. The FWS has moved ahead to: (1) Take a strong lead on providing information on lead poisoning by producing a lead shot brochure that is going into the second printing, and a lead poisoning video program that is available to the States and others in 16 mm movie, 35 mm slide, and VCR formats; (2) make available to the States and others the film, "Field testing a steel shot," with Tom Roster; (3) cooperate with the NRA to provide shooting clinics with a steel shot component in the northeastern States; (4) provide funding to help support the CLPCIP production of steel shot materials and clinics; and (5) consider other informational lead/steel shot I&E materials that might be appropriate for FWS-only production and distribution.

Responses to Comments on Zones Proposed for Individual States

In overview, all 46 affected States responded to the proposed rule published on January 15, 1987 (52 FR 1636), regarding "Zones in which lead shot will be prohibited for the taking of waterfowl, coots and certain other species in the 1987-88 hunting season." Of the responding States, two (Illinois and Washington) have not yet given the FWS authority to implement and enforce nontoxic shot restrictions in proposed zones. Therefore, the Secretary has not imposed steel shot requirements for the 1987–88 waterfowl season in these two States in this final rule, and will not open the 1987–88 waterfowl season in affected counties until such time as the appropriate authorizations to implement and enforce are received by the FWS and a notice of opening(s) published in the **Federal Register.** Twenty-nine States concurred with and/or generally approved the implementation and enforcement of nontoxic shot regulations for their zones as published in the proposed rule. Another group of 15 States concurred with proposed areas and expanded their nontoxic shot zones in various ways. For some States, approval of the proposed rule zones represents an acceleration of the schedule. States in this category that converted statewide to nontoxic shot in 1987-88 are Minnesota, Mississippi and Wisconsin. The State of Iowa dropped its nontoxic shot restriction exemption for upland areas and, thus, has gone statewide in the strictest sense. Iowa has also extended its State 1987-88 nontoxic shot restrictions to two other groups of migratory birds—rails and snipes. Expansions of zones not initiated but concurred with by State wildlife authorities have been noted in the zone descriptions for the States of Montana, New Mexico and Utah for the Confederated Kootenai-Salish, Jicarilla Apache and Navajo Indian Tribes, respectively.

Three States (Missouri, Pennsylvania and Rhode Island) have made declarations for statewide bans on the use of lead shot in waterfowling for the 1988-89 season, and one State (South Carolina) has made that declaration for the 1989-90 season. For the 1987-88 waterfowl season, there will be 5 States (Iowa, Minnesota, Mississippi, Nebraska and Wisconsin) having a near-total ban on the use of lead shot for waterfowling—the exception being the possible use of lead shot in muzzleloading.

A total of 12 States responded specifically to the muzzleloading and/or aggregate bag proposals, although 9 responses were provided to the former, and 8 responses were provided to the latter; only 4 States responded to both proposals. The FWS concludes on the basis of the low level of response to these 2 proposals that the States not responding are generally unopposed to their implementation.

Alabama

The Alabama Department of Conservation and Natural Resources concurs with the FWS' intent to implement and enforce the use of nontoxic shot in the zone listed for the State of Alabama in the proposed rule.

Arizona

The Arizona Game and Fish Department (AZGFD) responded to the proposed rule by stating that the same nontoxic shot zones are expected to be designated for the 1987-88 waterfowl season as were in effect for 1986-87, pending Arizona Game and Fish Commission (AZGFC) approval. The

AZGFC will designate nontoxic shot zones by Commission Order at an August 8, 1987, meeting. The Navajo Tribal Council supported the proposed rule for reservation lands in Apache, Coconino and Navajo Counties. The AZGFD also expects that the AZGFC will concur, as per the Stevens amendment, that the FWS can implement and enforce nontoxic shot zones that include the Navajo Indian Reservation, and those Tribal areas have been added to the zones listed for Arizona in this final rule.

Arkansas

The Arkansas Game and Fish Commission (ARGFC) concurred with the proposed rule as it relates to the use of nontoxic shot in Arkansas, and granted approval for the FWS to implement and enforce nontoxic shot zone regulations in that State. The ARGFC also advised that the Felsenthal National Wildlife Refuge should be listed as a nontoxic shot zone for 1987–88 as well; that oversight is corrected in the final rule. Further, the ARGFC expressed support for refuge-specific nontoxic shot regulations that address all small game hunting in the wetland areas of both Felsenthal and Overflow National Wildlife Refuges. The ARGFC supported the aggregate bag and muzzleloading proposals and voiced general approval with the FWS' efforts in the nontoxic shot program area for the benefit of waterfowl.

California

The California Department of Fish and Game (CADFG) responded to the proposed zones by: (1) pointing out an error (p. 1638, col. 1) with regard to the taking of moorhens and coots in an aggregate bag during the California 1986–87 waterfowl hunting season; (2) advising that two counties included in the proposed rule had harvest rates much lower than 20 birds per square mile; and (3) requesting that 1986–87 California monitoring criteria and data be used for making the determination of where steel shot requirements will be implemented in California for the 1987–88 season. On March 24, 1987, the FWS provided CADFG with a written response to their comments that: (1) When the proposed rule was drafted, the FWS staff was unaware that California had made a special effort to resolve the 1986–87 season coot and moorhen aggregate bag/steel-lead shot problem. Without the regulatory measures that were taken by the State of California, it would have been legal under the Federal regulations to take moorhens with lead shot. Moorhens were not listed in the Federal nontoxic shot regulations for 1986–87 because it was not known at that time the action was needed; (2) base county area information for Inyo and San Bernardino Counties was checked and found to be incorrect, and these two counties are deleted from the SEIS Appendix N list of proposed 1987–88 nontoxic shot zones; and (3) an explanation was provided that it has consistently been the FWS' intent to establish an implementation schedule that is publicly explained, and adhere to that schedule. Monitoring in 1986–87 zones scheduled for conversion in the 1987–88 waterfowl hunting season would leave insufficient time for scheduling and final publication after the study, analyses, reporting and negotiation aspects have been completed. It would not provide for the consistent advance planning needed by the ammunition industry or by hunters.

The California Waterfowl Habitat Owners Alliance (WHOA) summed up their comments by stating "The confirmed incidence of waterfowl lead poisoning is insignificant, and in light of crippling loss potential no state should be required to adopt nontoxic shot zone regulations without its consent just as the Congress intended. The No Hunting Option is destructive of confidence and respect; and will do little if anything to promote the cause of a wise conservation and resource management." As explained elsewhere, the significance of lead poisoning mortality and nontoxic shot crippling loss issues are not the subject of this rulemaking, having been dealt with earlier and extensively in the Final SEIS published in June of 1986 (51 FR 23444), and the final rulemaking for the 1986–87 nontoxic zones published in the Federal Register on September 3, 1986 (51 FR 31429). Similarly, the issue raised with reference to States' rights to consent or not to consent, i.e., the Stevens Amendment, is discussed in some detail in Issue 22 (p. 31455) of 51 FR 31429, referred to earlier in this rule. Thus, these issues will not be commented on in this rule. However, the FWS disagrees with WHOA's statement that the discontinued use of lead shot for waterfowl nationwide " . . . will do little if anything to promote the cause of wise conservation and resource management." On the contrary, with the other stresses that are depressing the continental waterfowl population—degradation and loss of habitat from development, disease, predation, drought, contaminants, etc.—the interests of wise conservation and resource management are best served by the action that the FWS is taking to phase out the use of lead shot for waterfowl and coot hunting.

The California Fish and Wildlife Commission (CAFWC) has given its approval, under protest, for the FWS to implement and enforce nontoxic shot regulations for California nontoxic shot zones in the 1987–88 waterfowl hunting season. The CAFWC's approval to implement and enforce is contingent upon the FWS' regulations remaining " . . . unrescinded, substantially unchanged from the above published forms to which this approval is given and legally effective with the full force and effect of law."

Colorado

The Colorado Department of Natural Resources, Division of Wildlife, provided approval for the FWS to implement and enforce nontoxic shot regulations in the proposed rule areas, and also expanded nontoxic shot restrictions to the Turk's Pond area in Baca County as well. Except for this expansion area, the nontoxic shot areas federally listed for Colorado for the 1987–88 season are identical to those that were in effect for the 1986–87 season (51 FR 31429).

Connecticut

The Connecticut Department of Environmental Protection (CTDEP) requested that the FWS enforce nontoxic shot use restrictions in the Connecticut zones described in the proposed rule. The CTDEP supported the FWS' proposal on aggregate bag species.

Delaware

The Delaware Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, accepted the proposed rulemaking and consented to Federal enforcement of nontoxic shot regulations in the Delaware areas described in the proposed rule.

Florida

The Florida Game and Fresh Water Fish Commission (FLGFWFC) accepted the nontoxic shot areas described in the proposed rule and added the floodplains of Lake Talquin and the Ochlockonee River lying adjacent to Leon County, in effect extending the Leon County nontoxic shot zone to the Gadsden County and Liberty County sides of the lake and river. The FLGFWFC has also included, under nontoxic shot restrictions, the Lake Harbor public waterfowl hunting area in Palm Beach County and the Chassahowitzka Wildlife Management Area in Hernando County. The FLGFWFC supported the

FWS' proposal on nontoxic shot for aggregate bag species and muzzleloading waterfowls. Although tentative approval has been made, the FLGFWFC will give final approval to the proposed 1987–88 nontoxic shot zones in a July 1987 meeting.

Georgia

The Georgia Department of Natural Resources supported the FWS proposal to implement and enforce nontoxic shot restrictions for waterfowl hunting on the State of Georgia areas described in the proposed rule.

Idaho

The Idaho Department of Fish and Game consented to allow the FWS to implement and enforce nontoxic shot zones restrictions in the State of Idaho areas described in the proposed rule.

Illinois

The Illinois Department of Conservation (ILDC) responded that Illinois State statute was in conflict with nontoxic shot zoning proposed by the FWS for that State. Thus, the State of Illinois could not legally authorize FWS implementation and enforcement of 1987–88 nontoxic shot zone regulations. The ILDC advised that Illinois State law is very explicit regarding establishment of nontoxic shot zones to protect waterfowl, i.e., documentation of waterfowl losses due to lead poisoning, exhaustion of other methods (such as draining, tilling and flooding) to prevent losses, and a public hearing process are required before nontoxic shot zones may be established. The ILDC stated that it has not been able to document waterfowl losses due to lead poisoning in the areas proposed by the FWS and, in light of the prospect of a closed season in the areas proposed, will explore actions to address the conflict between the Federal requirements to impose nontoxic shot restrictions and State statutes.

The Migratory Waterfowl Hunters, Inc., group submitted lengthy comments on the inappropriateness of the FWS' adopted strategy to phase-in nontoxic shot and the implications of this for Illinois, and also commented that the proposed muzzleloading regulation change would eliminate this group of waterfowlers. The comments on the nontoxic shot phase-in strategy is, as noted earlier, referred to earlier regulations treatment of that issue and the muzzleloading comments are treated in Issue 2 of this final rule.

On March 30, 1987, the Director, ILDC, was reminded by the Director, FWS, that the proposed rule on 1987–88 nontoxic shot zones contains the language that, "If States do not approve nontoxic shot zones when current guidelines and criteria indicate that such zones are necessary to protect migratory birds, the FWS will not open the areas to waterfowl and coot hunting." Despite FWS urgings, the ILDC has not completed the description of nontoxic shot zone boundaries and provided implementation and enforcement authority to the FWS. Thus, pursuant to the authority vested in the Secretary by the MBTA, the State, of Illinois nontoxic shot zones, described in the January 15, 1987, **Federal Register** (52 FR 1635), will not be opened to waterfowl hunting in the 1987–88 waterfowl hunting season, barring timely consent to implement and enforce steel shot regulations.

Indiana

The Indiana Department of Natural Resources (INDNR) stated that the imposition of nontoxic shot restrictions in the proposed zones would cause no great hardship for the State. The only change in the 1987–88 zones from previous years is that the nontoxic shot restrictions will uniformly apply throughout Starke and Newton Counties; these two counties previously had partial nontoxic shot regulations for the 10 proceeding waterfowl seasons. The INDNR also expressed concern for the FWS' proposed rule to require muzzleloading waterfowlers to use nontoxic shot in the 1987–88 season, and suggested a 1-year delay in promulgation of the rule to allow dealers to evaluate the availability and demand for materials that would be required by muzzleloading waterfowlers. A 1-year delay would allow the muzzleloading shooter to better prepare for a change from lead to steel shot. This comment by the INDNR has been considered when addressing the muzzleloading-nontoxic shot issue in the earlier section "Responses to General Comments on the Proposed Rule."

Iowa

The Iowa Department of Natural Resources stated a concurrence for the FWS to implement and enforce nontoxic shot regulations in all State of Iowa counties on all areas for hunting geese, ducks, coots, snipe and rails in the 1987–88. By including rails and snipes, the Iowa regulations on species coverage will exceed those of the FWS.

Kansas

The Kansas Fish and Game Commission (KSFGC) approved the FWS' implementation and enforcement of nontoxic shot regulations in that State as described in the proposed rule. This approval includes the action by the FWS to require muzzleloaders to comply with nontoxic shot restrictions in the same manner as other waterfowl hunters. The KSFGC also requested that the action to impose nontoxic shot restrictions be accompanied by an intensive information and education effort by the FWS.

Kentucky

The Kentucky Department of Fish and Wildlife Resources responded that the Commonwealth of Kentucky was in concurrence with the 1987–88 nontoxic shot zones, as described for Kentucky in the proposed rule.

Louisiana

The Louisiana Department of Wildlife and Fisheries responded by providing a resolution adopted by the Louisiana Wildlife and Fisheries Commission (LAWFC) that authorizes, under protest, implementation and enforcement of FWS nontoxic shot zones regulations in the State of Louisiana, as described in the proposed rule. Approval by the LAWFC is made contingent upon the conditions that the FWS' regulations ". . . remain unrescinded, unchanged and legally effective."

Maine

The Maine Department of Inland Fisheries and Wildlife (MEDIFW) approved establishment of the State of Maine nontoxic shot zones contained in the 1987–88 waterfowl season proposed rule, and expanded those descriptions to include that part of Lincoln County identified as Merrymeeting Bay. The MEDIFW also stated that, after public hearings, the zones for the current season may be further expanded; any expansions made after **Federal Register** publication of this final rule are reflected only in State regulations. The MEDIFW supports the amendment to require use of nontoxic shot in all firearms when used to hunt waterfowl and coots in nontoxic zones, as well as the proposed amendment regarding aggregate bag limits.

Maryland

The Maryland Forest, Parks and Wildlife Service, Department of Natural Resources, approved the implementation and enforcement by the FWS of 1987–88 nontoxic shot regulations in the State of Maryland areas listed in the proposed rule.

Massachusetts

The Massachusetts Fish and Wildlife Regulatory Board (MAFWRB) accepted implementation and enforcement of nontoxic shot regulations in

Massachusetts nontoxic shot zones as described in the proposed rule. The MAFWRB voted to expand nontoxic shot zones beyond the counties listed in the proposed rule; however, expansion is pending action by the Massachusetts State Legislature. Expansions approved by the State of Massachusetts, after publication of this final rule in the **Federal Register** will appear only in State regulations for the 1987–88 waterfowl hunting season.

Michigan

The Michigan Department of Natural Resources requested the assistance of the FWS in implementing and enforcing nontoxic shot regulations for new and previously established nontoxic shot zones for the 1987–88 waterfowl hunting season. The organization of nontoxic shot zones descriptions for the State of Michigan in this final rule is substantially different from that presented in the proposed rule, and areas have been added as a result of Michigan Natural Resources Commission action.

Minnesota

The Minnesota Department of Natural Resources (MNDNR) authorized the FWS to enforce nontoxic shot regulations throughout the State of Minnesota during the 1987–88 waterfowl season, as shown in the proposed rule. The MNDNR also commented on the proposal to include muzzleloaders under nontoxic shot restrictions, saying that available information indicates that there is not a steel shot soft enough to use in muzzleloaders and that the rule would very likely eliminate the use of muzzleloading shotguns for waterfowl hunting. The response to the MNDNR comments on the muzzleloading issue are included in the section "Responses to General Comments on the Proposed Rule."

Mississippi

The Mississippi Department of Wildlife Conservation concurred with the designation of statewide nontoxic shot regulations for the State of Mississippi, as shown in the proposed rule, and pledged to continue to cooperate with the FWS' nontoxic shot program for the harvesting of waterfowl.

Missouri

The Missouri Department of Conservation (MODC) concurred in the implementation and enforcement of nontoxic shot requirements by the FWS in the State of Missouri areas described in the proposed rule and, for purposes of clarifying mixed-description boundaries, added Cedar, Dunklin, Johnson and Lafayette Counties in their entireties. Accordingly, the descriptions for the State of Missouri nontoxic shot zones have been redescribed in this final rule. In addition, the MODC supports the aggregate bag proposed rule and application of the nontoxic shot restriction to muzzleloading waterfowl hunters. The State of Missouri will go statewide for nontoxic shot for waterfowl hunting beginning with the 1988–89 hunting season.

Montana

The Montana Department of Fish and Wildlife and Parks (MTDFWP) concurred with FWS' proposal to implement and enforce the nontoxic shot zones described for the State of Montana in the proposed rule. The MTDFWP also advised the FWS of the error regarding Lewis and Clark County in the proposed rule zone description; the appropriate change has been made in this final rule.

The Tribal Council of the Confederated Salish and Kootenai Indian Tribes of the Flathead Reservation support the goal of the FWS to phase out lead shot nationwide and advised that the Tribes are imposing a complete ban on the use of lead shot within the exterior boundaries of the Flathead Reservation for the 1987–88 waterfowl season. This nontoxic shot restriction on reservation lands under Tribal jurisdiction includes portions of Missoula County, which is scheduled to convert in its entirety in the 1991–92 season, and portions of Flathead, Lake and Sanders Counties. The MTDFWP concurred with the imposition of nontoxic shot restrictions on Tribally owned lands within the Confederated Salish-Kootenai (Flathead) Reservation for the 1987–88 waterfowl hunting season.

Nebraska

The Nebraska Game and Parks Commission invited the FWS to implement and enforce nontoxic shot regulations statewide in Nebraska for the 1987–88 waterfowl season, as described in the proposed rule.

Nevada

The Nevada Department of Wildlife (NVDW) advised that the Nevada Board of Wildlife Commissioners approved an additional 6 areas for inclusion as nontoxic shot zones for the 1987–88 waterfowl season in that State, bringing to a total of 8 the nontoxic areas covered by nontoxic shot restrictions. Implementation and enforcement of nontoxic shot restrictions in the State of Nevada on these eight areas will occur in the 1978–88 season for waterfowl, coot and certain other species, as proposed. The action to expand nontoxic shot zoning was taken on the evidence of lead monitoring results that showed lead levels all exceeded the minimum criteria established for lead shot ingestion and toxicity. The NVDW requested that nontoxic shot zones be identified within the State by county. The State of Nevada descriptions have been changed accordingly in this final rule.

New Jersey

The New Jersey Department of Environmental Protection (NJDEP) acknowledged the 1987–88 nontoxic shot zones proposed for the State of New Jersey by the FWS and stated that compliance would be made accordingly. The NJDEP is proposing to expand the Burlington County zone for the 1987–88 waterfowl hunting season; to include that area ". . . east and south of the New Jersey transit railroad tracks that run from Atsion to Woodmansie." However, that change may not be approved in time to be incorporated into this final rule. If State approval occurs after this final rule appears in the **Federal Register**, any change of description will be reflected only in the New Jersey State waterfowl hunting regulations for the 1987–88 season.

New Mexico

The New Mexico Department of Game and Fish (NMDGF) concurred with the implementation and enforcement of nontoxic shot restrictions for the zones proposed for New Mexico for the 1987–88 waterfowl hunting season. The NMDGF added two areas in the Central Flyway area of the State, i.e., the Charette Lake Waterfowl Management Area and the Lower Pecos River Valley. Further, the NMDGF advised the FWS to delete the Santa Fe spillway basin marsh, also in the Central Flyway, from nontoxic shot zone status because the area has been transferred to Indian ownership. The FWS subsequentiy determined through Cochiti Tribal contacts that the Santa Fe spillway basin marsh will not be opened to waterfowl hunting in the 1987–88 season.

In addition, the Jicarilla (Apache) Natural Resources Department informed the FWS that the Jicarilla Apache Tribe has enacted a steel-shot-only regulation for the 1987–88 waterfowl season on the Jicarilla Apache Indian Reservation, New Mexico. Too, the Navajo Fish and Wildlife Department advised that Navajo Indian Reservation lands in Bernalillo, Cibola, McKinley, San Juan and Socorro Counties have been tribally

proposed as nontoxic shot zones for hunting waterfowl, coots and certain other species.

The NMDFG requested the assitance of the FWS to implement and enforce nontoxic shot regulations in all established nontoxic shot zones for waterfowl hunting in New Mexico during the 1987–88 waterfowl hunting season. All of the requested New Mexico zone changes have been made in this final rule.

New York

The New York State Department of Environmental Conservation (NYDEC) accepted the FWS schedule for nontoxic shot implementation in the State of New York for the 1987–88 waterfowl hunting season, as described in the proposed rule. The NYDEC recommended that the final rule describing State of New York nontoxic shot zones eliminate redundant wording for purposes of clarification. This final rule wording has been modified accordingly.

North Carolina

The North Carolina Wildlife Resources Commission has concurred with the FWS' proposed rule regarding the nontoxic shot zone restrictions that are to be implemented and enforced in the State of North Carolina for the 1987–88 waterfowl hunting season.

North Dakota

The North Dakota Game and Fish Department has concurred with the FWS' proposed rulemaking regarding the nontoxic shot zone restrictions that are to be implemented and enforced in the State of North Dakota for the 1987–88 waterfowl hunting season.

Ohio

The Ohio Department of Natural Resources (OHDNR), Division of Wildlife, has approved the FWS' proposed regulations regarding the nontoxic shot zone restrictions that are to be implemented and enforced in the State of Ohio for the 1987–88 waterfowl hunting season. In addition, the OHDNR has requested expansion of the nontoxic shot restrictions to totally include four counties not previously considered (Ashtabula, Lake, Lorain and Trumbull Counties) and completed six counties that would have been only partially included (Cuyahoga, Erie, Holmes, Sandusky, Wayne and Wood). The requested expansions have been incorporated into this final rule.

Oklahoma

The Oklahoma Department of Wildlife Conservation (OKDWC) concurred with the FWS implementation and enforcement of nontoxic shot restrictions in those zones described in the proposed rule for the State of Oklahoma. The OKDWC also advised the FWS that the Oklahoma Wildlife Conservation Commission has expanded the nontoxic shot zoning to include other areas as follows: (1) the Oologah Reservoir area in Rogers County; (2) the Fort Cobb Reservoir area; (3) Hajek Marsh; and (4) nine Waterfowl Stamp Hunting areas listed as Waurika, Texoma-Washita Arm, Hula, Wister, Okmulgee, Chouteau, Copan, Hugo and Mt. Park. These additions have been made to the State of Oklahoma nontoxic shot zone descriptions in this final rule.

Oregon

The Oregon Department of Fish and Wildlife granted the FWS permission to implement and enforce nontoxic shot regulations in the Idaho proposed zones. Harney County, despite being listed in the proposed rule, is exempt from nontoxic shot restrictions in the 1987–88 season because it does not meet the minimum harvest level for conversion i.e., an average of 20 or more waterfowl harvested per square mile over the period 1971–80.

Pennsylvania

The Pennsylvania Game Commission (PAGC) advised the FWS that implementation and enforcement of nontoxic shot zones restrictions will be in effect in the State of Pennsylvania for the 1987–88 waterfowl hunting season in the same areas that were in place for the 1986–87 season. The PAGC also stated that a statewide conversion to the use of nontoxic shot for waterfowl hunting would take place in Pennsylvania beginning with the 1988–89 waterfowl hunting season.

Rhode Island

The Rhode Island Department of Environmental Management (RIDEM), Division of Fish and Wildlife, accepted the proposed rule to implement and enforce nontoxic shot restrictions in the State of Rhode Island for the 1987–88 waterfowl hunting season in the counties listed. The RIDEM also expanded the zones to include the County of Newport and the area of Breakheart Pond in the Towns of Exeter and West Greenwich; these changes have been incorporated into this final rule. The RIDEM advised the FWS that the State of Rhode Island intends to declare a statewide ban on the use of lead shot for waterfowl and coot hunting beginning in the 1988–89 season.

South Carolina

The South Carolina Wildlife and Marine Resources Department advised that the South Carolina Wildlife and Marine Resources Commission has approved a phase-in plan for nontoxic shot for South Carolina that accelerates the FWS' implementation schedule. Statewide use of nontoxic shot for waterfowl hunting will be required beginning with the 1989–90 waterfowl season. For the 1987–88 waterfowl season, 4 counties (Beaufort, Berkeley, Charleston and Colleton) will be converted that had not been scheduled until later seasons, resulting in a total of 5 counties (the fifth being Georgetown County) that will have nontoxic shot restrictions. These changes for the State of South Carolina have been incorporated into the final rule.

South Dakota

The South Dakota Department of Game, Fish and Parks (SDDGFP) advised the FWS that it intends to implement and enforce nontoxic shot zones statewide in a modified form for the 1987–88 waterfowl hunting season. Under this plan the zones that existed in the 1986–87 waterfowl hunting season as "eagle zones," plus Kingsbury County, will have strict nontoxic shot requirements that must be observed by all hunters. The SDDGFP also commented that although Washabaugh County was listed in the proposed rule as meeting the 20 or more birds harvested/mile^2 criterion for conversion in the 1987–88 season, it was annexed to Jackson County in 1979. Annexation of Washabaugh County by Jackson County results in a lower harvest of waterfowl per square mile and it, therefore, falls below the minimum necessary to convert it to nontoxic shot in the 1987–88 season; the final rule section for South Dakota has been changed accordingly. For all other counties and parts of counties of the State, the nontoxic shot use restrictions apply to all hunters except those under 16 years of age using 16-guage, 28-guage or .410 caliber shotguns, and those using muzzleloading shotguns. As each of these second category areas convert totally to nontoxic shot use, according to the schedule, the exemptions will be discontinued. The SDDGFP supports the FWS' proposal on aggregate bag species.

Tennessee

The Tennessee Wildlife Resources Agency (TNWRA) advised that it approves implementation and enforcement of 1987–88 nontoxic shot zone regulations by the FWS in the State of Tennessee, as described in the

proposed rule. The TNWRA supports the FWS' proposal for aggregate bag species but does not agree that muzzleloaders should be included along with other waterfowl hunters in nontoxic shot restrictions. See Issue 2 for further discussion of the TNWRA muzzleloading comments.

One individual commenting from the State of Tennessee stated that the inclusion of Shelby County in counties qualifying for nontoxic shot zones status must be in error. The commentor also advised that before Shelby County was included as a nontoxic shot zone a valid, accurate survey should have been made or a gizzard (lead shot ingestion) study initiated. The FWS response is that data used to determine the eligibility of a county for nontoxic shot zones status have been, as correctly identified, taken from Carney et al., "Distribution of Waterfowl Species Harvested in States and Counties During 1971–80 Hunting Seasons." Shelby County has a total area (land and water) of 785.7 square miles and an average annual harvest over the 1971–80 period of 16,570 waterfowl (ducks and geese), which gives a harvest per square mile of 21.1 birds. The threshold harvest level that triggers the inclusion of counties in nontoxic shot zones for 1987–88 waterfowl hunting season is 20 birds. The FWS stands by the accuracy of survey data for Shelby County. Further, lead poisoning studies over a broad geographic area have demonstrated a nationwide problem creating significant and unnecessary waterfowl mortality, and the FWS is committed to a nationwide program to phase out the use of lead shot for hunting waterfowl and coots.

Texas

The Texas Parks and Wildlife Department approved the FWS' implementation and enforcement of nontoxic shot zones for the 1987–88 waterfowl hunting season, as described for the State of Texas in the proposed rule.

Utah

The Utah Division of Wildlife Resources (UTDWR) commented that it would not oppose implementation of nontoxic shot zones for the State of Utah as outlined in the proposed rule. However, the UTDWR voiced opposition to early conversion of Federal refuges, i.e., Fish Springs and Ouray National Wildlife Refuges. The FWS policy is that Federal refuges will not be converted early if States are unreceptive to that action; however, Federal refuges will be converted with the first converting county of which they are a part in order to eliminate enforcement/compliance problems.

The Navajo Fish and Wildlife Department responded that Navajo Indian Reservation lands in San Juan County have been tribally proposed as nontoxic shot zones for hunting waterfowl, coots and certain other species. The UTDWR has commented that it would not oppose enforcement of these regulations on the reservations. The requested changes have been incorporated into this final rule.

Vermont

The Vermont Department of Fish and Wildlife provided a statement of concurrence for the FWS' intent and schedule to implement nontoxic shot regulations for Grand Isle County, beginning in the 1987–88 waterfowl hunting season.

Virginia

The Virginia Commission of Game and Inland Fisheries (VACGIF) stated that they had adopted nontoxic shot regulations for the phase-in period identical to those proposed by the FWS. The VACGIF noted that, although the areas have not changed, names of some of the areas have changed over the past years and certain corrections should be made. Appropriate changes have been made in this final rule to give nontoxic shot status to the areas as follows: *Virginia Counties*—Charles City, Gloucester, James City, New Kent and York; and *Virginia Cities*—Chesapeake (formerly Norfolk County), Hampton, Newport News, Norfolk, Suffolk (formerly Nansemond County) and Virginia Beach (formerly Princess Anne County).

Washington

The Washington Department of Game (WADG) objected to the FWS adding counties and/or portions of counties in 1987–88 to the existing 1986–87 nontoxic shot zones. The WADG commented that, by their estimates, over 80 percent of the Washington hunting areas are included in the 1986–87 zones and the expansion of zones in the 1987–88 season will push that figure to over 95 percent (also estimated). Further, the WADG protested that the composite zoning for the 1987–88 waterfowl season results in confusing "patchwork" zoning that will create enforcement difficulties. The WADG added that ". . . preliminary license sales figures for 1986–87 indicate that the number of waterfowl hunters in our State may have dropped almost 25% . . ." from the previous season, and that based on input from hunters, the majority of this decrease should be attributed to the impact of the 1986–87 nontoxic shot regulations. In summary, the WADG believes that because of the cited concerns all the areas scheduled for conversion before the 1991–92 waterfowl season be converted in that last year.

On March 24, 1987, the FWS responded to the WADG comments by advising that the State of Washington zones for the 1987–88 waterfowl season are composites of existing 1986–87 zones and those to be converted according to the schedule and criteria adopted by the FWS for the period 1987–91. The letter to WADG also stated that the schedule and criteria resulted from a National Environmental Policy Act analysis of the lead poisoning problem among migratory birds in the United States as a result of lead shot use by waterfowlers, and that adoption occurred after they were published first as a proposed rule (51 FR 23444) and then as a final rule (51 FR 42403). The Director, FWS, advised the State of Washington that the FWS is committed to a lead shot ban nationwide for waterfowl hunting, and reminded WADG that "If States do not approve nontoxic shot zones when current FWS guidelines and criteria indicate that such zones are necessary to protect migratory birds, the FWS will not open the areas to waterfowl and coot hunting." Inasmuch as the WADG has not granted the FWS the necessary authorization to implement and enforce nontoxic shot regulations in that State, and pursuant to the authority vested in the Secretary by the MBTA, the nontoxic shot zones described for the State of Washington in the January 15, 1987 **Federal Register** (52 FR 1636), will not be opened to waterfowl hunting in the 1987–88 waterfowl hunting season, barring timely consent to implement and enforce steel shot regulations.

Wisconsin

The Wisconsin Department of Natural Resources (WIDNR) commented that the State has ". . . supported adequate, national nontoxic shot regulations and timetables," and advised that the Wisconsin Legislature has passed legislation requiring statewide use of nontoxic shotshells for all waterfowl and coot hunting beginning with the 1987–88 season—as given in the proposed rule. While concurring with the FWS proposed zones for Wisconsin as published, and providing an implied authority to implement and enforce nontoxic shot restrictions in these zones, the WIDNR went on to protest the proposed rule to include muzzleloading waterfowlers in the nontoxic shot restrictions. The FWS has responded specifically to the WIDNR objections in

a letter dated March 25, 1987; this issue and the relevant correspondence are discussed in an earlier section of this final rule.

Wyoming

The Wyoming Game and Fish Department provided a notice of approval for the FWS to implement and enforce nontoxic shot regulations for the 1987–88 waterfowl season in Big Horn and Goshen Counties, as described in the proposed rule.

Since 1978, the FWS has not been able to implement or enforce nontoxic shot zones in a State without approval of the appropriate State authorities. This restriction on use of funds by the FWS has been contained in the appropriations act for the Department of the Interior each year since 1978 (see, e.g., Pub. L. 98–473, Sec. 305; Pub. L. 99–190, Sec. 313; Pub. L. 99–591, Sec. 317). As a consequence of this restriction, the FWS can only implement and enforce nontoxic shot zones for waterfowl and coot hunting with the approval of State authorities. If States do not approve nontoxic shot zones when current FWS guidelines and criteria indicate that such zones are necessary to protect migratory birds, the FWS will not open the areas to waterfowl and coot hunting. This action is taken pursuant to the FWS' responsibilities under the Migratory Bird Treaty Act and, in the case of zones established for bald eagle protection, the Endangered Species Act and the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668–668d; 54 Stat. 250).

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The Service believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

TABLE 1. COUNTIES PROPOSED (AT 52 FR 1636) TO BE ADDED IN 1987–88 TO THE EXISTING ZONES WHERE THE HUNTING OF WATERFOWL, COOT AND CERTAIN OTHER SPECIES IS LIMITED TO THE USE OF NONTOXIC SHOT.[1]

State and County	
Arkansas	
Arkansas	Lawrence
Ashley	Little River
Clay	Lonoke
Craighead	Monroe
Cross	Poinsett
Desha	Prairie
Jefferson	Woodruff
California	
Butte	Sacramento
Colusa	San Bernardino [2]
Contra Costa	San Joaquin
Glenn	Solano
Imperial	Sutter
Inyo [2]	Yolo
Merced	
Delaware	
Kent	
New Castle	
Florida	
Leon	
Idaho	
Canyon	Jefferson
Gooding	
Illinois	
Carroll	Jefferson
Cass	Lake
Clinton	Mason
Henderson	Putnam
Indiana	
Newton	Starke
Iowa	
Allamakee	Fremont
Bremer	Louisa
Clinton	
Kansas	
Montgomery	Neosho
Louisiana	
Acadia	Orleans
Bossier	Ouachita
Caddo	Plaquemines
Calcasieu	Red River
Cameron	St. Bernard
Evangeline	St. Charles
Jefferson	St. James
Jeff. Davis	St. John the Baptist
La Fourche	St. Mary
La Salle	St. Tammany
Morehouse	Terrebonne
Natchitoches	Vermilion
Maine	
Sagadahoc	
Maryland	
Cecil	Somerset
Kent	Talbot
Queen Annes	Worchester
Massachusetts	
Barnstable	Nantucket
Essex	Plymouth
Michigan	
Bay	Saginaw
Huron	St. Clair
Macomb	Tuscola
Minnesota	
All lands and waters of all counties of the State	
Mississippi	
All lands and waters of all counties of the State	
Missouri	
Chariton	Pike
Henry	St. Charles
Holt	Vernon
Linn	
New Jersey	
Atlantic	Monmouth
Cape May	Ocean
Cumberland	Salem
Middlesex	

[1] Counties listed are taken from the Final Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States, Appendix N. Counties listed are those that have 20 or more waterfowl harvested per square mile, as referenced by Carney et al. 1983 (Distribution of waterfowl species harvested in states and counties during the 1971–80 hunting seasons. U.S. Fish and Wildlife Service, Spec. Sci. Rpt.—Wildl. No. 254, Washington, D.C.). "Certain other species" refers to those species, other than waterfowl or coots, that are affected by reason of being included in aggregate bag limits and concurrent seasons.

[2] Counties noted (Inyo and San Bernardino in California and Harney in Oregon) have been removed from the Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States, Appendix N, list of those zones to be converted to nontoxic shot in the 1987–88 waterfowl hunting season.

New York	
Genesee	Suffolk
Jefferson	Wayne
Nassau	
North Carolina	
Currituck	Pamlico
North Dakota	
Nelson	Towner
Ramsey	
Ohio	
Lucas	Ottawa
Oklahoma	
Nowata	
Oregon	
Columbia	Polk
Harney [2]	Yamhill
Multnomah	
Rhode Island	
Bristol	Washington
South Carolina	
Georgetown	
South Dakota	
Kingsbury	Washabaugh
Tennessee	
Benton	Shelby
Dyer	
Texas	
Colorado	Nueces
Harris	Waller
Jefferson	
Utah	
Cache	Salt Lake
Davis	
Vermont	
Grand Isle	
Virginia	
Charles City	New Kent
Hampton City	Newport News
Gloucester	Norfolk
James City	Princess Anne
Nansemond	York
Washington	
Clark	Grant
Franklin	Skagit
Wisconsin	
All lands and waters of all counties of the State.	

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Considerations

Pursuant to the requirements of Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to the Endangered Species Act, a Section 7 consultation was done on the potential impacts of the provisions of this rule on bald eagles. The Section 7 opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle.

Authorship

The primary author of this final rule is Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103–04, unless otherwise noted.

2. Section 20.21 is amended by revising paragraph (j) to read as follows: (The introductory paragraph is being republished.)

§ 20.21 Hunting methods.

"Migratory birds on which open seasons are prescribed in this part may be taken by any method except those prohibited in this section. No persons shall take migratory game birds:

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134, Provided, That: (1) This restriction applies only to the taking of Anatidae (ducks, geese [including brant]), coots (*Fulica americana*) and any species that make up aggregate bag limits during concurrent seasons with the former in areas described in § 20.108 as nontoxic shot zones, and (2) Nontoxic shot restrictions for muzzleloading (loose shot) become effective on September 1, 1988.

3. Section 20.108 is revised to read as follows:

§ 20.108 Nontoxic shot zones.

The areas described within the States indicated below are designated for the purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species.

Atlantic Flyway

Connecticut

1. That portion of New Haven and Fairfield Counties bounded by a line beginning at the north end of the breakwater at Milford Point extending south to Stratford Point, north along Prospect Drive and Route 113 to Interstate 95, easterly along I-95 to Naugatuck Avenue, southerly along Naugatuck Avenue and Milford Point Road and continuing along a line extending from the end of Milford Point Road to the north end of the breakwater at Milford Point.

2. That portion of New Haven County along the Quinnipiac River, known as the Quinnipiac Meadows, beginning at the intersection of Sackett Point Road and I-91, extending south along I-91 to Route 5, northerly along Route 5 to Sackett Point Road, and easterly along Sackett Point Road to I-91.

Delaware

1. Kent and New Castle Counties.

2. All State and/or Federally owned property within the following areas of Sussex County:

A. Assawoman, Gordon's Pond and Prime Hook State Wildlife Areas.

B. Cape Henlopen and Delaware Seashores State Parks.

C. Prime Hook National Wildlife Refuge.

Florida

1. Brevard, Broward, Citrus, Collier, Dade, Leon, Osceola, Polk and Volusia Counties.

2. Those portions of Gadsden and Liberty Counties, adjacent to Leon County, that include the floodplains of Lake Talquin and the Ochlockonee River.

3. That portion of Lake Miccosukee in Jefferson County.

4. Orange Lake and Lochloosa Lake in Alachua County.

5. The area lying lakeward of and bounded by the Lake Okeechobee levee, by the State Road 78, Kissimmee River bridge, and by State Road 78 from its intersection with the Lake Okeechobee levee at points near Lakeport and the Old Sportsman's Village site.

6. Occidental Wildlife Management Area, as well as all of the Occidental Chemical Company phosphate pits east of U.S. Highway 41, south of State Road 6, west of State Road 135 and north of White Springs, all in Township 1 north, Ranges 15 and 16 east in Hamilton County comprising approximately 35,000 acres.

7. Lake Ponte Vedra in St. Johns County (all waters north of Guana Dam).

8. M–K Ranch public waterfowl area in Gulf County.

9. That portion of Everglades Conservation Area 2 in Palm Beach County.
10. That portion of Lake George lying in Putnam County.
11. That portion of the St. Johns River floodplain lying in Lake, Seminole, and Orange Counties.
12. That portion of Lake Rousseau lying in Levy and Marion Counties.
13. Lake Harbor public waterfowl hunting area in Palm Beach County.
14. Chassahowitzka Wildlife Management Area in Hernando County.
15. Chassahowitzka, Lower Suwannee and Loxahatchee National Wildlife Refuges.

Georgia

1. Eufaula and Savannah National Wildlife Refuges.

Maine

1. Sagadahoc County, and those portions of Cumberland and Lincoln Counties bounded as follows: From the high tension wires at Chop's Point to the first dam on the Androscoggin River; to the first road bridges on the Muddy, Cathance, Abbagadassett and Eastern Rivers and the Richmond-Dresden bridge on the Kennebec River, otherwise known as Merrymeeting Bay.
2. Those portions of State Wildlife Management Unit 6 located in Hancock and Washington Counties.
3. The following portion of Washington County: Commencing at the junction of State Highway 6 and the Canadian Border at Vanceboro, continuing west on State Highway 6 to the junction of U.S. Highway 1 at Topsfield, thence south on U.S. Highway 1 to where it enters State Wildlife Management Unit 6 at the Baileyville-Baring town lines.

Maryland

1. Cecil, Dorchester, Kent, Queen Annes, Somerset, Talbot and Worcester Counties.

Massachusetts

1. Barnstable, Essex, Nantucket and Plymouth Counties.

New Jersey

1. Atlantic, Cape May, Cumberland, Middlesex, Monmouth, Ocean and Salem Counties.
2. Burlington County, that portion east of the Garden State Parkway.

New York

1. Genesee, Jefferson, Nassau, Suffolk and Wayne Counties.
2. All waters, and all land areas within 150 yards of all waters, within the following zones (including all bays, lakes, ponds, marshes, swamps, rivers, streams, and ocean waters but not including drainage ditches or temporary sheet water):

A. That portion of upstate New York, outside of Genesee, Jefferson and Wayne Counties, that is west of I–81 and north of I–90, except the waters of the Niagara River north of the Peace Bridge and the waters of Lake Ontario, outside the barrier beaches, in Cayuga, Monroe, Niagara, Orleans and Oswego Counties.

B. Oneida Lake and adjacent areas bounded on the north by Route 49, on the east by Route 13, on the south by Route 31 and on the west by I–81.

C. That area including and adjacent to the Hudson River south of an imaginary line extending perpendicular from the east and west shores and passing through the fixed marker number 13 in the river near Lampman Hill in the Town of Coxsackie, and north of an imaginary line extending perpendicular from the east and west shores and passing through buoy number 28 in the river near Tyler Point in the Town of Ulster.

D. Bashakill, Upper and Lower Lakes and Wilson Hill Wildlife Management Areas.

North Carolina

1. Currituck and Pamlico Counties.
2. Cape Hatteras National Seashore Recreation Area.
3. Cedar Island, Mattamuskeet and Swanquarter National Wildlife Refuges.

Pennsylvania

1. Crawford County.
2. The waters of the Susquehanna River beginning at the confluence of the North and West branches at Northumberland and continuing southward to the Maryland-Pennsylvania State boundary and including a 25-yard zone of land adjacent to the waters of the Susquehanna River that are described above.
3. Middle Creek Wildlife Management Area.

Rhode Island

1. Bristol, Newport and Washington Counties.
2. All waters, and a 25-yard zone of land adjacent to the waters, of Breakheart Pond in the Towns of Exeter and West Greenwich in southern Kent County.

South Carolina

1. Beaufort, Berkeley, Charleston, Colleton and Georgetown Counties.
2. Savannah National Wildlife Refuge.

Vermont

1. Grand Isle County.
2. Missisquoi National Wildlife Refuge.

Virginia

1. Counties of Charles City, Gloucester, James City, New Kent and York.
2. Cities of Chesapeake, Hampton, Newport News, Norfolk, Suffolk and Virginia Beach.

Mississippi Flyway

Alabama

1. Eufaula National Wildlife Refuge.

Arkansas

1. Arkansas, Ashley, Clay, Craighead, Cross, Desha, Jefferson, Lawrence, Little River, Lonoke, Monroe, Poinsett, Prairie and Woodruff Counties.
2. Lake Dardanelle and Millwood Lake Wildlife Management Areas.
3. Felsenthal and White River National Wildlife Refuges.

Indiana

1. Newton and Starke Counties.
2. On all waters of Lake, Porter (except that area south of U.S. 30 and north of S.R. 8), LaPorte, Jasper (north of S.R. 114), Elkhart, Kosciusko, LaGrange and Steuben Counties and within a 150-yard zone of land in these counties adjacent to the margins of these waters. This includes lakes, ponds, marshes, swamps, rivers, streams, and seasonally flooded areas of all types. Excluded from the provisions for these Counties are the waters of Lake Michigan and drainage ditches and temporary sheet waters that are more than 150 yards from the waters described above.
3. All waters and within a 150-yard zone of land adjacent to the margins of these waters on the Jasper-Pulaski, Tri-County and Glendale Fish and Wildlife Areas.
4. Within the boundaries of the following State-owned or State-operated properties: Hovey Lake Fish and Wildlife Area in Posey County, Mallard Roost Wetland Conservation Area in Noble County, Monroe Reservoir in Monroe and Brown Counties, Patoka Reservoir in Dubois, Crawford and Orange Counties, Turtle Creek State Fish and Wildlife Area in Sullivan County and Minnehaha Fish and Wildlife Area in Sullivan County.
5. Within the proposed boundaries of the Menominee Wetlands Conservation Area in Marshall County.

Iowa

All lands and waters within the State of Iowa have been designated for nontoxic shot use.

Kentucky

1. Western Zone—That area west of a line beginning at the Kentucky-Tennessee border at Fulton, Kentucky, and running northeast along the Purchase Parkway to Interstate 24, east to U.S. Highway 641, north to U.S. Highway 60, north to U.S. Highway 41, then north to the Kentucky-Indiana border near Henderson, Kentucky.

Louisiana

1. Acadia, Bossier, Caddo, Calcasieu, Cameron, Evangeline, Jefferson, Jefferson Davis, LaFourche, LaSalle, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Red River, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary, St. Tammany, Terrebonne and Vermilion Parishes.
2. Boque Chitto, D'Arbonne and Upper Ouachita National Wildlife Refuges.

Michigan

1. Eastern Upper Peninsula.

A. The water and land areas of Chippewa County within the following described boundary: Starting at the SW corner of Sec. 33, T44N, R1E on a line extending north 4 miles along the west side of Secs. 33, 29, 21, and 16 of the NW corner of Sec. 16, T44N, R1E; then east 1½ miles to the S quarter corner of Sec. 10, T44N, R1E; then north 1 mile to the N quarter corner of Sec. 10, T44N, R1E; then east ½ mile to the SW corner of Sec. 2, T44N, R1E; then north 1 mile to the NW corner of Sec. 2, T44N, R1E; then east along the north section lines of Secs. 1 and 2, T44N, R1E and Secs. 4, 5, and 6, T44N, R2E, to the NE meander corner of Sec. 4, T44N, R2E; then on a line southerly across Munuscong Lake to the NE meander corner of Sec. 28, T44N, R2E; then south on the E section lines of Secs. 28 and 33, T44N, R2E to the SE corner of Sec. 33, T44N, R2E; then west 7 miles along

the south section line of Sec. 33, 32, and 31, T44N, R2E, and Secs. 36, 35, 34, and 33, T44N, R1E, to the point of beginning.

B. The waters of Potagannissing Wildlife Flooding on Drummond Island.

2. Houghton Lake. That area of water and land encompassing Houghton Lake, Roscommon County, described by road boundaries as follows: south of Meads Landing Road, County 300 and County 100; west of M–18; north of M–55; and east of US–27.

3. Saginaw Bay. All water and land areas of Arenac, Bay, Tuscola, Huron and Saginaw Counties, including all portions of Saginaw Bay and those portions of Lake Huron south of a line directly east from the north boundary of Arenac County to the Ontario border, and north of a line directly east of the south boundary of Huron County to the Ontario border. All county boundary waters and lakes partially within the steel shot zones are totally included.

4. Central Michigan. That area of water and land encompassing the controlled water level impoundments (wetlands wildlife management units) of the Maple River State Game Area adjacent to US–27 in Gratiot County, as posted.

5. Southeastern Michigan.

A. All water and land areas of Macomb and St. Clair Counties and that portion of Wayne and Monroe Counties east of I–94 and I–75, including the U.S. waters of the St. Clair River, Lake St. Clair, the Detroit River, and Lake Erie, and that portion of Lake Huron south of a line directly east from the north boundary of St. Clair County to the Ontario boundary. All county boundary waters and lakes partially within the steel shot zone are totally included.

B. That area of Jackson County (north of I–94 and east of M–106); Ingham County (east of M–106/M–52 and south of M–36); Livingston County (south of M–36, east of M–155 and south of M–59); Oakland County (south of M–59, west of US–24 [Telegraph Road], north of I–96 and west of I–275); Wayne County (west of I–275 and north of M–14); and Washtenaw County (north of M–14 and I–94).

C. On all waters and lands within the posted boundaries of the U.S. Fish and Wildlife Service Schlee Waterfowl Production Area located in Section 6, T3S R2E of Grass Lake Township, Jackson County.

6. That area of water and land encompassing Muskegon, Ottawa and Kalamazoo Counties, and Allegan County west of US–131, including the waters of Lake Michigan lakeward from these counties to the border with Wisconsin. All county boundary waters and lakes partially within the steel shot zones are totally included.

Minnesota

All lands and waters within the State of Minnesota have been designated for nontoxic shot use.

Mississippi

All lands and waters within the State of Mississippi have been designated for nontoxic shot use.

Missouri

1. Andrew, Atchison, Bates, Bollinger, Butler, Carroll, Cass, Cedar, Chariton, Dunklin, Henry, Holt, Johnson, Lafayette, Lincoln, Linn, Livingston, Pike, Ralls, St. Charles, St. Clair, Saline, Stoddard, Vernon, and Wayne Counties.

2. On all waters of Harry S. Truman and Mark Twain Lakes.

3. The Pony Express, Seven Island and Ten Mile Pond State Wildlife Management Areas.

Ohio

1. Ashtabula, Cuyahoga, Erie, Holmes, Lake, Lorain, Lucas, Ottawa, Sandusky, Trumbull, Wayne and Wood Counties.

Tennessee

1. Benton, Dyer, Lake, Obion and Shelby Counties.

2. Cross Creeks, Hatchie and Lower Hatchie National Wildlife Refuges.

Wisconsin

All lands and waters within the State of Wisconsin have been designated for nontoxic shot use.

Central Flyway

Colorado

1. Weld and Morgan Counties.

2. Turk's Pond portion of Baca County.

Kansas

1. Barton, Coffey, Cowley, Doniphan, Ellsworth, Jefferson, Mitchell, Montgomery, Neosho and Stafford Counties.

2. All areas administered by the Kansas Fish and Game Commission, U.S. Army Corps of Engineers and U.S. Bureau of Reclamation, including those within the boundaries of the above Counties.

3. Kirwin Reservoir.

4. Flint Hills, Kirwin and Quivira National Wildlife Refuges.

Montana

1. Yellowstone County.

Nebraska

All lands and waters within the State of Nebraska have been designated for nontoxic shot use.

New Mexico

1. Colfax County.

2. That area bounded by a line beginning at the northeast corner of the Bosque del Apache National Wildlife Refuge (BNWR) boundary and running east to the road joining the White Sands Missile Range Military Reservation Extension Co-Use (WSMRMREC) boundary from the northwest, thence southeast along the road to its junction with the WSMRMREC boundary, thence north, east, and west along the WSMRMREC boundary to its junction with the Sevilleta National Wildlife Refuge (SNWR), thence north and east along the boundary of the SNWR to its intersection with U.S. Highway 60, thence west along U.S. Highway 60 to its junction with State Highway 47, thence north along State Highway 47 to its intersection with the Isleta Indian Reservation, thence west and south along the southern boundary of the Isleta Indian Reservation to its intersection with Interstate Highway 25, thence south along Interstate Highway 25 to its junction with the SNWR boundary, thence following the SNWR boundary west, north, then south and east to Interstate Highway 25, thence south along Interstate Highway 25 to its junction with BNWR boundary and following the BNWR boundary west, southwest, southeast, east, and northeast to the northeast corner of BNWR. This zone includes Belen, Bernardo, and La Joya State Game Refuges.

3. That area bounded by a line starting at the junction of State Highway 3 and State Highway 21 and running northeast along State Highway 21 to its junction with Coyote Creek; thence southeast along Coyote Creek to its junction with the Mora River; thence westerly along the Mora River to its junction with State Highway 161; thence north and west along State Highway 161 to its intersection with State Highway 3 and north on State Highway 3 to its junction with State Highway 21.

4. The Lower Pecos River Valley, as bounded on the north by U.S. 380, on the west by U.S. 285, on the south by the Texas-New Mexico border, and on the east by the Lea County line. This area includes the William S. Huey Waterfowl Area, formerly known as the Artesia State Waterfowl Management Area.

5. Charette Lake State Waterfowl Management Area in Mora County.

6. McAllister and Salt Lake State Game Refuges.

7. Jicarilla Apache Indian Reservation lands in Rio Arriba and Sandoval Counties.

8. Navajo Indian Reservation lands in Bernalillo, Cibola, McKinley and Socorro Counties.

9. Bitter Lake and Las Vegas National Wildlife Refuges.

North Dakota

1. Nelson, Ramsey and Towner Counties.

Oklahoma

1. Nowata County.

2. U.S. Highway 77 from the Kansas border south to U.S. Highway 177, U.S. Highway 177 south to State Highway 15, State Highway 15 east to State Highway 18, State Highway 18 south to U.S. Highway 64, U.S. Highway 64 east to State Highway 99, State Highway 99 south to State Highway 51, State Highway 51 east to State Highway 97, State Highway 97 north to its junction with unnamed county roadway, northwestwardly on the county roadway to its junction with State Highway 20, State Highway 20 west to State Highway 18, State Highway 18 north to the Kansas border.

3. Interstate 40 from the Arkansas border west to State Highway 82, State Highway 82 north to State Highway 100, State Highway 100 west to State Highway 10A, State Highway 10A west to State Highway 10, State Highway 10 north to State Highway 80, State Highway 80 north to State Highway 251A, State Highway 251A southwest to Muskogee Turnpike, Muskogee Turnpike south to Interstate 40, Interstate 40 west to U.S. Highway 69, U.S. Highway 69 north to U.S. Highway 266, U.S. Highway 266 west to U.S. Highway 62, U.S. Highway 62 south to

Indian Nation Turnpike, Indian Nation Turnpike south to U.S. Highway 270, U.S. Highway 270 east to State Highway 2, State Highway 2 north to State Highway 31, State Highway 31 west to State Highway 71, State Highway 71 north to State Highway 9, State Highway 9 to State Highway 9A, and State Highway 9A north and east to the Arkansas border.

4. State Highway 78 from the Texas border north and west to U.S. Highway 75, U.S. Highway 75 north to State Highway 78, State Highway 78 west to State Highway 22, State Highway 22 north and west to its junction with State Highway 12 at Ravia, south and west on State Highway 12 to State Highway 199 to State Highway 99C near Oakland, south and west on State Highway 99C and State Highway 32 to the junction of Interstate Highway 35 near Marietta, south down Interstate Highway 35 to the Texas border.

5. That portion of Oologah reservoir and all adjoining public lands in Rogers County.

6. Fort Cobb Reservoir and all adjoining public lands.

7. Hajek Marsh.

8. Those areas of land and water encompassing the controlled water level impoundments (Waterfowl Stamp Hunting Areas) within the following State Wildlife Management Areas:

A. Waurika
B. Texoma-Washita Arm
C. Hulah
D. Wister
E. Okmulgee
F. Chouteau
G. Copan
H. Hugo
I. Mt. Park

9. Washita National Wildlife Refuge.

South Dakota

1. In the following areas, nontoxic shot must be used by all hunters:

A. Kingsbury County.

B. That portion of Hughes County lying west and north of U.S. Highway 83, and lying south of U.S. Highway 14.

C. That portion of Stanley County lying east and north of the Lower Brule-Antelope Creek Road from the Lyman-Stanley County line to Fort Pierre, and that portion of Stanley County lying north of State Highway 34 for approximately five miles west of Fort Pierre and east of Stanley County Federal-Aid Secondary Highway 6193 and State Highway 1806 to Minneconjou Bay.

D. On or within 100 yards of the water's edge of Lake Andes in Charles Mix County.

E. Those portions of Bon Homme, Charles Mix and Gregory Counties lying on or within 100 yards of the water's edge of the Missouri River, from Fort Randall Dam downstream to the Bon Homme-Yankton County line.

2. In all other counties, and in the remaining portions of those counties not covered by item 1 above, nontoxic shot must be used by all hunters except those under 16 years of age using 16 gauge, 28 gauge or .410 caliber shotguns, and those using muzzleloading shotguns.

Texas

1. Those portions of Colorado, Harris, Jefferson and Waller Counties north of IH–10.

2. Neuces County, that portion west of U.S. Highway 77.

3. That area within boundaries beginning at the Louisiana State line, thence westward along IH 10 to the junction of U.S. Highway 90 and IH 10 in Beaumont, thence westward along U.S. 90 to its junction with IH 610 in Houston, thence north and west along IH 610 to its junction with U.S. Highway 290 in Houston, thence westward along U.S. Highway 290 to its junction with State Highway 159 in Hempstead, thence southwestward along State Highway 159 to its junction with State Highway 36 in Bellville, thence eastward along State Highway 36 to its junction with Farm-to-Market (FM) 2429, thence southward along FM 2429 to its junction with FM 949, thence southwestward along FM 949 to its junction with IH 10, thence westward along IH 10 to its junction with U.S. Highway 77 at Schulenburg, thence southward along U.S. Highway 77 to its junction with the U.S.-Mexico international boundary at Brownsville, thence eastward along the U.S.-Mexico international boundary to the Gulf of Mexico, thence east and seaward to the three marine league limit, thence northeastward along the three marine league limit to the Louisiana State line, thence northward along the Texas-Louisiana State line to its junction with IH 10.

4. The portions of Grayson, Fannin and Cooke Counties lying within boundaries beginning at the Oklahoma State line, thence southward along I–35 to its junction with U.S. Highway 82 at Gainesville, thence eastward along U.S. Highway 82 to its junction with U.S. Highway 78 at Bonham, thence northward along State Highway 78 to its junction with the Oklahoma State line, thence westward along the Oklahoma-Texas State line to its junction with I–35.

5. The portions of Upshur, Cass, Harrison, Morris and Marion Counties lying within boundaries beginning at the Louisiana State line, thence westward along State Highway 49 to its junction with U.S. Highway 259 at Daingerfield, thence southward along U.S. Highway 259 to its junction with State Highway 450 at Ore City, thence eastward on State Highway 450 to its junction with State Highway 154 at Harleton, thence southeastward along State Highway 154 to its junction with U.S. Highway 80 at Marshall, thence eastward along U.S. Highway 80 to its junction with State Highway 43, thence northeastward along State Highway 43 to its junction with FM 2682 at Karnack, thence eastward along FM 2682 to its junction with FM 134, thence southward along FM 134 to its junction with FM 1999 at Leigh, thence eastward along FM 1999 to its junction with the Louisiana State line, thence northward along the Louisiana-Texas border to its junction with State Highway 49.

6. The portions of Henderson, Kaufman and Anderson Counties lying within boundaries beginning at the junction of State Highway 31 and FM 2661, thence westwardly along State Highway 31 to its junction with U.S. Highway 175 at Athens, thence northwestward along U.S. Highway 175 to its junction with FM 90, thence northward along FM 90 to its junction with FM 1391, thence westward along FM 1391 to its junction with U.S. Highway 175 at Kemp, thence southward along U.S. Highway 175 to its junction with State Highway 274, thence south along State Highway 274 to its junction with State Highway 31 at Trinidad, thence eastward along State Highway 31 to its junction with FM 3441 at Malakoff, thence southward along FM 3441 to its junction with FM 59 at Cross Roads, thence southward along FM 59 to its junction with U.S. Highway 287 at Cayuga, thence southeastward along U.S. Highway 287 to its junction with FM 860, thence northward along FM 860 to its junction with FM 837, thence northeastward along FM 837 to its junction with U.S. Highway 175 at Frankston, then eastward along U.S. Highway 175 to its junction with FM 855, thence northward along FM 855 to its junction with FM 346, thence northward along FM 346 to its junction with FM 344, thence northward along FM 344 to its junction with FM 2661, thence northward along FM 2661 to its junction with State Highway 31.

Wyoming

1. Big Horn County: Along and within one mile either side of the water line of the Big Horn River, Yellowtail Reservoir, Shoshone River, Nowood River and portions of Medicine Lodge Creek and Paintrock Creek where they flow into the Nowood River, beginning from their confluence to where they flow from the mountains.

2. Goshen County:

A. North Platte River/Laramie River—Beginning where U.S. Highway 25 crosses the Wyoming-Nebraska State line; south along said State line to Goshen County Road No. 7–108; west along said road to Wyoming Highway 92, west, then northerly along said highway to U.S. Highway 85; northerly along said highway to Wyoming Highway 156; westerly and northerly along said highway to Goshen County Road No. 7–62; westerly along said road to the Fort Laramie Canal Road; northwesterly along said road to Goshen County Road No. 7–48; southwesterly along said road to the Goshen-Platte County line; north along said line to U.S. Highway 26; southeast along said highway to the point of beginning.

B. Table Mountain—Beginning where Wyoming Highway 92 intersects Wyoming Highway 158; south along said highway to Goshen County Road No. 7–171; west along said road to the Fort Laramie Canal Road; northwesterly along said road to Goshen County Road No. 7–160; east along said road to Goshen County Road No. 7–166; North along said road to Goshen County Road No. 7–114; east along said road to Wyoming Highway 92; east along said highway to the point of beginning.

Pacific Flyway

Arizona

1. Game Management Unit 5B, Upper Lake Mary, Lower Lake Mary and Mormon Lake.

2. Navajo Indian Reservation lands in Apache, Coconino and Navajo Counties.

3. Cibola National Wildlife Refuge.

California

1. Butte, Colusa, Contra Costa, Glenn, Imperial, Merced, Sacramento, San Joaquin, Solano, Sutter, Yolo and Yuba Counties.

2. Northeastern Zone. Those portions of Siskiyou, Shasta, Sierra, Tehama and Plumas Counties, and all of Lassen and Modoc Counties, bounded by the following line: Beginning at I–5 at the Oregon border, southerly on I–5 to State Highway 89, thence southeasterly on State Highway 89 to State Highway 70, thence easterly on State Highway 70 to US 395, thence southerly on US 395, thence southerly on US 395 to the Nevada border.

Colorado

1. Montrose County.

Idaho

1. Panhandle Zone. All of Benewah, Bonner, Boundary and Kootenai Counties.

2. Southwestern Zone. Canyon County north and east of I–84, and those portions of Ada, Canyon, Elmore, Owyhee and Payette Counties within the following boundary: Beginning at the intersection of I–84 Business Highway junction at Cold Springs Creek east of Hammett, then northwest on I–84 to the Idaho-Oregon State line, then south along the Idaho-Oregon State line to State Highway 19, then east on State Highway 19 to U.S.–95 near Homedale, then south and east on U.S.–95 to State Highway 55 west of Marsing, then east on State Highway 55 to State Highway 78 at Marsing, then southeast on State Highway 78 to I–84 Business Highway at Hammett, then east on I–84 Business Highway to I–84 at Cold Springs Creek, the point of beginning.

3. South Central Zone. All of Gooding County, and that portion of Twin Falls County that is west of the Gooding County-Jerome County-Twin Falls County junction and within 600 feet of the high water line of the Snake River.

4. Southeastern Zone. All lands within the Fort Hall Indian Reservation boundary; Jefferson County; and those portions of Bannock, Bingham, Bonneville, Caribou, Cassia, Jefferson, Madison and Power Counties within the following boundary: Beginning at the Interstate 15–State Highway 33 junction (Sage Junction north of Idaho Falls), then south and southwest on I–15 to State Highway 39 near Blackfoot, then southwest on State Highway 39 to the road to the Idaho Department of Fish and Game's American Falls Fish Hatchery (approxiately one-quarter mile west of American Falls Dam), then south on the hatchery road to the Union Pacific Railroad tracks, then southwest on the Union Pacific Railroad tracks to the Blaine County line, then south on the Blaine County line to its junction with the Cassia County line, then west on the Cassia County line to the Snake River-Raft River confluence, then upstream on the Raft River to I–86, then northeast on I–86 to I–15, then north on I–15 to U.S.–91 (Old Yellowstone Highway) near Blackfoot, then northeast on U.S.–91 to its junction with State Highway 26 approximately five miles northeast of Shelly, then northeast on U.S.–26 to the spot directly above the Heise measuring cable (about 1.5 miles upstream from Heise Hot Springs), then north across the South Fork of the Snake River to the Heise-Archer-Lyman Road (Snake River Road), then northwest on the Heise-Archer-Lyman Road to U.S. 191–20, then north on U.S. 191–20 to Rexburg, then west on State Highway 33 to I–15 at Sage Junction, the point of beginning.

Montana

1. Flathead, Lake, Lewis and Clark and Sanders Counties.

2. The Confederated Salish and Kootenai Indian Tribal lands on the Flathead Reservation.

3. Benton Lake and Red Rock Lakes National Wildlife Refuges.

Nevada

1. Stillwater Wildlife Management Area in Churchill County.

2. Ruby Lake National Wildlife Refuge in White Pine and Elko Counties.

3. Canvasback Gun Club in Churchill County.

4. Carson Lake (Greenhead Hunting Club) in Churchill County.

5. Humboldt Wildlife Management Area in Churchill and Pershing Counties.

6. Mason Valley Wildlife Management Area in Lyon County.

7. Key Pittman Wildlife Management Area in Lincoln County.

8. Overton Wildlife Management Area in Clark County.

New Mexico

1. San Juan County.

2. Navajo Indian Reservation lands in Cibola, McKinley and San Juan Counties.

3. Jicarilla Apache Indian Reservation lands in Rio Arriba and Sandoval Counties.

Oregon

1. Polk and Yamhill Counties.

2. Columbia County, that portion south and west of US 30.

3. Multnomah County, that portion south of I–84.

4. Southcentral Zone—All of Klamath County, excluding Davis Lake, and that portion of Lake County lying west of Highway 395.

5. Lower Columbia River Zone—Those portions of Multnomah, Columbia and Clatsop Counties bounded by the following line: Beginning at the Bonneville Dam, westerly on Highway I–84 to Portland, thence northwesterly on US 30 to the Astoria bridge, thence partially across Astoria bridge to the Oregon-Washington State line, thence upriver on the Washington-Oregon State line to point of origin.

6. Malheur County Zone—That portion of Malheur County bounded by a line beginning at I–84 at the Oregon-Idaho State line, thence northwesterly on I–84 to State Highway 201, thence southerly on State Highway 201 to State Highway 19, thence easterly on State Highway 19 to the Oregon-Idaho State line to the point of beginning.

7. Columbia Basin Zone—Those portions of Gilliam, Morrow and Umatilla Counties bounded by the following line: Beginning at the town of Arlington on I–84, thence easterly on I–84 to US–730, thence northeasterly on US–730 to the Oregon-Washington State border, thence westerly along the Columbia River, Oregon-Washington border to point of origin.

8. Ankeny and William L. Finley National Wildlife Refuges.

Utah

1. Cache, Davis, Salt Lake, Utah and Weber Counties.

2. That portion of Box Elder County lying east of a line extending from 80N at the Utah-Idaho border, thence southeast on 80N to the junction of the Snowville-Locomotive Springs Road, thence southwest on the Snowville-Locomotive Springs Road to the junction of the Kelton Road, thence west on Kelton Road to the town of Kelton, thence south to the north shore of the Great Salt Lake, thence south along the west shore of the Great Salt Lake to the Box Elder County line.

3. Navajo Indian Reservation lands in San Juan County.

Dated: July 2, 1987.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–16476 Filed 7–21–87; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 52, No. 139
Tuesday, July 21, 1987

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 933

[Docket No. AO F&V 87-1]

Proposed Florida Strawberry Marketing Agreement and Order; Extension of Time

AGENCY: Agricultaural Marketing Service, USDA.

ACTION: Extension of time for filing briefs.

SUMMARY: By an order dated July 2, 1987, the Administrative Law Judge Edward H. McGrail extended the time for filing briefs on the record of the hearing held May 27–29, 1987, at Valrico, Florida, concerning proposals to promulgate a Florida Strawberry Marketing Agreement and Order. The Florida Strawberry Growers' Association represented by Attorney Robert D. Henry and the attorney for the opponent group, Michael A. Linsky, have requested more time to review the hearing record and to prepare briefs.

DATE: Briefs are now due on or before July 27, 1987.

ADDRESS: Briefs (4 copies) should be filed with the Hearing Clerk, Room 1079, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V Division, Room 2523–S, AMS, USDA, Washington, DC 20250; Telephone (202) 475–3914.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Hearing: Issued May 6, 1987; published May 11, 1987 (52 FR 17581).

Notice is hereby given that the time for filing briefs, proposed findings and conclusions on the record of the public hearing held May 27–29, 1987, at Valrico, Florida, with respect to the proposed marketing agreement and order regulating the handling of fresh strawberries grown in Florida pursuant to notice of hearing issued May 6, 1987 (52 FR 17581) is hereby further extended to July 27, 1987.

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

List of Subject in 7 CFR Part 933

Marketing agreement and orders, Strawberries, Florida.

Signed at Washington, DC, on: July 13, 1987.

J. Patrick Boyle

Administrator.

[FR Doc. 87–16504 Filed 7–16–87; 8:45 am]

BILLING CODE 3410–01–M

7 CFR Part 989

[Docket No. AO–198–A14]

Raisins Produced from Grapes Grown in California; Hearing on Proposed Amendments of Marketing Agreement and Order No. 989, as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 989 (7 CFR Part 989). The marketing order, hereinafter referred to as the "order", regulates handlers of raisins produced from grapes grown in California. The purpose of the hearing is to receive evidence on proposals to amend provisions of the order concerning the Raisin Diversion Program, expenses for alternate Raisin Administrative Committee (Committee) representatives, nomination procedures for independent producer representatives, reserve pool procedures, producers' equity in reserve pools, handler compliance with the marketing order, limitations on committee tenure, and authority for continuance referenda.

DATE: The hearing will begin at 9:00 a.m., August 5, 1987.

ADDRESS: The hearing will be held in Assembly Room No. 1036, State of California Building, 2550 Maraposa Mall, Fresno, California 93721.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250–0200; telephone: (202) 447–5697, or David B. Fitz, Officer-In-Charge, Fresno Marketing Field Office, 1755 N. Gateway, Suite B, Fresno, California 93727; telephone: (209) 456–2262.

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 (Pub. L. 96–354), effective January 1, 1981, seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small business. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small businesses.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

Proposals have been submitted by the Raisin Administrative Committee and John D. Pakchoian, Chairman of the Committee, and the Fruit and Vegetable Division, U.S. Department of Agriculture. These proposals have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the marketing agreement and order; (ii) determining whether there is a need for the proposed amendment to the marketing agreement and order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material in evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, California.

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Proposals Submitted by the Raisin Administrative Committee

Proposal No. 1

Amend § 989.29 by revising paragraph (b)(2) and removing the last two sentences of paragraph (b)(4) as follows:

§ 989.29 Initial members and nomination of successor members.

* * * * *

(b) * * *

(1) * * *

(2)(i) Any producer representing independent producers and producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year must have produced grapes which were made into raisins in the particular district for which they are nominated, to represent said district as a producer member or alternate producer member on the Committee. In the event any such nominees are engaged as producers in more than one district they may be a nominee for only one district. One or more producers may be nominated for each such producer member or alternate member position.

(ii) Each such producer nominated shall be given the opportunity to provide the Committee management a short statement outlining their qualifications and desire to represent independent producers on the Committee. These brief statements, together with a ballot and voting instructions, shall be mailed to all independent producers of record with the Committee in each district. The producer receiving the highest number of votes shall be designated as the first member nominee, the second highest shall be designated as the second member nominee or alternate member nominee, as the case may be, until nominees for all member and alternate member positions have been filled.

(iii) Each independent producer and producer affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. The person receiving the most votes with respect to each position to be filled, shall be the person to be certified to the Secretary as the nominee.

* * * * *

Proposal No. 2

Revise § 989.39 as follows:

§ 989.39 Compensation and expenses.

The members and alternate members of the Committee shall serve without compensation, but shall be allowed their necessary expenses as approved by the Committee.

Proposal No. 3

Amend § 989.56 by revising paragraphs (a) and (c) as follows:

§ 989.56 Raisin diversion program.

(a) Announcement of program. On or before November 30 of each crop year, the Committee shall hold a meeting to review production data, supply data, demand data, including anticipated demand to all potential market outlets, desirable carryout inventory and other matters relating to the quantity of raisins of all varietal types. When the Committee determines that raisins exist in the reserve pool in excess of projected market needs for any varietal type, it may announce the amount of such tonnage eligible for diversion during the subsequent crop year. At the same time, the Committee shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage. A production cap of 2.75 tons of raisins per acre shall be established for any production unit approved for participation in a diversion program. The Committee may announce, at the same time that the diversion tonnage for that season is announced, a change in the production cap for that season's diversion program of less than 2.75 tons per acre for any production unit approved for the diversion program.

* * * * *

(c) Issuance of diversion certificates. After the Committee announces a raisin diversion program, any producer may divert grapes of their own production and receive from the Committee a diversion certificate in accordance with the applicable rules and regulations. Such certificates only may be submitted by producers to handlers in accordance with applicable rules and regulations. Diversion certificates issued by the Committee shall apply to a specific production unit and shall be equal to the creditable fruit weight; not to exceed the production cap established or announced pursuant to § 989.56(a), of such raisins produced on such unit during the prior crop year or the last prior crop year eligible for such diversion: *Provided,* That in the case of a production unit, or partial production unit, removed from production through vine removal or other means established by the Committee, it may issue a diversion certificate in an amount greater than the creditable fruit weight of the raisins produced therein or the production cap applicable.

* * * * *

Proposal No. 4

Amend § 989.66 by revising paragraphs (b)(1) and (b)(4), and (d) as follows:

§ 989.66 Reserve tonnage generally.

* * * * *

(b)(1) Each handler shall hold in storage all reserve tonnage acquired by such handler and all reserve tonnage transferred to such handler by the Committee until such handler has been relieved of such responsibility by the Committee, either by delivery to the Committee or otherwise. Such handler shall store such reserve in such manner as will maintain the raisins in the same condition as when such handler acquired them, except for normal and natural deterioration and shrinkage, and except for loss through fire, acts of God or other conditions beyond the handler's control.

* * * * *

(4) The Committee may after giving reasonable notice, require a handler to deliver to it, or to anyone designated by it, at such handler's warehouse or at such other place as the raisins may be stored, part or all of the reserve tonnage raisins held by such handler. Reserve tonnage raisins delivered by any handler to the Committee, or to any person designated by it, in the form of natural condition raisins shall in the aggregate be equal to, but not more than 2 percent less than, the average maturity quality of all raisins such handler acquired during the applicable crop year. The Committee may require that such delivery consist of natural condition raisins with the bloom still visible, or it may arrange for such delivery to consist of packed raisins.

* * * * *

(d) Reserve tonnage raisins delivered by any other handler to the Committee, or to any person designated by it,

whether in the form of natural condition raisins with the bloom still visible or packed raisins shall meet the applicable minimum grade or grade and condition standards, except for normal and natural deterioration. The Committee shall have the authority to require, in its discretion and at its expense, such reinspection and certification of reserve pool tonnage raisins as it may deem necessary.

* * * * *

Proposal No. 5

Amend § 989.67 by revising paragraph (g) as follows:

§ 989.67 Disposal of reserve raisins.

* * * * *

(g)(1) The Committee may, with the approval of the Secretary, refuse to sell reserve tonnage raisins for export or for direct sale to any agency of the U.S. Government for non-competitive use or as free tonnage pursuant to §§ 989.54(g) adn 989.67(j):

(i) To any handler who is in default on any previous purchase of reserve tonnage raisins from the Committee;

(ii) To any handler currently not in compliance with the provisions of a sales agreement covering reserve tonnage raisins, executed by such handler with the Committee; or

(iii) To any handler who signifies an intention to sell reserve tonnage to or through any person who has previously failed to complete a sale of reserve tonnage raisins to a foreign buyer and such raisins remain to be exported and remain unsold to any foreign buyer in an eligible export market.

(2) The Committee may sell reserve raisins to handlers who are in default of timely payment under any purchase agreement, subject to an interest and/or late payment charge(s) recommended by the Committee and approved by the Secretary, on the delinquent amount that it owed the Committee. The interest charge shall be the current commercial prime rate plus 2 percent established by the bank in which the Committee has its administrative assessment funds deposited, on the day the amount owed becomes delinquent; and further, that such rate of interest be added to the bill monthly until the handler's delinquent amount owed plus applicable interest has been paid: *Provided*, That the Committee may change the rate of interest to a rate of interest that equals or exceeds the rate that handlers must pay at banks for commercial loans plus 2 percent. When the Committee determines to change the rate of interest and/or a late payment charge is needed, the Committee shall announce the change in the rate of interest and/or the rate of late payment charge through a mailing to the Committee and handlers.

(3) For any handler not in compliance with the provisions of the order and the rules and regulations by non-payment or timely payment of assessments, non-compliance with the inspection requirements, failure to submit acquisition, shipment and other reports as required and/or non-compliance with the setaside requirements, the Committee may, after providing written notice to the handler of any alleged deficiency and a time of not less than 15 calendar days to correct any such deficiency: Refuse to sell reserve raisins: (i) For export; (ii) for direct sale to any agency of the U.S. Government for non-competitive use; (iii) or as free tonnage pursuant to §§ 989.54(g) and 989.67(j).

(4) Appeals. If a determination is made by the Committee that a handler has not compled with the provisions of this section and any actions allowed under this section are taken against the handler, such handler may request a hearing before an appeals subcommittee established by the Committee. If the handler disagrees with the subcommittee's decisions, the handler may request the Committe to review the subcommittee's decision. The Committee may establish additional procedures concerning the appeals procedures.

* * * * *

Proposal Submitted by John D. Pakchoian, Chairman of the Raisin Administrative Committee

Proposal No. 6

Revise § 989.27 as follows:

§ 989.27 Eligibility.

No person shall be selected or continue to serve as member or alternate member of the Committee who is not actively engaged in the business of the group which such persons represents either in such person's own behalf, or as an officer, agent, or employee of a business unit engaged in such business:

Provided, That only producers, as defined in § 989.11, engaged as such with respect to the most recent grape crop, are eligible to serve on the Committee. Only handlers who packed or processed raisins during the then current crop year shall be eligible to represent handlers on the Committee:

Provided further, That no owner, partner, or executive of a handler shall be selected to represent independent producers on the Committee. Any handler eligible to represent a particular group shall continue to represent handlers for the entire term for which such person was selected.

Proposals Submitted by the Fruit and Vegetable Division, Agricultural Marketing Service

Proposal No. 7

Revise § 989.28 as follows:

§ 989.28 Term of Office.

The term of office of all representatives serving on the Committee shall be two years and shall end on April 30 of even numbered calendar years, but each such member and alternate member shall continue to serve until their successor is selected and has qualified. Beginning with the 1990 term of office, no member shall serve more than three full consecutive terms: *Provided*, That members serving three consecutive terms could again become eligible to serve on the Committee by not serving for one full term as either member or alternate member.

Proposal No. 8

Amend § 989.91 by redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as follows:

§ 989.91 Suspension or termination.

* * * * *

(d) The Secretary shall hold a referendum in crop year 1993–94 and every six years thereafter to ascertain whether continuance of this order is favored by raisin producers. The Secretary may terminate the provisions of the order at the end of any crop year in which the Secretary has found that continuance of the order is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of raisins in the production area.

* * * * *

Proposal No. 9

Make such changes as may be necessary to the marketing agreement and order to conform with any amendment thereto that may result from the hearing.

Dated: July 16, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87-16576 Filed 7-20-87; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1136 and 1139

[Docket Nos. AO-309-A27 and AO-374-A11]

Milk in the Great Basin and Lake Mead Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends a merger of the Great Basin and Lake Mead Federal milk orders, based on industry proposals considered at a public hearing held March 18–20, 1986, in Salt Lake City, Utah. In addition to the presently regulated marketing areas, the proposed merged "Great Basin" marketing area would include the presently unregulated portion of the State of Utah, two counties in Wyoming, and additional counties in Idaho. The provisions of the proposed merged order are generally patterned after those of the two separate orders, and the present Class I price differentials at Salt Lake City and Las Vegas are maintained.

One feature of the proposed merged order not now contained in either order includes, in the pool plant definition, a manufacturing plant located within the marketing area and operated by a cooperative association. The obligation of a partially regulated distributing plant operator regulated by a State order would be determined by subtracting any amount the handler has paid under the State order for the fluid milk products distributed in the Federal order marketing area from the value of those products at the applicable Federal order Class I price.

For the first time in the Federal milk order system, the proposed merged order includes a plan for pricing milk on the basis of its protein, as well as butterfat, components. The differential value of milk used in Class I and Class II would be pooled to determine producers' shares of the higher-valued uses, and the value of protein used in Classes II and III would be pooled with the value of skim milk used in Class I to determine the value of protein in producer milk.

The merger is needed to reflect changes in market structure in that the two separately regulated areas have become, in effect, one common market.

DATE: Comments are due on or before August 20, 1987.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-7311.

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

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small businesses. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities.

There are 11 regulated handlers that operate 14 pool plants under the orders that received milk from approximately 700 dairy farmers. A substantial majority of the producers are members of four cooperative associations that are organized into a federation. Most of these entities would be small businesses under the standards specified in 13 CFR Part 121.

The merged and expanded marketing area reflects the sales areas of currently regulated plants. Consequently, the marketing area issue does not involve substantive economic considerations. Changes in pricing within the merged and expanded marketing area would be minor, and should have little economic impact on handlers or producers. Inclusion of a cooperative-owned manufacturing plant located within the marketing area in the pool plant definition would reduce the regulatory burden by not encouraging the cooperative to make excessive, uneconomical shipments of milk to distributing plants.

Adoption of multiple component pricing would change the distribution among handlers of obligations to producers and the pool, and re-distribute payments between producers. However, the changes would affect only one component of the milk received from producers and used by handlers, and would more accurately reflect the value of producer milk priced under the order. The burden of testing and reporting required of handlers for an additional milk component has been minimized as much as possible, while maintaining the integrity of the milk pricing plan. Most of the producer milk used by handlers who would be regulated under the merged order is already subject to protein testing and payments outside the operation of the Federal order. Incorporation of multiple component pricing in the order, therefore, would not increase the regulatory burden for most market participants.

Prior documents in this proceeding:

Notice of Hearing: Issued February 6, 1986; published February 11, 1986 (51 FR 5070).

Suspension Order (Great Basin): Issued May 28, 1986; published June 3, 1986 (51 FR 19821).

Notice of Proposed Suspension (Great Basin): Issued July 29, 1986; published August 4, 1986 (51 FR 27866).

Notice of Proposed Suspension (Lake Mead): Issued July 29, 1986; published August 1, 1986 (51 FR 27555).

Termination of Proceeding on Proposed Suspension (Lake Mead): Issued August 29, 1986; published September 9, 1986 (51 FR 32104).

Suspension Order (Great Basin): Issued September 2, 1986; published September 5, 1986 (51 FR 31759).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Great Basin and Lake Mead marketing areas, and of the opportunity to file written exceptions thereto. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, Room 1079, South Building, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Salt Lake City, Utah, on March 18–20, 1986, pursuant to a notice of hearing issued February 6, 1986 (51 FR 5070).

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 Great Basin and Lake Mead orders should be included under one order;

3. Whether the proposed merged marketing area should be expanded to include additional territory;

If a single order is issued for the proposed merged and expanded marketing area, what its provisions should be with respect to:

4. Milk to be priced and pooled;

5. Multiple component pricing;

6. Handler reports;

7. Classification of milk;

8. Class prices, location adjustments and component prices;

9. Handler obligations, the differential pool and the skim milk/protein pool;

10. Payments to producers;

11. Obligations of partially regulated distributing plant operators;

12. 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 "merged Great Basin marketing area", includes 45 contiguous counties, of which 29 comprise the entire State of Utah. The other counties are located in Idaho (10), Nevada (4), and Wyoming (2). The principal cities in the marketing area are Salt Lake City, Utah, and Las Vegas, Nevada. The specific territory included in the marketing area is set forth in the marketing area discussion.

Handlers located in the present Great Basin area have route sales primarily in Utah and Idaho, with some sales in the Wyoming counties proposed to be included in the merged Great Basin marketing area. Handlers regulated under the Lake Mead order distribute milk in southern Nevada and southern Utah. A number of California fluid milk plants dispose of fluid milk products in Nevada.

Similarly, milk procurement for the proposed merged area crosses state boundaries. Handlers regulated by the present Great Basin order procure milk in the States of Utah, Nevada, Idaho, Wyoming and Colorado. The milk needed to supply Lake Mead distributing plants is procured from Nevada, Utah, California, and, at times, Arizona and Idaho.

There are numerous manufacturing plants located within the proposed marketing area that manufacture dairy products. These products are sold in Utah, Nevada, Idaho, Wyoming and other States. Manufactured products produced in many States are offered for sale in Utah, Idaho, Nevada and Wyoming.

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 the Great Basin area was initiated November 1, 1959, when the Great Basin order became effective. The marketing area has since been amended several times to include Elko and White Pine Counties, Nevada; portions of Cache County, Utah, and Uinta County, Wyoming; and the seven Idaho counties currently in the order. The Lake Mead order became fully effective August 1, 1973. The marketing area covered by the Lake Mead order has not been changed since then.

The merger of the Great Basin and Lake Mead orders was proposed by Intermountain Milk Producers Association (IMPA), a federation of four cooperative associations that market milk in the Great Basin and Lake Mead marketing areas. IMPA represents 75–80 percent of the producers whose milk is pooled under the Great Basin order, and nearly all of the producers included in the Lake Mead pool.

A witness testifying on behalf of IMPA stated that the Lake Mead marketing area is an appendage of the Great Basin market, with handlers regulated by the two orders sharing a common procurement area throughout the State of Utah. He said that the milk surplus to Class I and Class II needs in both markets is absorbed by the same manufacturing plants, located primarily in the Great Basin area. The witness also stated that handlers regulated by the two orders compete for packaged fluid milk sales to consumers, and that fluid milk products packaged in plants regulated by one order are distributed by handlers regulated by the other order. The witness pointed out that most producers in the two marketing areas market their milk through IMPA, a federation of cooperatives active in both markets.

The IMPA representative explained that IMPA assures a market outlet for all of its member producers, and balances reserve and surplus supplies for the Lake Mead and Great Basin markets. He said that IMPA, as a handler under both the Lake Mead and Great Basin orders, furnishes bulk and packaged milk to other handlers and operates the fluid milk distributing plants and manufacturing plants formerly operated by the cooperative associations comprising the federation.

The witness stated that the proposed merger would not change the number of fully-regulated handlers, and would cause little change in the cost of milk to handlers or returns to producers. He claimed that additional supplies of milk would not be attracted to the market, although increases in the production of present producers and the conversion of manufacturing-grade producers to Grade A would be accommodated. According to the witness, merger of the orders would not displace present production, discourage market entry by new producers or affect current price alignment between Las Vegas and Salt Lake City handlers or between handlers at those locations and in other marketing areas.

A witness representing Rockview Dairies, Inc., testified in opposition to the proposed merger. Rockview Dairies operates a California distributing plant and two dairy farms which are nonmember producers for Anderson Dairy, the operator of a pool distributing plant under the Lake Mead order. The witness stated that although there appears to be a shared production area for the two orders, he saw little evidence of overlap of sales by handlers regulated under the Lake Mead and Great Basin orders and little movement of dairy products between the two orders. He observed that there would appear to be as much commonality of sales and production areas between the Great Basin and Southwestern Idaho-Eastern Oregon marketing areas, but that no merger of those orders had been proposed. The witness claimed that a merger of the Lake Mead and Great Basin areas would result in lower blend prices paid to Lake Mead producers. He explained that milk pooled under the Lake Mead market is primarily used in Class I, with little Class II use and limited opportunities for disposing of surplus milk, while the Great Basin market uses a much larger percentage of its milk in Class II and Class III products. As a result of a merger, he said, the two nonmember producers

shipping their milk to Anderson Dairy would have to pool their higher-valued Class I utilization with the much greater quantity of Great Basin milk that is used more predominantly in the lower-valued classes of utilization.

According to the Rockview Dairies representative, Anderson Dairy, the largest distributing plant regulated under the Lake Mead order, recently contracted with a California dairy farm (Rockview) for the farm's total milk supply, and made arrangements with a California nonpool plant to buy any of the farm's production surplus to Anderson's fluid milk needs. The witness predicted that as a result of Anderson's new procurement arrangements, the Lake Mead market would be much less dependent on manufacturing plants located in the Great Basin marketing area for the disposal of milk production surplus to the fluid milk needs of the market.

A brief filed on behalf of Rockview Dairies, Inc., described proponent's proposal to merge the orders as an attempt by IMPA to establish a monopoly in the marketing area and to obstruct interstate commerce. The brief quoted proponent witness as testifying that the merged order proposed by IMPA would allow the milk produced in Clark County, Nevada (Las Vegas area), to be marketed there "rather than making way for some other producers to come into the market to be qualified." The Rockview Dairies' brief also stated that the record contains no evidence suggesting that the Lake Mead order fails to protect the interests of producers and consumers or to promote the orderly flow of the milk supply to the market, or causes any disruption of the orderly exchange of milk in interstate commerce.

The record indicates that the Lake Mead and Great Basin 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 practices and market structure since that time, however, have caused these separately regulated areas to become substantially interrelated in both distribution and supply arrangements. With a single organization, IMPA, marketing the milk of most of the producers supplying milk to the present marketing areas, it is reasonable to expect that the interrelationship of the two areas will become even more pronounced over time.

With the formation of IMPA, cooperatives that formerly marketed the milk of member producers within two separate local markets have combined to market milk and balance milk supplies for the two markets as a whole. The provisions of the present individual orders that involve pooling qualifications do not encourage or promote efficient handling and hauling of milk throughout the area encompassed by the two orders. The proposed merger would assist IMPA in marketing the milk of its members in a more effective and efficient manner without encumbrances exerted on the federation's marketing system by the provisions of the separate orders. At the same time, the merger would have little effect on handlers, consumers and nearly all of the nonmember producers in the merged marketing area.

Proponent cooperative federation operates a fleet of trucks to move member producer milk and directs milk to distributing plants regulated under both orders at the times and in the amounts needed. Under the present provisions of the two Federal orders, the federation must move producers' milk in a manner that will maintain the producer status of its members under either or both orders in order to ensure an adequate reserve supply of milk for both orders. In determining the order under which a producer's milk should be pooled, the federation must consider which plants need milk for fluid and Class II use, which producers' milk is to be included on particular farm pick-up routes, and the need to keep enough dairy farmers qualified as producers on both markets to assure the availability of milk to distributing plants in both markets on short notice. The federation sometimes must shift the market on which a producer's milk is pooled from one Federal order to another because of conditions such as a recent strike of workers at California milk plants. One result of the strike was increased demand for fluid milk in Las Vegas, necessitating the pooling of producers previously associated with the Great Basin market on the Lake Mead market. Another cause of instability in the relative milk supplies of the two markets is the nature of demand in Las Vegas. The number of people in Las Vegas varies widely, increasing significantly over weekends and holidays, and causing large shifts in the demand for fluid milk, both by consumers and by distributing plants.

Adoption of the merger proposal will equalize marketing conditions and prices to producers between the two marketing areas and contribute to greater efficiency by allowing distributing plants to be supplied from the most favorably-located producers without regard to the shipping requirements of two different orders. The distances milk is required to be hauled to qualify for pooling would be shortened, and hauling costs thereby reduced. Accounting and reporting requirements will be reduced if handlers no longer need to be concerned about two separate sets of provisions, two different reporting forms, or the complexities of dealing with the provisions regulating transfers of milk and milk products between orders. The merger would help to reduce unnecessary regulation and reduce costs by relieving the market administrator of duplicating many reports and duties involved in administering two orders instead of one.

It is apparent that, although route disposition from plants regulated under each of the separate orders may not have expanded into the other order area to any great degree, milk supplied by Great Basin producers and bottled in the Great Basin marketing area is increasingly being distributed in the Lake Mead area by Lake Mead handlers. At the same time, it is clear that nearly all of the milk historically associated with the Lake Mead order has become increasingly dependent on distant manufacturing plants in the Great Basin marketing area as outlets for milk produced in excess of the Lake Mead market's fluid milk requirements. If, as the Rockview Dairies' representative testified, the largest distributing plant operator in the Lake Mead market develops an independent supply of milk from California, the need for access to outlets for surplus milk supplies by Lake Mead producers will become even more acute.

Dependence by producers traditionally supplying the Lake Mead market upon the dwindling number of Lake Mead pool distributing plants [1] for a pooling base is likely to generate disorderly marketing conditions as producers struggle to assure that their milk will share in the marketwide pool. Data in the hearing record indicate that in May 1985, most of the Class I needs of the Lake Mead market could be met by milk produced in California and Clark County, Nevada. During that month only a small proportion, approximately 13 percent, of the milk produced in Utah

[1] Official notice is taken of the cessation of bottling operations at the IMPA Cedar City, Utah, plant in August 1986.

and pooled on the Lake Mead order was actually needed at Lake Mead distributing plants for Class I use. Testimony by the IMPA witness indicated that under this situation the federation intends to maintain Lake Mead pool status for the Grade A milk of all of its member producers traditionally associated with the Lake Mead market, regardless of whatever excessive hauling costs or complex accounting and reporting procedures may be involved in doing so. The federation's incentive for continuing to assure that its producers are qualified for pooling under the Lake Mead order is the historically higher blend price paid to producers under the Lake Mead order than under the Great Basin order. During the years of 1983–85, the announced blend price paid to Lake Mead producers exceeded the Great Basin blend price by an average of approximately 15 cents per hundredweight.

With milk supplies from the southern and central Utah production area available to both the Great Basin and Lake Mead marketing areas and comprising a necessary reserve for the Lake Mead market, equilibrium in the prices paid to producers located in that area is necessary to avoid disorderly marketing conditions. Maintenance of the present pooling standards for a separate Lake Mead order would require the federation to incur unnecessary, expensive and inefficient marketing practices in order to maintain the pool status of its milk on the Lake Mead market.

In the absence of a merger, the federation would be able to assure an adequate supply of milk at its Lake Mead distributing plants while maintaining the Lake Mead pool status of as much of its producer milk as possible only by calculating each month the producer milk that would be pooled under the Lake Mead order. Enough milk would have to be associated with the Lake Mead order to be able to meet the plants' fluid milk requirements on the days the plants receive milk without associating so much milk with the order that the amount of milk diverted to manufacturing would exceed the order's diversion limits. Any milk in excess of that qualified for pooling on the Lake Mead market would have to be pooled under the Great Basin order. Under such conditions, the Great Basin pool would be carrying almost the entire seasonal reserve supply of milk for the Lake Mead marketing area. In addition, the federation would be incurring unnecessary trouble and expense for the sole purpose of marketing its members' milk to their greatest benefit.

The quotation of the IMPA witness from the hearing record used in the Rockview Dairies' brief refers to the requirement of the Lake Mead order that one day's production of a producer's milk must be received at a pool distributing plant each month in order for the producer's total production for the month to be pooled. The IMPA witness testified that, in order for milk produced in southern Utah, more than 200 miles from Las Vegas, to be pooled under the Lake Mead order, some of it must be shipped to Las Vegas each month, sometimes displacing milk produced in the Las Vegas area. The witness' statement was not an assertion that milk from other areas should not be marketed in the Las Vegas area, but rather that the provisions of the order should not require milk to be moved into the Las Vegas area solely in order to be pooled, necessitating the removal of locally-produced milk to make room for it. Provisions encouraging such uneconomic and inefficient handling of producer milk and the testimony that such handling has been engaged in are evidence that the Lake Mead order fails to protect the interests of consumers and handlers by failing to promote the orderly flow of the milk supply to the market. Adoption of the proposal to merge the orders does not require a finding that the Lake Mead order causes a disruption of the orderly exchange of milk in interstate commerce, but merely that such exchange would be improved by a merger of the orders.

The federation probably would be able to continue the Lake Mead pool status of some of its producers without merging the orders and without undertaking unnecessary and uneconomic hauling if the present Lake Mead diversion limits were relaxed. Relaxation of those limits would allow more producer milk to be pooled on the Lake Mead market without an increase in actual deliveries to pool distributing plants. However, increased diversion limits would allow more milk to be pooled under the Lake Mead order, causing a decline in Lake Mead prices to producers that would bring them into balance with Great Basin producer prices.[2]

For the reasons discussed above, the inevitable result of existing marketing conditions under the two separate orders is the uneconomic and inefficient hauling practices undertaken by the federation to assure the pool status of its members under the Lake Mead order. Any attempt to avoid such practices by relaxing the present Lake Mead pooling standards will have the effect of reducing the uniform price to Lake Mead producers to a point at which it will be in equilibrium with the Great Basin uniform price to producers similarly located. A merger of the two orders is the best means of accomplishing the same ends by assuring that participants in the merged marketing area will have no incentive to conduct their operations in other than the most efficient possible manner. The efficiencies of operation that may be expected to result from a merger of the two orders should, on the whole, benefit milk producers, handlers and consumers in the marketing areas affected.

As argued by the Rockview Dairies representative, the lower Class I utilization percentage in the present Great Basin area, relative to Lake Mead, can be expected to cause some reduction in prices paid to all producers delivering their milk to plants located in the present Lake Mead marketing area when the orders are merged. However, producers in the Lake Mead area would share in the 30-cent higher Class I price effective at locations in most of the present Great Basin marketing area, which would counteract some of the effect of the present Great Basin market's lower Class I use on returns to producers now supplying the Lake Mead market. In 1985, the average uniform price paid to producers whose milk was pooled under the Great Basin order was $12.61. The range in Great Basin uniform prices during 1985 was from $12.07 to $13.74. The average uniform price paid to Lake Mead producers during 1985 was $12.78, with a range of $12.14 to $13.78. The difference in prices paid to producers under the two orders, therefore, represents just over 1 percent of the uniform price under either order.

In view of the marketing conditions discussed above, separate orders for the Great Basin and Lake Mead marketing areas are no longer compatible with the current marketing practices in these regulated areas. The adoption of a single regulation for the combined area would insure more orderly marketing through application of the same regulatory provisions to all handlers and producers associated with the merged order.

The cooperative federation proposed that the order for the merged marketing area follow the format of the present Lake Mead order, as it was issued more recently than the Great Basin order. Proponent pointed out that the

[2] Official notice is taken of the dramatic increase in the volume of milk pooled under the Lake Mead order while diversion limits were suspended during early 1986, and the resulting decline in the uniform prices paid to producers.

provisions of the two orders do not differ greatly, and the proposed order includes most of the provisions of the individual orders except for certain modifications considered necessary to adapt the proposed order to the marketing conditions existing in the proposed merged marketing area. The provisions common to both orders, with certain modifications, have been appropriate in achieving the objectives sought by the regulatory plans for both marketing areas. Accordingly, on the basis of the record evidence, it is found and determined that the order provisions common to both orders would be appropriate for achieving orderly marketing conditions in the proposed merged and expanded marketing area. Only the significant modifications or specific provisions that were at issue will be dealt with in the decision. Wherever possible, the section numbers containing specific provisions have been designated to conform with the format of order provisions that was incorporated into 39 other Federal milk orders in 1974. Uniform numbering between orders should facilitate references to specific provisions.

The order adopted herein would continue the use of the part number for the present Lake Mead order, Part 1139, as proposed by the merger proponents. The amended Part 1139, upon issuance, would supersede Part 1136. The merged marketing area should retain the name "Great Basin", proposed by IMPA as being more descriptive of the territory included in the merged marketing area than the name "Lake Mead." The name "Intermountain" for the marketing area, also proposed by IMPA, would be more descriptive of a larger marketing area extending eastward of the boundaries of the proposed merged order.

Although the present two orders would no longer exist upon effectuation of the merged Great Basin order, this merger action is not intended to preclude the completion of those procedures that would otherwise have existed under the separate orders with respect to milk handled prior to the effective date of the merger. Such procedures which would need to be completed after the effective date of the merger include the announcement of certain class prices and butterfat differentials, submission of reports, computation of uniform prices, payment of obligations, and verification procedures. The provisions of the merged order would apply only to that milk handled after the effective date of the merger.

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 Great Basin and Lake Mead orders. Certain additional territory between and adjacent to the two present marketing areas also should be part of the proposed merged marketing area. The additional territory to be included are the entire Idaho counties of Caribou, Oneida and Power; Lincoln County, Nevada; the Utah counties of Beaver, Garfield, Kane, Piute, Rich, San Juan and Wayne; and Lincoln County, Wyoming. Previously unregulated portions of Cache, Iron and Washington counties, Utah; Uinta County, Wyoming; and Clark County, Nevada, also would be included. 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 a 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 the entire State of Utah, ten southeastern Idaho counties, the four easternmost Nevada counties, and two counties in the southwest corner of Wyoming. The total population of the merged and expanded marketing area, according to the 1980 census, was approximately 2,214,500 people, or about 170,700 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 ten percent over that of the separate marketing areas.

The territory to be added to the merged marketing area was proposed for inclusion by IMPA. Proponent described all of the added territory as adjacent to counties presently regulated, sparsely populated, and primarily dependent upon handlers regulated by the Great Basin and Lake Mead orders for dispositions of fluid milk products. In response to questions, the IMPA witness stated that there is some distribution in some of the proposed area by handlers regulated under the Southwestern Idaho-Eastern Oregon and Western Colorado orders, but that dispositions in those portions of the area by Great Basin handlers predominate. Proponent justified the addition of entire counties and the presently unregulated portions of counties partially included in the present marketing areas by explaining that the use of county boundaries will make it easier for handlers to determine which of their sales of fluid milk products are inside and which are outside the marketing area. Handlers must report sales inside and outside the marketing area so that the market administrator will have a basis for determining whether or not the handlers meet pooling qualification standards.

The IMPA witness testified that no additional handlers would become regulated as a result of including the proposed additional territory in the merged marketing area. However, in response to questioning, the witness conceded that a manufacturing plant located at Thayne, Wyoming, and operated by IMPA would be included as a pool plant under the pool plant definition of the proposed order. In addition, he said, several producer-handlers would be included in the marketing area because of the inclusion of additional territory. It is expected that these producer-handlers would be exempt from the pooling and pricing provisions of the proposed order.

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 proposed territory as supplied with fluid milk products primarily 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," "distributing plant," "supply plant," "pool plant" and "nonpool plant". Definitions of persons include "producer," "handler," "producer-handler," "cooperative association," and "federation." 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 Great Basin or Lake Mead orders. Such definitions are discussed below.

Pool plant. It is necessary to establish minimum performance requirements to distinguish between plants that serve the fluid 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, supply plants and cooperative-operated manufacturing 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 that in the present Great Basin order, with the addition of a plant operated by a cooperative association and located within the marketing area. Certain features of the pooling standards for a distributing plant should be revised to conform with current marketing conditions existing in the proposed combined and expanded area. The pooling standards for distributing plants under the proposed order should reflect the current Great Basin standards of total route dispositions as a percentage of receipts, as proposed by proponents. Those standards are 50 percent for the months of September through February, 45 percent in March and April, and 40 percent in the months of May through August. The proposed requirement that a pool distributing plant dispose of at least 15 percent of its receipts as route disposition in the marketing area, also from the present Great Basin order, should also be adopted. However, a modification of the proposed order as published in the hearing notice that would include milk diverted from a distributing plant as a receipt for purposes of determining pool qualification should not be adopted.

Testimony on behalf of IMPA and its post-hearing brief supported the distributing plant percentage pooling standards adopted in this decision, describing them as varying inversely with the seasonal pattern of milk production. Proponent witness stated that qualification percentages lower than the 50 percent standard currently in the Lake Mead order would have no adverse effects on distributing plants in the Lake Mead market. At the same time, he said, Lake Mead handlers would have no difficulty in meeting the Great Basin 15 percent in-area requirement rather than the 10 percent of route disposition required to be sold inside the marketing area by pool plant operators under the Lake Mead order. There was no disagreement with either assertion from any other participants in the proceeding.

Although it was not included in its initial proposal as published in the hearing notice, the merger proponent proposed at the hearing that milk diverted from a distributing plant be included as part of such plant's total supply in determining its qualifications as a pool plant. As the pool distributing plant definitions of both the Lake Mead and Great Basin orders now include diversions to nonpool plants as receipts for determining pool plant qualifications, the witness explained the omission from the proposal as a typing error. Proponent did not attempt to explain why such diversions should be included as receipts for pool qualifications.

Two proprietary handlers, K.D.K, Inc. and Gossner Foods, Inc., filed post-hearing briefs objecting to the inclusion of diverted milk as a receipt in determining pool plant qualification under the proposed merged order. The handlers complained that adoption of such a provision, along with other provisions proposed by IMPA to be included, would severely disadvantage the operations of proprietary handlers vis-a-vis those of cooperatives in retaining their nonmember producer suppliers and in being able to compete for fluid milk accounts. Specifically, the handlers asserted that with adoption of the proposed cooperative manufacturing pool plant definition (discussed below), IMPA would be able to pool much more milk than would proprietary handlers without having any greater proportion of milk used in Class I products.

The percentage requirements of the pool distributing plant definition contained in the adopted merged order will be sufficient to ensure that a plant that qualifies as a pool distributing plant will be engaged primarily in the processing and disposition of fluid milk products, and that enough of those fluid milk products are distributed within the marketing area to demonstrate the plant's involvement in supplying the market's fluid needs. Provisions intended to limit the amount of milk a handler may associate with the pool would be included more appropriately under diversion limits. There is no reason to require proprietary handlers to meet standards not required of a cooperative association. Accordingly, diversions should not be included as receipts in determining pool distributing plant qualifications.

A provision currently contained in the Great Basin order that allows producer milk delivered by a cooperative to the pool distributing plant of another handler to be included as a receipt at the cooperative's distributing plant, and the amount of such milk assigned to Class I to be included in the cooperative plant's pool qualification should not be retained in the merged order. Although included in IMPA's proposed order, proponent agreed that the provision may not be helpful to the federation under the merged order, given some of the other provisions that were proposed for inclusion. IMPA should experience no difficulty in associating all of its historical supplies of producer milk with the merged order, and thus should have no need to use other handlers' receipts and dispositions to qualify its own plants. Adoption of the provision would only cause the market administrator to make many extra calculations in determining pool plant qualifications.

The definitions of a pool supply plant and a pool plant primarily engaged in the distribution of aseptically processed and packaged fluid milk products should be adopted as proposed by IMPA. As noted by proponent witness, the pool supply plant definition is little different from that contained in both orders now, while the definition of a pool distributing plant disposing of aseptically processed and packaged fluid milk products is the same as that contained in the present Great Basin order. None of the provisions of the two definitions was opposed by any interested person.

A new category of pool plant, not now defined in either the Great Basin or Lake Mead orders, should be included in the merged order. IMPA proposed that a manufacturing plant operated by a cooperative association, which is not covered under the other pool plant definitions and is located within the marketing area, be defined as a pool plant. The cooperative would have to deliver at least 45 percent of its producer milk to pool distributing plants during each month or during the 12-month period ending with the current month to continue the pool status of such a plant.

Proponent witness testified that inclusion of the definition of a cooperative-operated manufacturing pool plant would allow IMPA to integrate its operations and better enable the federation to furnish other handlers with milk, providing supplemental supplies when needed; absorb surplus milk not needed by other handlers; process its own reserve supplies in its members' best interests; reduce the cost of transporting milk from farm to market and maintain its members as producers under the order.

The witness explained that IMPA operates a number of fluid processing plants and manufacturing plants located throughout the proposed marketing area to serve the fluid needs of the market and handle the market's reserve supplies of milk. He said that several of the manufacturing plants, particularly those at Beaver, Utah; Idaho Falls, Idaho; and Thayne, Wyoming, are located near areas of high milk production. From those areas, he stated, producer milk can be shipped directly to distributing plants as needed or delivered to the nearby manufacturing plants when not needed for fluid use. The witness testified that order provisions requiring certain percentages of producer milk or a given number of days of production for each producer to be received at pool plants each month often require the federation to move some milk from the production areas to pool plants when it is not needed there. Such movements, he said, often displace other, closer-in milk that must, in turn, be moved long distances to manufacturing outlets.

Because IMPA represents a large majority of the producers on the market, the witness claimed, the federation is the most likely source of supplemental milk supplies for other handlers, and absorbs most of the market's surplus milk. He introduced data that showed the daily variations in volumes of milk delivered to distributing plants and to manufacturing plants, pointing out that most distributing plants receive significant volumes of milk on five or fewer days per week. Because milk production is relatively constant on a day-to-day basis, daily deliveries to manufacturing plants, as shown by the exhibit, vary accordingly. According to the witness, designation of the cooperative manufacturing plants as pool plants will allow IMPA to provide better service to fluid milk handlers, to handle milk surplus to distributing plant requirements more efficiently, and to reduce the cost of unnecessary shipments to distributing plants for the sole purpose of keeping its producers pooled.

Proponent witness emphasized the desirability to the federation of maintaining producer status under the order for all of its members. He stressed that the federation cannot decide which of its members' milk should be pooled and which should not if the federation is not able to qualify all of their milk for pooling. Such decision, he claimed, would pit dairy farmers against each other for a share of the fluid market. The witness stated that the principal source of difficulty in qualifying all of the federation's producer milk for pooling is the fact that Class I use is not increasing as rapidly as milk production. He described the recent large surge in production as not only a local but a national problem, and asserted that the cooperative associations cannot control production increases. Proponent witness testified that adoption of the proposed pool plant definition would not result in a large volume of currently unpooled Grade A milk becoming eligible for pooling. He said that the only likely source of additional producers that would be added to the pool would be dairy farmers currently producing manufacturing grade milk who may convert their operations to Grade A.

Addition of a cooperative manufacturing plant to the pool plant definition was opposed in post-hearing briefs filed by Gossner Foods, Inc., and K.D.K., Inc., two proprietary pool handlers under the present Great Basin order. The handlers claimed that the proposed definition would give cooperative associations a large advantage over proprietary handlers in being able to maintain the pool status of their producers. The handlers stated that allowing member milk deliveries to manufacturing plants to be considered as deliveries to pool plants would have the effect of liberating the cooperatives from the constraints of any diversion limits, particularly in view of the diversion limits proposed by IMPA for other handlers (discussed below). As pointed out in the brief filed by K.D.K., Inc., some of the reasons behind IMPA's desire for such a pool plant definition—assuring producers of continuing pool status, reducing the cost of transporting milk from farm to market, and handling reserve supplies of milk in the most efficient manner possible—apply equally to any handler with its own producers.

However, some of the reasons for IMPA's proposal for a cooperative manufacturing plant do not apply to proprietary handlers. Proponent witness repeated several times the federation's commitment to supplying the fluid needs of the market, whether through its own fluid processing plants, or as supplemental or full-supply deliveries to other handlers. Proponent also expressed a sense of the responsibility of a cooperative's role in absorbing the market's surplus milk in manufactured products. It is apparent from the hearing record that adoption of a cooperative manufacturing pool plant definition would enable IMPA to supply milk to fluid handlers and handle much of the market's surplus milk supply more efficiently than is possible under the present provisions of the separate orders, while assuring that all of the milk of its member producers remains eligible for pooling. IMPA would be able to oversee the movement of milk to where it is needed and assure that it is moved most economically without concern about meeting the pooling standards relating to each plant's supply of milk. At the same time, the requirement that 45 percent of the cooperative's, or federation's, milk supply be received at pool distributing plants during the current month or the 12-month period ending with the current month would assure that the association does not pool large amounts of unneeded supplies of milk under the order. In effect, the requirement that a particular percentage of a cooperative's milk be received at pool distributing plants would serve as a limit on the ability of the cooperative, or federation of cooperatives, to move milk directly to either pool or nonpool manufacturing plants.

The objective desired by proponent in adopting a pool plant definition that includes a cooperative manufacturing plant would best be achieved by establishing a percentage requirement of deliveries to pool distributing plants of 45 percent, adjustable upward or downward by 10 percentage points by the Director of the Dairy Division as marketing conditions require. IMPA's proposal, as published in the hearing notice, included a requirement that 60 percent of the cooperative's (or federation's) milk supply be received at pool distributing plants in order for the cooperative's manufacturing plants to be pooled. However, after studying more closely IMPA's actual deliveries to distributing plants, proponent witness stated that 50 percent appeared to be a more realistic number. In suggested order language contained in the post-hearing brief filed on behalf of IMPA, the percentage had declined to 45 percent, with no explanation or justification. However, examination of data introduced at the hearing for the two separate orders combined supports the 45 percent requirement. Producer milk pooled under the two separate orders in 1985 had increased more than 30 percent, while Class I use increased less than eight percent. As a result, the percentage of producer milk used in Class II and III increased more than 10 percentage points, to nearly 50 percent. There is no reason to believe that increases in milk production in the merged area will slow very much in the near future, or that Class I use will increase greatly enough to keep pace with production increases. In addition,

milk production in the area could be increased by approximately 20 percent by the conversion of IMPA's Grade B producers to Grade A. It would seem prudent, if the delivery requirement of milk to pool distributing plants for cooperative manufacturing pool plants is not to be obsolete before it is implemented, to set a standard of 45 percent.

Although not specifically included in the hearing notice, a provision allowing the pool plant percentage requirements to be raised or lowered 10 percentage points by the Director of the Dairy Division should be adopted. Such a temporary revision of percentage requirements should apply also to pool distributing plant and pool supply plant standards, and to the limits on the amount of a handler's milk supply that may be delivered directly from producers' farms to nonpool plants. When questioned by the attorney for Kraft, Inc., about the desirability of such a provision, the proponent witness indicated no objection to its inclusion. In the post-hearing brief filed on behalf of Kraft, Inc., adoption of such provision was supported as providing "additional flexibility during a time of changing and uncertain production and marketing conditions." In view of the difficulty of projecting milk production and use trends in the marketing area, such a provision would make suspension of the percentage pooling standards and diversion limits unnecessary if milk production increases are greater than anticipated, and would also allow the delivery requirement percentage to be increased if milk supplies for fluid use become tighter than expected.

Nonpool plant. The "nonpool plant" definition of the merged order should specify those categories of plants which are associated with the market but not to the degree that they should be fully regulated by the order. As used herein, a nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. A description of the specific categories of nonpool plants included in the "nonpool plant" definition follows.

A plant of a "producer-handler" would be considered a nonpool plant since, by the nature of the operation, as discussed later, the plant is specifically exempt from pool status.

An "other order plant" would be a plant that is fully regulated under another Federal order. As such, it cannot be a pool plant under this order.

As proposed by the merger proponent and adopted herein, an "exempt plant" means a distributing plant with an average route disposition in the marketing area of less than 1,000 pounds per day. Also included in the "exempt plant" definition are a plant operated by a government agency or by a college or university and a plant from which all of the route disposition is for charitable purposes without remuneration. The present Great Basin order contains a definition of an "exempt plant" as "a governmental agency, Brigham Young University or any approved plant from which the total route disposition is to individuals or institutions for charitable purposes and is without remuneration from such individuals or institutions." Although the proposed merged order did not include exemptions for the latter descriptions of plants, proponent witness testified that IMPA would support exempt plant status for government agency and college plants as long as such plants are not engaged in commercial distribution in competition with regulated handlers, and for plants operated solely for charitable purposes.

Witnesses representing Brigham Young University and the Church of Jesus Christ of the Latter Day Saints (LDS Church) testified that the exemptions from regulation currently afforded their milk plants are necessary to their plants' operations, and that neither institution is involved in commercial sales of fluid milk products. The LDS Church witness stated that the Deseret Milk Plant in Salt Lake City processes its own farm production and distributes milk products free of charge to the poor and needy, as determined by a bishop. He testified that in 1985, the milk plant processed and disposed of approximately 10 million pounds of milk. In order to balance the milk needs of the plant, he said, approximately 500,000 pounds of surplus milk was sold to IMPA, and about 175,000 pounds of supplemental supplies were purchased from IMPA. The witness stated that the LDS plant sells some surplus milk to IMPA, and has no commercial sales of fluid milk products.

The witness representing Brigham Young University (BYU) testified that the operation of a dairy herd and a dairy processing plant are essential for continuing the University's teaching and research programs in dairy production and manufacturing. He stated that the University can afford to operate the farm and plant only if they are fully functional and paying their own way by supplying most of the dairy products used in BYU's food services system. The witness testified that the BYU dairy operation has been exempt from the terms of the Great Basin milk order for many years, and that such an exemption is necessary for the continued operation of the farm and plant. He said that in the past supplemental milk supplies have been purchased, and that production in excess of campus demand has been sold. At the present time, he stated, approximately one-third of the BYU herd's production is sold as surplus.

In testimony at the hearing and in a post-hearing brief, IMPA stated that plants distributing less than 1,000 pounds of milk per day in the marketing area would not have a destabilizing effect on the market if such plants are not regulated. The IMPA witness testified that exemption of plants only casually associated with the market would eliminate needless regulation. He stated also that IMPA would support continued exemption for the LDS plant and for the BYU dairy operation on the basis that neither entity is involved in disposing of fluid milk products through commercial channels. At any time such operations engage in competition with regulated handlers by disposing of fluid milk products in commercial channels, he said, they should lose their exempt status and become regulated.

The "exempt plant" definition, as proposed and modified by proponent, should become part of the merged order. A milk handler disposing of less than 1,000 pounds of fluid milk per day is not likely to disrupt marketing conditions in a market which disposes of nearly two million pounds of milk per day. In addition, organizations such as the LDS and BYU milk plants are not in competition with the fully regulated handlers who compete for route sales in the market. The "exempt plant" definition should be constructed in such a way that if such entities were to enter commercial distribution channels their exemption from regulation would cease.

A "partially regulated distributing plant" would also be considered to be a nonpool plant. A partially regulated distributing plant would be a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant. Such a plant would be one from which during the month an average of 1,000 pounds or more of fluid milk products is disposed of daily as route disposition in the marketing area, but is not operated by a government agency, a college or university, or a charitable institution from which route disposition is for charitable purposes and without remuneration. Also, such a plant would distribute less than 15 percent of its receipts as route disposition within the defined marketing area of the order and/or not meet the minimum total route disposition requirement of the order.

An "unregulated supply plant" means a supply plant that does not qualify as a pool supply plant, an other order plant, a producer-handler plant, or an exempt distributing plant. In essence, it is a plant that transfers milk to a pool distributing plant, but not to an extent that would qualify it for pool status under 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. 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 or diverted for the cooperative's account to a nonpool plant;

(3) A producer-handler;

(4) The operator of an other order plant from which milk is disposed of in the marketing area;

(5) The operator of an exempt plant;

(6) The operator of a partially regulated distributing plant; and

(7) The operator of an unregulated supply plant.

All such persons are now defined as handlers under the Lake Mead order, and most are so defined under the present Great Basin 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 nearly identical to the one contained in the present Lake Mead order. Adoption of the proposed handler definition should help to assure orderly marketing in the merged marketing area.

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 essentially the same as that now contained in the Great Basin order. The amount of fluid milk products a producer-handler would be able to purchase from pool or other order plants and still maintain its exemption from regulation would be increased somewhat from 3,000 pounds to 5,000 pounds per month, or 5 percent of the producer-handler's Class I sales, whichever is greater.

Proponent witness testified that a farmer who is engaged in distributing its own milk production should be exempt from regulation as long as the operation of the farm or dairy plant does not involve other milk-producing or processing entities. The witness explained, however, that as long as a producer-handler does not share its Class I disposition with the other producers in the pool, the producer-handler should not be able to share in the Class I proceeds of other producers. He said that there may be times when a producer-handler cannot produce all of its Class I needs, and may have to purchase Class I milk from the pool, sharing some of its Class I use with other producers. At other times, the witness observed, a producer-handler may need to dispose of surplus milk as a Class III sale to a pool outlet, an action which would not affect other producers.

Although the actual order language proposed by proponent would reduce the limit on the amount of milk a producer-handler would be allowed to purchase from pool sources, proponent stated that the limit on the amount of milk a producer-handler may purchase from pool sources should be increased because of the growth in size of producers in recent years, and an assumption that producer-handlers have also grown in size. According to the witness, the regulatory status of handlers currently involved in either order would not change as a result of the proposed changes in the present producer-handler definitions of the Lake Mead and Great Basin orders. There was no other testimony at the hearing relating to the limits to be placed on a producer-handler's operations.

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 its own production. Any fluctuations in a producer-handler's daily and seasonal milk needs is met through his own farm production, and any excess milk supplies are disposed of at its 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 its 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 its own farm but also relies on pool plants for substantial supplies, either in bulk or packaged form, its operations are not significantly different than the operations conducted by a pool handler. However, since its operation is not fully regulated, the pool does not receive the benefits of the producer-handler's Class I sales. And yet, the other producers in the market are bearing the cost of balancing its 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 who receives significant amounts of milk from pooled sources.

In view of the marketing situation in the merged order, the proposed producer-handler definition should serve to identify and exempt from regulation those entities who rely almost entirely on their own milk production to balance their fluid sales. At the same time, producer-handlers who rely too heavily on pool sources to balance their fluid milk needs would become fully regulated handlers, sharing their Class I use with the other producers in the market. According to the market statistics introduced by the market administrator, producer-handler dispositions appear to represent a relatively small part of Class I sales in the Great Basin market and little or none of the Class I sales in the Lake Mead marketing area. The limits proposed to be placed on producer-handler purchases should be adequate to prevent such persons from creating disorderly marketing conditions in the merged marketing area, and should be adopted.

One change to be made in the producer-handler definition as proposed is that producer-handlers should be able to receive Class I milk from pool sources by diversion directly from producers' farms as well as by transfer from pool plants. At times, it may be more efficient for a pool handler to deliver supplemental milk supplies directly from a farm pick-up route than to pump milk out of a pool plant into a tank truck for delivery to the producer-handler. Also, allowing such milk to be moved by diversion as well as by transfer will help to forestall incidents in which a producer-handler operating within the order's limits inadvertently receives a partial load of diverted milk rather than transferred milk and must be pooled as a result. The effect on the pool of allowing a producer-handler to receive Class I milk by diversion would be the same as if such milk were received by

transfer, except that the handler selling the milk may be able to handle the milk more efficiently.

Producer. The producer definition proposed for the merged order and adopted in this decision is essentially the same as those in the present Lake Mead and Great Basin orders. However, the provision of the producer definition in the Lake Mead order commonly referred to as the "dairy farmer for other markets" provision has been modified by proponent to avoid unnecessarily restricting the pooling of milk under the order. The present Great Basin order contains no such description of a nonproducer, and proponents expressed concern that adoption of the present Lake Mead provision would make it difficult to manage the milk supplies marketed in the regulated areas of Idaho and Wyoming, and in northern Utah.

Proponent witness described the present Lake Mead provision as requiring that all of a producer's milk production for a month be pooled under some Federal order if any of the producer's milk is to be eligible for pooling, beginning with the first day of the month. He explained that the modification would allow a producer's milk to be pooled if the producer became associated with the market sometime after the first day of the month, but would still require that all of the producer's production for the remainder of the month be pooled. Proponent supported the change in the provision by observing that the Grade B producers who convert to Grade A and wish to share in the pool should not have to wait until the first day of the month following their change in status to do so. In addition, he stated that IMPA sometimes balances fluid milk needs and handles reserve supplies in cooperation with handlers in other nearby marketing areas, and that the modification would assist the cooperative in the efficient management of such milk supplies without allowing producers' pool status to change on a daily basis.

The "dairy farmer for other markets" exclusion from the producer definition would prevent dairy farmers whose milk is regularly used for fluid disposition in other markets from pooling the surplus part of their production on the merged order and sharing the Class I value of the merged Great Basin pool with those producers who regularly supply the fluid needs of the merged order. Modification of the "dairy farmer for other markets" provision would prevent it from becoming too restrictive to enable handlers to market milk in the most efficient manner possible.

Producer milk. The order must define clearly which milk is eligible to be included in the marketwide pool and share in the market's fluid milk sales. For this reason, certain minimum standards of association with the market are determined for individual producers and for all of a handler's producers as a group. The merged order should require that all producers "touch base" by delivering at least one day's production of milk to a pool plant each month. Diversion limits on the amount of milk not needed at fluid processing plants that may be delivered directly from producers' farms to nonpool manufacturing plants should be established at 60 percent for the months of April through August and 50 percent in other months of the total milk delivered to pool plants and diverted to nonpool plants by a handler.

Proponent proposed, and argued at the hearing and in a brief, that an appropriate level of allowable diversions would be much lower than the limits adopted in this decision. Proponent based its argument that diversions should be limited to 25 percent in the months of April through August and 15 percent in other months of the producer milk delivered to pool plants by a handler on the expected existence in the merged order of the cooperative-operated pool manufacturing plant definition adopted in this decision. Because the cooperative would be able to count deliveries to its own manufacturing plants as deliveries to pool plants, proponent witness stated, the cooperative's need to divert milk to nonpool plants would be reduced substantially. In the post-hearing brief filed on behalf of IMPA, proponent argued that its proposed diversion limits are nearly the same as those in the present Great Basin order and should be adopted to serve the same purpose currently served by those limits. In addition, proponent argued that the 15-percent limit proposed for the months of September through March should be reduced from the current Great Basin order's 20-percent limit for the purpose of encouraging manufacturing plants to release milk to distributing plants during the season of the year when milk is more likely to be needed for fluid use.

Kraft, Inc., proposed that a handler be allowed to divert a quantity of milk equal to the volume delivered to pool plants during the months of April through August, and 50 percent of the volume of milk delivered to pool plants during other months. In effect, a handler would be able to divert 50 percent of its total milk supply to nonpool plants in the months of April through August, and 33 percent in other months. In the post-hearing brief submitted on behalf of Kraft, the diversion limits proposed to be incorporated in the merged order were relaxed to 50 percent of a handler's milk supply on a year-round basis to better accommodate the present needs of pool handlers.

In testimony presented at the hearing, the witness representing Kraft described the production and marketing conditions in the present Great Basin marketing area as unable to support the highly restrictive diversion limits proposed by IMPA. He cited percentages of Class I use in the Great Basin market for the months of April through December 1985 that ranged from a low of 41.6 percent in June 1985 to a high of 53.6 percent in November 1985. The witness then pointed out that the diversion limit percentages proposed by IMPA, at 25 and 15 percent of milk delivered to pool plants, would actually represent only 20 and 13 percent, respectively, of the total volume of milk handled by a diverting handler. The Kraft witness acknowledged that IMPA would be able to pool all of its member milk within IMPA'S proposed diversion limits if a cooperative manufacturing plant is to be considered a pool plant. He asserted, however, that other handlers would continue to require realistic diversion limits to promote efficient handling because of their inability to designate their manufacturing outlets as pool plants. The Kraft witness observed that the diversion limits in both the Great Basin and Lake Mead orders have been suspended much of the time for the last several years because IMPA has been unable to operate within the present limits of the two orders.

Witnesses representing KDK Dairy, Inc., and Gossner Foods, Inc., two proprietary handlers pooled under the Great Basin order, testified that the diversion limits proposed by IMPA for the merged order would be entirely too restrictive to enable either of those two handlers to maintain the pool status of all of the producers whose milk they currently handle. The witness for KDK testified that KDK receives all of its milk supply from its own nonmember producers, and balances its supply by sending surplus milk to Gossner Foods' cheese plant in Logan, Utah. She stated that KDK is located about 20 miles south of Salt Lake City and about 100 miles south of the Cache Valley area where most of KDK's producers are located. The witness said that when producers' milk is not needed for fluid use at KDK, it can be diverted to the Gossner cheese plant at Logan, Utah, near the producers' location. She described such

milk movements as being more efficient and less costly to producers than shipping the milk to the KDK plant, unloading it, reloading it and shipping it back to Gossner Cheese. Such unnecessary and expensive milk shipments would be required, the witness said, in order to pool KDK's producer milk supply if the restrictive diversion limits proposed by IMPA were adopted.

The KDK witness stated that with the recent loss of a major account, KDK has found it necessary to divert about 50 percent of its producer milk supply to manufacturing use. She explained that it is important to KDK to have a large enough supply of milk available in order to expand sales if the opportunity to do so should arise. She also indicated that it is as important for KDK to be able to pool all of its producer milk supply as it is for IMPA to be able to maintain the pool status of all of its member producers. The brief filed by KDK argued further that KDK and Gossner both balance their own supplies of milk and share the same problems of operating within the current order provisions as IMPA does. The brief states that IMPA would be able to operate within its own proposed diversion limits only if the IMPA manufacturing plants are considered pool plants, and that imposing the proposed limits only on proprietary handlers would be inequitable. The KDK brief, while stating a preference for unlimited diversions, supported the Kraft proposal to establish diversion limits at 50 percent during the months of April through August and 33 percent in other months of a handler's total supply of producer milk, in preference to the limits proposed by IMPA.

A representative of Gossner Foods testified that diversion limits should be established at a level that would allow a handler to divert 50 percent of its milk supply on a year-round basis. The witness described Gossner's fluid milk business as an aseptic packaging and processing pool plant. In addition, he said, Gossner operates a cheese factory through which it balances the milk supply for its fluid milk plant. The witness said that Gossner's aseptic fluid milk sales are primarily to the military, and explained that Gossner needs reserve supplies of milk large enough to enable the handler to bid on contracts which, if accepted, might double Gossner's output and result in a need for more producer milk receipts. Further, in a brief filed by Gossner, the handler stated that the reserve supply of milk which must be available to fill contracts must be of a dependably high quality that will enable the milk to withstand the high sterilizing temperatures required for aseptically packaged fluid milk products. The handler stated that it is important for Gossner to receive milk from its own group of producers in order to work with the producers to ensure that high quality milk receipts are available to fill contracts.

The post-hearing brief filed by Gossner advocated that the order contain no limits on the volume of producer milk that may be diverted to nonpool plants if, as a result of adopting the cooperative pool manufacturing plant definition, IMPA would be subject to no such limit on diversions. In the brief the handler described diversion limits affecting proprietary handler operations under such circumstances as discriminatory. Gossner stated that all producers associated with the present Great Basin order should have their total production pooled and priced, asserting that the IMPA witness' testimony to the effect that the federation cannot pool the milk of some cooperative members and fail to pool others' is applicable to nonmembers as well. In fact, the handler observed, a cooperative's ability to reblend monies received from the marketwide pool among its members makes pool status much less important to individual cooperative members than to nonmembers. In lieu of continuing the present situation, in which diversion limits are suspended, Gossner advocated adoption of a limit on diversions of 50 percent of a handler's total producer milk supply.

It is true that adoption of the cooperative pool manufacturing plant definition would, for all practical purposes, exempt IMPA from the effects of the order's diversion limits by changing the status of the federation's manufacturing plants from nonpool plants to pool plants. However, the provision of the cooperative pool manufacturing plant definition that requires that a cooperative association deliver at least 45 percent of the total supply of its member producer milk to pool distributing plants would, in effect, require the same standard of performance of IMPA as the diversion limits require of other handlers in the market.

It is obvious from the testimony of the witnesses representing KDK Dairy and Gossner Foods, as well as from the market statistics, that the diversion limit percentages proposed by IMPA are much too restrictive to allow other handlers to operate their milk plants or to handle their producer milk supplies efficiently or economically. The percentage of producer milk used in Classes II and III has been increasing in recent months and, as producer milk increases continue, the rate of increase of milk surplus to the fluid needs of the market shows no sign of abating. The diversion limits of both of the present orders have been found too restrictive for some time now, a fact reflected by the suspension of those limits for much of the last several years. Establishing diversion limits even more restrictive than those in the present Great Basin order would ensure that the milk of some producers in the market would fail to be pooled, or that the limits would have to be suspended as soon as the merged order is effective.

The diversion limits adopted in this decision are only somewhat more liberal than those contained in the present Lake Mead order. Relaxation of the present Lake Mead diversion limits for the merged order is necessary because of the historically greater use of milk in Class II and III in the Great Basin marketing area than under the Lake Mead order, and the predominantly greater share of the milk to be pooled under the merged order represented by present Great Basin production.

While it is true that allowing IMPA to pool its manufacturing plants will solve the over-diversion problems experienced by the cooperatives, the existence of pool manufacturing plants should not be a basis for narrowly limiting the amount of milk that may be diverted to nonpool plants by other handlers. Unnecessarily restrictive diversion limits would continue to encourage inefficient handling of producer milk by handlers that use nonpool manufacturing plant outlets to dispose of their surplus milk. The same data that supports a requirement that a cooperative association deliver only 45 percent of its member producer milk to pool distributing plants in order to pool its manufacturing plants also supports diversion limits that would allow other handlers to qualify all of their producer milk supply for pooling on the basis of delivering approximately the same percentage of their milk to pool distributing plants as cooperatives are required to deliver.

Diversion limits for the months of September through March should be 50 percent of the total milk supply of a handler. For the months of April through August, the limit on the proportion of a handler's milk supply that may be diverted to nonpool plants should increase to 60 percent. Because milk production and consumption vary seasonally, there should be some recognition of the fact that more milk

will have to be diverted to manufacturing uses during some periods of the year than during others. As proposed by IMPA, diversion limits should allow more milk to be delivered directly to nonpool plants during the months of April through August than during September through March. Statistics for the Great Basin and Lake Mead marketing areas for 1984 and 1985 indicate that the percentage of milk used in Class II and Class III is higher during the months of April through September than in other months. As a consequence, higher percentages of milk must be diverted during those spring and summer months than during the fall and winter. September, however, is the traditional month for schools to resume classes and therefore, for Class I consumption in schools to increase. Consequently, September should not be included with the months during which diversion limits would be increased.

In Kraft's brief it was suggested that if in the event of over-diversions the handler fails to designate which milk is to be excluded from the pool, the market administrator should first exclude the last milk diverted during the month in lots of an entire day's production until the diversion limit is reached. There is no testimony in the record to support such a procedure, which could be a sizeable administrative burden for the market administrator. As proposed by IMPA, the merged order directs that if the diverting handler fails to designate which producers' milk is not to be producer milk, none of the handler's diverted milk shall be producer milk. Such a provision should ensure that an over-diverting handler will not neglect to designate which producer milk should not be pooled.

An additional modification to the producer milk definition suggested by a Kraft representative at the hearing and included in Kraft's post-hearing brief should be adopted. Provision should be made in the merged order for the Director of the Dairy Division to adjust diversion limits up or down by 10 percentage points. Such a provision will provide additional flexibility in providing for efficient disposal of surplus milk or assuring adequate supplies of milk for fluid uses at a time when production trends and marketing conditions are changing and uncertain. No parties present at the hearing objected to the inclusion of such a provision in the merged order.

Federation. A definition of the term "federation" should be included in the merged order, as originally proposed by IMPA. A federation should be defined in the order as a business organization incorporated under state law that is owned and operated by two or more cooperative associations. Most of the references to cooperative associations in the order will also refer to federations. At the hearing, IMPA's witness testified that such a definition would not be necessary because the four individual cooperative associations of which Intermountain Milk Producers Association is composed were planning to merge their organizations into one cooperative association by the time the merger proceeding would be completed. However, all of the descriptions of marketing conditions in the merged marketing area included references to IMPA as a federation and were based on the organizational status of the cooperatives that then existed. Until there is evidence that the federation has ceased to exist, the definition should be included in the order.

5. *Multiple component pricing.* IMPA included in its proposed merged order a plan to price milk according to its content of protein and butterfat, as well as the differential values of milk used in Class I and Class II. The proposed pricing plan, with some modifications, should be adopted. Under the component pricing plan adopted herein, handlers' obligations for producer milk used in Class I will not be affected by the protein content of the milk.

At the present time under the Lake Mead and Great Basin orders, and under nearly all of the other Federal milk orders, milk received by handlers is priced according to the pounds of producer milk allocated to each class of use multiplied by the prices per hundredweight of milk testing 3.5 percent butterfat, as determined under the orders for each class of use. Adjustments for such items as overage, reclassified inventory, location and other source milk allocated to Class I are added to or subtracted from the classified use value of the milk. The resulting amount is divided by the total producer milk in the pool to calculate a price per hundredweight of milk testing 3.5 percent butterfat to be paid to producers for the approved milk they have delivered to handlers. The price paid to each producer is then adjusted according to the specific butterfat test of the producer's milk by means of a butterfat differential. The butterfat differential is computed by multiplying the wholesale selling price of Grade A (92-score) bulk butter per pound at Chicago, as reported for the month by the U.S. Department of Agriculture, by .115.

The IMPA witness advocated adoption of the proposal to price protein contained in producer milk on the basis that higher levels of protein in milk improve the yield of manufactured products in which the milk is used, and thereby increase returns to the handler using such milk. Therefore, the witness stated, milk containing a higher level of protein has a greater value, and should be priced accordingly. He testified that nearly all of the milk surplus to the fluid needs of the Lake Mead and Great Basin marketing areas is processed into cheese at nonpool plants located in and around the marketing areas. He described cheese as a product whose yield is largely a function of the protein content of the milk from which it is made, and stated that all of the cheese plants he had surveyed in or near the marketing area pay producers on the basis of the protein content of their milk, or on the basis of formulas which attribute cheese yield to the nonfat, or protein, and butterfat solids in producer milk.

The witness argued that the value of butterfat in milk has been reflected in payments for milk for decades, and that protein should not be treated any differently. In fact, he asserted, demand conditions for milk and dairy products have changed considerably over the years, and as a result the value of protein in milk has become more important than the value of butterfat. The witness cited the changing relationship between the prices of cheese and butter as an example of the shift in relative values of the two components. Prices cited for 1920 through 1980 indicate that cheese has risen in price relative to butter from less than half of the value of butter in 1920 to more than the value of butter in 1980. The witness stated, however, that up to the present time protein contained in producer milk has been priced at the same level as the water in which it is contained, while it clearly is of much greater value than water. He stated that under the present order provisions a producer is paid the same price for milk that will produce 11 pounds of cheese as for milk that will produce 9 pounds of cheese. The witness argued that producers should be given an incentive to increase their production of protein relative to water in milk by being paid for protein at a level that reflects its value in manufactured products.

Proponent witness testified that the ability of unregulated handlers to pay producers according to the protein content of their milk gives them an unfair advantage over pooled handlers, who must pay producers at least the order's minimum uniform price. Pooled handlers, therefore, are not allowed to

pay producers less than the order's minimum price for milk of low protein content, although they are allowed to pay a premium for milk of high protein content. According to the witness, nonpool handlers consequently enjoy an advantage in procuring higher-protein milk supplies, and pooled handlers are left with milk of a lower protein test. The IMPA witness asserted that the declared policy of the Agricultural Marketing Agreement Act of 1937 would be effectuated by adoption of the use of protein in the pricing of milk under Federal milk orders because of the Act's requirement that prices to handlers be uniform. The witness argued that payment of the same price for milk which will yield different amounts of the same product is inequitable pricing.

According to the proponent witness many milk handlers, including proponent who represents a substantial majority of the producers in the proposed merged marketing area, currently pay producers at least partially on the basis of protein and have encountered no difficulty in so doing. An expert witness in the field of dairy chemistry testified that protein testing is indeed feasible and widely practiced in the dairy industry. He stated that although testing milk for any component, including butterfat, is not an exact science, the currently accepted methods of testing for the protein content of producer milk can be used to provide fair and equitable results on which payments for producer milk may be made. The expert witness testified that the accepted methods of testing producer milk for protein vary greatly in the cost of equipment and expertise required to perform the testing. He stated that one of the tests available is a better determinant of protein in milk than the Babcock test (the primary test for butterfat) is of butterfat, and that a lab technician's ability to obtain the same results with repeated testing is at least as good with one of the secondary protein tests as with the Babcock test. The expert witness described milk protein as distributed uniformly throughout the skim portion of milk. He stated that because of this characteristic of protein it is much easier to obtain a representative sample of milk for protein testing than for butterfat testing.

The IMPA witness testified in favor of using the price per pound of protein and butterfat to determine the value of those components in producer milk, rather than adjusting a uniform price to producers by the differential value of each component as is done currently in the case of butterfat. In addition, under the proposal producers would receive their share of the added value in the market's Class I and Class II utilization by means of a "weighted average differential" price.

Proponent recognized the difficulty of pricing protein used in Class I products, citing the widely-held belief in the fluid milk industry that consumers are not willing to pay for extra protein in fluid milk at a rate that would equal its value in other uses. Therefore, proponent proposed a negative adjustment to be made to the pool obligation of a handler whose average of protein in producer milk is higher than in the market as a whole, and who tests all of his receipts and milk used in his plant for protein.

In his testimony, proponent witness stressed the importance of complete testing and accounting for both butterfat and protein in all receipts and finished products. However, testimony in the record indicated that reliable tests of protein content are not available for some manufactured products, and that such a requirement would necessitate substantial additional expenditures for testing and accounting on the part of regulated handlers. Accordingly, the testing and accounting requirements were revised in proponent's brief to require that all fluid milk and cream products and fluid milk, cream and nonfluid receipts used in manufactured products be tested for butterfat and protein content and accounted for accordingly.

Other witnesses, who have dealt with protein pricing systems in other areas of the country, testified in favor of recognizing the value to handlers of protein in producer milk by adjusting payments to producers according to the protein content of their milk. The manager of a Wisconsin-based cooperative association with wide experience over a five-year period in marketing milk priced solely on the basis of protein and butterfat stated that protein pricing benefits handlers, producers and consumers. The witness testified that consumer demand has changed the relative values of skim milk and butterfat over time, shifting value from butterfat to skim milk and to the products such as cheese whose yield is affected by the protein content of skim milk. He said that handlers prefer a system which recognizes the effect of the composition of their producer milk receipts on the amount of finished product they are able to obtain from it. In addition, he testified, producers receive a signal to respond to price incentives by selecting cows on the basis of total protein and fat production.

The witness asserted that the operating efficiency of the entire dairy industry will be improved if milk is priced on the basis of the value of its protein or nonfat components, as well as its butterfat content. He predicted a reduction in the volume of milk produced combined with an increased percentage of protein and butterfat in the milk, with the result of enabling processing plants to operate more efficiently. As milk production and processing become more efficient, and therefore more profitable for producers and processors, he stated, consumers may benefit from the increased efficiency of the industry. The Wisconsin cooperative manager testified that accepted testing procedures for protein yield more consistent and repeatable results than the commonly-used butterfat tests. He indicated that his association has had no difficulty in testing, accounting or paying for milk on the basis of protein as well as butterfat.

A representative of an Iowa-based Midwest cooperative association testified that his association has been paying bonuses for protein in its members' milk since 1973. He stated that cooperative members are paid a bonus for protein tests above a 3.2 percent base, and that a deduction is made for milk testing below 2.9 percent protein. According to the witness, members perceive protein payment as equitable, and cooperative management favors the incentive created by such payments for the production of milk high in solids and high in cheese yield. The witness stated that Grade B producers are paid a higher rate for high protein content than is paid to Grade A producers because the milk of the Grade B producers is used in manufactured products where higher protein content results in increased yield, while Grade A milk is used in fluid milk where no gain is realized for higher protein content.

A witness associated with the California dairy industry testified that multiple component pricing has been used under the California State order for approximately 20 years, and that he favors it wholeheartedly. He stated that an adequate testing system, while expensive, is accurate and completely satisfactory. However, the California witness asserted that full accounting for protein as well as butterfat in all receipts and uses in a milk plant would be a nightmare for handlers. He stated that both protein and nonfat solids in milk can be tracked with the skim milk from which they cannot easily be separated and within which they are uniformly distributed. He also expressed the opinion that protein should be priced in all products, not just manufactured

items, and that minimum standards of protein content should be established and enforced for all packaged milk.

A representative of the cheese-making industry testified that there is no doubt that protein has value in milk used to make cheese because of the direct relationship between the protein content of the milk and the amount of cheese that may be made from that milk. He also stated that the cheese-making organizations he heads believe that Federal orders must be modified to recognize the values of protein in milk. However, he expressed concern that the proposed pricing plan would apply the same price to protein in all uses when its value in different dairy products varies somewhat. He also expressed misgivings about the use of the skim milk value of the Minnesota-Wisconsin price and the market-wide average of protein to establish a value for protein. He explained that the protein content of milk produced in Minnesota and Wisconsin that is used in the computation of the "M–W" price, which is used as a price determinant under all milk orders, is greater than the protein content of milk produced in Utah and Nevada. He expressed the belief that such a procedure for determining a value for protein may result in overvaluing that component.

The witness suggested that the order allow handlers to make deductions from producer payments for milk low in protein, in the same way that handlers currently pay premiums for higher-than-average levels of protein in producer milk. Such a solution, he suggested, would allow handlers to pay producers on the basis of the protein content in their milk, but would avoid incorporating a system of protein pricing within the order.

One reservation about the proposed pricing plan voiced by most of the witnesses who supported the adoption of some form of multiple component pricing is its inability to address the problem posed by the presence of somatic cells in milk. According to testimony in the hearing record, somatic cells occur naturally in milk. However, in the presence of infections such as mastitis, somatic cell numbers multiply greatly and produce enzymes that break down the casein component of milk protein that contributes to cheese yields. These witnesses urged that any protein pricing system, to be effective, should incorporate some type of quality payment schedule based on the somatic cell count of a producer's milk.

The issue of adjusting producer payments according to somatic cell counts should be addressed independently with proper notice and opportunity for both opponents and proponents to prepare testimony. The notice of hearing in this proceeding included no reference to the consideration of any payment adjustments for somatic cell counts. Therefore, any such adjustment more properly would be considered in another proceeding.

Opposition to the multiple component pricing proposal came from several fluid milk handlers regulated under the Great Basin order, and from a national trade association for dairy product processors. The witness for the trade association expressed concern that a lack of readily available and efficient methods of testing for protein may lead to non-uniform or unequal raw product costs for handlers. He also was opposed to including any Class I products and some Class II products in a component pricing scheme because the value of such products is not affected by their protein content. Additionally, the witness stated that there is no readily available method for handlers to extract protein or nonfat solids from the milk they receive, and therefore no advantage to a Class I or Class II processor in receiving high protein milk.

Another feature of the proposed payment plan opposed by the trade association representative was the requirement that a handler report and account for the protein contained in all incoming milk and finished products. The witness expressed a preference for a "used-to-produce" concept, under which all of the milk going into a product must be tested and all of its components accounted for, but which would not require the finished product itself to be tested. He described the available tests for protein as dangerous and expensive to perform, requiring specialized personnel and equipment. In addition, he stated that the officially recognized protein tests are not appropriate for determining the protein content of all dairy products. The witness suggested that the percentage of protein contained in a handler's milk receipts may be assumed to remain constant regardless of the product in which it is used. He stressed the importance of an efficient, practical, uniform and reliable testing program to assure equity between handlers and producers, and expressed doubt that present testing technologies are adequate to fulfill such conditions.

A further concern voiced by the trade association representative, was that the price alignment of milk used in the same products in different marketing areas be maintained. He expressed scepticism that competition among handlers in adjoining markets can remain fair if a handler in one market who must pay for his milk on the basis of its protein content competes for sales with a handler in another market who does not pay for milk based on its protein content.

An expert witness testifying on behalf of the trade association expressed concern that the testing procedures necessary to implement a protein pricing system are too expensive for most fluid milk handlers to justify on the basis of the benefits to be enjoyed from such testing, both in terms of capital costs and in terms of salaries that would have to be paid to technicians more highly trained than a milk plant would otherwise need to employ. In addition, he testified, handlers' accounting and recordkeeping costs would increase as a result of such a pricing plan, as would the probability of extra costs associated with overages and excess shrinkage resulting from testing inaccuracies. The witness also observed that the protein content of nonfat solids varies significantly. Therefore, he stated, a plant that does not make cheese does not have any use for protein testing in controlling the solids content of its Class I and Class II finished products, even to determine whether its products meet the minimum identity standard for nonfat solids content.

Three fluid milk handlers currently pooled under the Great Basin order who opposed the proposed multiple component pricing plan also objected to the extra costs of testing and accounting for the protein, as well as the butterfat, in all of their receipts and finished products. The handlers found it especially unfair that they be expected to assume such an added cost burden in order to account for a component that does not enhance the value of the products they process and sell. Another feature of the proposal to which they objected was the deduction to be made from handlers' obligations in the case of handlers whose Class I milk contains a higher protein percentage than the marketwide average. Such a provision, they contended, would result in inequitable pricing for Class I use between handlers, with handlers receiving lower-protein milk paying less for it than handlers receiving milk containing the marketwide average percentage of protein or more. In such a case, the low-protein milk would be worth as much used in fluid milk products as milk containing more protein, although the costs to handlers would differ. The handlers complained that such a provision would fail to carry out the requirement of the Agricultural Marketing Agreement Act of 1937 that

Federal milk orders establish uniform prices between handlers.

The protein content of milk received and used by handlers should be considered, along with butterfat and volume, as a factor in determining the value of producer milk under the order. Failure to include the effect of protein variations on the use value of milk in a marketing area in which a substantial volume of unregulated milk is subject to multiple component pricing can be expected to cause, and apparently has caused, serious problems for regulated handlers competing for the procurement of producer milk with the operators of nonpool plants who have a supply of pooled milk. In addition, it is economically sound in such circumstances to recognize additional value in milk with a higher-than-average protein content by paying more for such milk.

There was no disagreement among hearing participants that, all things' being equal, milk containing a higher percentage of protein will result in greater yields of most manufactured products than milk with a lower protein test. If a handler receives milk that will result in greater volumes of finished products such as cheese or cottage cheese than the same volume of milk testing lower in protein, the handler should be required to pay more for the higher-testing milk. At the same time, the dairy farmer producing milk that yields greater amounts of finished product deserves to be paid more for it than a dairy farmer producing the same volume of milk that results in less product yield. The reason producers have been paid partly on the basis of the butterfat content of their milk for decades is that butterfat is a component of milk which affects the amount of butter that can be manufactured from a given amount of milk. Butter has value, and therefore additional butterfat in milk increases the value of the milk. A handler is required to pay for the butterfat in the milk he receives, and it is not unreasonable that he be required to pay for the protein in his milk receipts if protein content is a factor in determining the value of milk as it is used.

Those testifying at the hearing agreed that cheese is the manufactured product whose yield is most affected by the protein content of the milk used to produce it. It is apparent that an overwhelming proportion of the producer milk pooled under the Great Basin and Lake Mead orders and surplus to the fluid needs of those markets is used to produce cheese. Exhibits in the record show that 85 percent of the Class II and Class III milk pooled on the Lake Mead and Great Basin markets was used to produce cheese in 1984, and 89 percent in 1985. Given the percentages of milk used in these classes in the two markets, 38.2 percent of the total producer milk pooled on the Lake Mead and Great Basin markets in 1984 was used in cheese and cottage cheese, and 49.6 percent in 1985. Therefore, it is appropriate in these areas to price milk on the basis of its protein content to the extent that protein content affects the value of the milk in the end use.

While protein content was seen to be critical in establishing the value of milk used in cheese, there was no evidence that protein content has any effect on the value of fluid milk products at all. On the contrary, there appears to be general agreement that consumers are not willing to pay more for fluid milk with a higher-than-average protein content than they are for low-protein milk. Handlers cannot easily remove protein from fluid milk products to add it to products in which it would have value, and it is illegal for them to add water to milk to reduce its protein content. Therefore, handlers obtain no discernable difference in economic benefit from the various levels of protein contained in milk used in fluid milk products, and there is no justification for requiring them to pay for such milk according to its protein content.

Regardless of doubts voiced by those opposing adoption of a multiple component pricing plan under the order, there is no reason to believe that the problems involved in adopting such a plan are insurmountable. It is clear from testimony in the hearing record that pricing milk on the basis of its protein as well as its butterfat content is practiced in other areas of the U.S. and among most, if not all, of the cheese processors in the proposed merged marketing area, as well as by the group of cooperative organizations representing a substantial majority of the producers in this area. Although opponents of the proposed pricing plan expressed reservations about the accuracy and reliability of present methods of testing for protein, other testimony indicates that those testing methods are at least as adequate as butterfat testing for purposes of determining handler obligations and payments to producers.

There was some difference of opinion between witnesses about whether higher protein content results in greater yield of such Class II products as ice cream, dips and yogurt. Although there was no conclusive testimony either way, it seems reasonable to believe that the costs of manufacturing any products to which nonfat milk solids are routinely added would be reduced by the use of milk containing high levels of protein. These products represent a very small percentage of the milk that handlers will be required to pay for on the basis of protein. In addition, because the protein price is derived from the value of skim milk, the difference caused by valuing a relatively small amount of milk at the protein price rather than at the skim milk price can be expected to be negligible. Therefore, protein pricing should apply to all producer milk used in Class II and Class III. There is no point in creating special categories of Class II and Class III use for products that would not be subject to protein pricing when those products represent such a small percentage of the total milk in the pool, and when the protein pricing plan adopted in this decision would cause little change in most handlers' pool obligations.

Other objections raised by witnesses to the implementation of a multiple component pricing system within the order present no great obstacles to the adoption of such a system. The possibility that pricing milk on the basis of its protein content in one order may create competitive problems for handlers if milk in neighboring marketing areas is not priced in the same manner is overridden by the fact that different systems of pricing between regulated and unregulated handlers who receive pool milk within the proposed merged marketing area are currently causing competitive problems. Handlers in the proposed merged area and in other Federal order marketing areas have been selling their products for some time in competition with unregulated handlers in all areas who pay for their milk receipts on the basis of protein content without encountering any difficulties in the course of such competition serious enough to be mentioned in the hearing record. The competitive area in which different pricing bases appear to cause inequities is in the procurement of milk supplies from producers. Grade A producers with high-protein milk are likely to prefer that their milk be shipped to a cheese plant from which they can obtain the benefit of its protein content than be pooled by a handler with obligations to supply the fluid market. In consequence, there is some concern that the continued inability of pooled handlers to adjust payments to producers for differences in protein content will result in a gradual decline in the protein content of fluid milk products as producers with higher protein content recognize the economic

advantage of delivering their milk to the nonpool handlers who will pay more for it.

Under the pricing plan adopted in this decision the protein price is derived from the Minnesota-Wisconsin price, upon which all Federal order prices are based. As a result, costs to handlers under Federal order regulation in neighboring areas should deviate little, if any, from costs to handlers in the merged marketing area. In nearby areas that are not under Federal regulation, of course, there is no assurance of price alignment with the merged Great Basin market for any product. That is a situation under which handlers have operated over the existence of the present orders, and under which handlers will continue to operate.

It was observed at several places in the hearing record that as producers respond to market signals by increasing the protein content of their milk, the protein price will decline. This result would occur because of the method of computing the protein price by dividing the skim portion of the Minnesota-Wisconsin price by the marketwide average percentage of protein in producer milk. As the marketwide average percentage of protein increases over time in response to paying producers on the basis of the protein content of their milk, the protein price as computed under the order will decrease. It was suggested that a more desirable method of computing an appropriate value for protein than that proposed, and adopted in this decision, would be to use the protein content of milk for which the Minnesota-Wisconsin price represents payment as a basis for determining the protein price to be used under the order. Such a price probably would better represent the actual value of protein in relation to the Minnesota-Wisconsin price and the butterfat price, both of which are determined by factors outside the local marketing area. Unfortunately, the protein content of the milk involved in calculating the Minnesota-Wisconsin price is not available.

However, according to several witnesses most of the unregulated handlers in Minnesota and Wisconsin include protein content as a basis for paying producers. These are the handlers whose payments to producers are surveyed in determining the Minnesota-Wisconsin price. As the producers in that area increase the protein content of their milk in response to payments for protein, the Minnesota-Wisconsin price should reflect the added value of increased protein. In fact, as observed by one witness, the present Minnesota-Wisconsin price apparently represents a return for milk containing more protein on the average than milk produced in the merged Great Basin area at the present time. It is possible that the protein price computed under the merged order will be overstated somewhat as a result. Increases in the protein content of Great Basin milk should result in a protein price closer to the actual value of protein reflected in the Minnesota-Wisconsin price.

The suggestion that the order allow handlers to adjust payments to producers for variations in protein content by allowing deductions for less-than-average protein as well as premiums for higher-than-average protein would not result in the uniformity necessary to assure equitable pricing of milk between handlers and among producers. Such deductions and premiums would be voluntary and their rates could vary. There is no reason to believe that such a system would be practiced by all handlers.

The multiple component pricing plan contained in this decision modifies the plan supported at the hearing by proponents. Instead of full plant accounting for protein, as well as butterfat, used by a handler, the assumption will be made that the percentage of protein contained in the skim milk portion of each handler's receipts of producer milk is constant for any particular month, regardless of the class in which it is used. According to the testimony of some of those witnesses most experienced with the use of protein and nonfat solids in milk pricing, protein and other nonfat solids are evenly distributed throughout skim milk and cannot easily be separated from it, as butterfat is. Although proponents altered their proposal to require that protein and butterfat be accounted for in fluid form on a used-to-produce basis, such a procedure would still require fluid milk handlers to incur extra expenditures for testing and accounting for protein and butterfat in fluid milk, fluid cream and nonfluid ingredients in all milk products. Such extensive testing and accounting would represent unnecessary and burdensome requirements for handlers who currently do not have the equipment or personnel necessary to comply with such a provision. Under the provisions adopted, handlers would be responsible for reporting the protein and butterfat content of milk received from producers and cooperative association handlers that is to be priced and pooled under the order. The percentage of protein contained in the skim milk portion of such receipts could then be used to calculate the pounds of protein in skim milk in every step of the accounting procedure at which the pounds of protein would need to be known for pricing purposes.

A system under which handlers are required to report the protein content of only their producers' milk could not be considered unduly burdensome. It is apparent in the hearing record that protein testing of producer milk in the marketing area is widespread. The handlers of most producer milk either have the equipment and personnel required for protein testing, and are currently using protein testing as a basis for paying producers, or they have close business associations with handlers who perform such testing. One proprietary handler who processes only fluid milk products, for instance, diverts all of the milk of its nonmember producers that is surplus to its fluid operation to the cheese plant of another handler. The cheese plant operator pays for milk received from its own producers partially on the basis of the protein content of the milk. Even if the pool plant operator's producers' milk is not ordinarily tested for protein, it is regularly delivered to a plant at which such testing is available.

In the case of a handler who has neither protein testing capability nor any access to other handlers' facilities at a reasonable cost, the market administrator would be authorized to determine the protein test of producer milk for pool purposes. It is not foreseen that protein testing which must be undertaken by the market administrator would be of an extent great enough to warrant any increase in the marketing service deduction from payments to nonmember producers.

Reservations about the effectiveness of such an accounting system were expressed by proponents, who hypothesized that handlers would be able somehow to manipulate the manner in which milk is received and used according to its protein content for their own financial benefit. It is difficult to see how handlers could arrange to use high-protein milk in cheese and low-protein milk in fluid products while paying for the protein used in Classes II and III on the basis of pro rata distribution of the protein content of producer milk receipts. It would seem that such a system of operation would cost more in terms of planning and execution than any benefit a handler might gain as a result. However, if the testing and accounting provisions of the merged order are not adequate for ensuring that handlers pay the full value

of their milk receipts, those provisions can always be amended at a later time.

The problem presented by pricing protein contained in Class II and Class III milk while not taking protein into account in pricing Class I milk can best be solved by leaving the pricing of Class I milk much the same as it is at present. The protein price to be applied to Class II and Class III milk under the merged order would represent the skim milk portion of the Minnesota-Wisconsin price for the month divided by the marketwide percentage of protein in milk pooled during the previous month. The skim value of Class I milk can be determined by multiplying the skim milk portion of the Minnesota-Wisconsin price for the month by the hundredweight of skim milk allocated to Class I. This skim milk value of each handler's Class I milk (not to include the Class I differential) would then be combined with the value of protein in milk used in Class II and Class III to determine a total skim milk/protein value for the marketwide pool. Divided by the pounds of protein in producer milk in the pool, the value would yield a protein price to be paid to producers.

Each producer's share of the differential value of the pool should be determined as proposed by proponents, although the mechanics should differ somewhat. The basis of the differential pool would be formed by multiplying the pounds of milk allocated to Class I by the difference between the Class I and Class III prices, and adding the amount computed by multiplying the pounds of milk allocated to Class II by the difference between the Class II and Class III prices. To the Class I and Class II differential values would be added adjustments for such items as overage, reclassified inventory, location of producer milk receipts, and other source milk assigned to Class I. The total value of the differential pool would be divided by the product pounds of producer milk in the pool to determine the rate per hundredweight by which each producer's share of the differential pool would be computed.

As a result of pooling the skim milk/protein and differential values of all producers' milk, producers would be paid on the basis of their total volume of production at a weighted average differential price, the protein contained in their production at the skim milk/protein price per pound, and the butterfat contained in their production at the butterfat price per pound. Because the value of butterfat would not be affected by the products in which it is used, there is no need to pool butterfat values.

The multiple component pricing plan adopted in this decision is not necessarily intended to be a model for inclusion in other Federal milk orders. The terms and provisions of each order must be tailored to the peculiar marketing conditions existing in each marketing area, as the provisions of this order have been determined by the conditions in the merged Great Basin marketing area. As marketing conditions change, or if the provisions adopted in this decision are found to be inadequate, the order should be amended to assure orderly marketing.

6. *Handler reports.* Reports required to be submitted by handlers should be similar to those required under the two separate orders, and to those proposed by proponents. However, proponents' proposed handler reporting requirement should be modified to conform with the incorporation of multiple component pricing as adopted in this decision. With respect to protein, only the protein pounds contained in producer milk receipts should be required to be reported. Reporting of the product pounds, skim milk and butterfat contained in other receipts and in utilization, disposition, and month-end inventories would give the market administrator adequate information for purposes of determining handlers' obligations. Handlers' reports of receipts and utilization should be due the seventh day after the end of each month, as is currently the case under the separate orders, and as proposed.

Payroll reports, indicating the receipts for which producers have been paid, should be submitted on or before the twenty-first day after the end of each month, as proposed. The due date for payroll reports would give handlers one more day for preparation of such reports than they currently have under the present Great Basin order. The payroll reporting dates under the present Lake Mead order would be inappropriate for the merged order because the present Lake Mead order requires payments for all pool milk to be collected by the market administrator. The information required to be reported would be the same as under present order provisions, except for the addition of the protein content of each producer's milk and the amount paid for protein contained in each producer's milk. Reports of receipts and utilization and payroll reports submitted by partially regulated distributing plant operators who elect to have their obligations computed as if they had been fully regulated handlers for the month should include the same information as provided by fully regulated handlers. Other partially regulated distributing plant operators may report their receipts and utilization in the same manner as they are currently required to report, omitting the protein content of their receipts.

The only deviation proposed from present reporting requirements was that handlers report the protein content of all their milk receipts and of all the uses made of those receipts. Many witnesses contended that such a requirement would add unnecessarily to the costs of testing and accounting for milk protein that would be imposed by adoption of a multiple component pricing scheme. As explained previously in this decision, protein in producer milk would be followed through a handler's operation and classified pro rata with the skim milk in which it is contained. Therefore, reporting of receipts and use of protein aside from its presence in producer milk would be unnecessary.

7. *Classification of milk.* The merged order should incorporate the same uniform classification plan that is currently contained in both of the two individual orders, and is commonly provided in most other Federal milk orders. 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 the skim and butterfat pounds contained in 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. A handler's receipts of cooperative member milk delivered directly from producers' farms to the handler's plant by the cooperative association should be included with the handler's direct receipts of producer milk for the purpose of allocating producer milk to classes of use.

Under the classification plan adopted in this decision, 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, and milkshake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed 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 in a Class III classification.

Class III milk should include products which are made from surplus approved 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 9 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 or in producer milk diverted to a 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 in any form, milkshake and ice milk mixes containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes. Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically-sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers, and certain other products as specified in the order would also be included as Class II milk.

The classification plan adopted herein was proposed by the merger proponent and includes 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 are contained in a final decision issued February 19, 1974 (39 FR 6202, 8452, 8712, 9012). A further decision that refined the present uniform classification plan was issued July 11, 1975 (40 FR 30119). The uniform classification plan was later adopted under both the Great Basin and Lake Mead orders in decisions issued August 17, 1982 (47 FR 37203) and September 19, 1984 (49 FR 37599). These decisions were duly noted on the record of this proceeding.

Proponent testified that adoption of the uniform classification system would result in no change in classification from that currently contained in the two individual orders. He stated that inclusion of the system in the merged order would assure uniformity among such essential aspects of marketing orders as accounting requirements and the movement of packaged Class I and Class II products between order areas. No testimony opposing incorporation of the uniform classification system in the merged order was received. Accordingly, the classification system proposed by proponent should be adopted.

Allocation of receipts to utilization. Under the merged order, a system of allocating handlers' receipts to the various classes should be similar to that adopted in the Assistant Secretary's June 19, 1964 (29 FR 9002), decision for 76 milk orders (including the Great Basin order). This decision dealt with the issue of integrating into each order's regulatory plan milk which is not subject to classified pricing under any order and receipts at a pool plant from other order plants. The decision provides a procedure for allocating over a handler's total utilization his receipts from all sources and for making payment into the producer-settlement fund on unregulated milk allocated to Class I. The allocation system adopted for 76 milk orders in the 1964 decision was incorporated in the Lake Mead order when it was promulgated in 1973.

Since the aforementioned decision sets forth the procedures for dealing with unregulated milk under Federal orders, it is appropriate and necessary that the same system of allocation apply under the proposed merged order. Likewise, the appropriate treatment of other order milk received at pool plants under the merged order should conform with the plan included in the aforesaid decision that is used for coordinating the applicable regulations on all movements of milk between and among Federal order markets.

Merger proponent proposed allocation provisions that essentially would allocate handlers' other source receipts to their utilization as is now provided in the separate orders proposed to be merged. However, proponent advocated allocating the product pounds of receipts, rather than the skim milk and butterfat pounds, to the pounds of milk used in each class. The present method of allocating pounds of skim milk and butterfat in receipts to the skim milk and butterfat in classes of use under the two individual orders should be continued under the merged order.

Proponent witness testified that under a system that prices both the butterfat and protein components of milk the two components should be treated the same in each stage of the accounting and pricing process. Such consistent treatment, he explained, would require that protein, butterfat and skim milk pounds each be allocated to the classes of use, or that product pounds only be allocated. He described the allocation of all three components as being cumbersome, if not unmanageable, and as serving no useful purpose. The witness stated that under the proposal no price distinctions would be made for protein or butterfat based on the classes in which those components are used. He argued that while in the past butterfat disposed of in Class I was priced at a higher rate than butterfat used in manufactured products, at the present time the value of the butterfat content of milk is determined by one differential without regard to the classes in which it is used. He stated that the only purpose of allocating butterfat or protein to the classes in which they are used is to distinguish differences in value according to class. With single butterfat and protein prices applicable to all

butterfat and protein in producer milk as provided by the proposal, the witness said, there is no reason to allocate milk components. He concluded that milk can be priced according to its class of use by allocating it only by product pounds without altering the obligations of handlers under the order.

Under the pricing and pooling provisions adopted in this decision, the butterfat and protein components of milk will not be treated in the same manner. The value of protein in producer milk used in Class II and Class III will be pooled with the value of skim milk used in Class I to determine the price to be paid producers for the protein in their milk. The value of butterfat will not be pooled. Even if butterfat and protein were to be priced in a parallel manner, these components have different physical characteristics, and cannot be considered to be handled in the same way. Butterfat is easily separable from the producer milk in which it is contained, and the butterfat content of nearly all fluid milk products is standardized to some extent. The butterfat, or cream, that is separated from producer milk is then further standardized for various cream products, added to ice cream mixes, or churned into butter.

Because butterfat can be separated from the skim milk in which it is contained, butterfat not needed in some products such as fluid milk products may be removed and used in other products, of which it will enhance the value. Protein, however, must be used with the skim milk throughout which it is distributed, even though extra amounts of protein may add no value to the fluid products in which the skim milk is used. Technology has not progressed to the point at which the protein component of milk can be removed from producer milk without use of a manufacturing process or without changing the form of the milk. Likewise, milk protein is not an end product of any commonly-used manufacturing process, and therefore cannot be added back to milk or milk products in its entirety or without other milk solids. The addition of nonfat milk solids to fluid milk in the fortification process involves adding nonprotein solids as well as protein. The use of casein in manufactured products adds only one form of milk protein.

Therefore, there is no reason for butterfat and protein to be treated in the same manner in determining the allocation of producer milk to the classes of use. The butterfat and skim milk portions of milk are separable, may be used separately in a milk plant, and therefore should be accounted for separately. All evidence available indicates that protein is evenly distributed within the skim portion of producer milk, and should be accounted for in proportion with the skim portion.

There are valid reasons for allocating milk to its classes of use by its skim and butterfat components, especially under the pricing system adopted in this decision. With the skim milk portion of milk classified as Class I subject to a skim milk price rather than to a protein price, it will be necessary to compute the pounds of protein by class in order to price only the pounds of protein used in Classes II and III. Allocation of skim milk and butterfat will make available the information necessary to prorate protein pounds to the skim milk allocated to each class, while allowing the calculation of the pounds of producer milk to be priced in each class. The calculations necessary to determine handler obligations under the order provisions adopted in this decision would not be unnecessarily burdensome or complicated for the market administrator. The necessary calculations would be performed by computer, as are nearly all pool computations at this time.

In addition to the need for separate allocation of skim milk and butterfat under the provisions of the merged order, proponent witness' assertion that allocating milk to classes of use by product pounds instead of by skim milk and butterfat pounds would not alter the obligations of handlers under the order is incorrect. The amounts of skim milk and butterfat used in each class establish separate limits on the amount of skim milk and butterfat in the various types of receipts that can be allocated to each class. If the amounts of skim milk and butterfat in each class are combined into product pounds it is likely that for any given handler the product pounds in other source receipts allocated to the product pounds of use will result in a greater amount of receipts being allocated than if skim milk and butterfat receipts are allocated under separate limits. Receipts are generally allocated first to Class III use, and only to Class II and Class I when the limits established by Class III use have been exceeded. Therefore, it can be expected that product pound allocation would, in cases where it differs from skim milk and butterfat allocation, always result in pricing fewer pounds of producer milk at the Class III price, and more pounds at the higher Class I and Class II prices.

Shrinkage and overage also should be computed and assigned to classes of use on the basis of skim milk and butterfat, rather than computing shrinkage on the basis of product pounds, protein and butterfat, and prorating it to Classes I and III solely on the basis of product pounds, as proposed by proponent. Shrinkage or overage in butterfat and skim milk often occur in opposite directions in the same dairy plant, as when skim milk shrinkage occurs during the same period as butterfat overage. If such a situation occurred under product pound accounting the shrinkage and overage would tend to cancel each other out. As a result, overage would not be allocated to its full extent and would only be priced as a component, without consideration of any greater value it may have in Class I or Class II use. Shrinkage also would be understated in such a case, and might be prorated quite differently to Class III and Class I than if the actual amount of shrinkage were prorated. With shrinkage computed and prorated by pounds of skim milk and butterfat, protein pounds in shrinkage or overage can still be computed, when necessary for pricing purposes, as a percentage of skim milk.

Milk for which handler is accountable. According to the producer milk definition proposed by IMPA and adopted in the decision, the milk for which a handler is accountable to the pool consists of the milk of a handler's own producers that is received or diverted by the handler and the milk delivered to the handler by a cooperative association directly from its members' farms. The IMPA witness testified that the proposed producer milk definition is a modification of the definitions of producer milk under the Great Basin and Lake Mead milk orders. The language of the proposed order would not allow the receipts of cooperative member milk at the handler's plant to be reported and accounted for by any other handler, including the cooperative. Under the proposed definition, the handler who first received milk from producers into a pool plant is the handler who is to be held responsible for reporting the disposition of the milk and accounting to the pool for its use. Such a procedure will be the most reasonable manner of determining the value of cooperative member milk received and used at a handler's plant, and the simplest to administer.

Some of the language proposed by IMPA for the general accounting and allocation sections of the order would not allow cooperative member milk received at a handler's plant to be accounted for as required by the proposed producer milk definition. Apparently, the proposed language of the general accounting and allocation

sections was intended to follow the present Lake Mead order, while the producer milk definition is a mixture of both the Great Basin and Lake Mead orders. Accordingly, the proposed general accounting and allocation sections have been modified to assure that producer milk will be accounted for in the manner required by the producer milk definition.

8. *Class Prices, location adjustments and component prices.* The present Class I price levels at Salt Lake City, Utah, and Las Vegas, Nevada, should be maintained. Although proponents omitted the Class III and basic formula prices from their proposed order as unnecessary for the computation of handler obligations and producer payments, all of the prices normally defined in Federal milk orders, in addition to those necessary to implement multiple component pricing, should be included in the merged Great Basin order. Defining all the necessary prices in the order will make computations included in the determination of handler obligations and producer payments less complex than they otherwise might have to be.

The dates on which prices are to be announced should be the same as those proposed by proponents. The dates on which the class prices and component prices are to be announced are the same as those on which class prices are currently announced under the two separate orders, and are uniform among Federal milk orders generally. Announcement of the weighted average differential and the uniform price for the previous month on the 12th of the month also represents no change from the present orders. There was no opposition to the dates proposed.

Class I price and location adjustments. The Class I price for the merged Great Basin 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 in the Salt Lake City area and other areas listed below. For the purpose of applying location adjustments, the marketing area should be divided into three pricing zones. Zone 1, which would be the base zone and would have no price adjustment, should include northern Utah (which includes Salt Lake City) and northeastern Nevada. Zone 2 should comprise the six counties in the southeastern corner of Idaho. A location adjustment of minus 25 cents per hundredweight should apply (in effect, a Class I differential of $1.65). Zone 3 should include all of the area in southeastern Nevada (which includes Las Vegas) and southern Utah, the Wyoming portion of the marketing area, and the four northernmost Idaho counties in the marketing area. A minus 30-cent adjustment should apply ($1.60 Class I differential). This would continue the price level now applicable at Las Vegas.

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)

Utah Counties

Box Elder	Grand	Sevier
Cache	Juab	Summit
Carbon	Millard	Tooele
Daggett	Morgan	Uintah
Davis	Rich	Utah
Duchesne	Salt Lake	Wasatch
Emery	Sanpete	Weber

Nevada Counties

Elko	White Pine

Zone 2—Minus 25 cents ($1.65)

Idaho Counties

Bannock	Franklin
Bear Lake	Oneida
Caribou	Power

Zone 3—Minus 30 cents ($1.60)

Idaho Counties

Bingham	Jefferson
Bonneville	Madison

Wyoming Counties

Lincoln	Unita

Nevada Counties

Clark	Lincoln

Utah Counties

Beaver	Piute
Garfield	San Juan
Iron	Washington
Kane	Wayne

At plant locations outside the marketing area, the Class I price and the weighted average differential price that are applicable at Salt Lake City, Utah, or Las Vegas, Nevada, whichever is nearer to the plant, should be reduced 1.5 cents for each 10 miles that the plant is from the nearer city.

Both the Class I prices to handlers and the weighted average differential prices to producers should be adjusted by the zone locations of the plants at which milk is received. At the present time, the Class I differential at Salt Lake City is $1.90. Prices under the Great Basin order are not adjusted for location at plants within 150 miles of Salt Lake City. For plant locations 150 to 160 miles from Salt Lake City, the Class I and uniform prices are reduced by 22 cents per hundredweight. Prices at locations more than 160 miles from Salt Lake City are reduced by 22 cents plus 1.5 cents per ten miles of distance in excess of 160 miles from Salt Lake City. As a result, Class I and uniform prices are reduced by 29.5 cents at pool plants located in Idaho Falls, Idaho and 23.5 cents at a pool plant in Pocatello, Idaho. Under the merged order the price adjustments at those locations would be minus 30 cents and 25 cents, respectively. Price changes of such small magnitude should create no competitive problems for the handlers affected. Price adjustments at locations in Idaho outside of the merged marketing area will be changed by 2 cents, since 24 cents rather than 22 cents would be provided for the first 160 miles. These adjustments also should be considered too minor to affect competitive relationships considering the relatively large distances involved from Salt Lake City.

The present Class I price differential at Las Vegas, Nevada, is $1.60, which also would be unchanged under the merged order. Currently, prices at locations more than 40 miles from Las Vegas are adjusted at a rate of 1.5 cents per 10 miles distance from Las Vegas. Location adjustments under the present Lake Mead order reduce Class I and uniform prices by 9 cents at Logandale, Nevada; 27 cents at Cedar City, Utah; and 34.5 cents at Beaver, Utah, for milk received at plants in those locations. The pricing plan incorporated in the merged order would remove the price differences at these locations, resulting in Class I and uniform price levels the same as those at Las Vegas. Currently, milk surplus to the Lake Mead market that must be moved to northern Utah for manufacturing use is subject to a 35-cent reduction in price for location. Under the pricing plan adopted in the merged order, milk so moved will be subject to the Zone 1 price effective at Salt Lake City.

Prices at locations outside the merged marketing area will be adjusted from the prices effective at Las Vegas or Salt Lake City, according to distance from the nearer of those two cities. This provision will assure that the present price relationships under the order between Lake Mead-area handlers and California handlers are unchanged.

Proponents supported adoption of their proposed zone pricing plan on the basis that it would facilitate the delivery of milk supplies from producers to different distributing plants and to manufacturing plants as milk is needed so that producer milk can be utilized to the greatest advantage. Proponents expect that the proposed zone pricing system will result in improved equity among handlers, improved service to handlers by producers and cooperatives, and more orderly marketing of producer

milk. Proponent witness testified that the zone pricing system would result in prices similar to those effective under the two separate orders, with the exceptions noted in southeastern Nevada and southwestern Utah. He stated that proponents see no justification for lower Class I and uniform prices at Logandale, Nevada, or Beaver, Utah, than at Las Vegas. The witness explained that Beaver is the location of the nearest manufacturing plant for the reserve supplies of milk from the Cedar City area and from southern Nevada. He expressed the opinion that milk which must be moved to a manufacturing plant at additional cost to producers because it is not needed at a nearby bottling plant should not be subject as well to a price adjusted downward for location.

Proponent witness also stated that a zone pricing system removes the confusion of determining location adjustments on the basis of distance and eliminates small price differences between neighboring locations. He explained that prices to producers and handlers similarly situated would be equalized, and that milk marketers would no longer have to consider the location values at each individual distributing plant or manufacturing plant in arranging farm to market hauling.

Proponents recognized the need for higher prices in heavily populated areas to compensate for the higher cost of delivering bulk milk to plants located there from the outer fringes of the procurement area. The witness stated that the proposed zone pricing system would cover the costs of moving milk to where it is consumed, but would also simplify accounting and computing the costs and returns of milk supplied to handlers by the cooperative associations and by other suppliers. Proponent witness stated that under the proposed zone pricing system Class I costs to handlers would not change significantly from their present levels, and that total returns to producers would increase slightly.

The manager of a distributing plant located in Pocatello, Idaho, testified that, in order for his plant to compete on an equitable basis with handlers regulated under the Southwestern Idaho-Eastern Oregon order, the location adjustment at Pocatello should be increased by 16.5 cents per hundredweight, thereby decreasing the Class I price effective at that location. The witness proposed that the location adjustment at Pocatello be increased from 23.5 cents to 40 cents, rather than the 25-cent adjustment proposed by proponents. He testified that competition for fluid sales in the Pocatello area comes primarily from distributing plants regulated under the Great Basin Federal milk order and located in northern Utah, and from a distributing plant regulated under the Southwestern Idaho-Eastern Oregon order located at Twin Falls, Idaho. According to the hearing record, the Class I differential at Twin Falls under the Southwestern Idaho-Eastern Oregon order is $1.50, and the Class I differential at Salt Lake City under the Great Basin order is $1.90. The Class I differential at Pocatello under the Great Basin order is currently $1.665, and would be $1.65 under the proposed zone pricing system. The witness complained that because of the present 16.5-cent difference in Class I prices between Twin Falls and Pocatello under the two orders, the Twin Falls handler enjoys a competitive advantage over the Pocatello handler on milk sold in the Pocatello area. He had no complaint about the 23.5-cent difference in prices paid for Class I milk by handlers in Salt Lake City and Pocatello.

Location adjustments are intended to offset the cost of moving bulk milk from the location at which it is produced to locations at which it may be used. Location adjustments are not intended to cover handlers' costs of moving packaged milk from where it is processed to where it is purchased by consumers. The present price relationships between Salt Lake City, Pocatello, and Twin Falls provide incentives for milk to move from where it is produced to where it is needed for processing. A $1.50 Class I price differential apparently results in a high enough price to attract an adequate supply of milk to Twin Falls, Idaho, to fill the fluid requirements of the handler located there. The 16.5-cent (or proposed 15-cent) price difference between Twin Falls and Pocatello is not excessive considering that it is at least 100 miles between the two locations. At the regular location adjustment rate of 1.5 cents per 10 miles of distance, a 15-cent price difference would be entirely appropriate.

The 25-cent price difference between Pocatello and Salt Lake City should make it possible for producer milk to move from an area of heavy milk production in southeastern Idaho to the heavily-populated Salt Lake City area. The 40-cent price difference between Pocatello and Salt Lake City that would result from adopting the handler's proposal would misalign prices between those two locations within the marketing area, and would eliminate the gradual reduction of prices by distance from Salt Lake City to Pocatello, and Salt Lake City to Twin Falls. Furthermore, if competition between handlers for sales, rather than for procurement of producer milk, were the object of location adjustments, a 40-cent price difference between Salt Lake City and Pocatello would put Salt Lake City handlers at an even greater disadvantage in competing for sales in the Pocatello area than they currently have with a 23.5-cent price difference.

A representative of Safeway Stores, Inc., a large multiple-distributing plant handler with a Great Basin pool plant in Salt Lake City and a plant located in Commerce City, California, that is a partially regulated plant under the Lake Mead order, advocated adjusting prices from Las Vegas and Salt Lake City to locations outside the marketing area by 2.2 cents per hundredweight per 10 miles of distance rather than by 1.5 cents. He stated that the present 1.5-cent rate falls far short of covering the actual transportation expenses incurred in moving milk from the Los Angeles area to Las Vegas. He estimated those costs at over 10 cents per hundredweight per 10 miles, but based the proposed 2.2-cent rate on proposals currently under consideration for incorporation in other Federal orders. The witness had no data supporting a 2.2-cent cost for moving bulk milk from California to Nevada. The 10-cent cost he cited pertained solely to movements of packaged milk, and would be irrelevant to any determination of an appropriate location adjustment rate. The costs of transporting bulk milk have undoubtedly increased since the 1.5-cent location adjustment rate was adopted. However, in the absence of any data supporting a location adjustment rate other than the present 1.5 cents, and without any evidence that the 1.5-cent rate is inadequate, there is no basis for adopting a higher rate.

There was no opposition expressed at the hearing to adoption of proponents' zone pricing system, even though Class I prices would be increased by 9 cents at the Logandale, Nevada, distributing plant, and by 27 cents at Cedar City, Utah. The change in location pricing at Beaver, Utah, would have no effect on Class I values because all of the milk received there is used solely in cheese, a Class III product. Price changes at locations in the Idaho portion of the marketing area are not significant enough to cause any concern about price misalignment between handlers or about competitive disruptions, as discussed earlier. Proponents' arguments that establishing prices by plants' locations within zones would be

less complex and easier to determine than establishing prices by mileage from specific basing points are valid. In addition, although it may not seem wise to eliminate price differences between locations in Las Vegas and southern Utah when a substantial proportion of the reserve milk supply associated with the Lake Mead market is still produced in southwestern Utah, there is evidence that most of the necessary reserves for the Nevada distributing plants can be supplied from Clark County, Nevada, production.

The witness representing Rockview Dairies, which owns the two farms supplying nonmember producer milk to Anderson Dairy, the large Las Vegas distributing plant operator, testified that the handler has contracted for a full supply of milk from California producers, and would no longer be receiving milk from the cooperative associations. Apparently, more milk produced in Nevada will be moved to Beaver, Utah, as surplus to the fluid needs of the market than will be hauled from farms in the Beaver area to distributing plants in Nevada. As a result, it appears that there may no longer be any reason for price differences within the southern portion of the merged order. Because the proposed zone pricing system does not materially change prices elsewhere in the marketing area, the system of determining location adjustments by zones for locations within the marketing area, and by mileage from basing points for locations outside the marketing area, should be adopted as proposed.

Class II and Class III prices. Proponent's proposal included a Class II price at the same level existing currently in the Great Basin order, and 5 cents lower than under the Lake Mead order. There was no testimony in support of or opposition to the proposed Class II price level. It is apparent from record evidence, however, that by far the most manufacturing use of milk, in both Classes II and III, occurs in the present Great Basin marketing area. The Class II price as currently determined under that order, therefore, is applicable to most of the milk used in Class II under the two orders and would be the more appropriate Class II price for the merged order.

Proponent's proposed order did not include a Class III price, but used the definition of the present Class III price whenever necessary for pool computations such as determining the differences between the Class I and Class III, or Class II and Class III, prices. In the interest of simplicity, the merged order should include a definition of the Class III price that is the same as in both of the two existing orders. Also, instead of a definition of the "Minnesota-Wisconsin price", as proposed, the merged order should contain a definition of the equivalent "Basic formula price", as do most other orders.

Component prices. The value of the butterfat and protein components of producer milk should be determined by prices per pound, as proposed by the merger proponent. The butterfat and protein prices should also be computed as proposed. In addition, a "skim milk price" should be defined and used to determine the value of the skim portion of producer milk that is allocated to Class I. No provision for a butterfat differential is needed in the merged order because value adjustments for variations in producer butterfat will be made by paying producers a price per pound for the butterfat contained in their milk, rather than by adjusting the price per hundredweight to be paid producers to reflect the butterfat content of their milk.

Proponent witness justified the proposal to bill handlers and pay producers for milk components on a per-pound basis rather than by the use of differentials by explaining that values based on prices per pound would be easier to understand and compute when two components, rather than one, are used to determine the value of milk. Using two price differentials, for protein as well as butterfat, he testified, would be unduly complex and confusing.

The witness explained that under the proposal the value of one pound of butterfat would be determined by adding the value of a pound of skim milk to the current butterfat differential, which represents the difference in value between a pound of butterfat and a pound of skim milk. He indicated that the provisions in the proposed order that describe the computation of the "butterfat price" would base the value of a pound of butterfat on the current market price of butter.

The IMPA witness also addressed the question of determining an appropriate price for protein and concluded that the value of protein depends on the product in which it is used. He indicated that under market conditions current at the time of the hearing, protein would be worth about 80 cents per pound in milk used to make nonfat dry milk, and approximately twice that amount in milk used for cheese. The witness stated that IMPA's proposal would attribute the skim milk portion of the Minnesota-Wisconsin (M–W) price to protein by deducting the value of 3.5 pounds of butterfat from the M–W price, and dividing the result by the marketwide percentage of protein in producer milk during the previous month. Although the protein would thus be valued at the higher end of the possible range of protein prices, he justified that result on the basis of the overwhelmingly large proportion of the surplus milk used in cheese manufacture in the proposed merged marketing area.

The prices for butterfat and protein components should be determined in the manner proposed by proponents. The butterfat price would accurately reflect the market value of butterfat used in butter, and would result in no changes from the present pricing system in the value of butterfat to producers or to handlers. The butterfat price would be used only to determine payments to producers, and would not be included in handlers' obligations to the pool.

The "milk protein price" computation proposed by proponents also serves the purpose for which it is intended—to derive a price-per-pound for protein that will reflect the value to handlers of protein contained in the skim milk portion of producer milk. Because the protein price is to be derived from the skim milk portion of the Minnesota-Wisconsin price and the average protein content of producer milk in the market, the total value of the pool should be unchanged. In addition, due to the minor variations to be expected in the protein content of producer milk received by different handlers, handler obligations resulting from use of the component pricing system should be little different from their present obligations. Also, given the very large proportion of the milk produced for other than fluid uses in the merged marketing area that is used to make cheese, it is appropriate that the protein contained in the milk reflect the value of the product in which it is used.

As discussed earlier, the protein price should apply only to protein in producer skim milk allocated to Classes II and III. The price to be paid to producers for the protein in their milk should represent a combination of the value of protein in Class II and Class III uses and the value of skim milk in Class I use. The computation of the "skim milk/protein price" to producers will be explained in the discussion of the skim milk/protein pool.

The "skim milk price" was not included in proponents' proposed order, but would help to accomplish proponents' objectives of avoiding a charge to handlers for protein used in Class I and maintaining equitable Class I costs between handlers. The skim milk price should be computed by subtracting

the differential value of 3.5 pounds of butterfat from the Class III price. The result would represent the value of 100 pounds of skim milk. When added to the differential value of a handler's Class I producer milk, calculated at the difference between the Class I and Class III prices, the handler's Class I skim milk value would determine the handler's obligation to the pool for his milk used in Class I.

The prices included in the merged order that are to be paid by handlers would result in a total pool value little different from that computed under the present pricing system. Total payments to producers also should not vary much from the present system. In fact, if the prices computed under the proposed merged order, as adopted herein, were carried out beyond the nearest full cent, the total pool value would be unchanged from its present level. However, there is no reason to carry out component prices to the tenths of cents when producer prices resulting from the merged pool should vary no more than 1 to 2 cents each month from the prices computed under the present system. Therefore, the butterfat, protein and skim milk prices should be rounded to the nearest whole cent. The prices from which the component prices are computed, however, and intermediate steps in the computations should be carried out as many decimal places as necessary to assure that the rounded component prices are as accurate as possible.

9. *Handlers' value of milk for computing prices to producers.* The value of milk to handlers under the multiple component pricing system adopted herein should reflect the value of protein in handlers' producer milk receipts that are used in Class II and Class III while continuing to price Class I milk without considering its protein content. At the same time, the present level of total costs of milk to all handlers should be maintained. These objectives can be met by determining handlers' obligations and rates of payments to producers through the operation of two marketwide pools. One pool would determine the price to be paid to all pooled producers for their share of the fluid market, and the other pool would determine the rate at which producers should be paid for the protein contained in their milk. Each handler's net obligation to the pool would be determined by subtracting the weighted average differential and skim milk/protein values due to producers from the differential value and skim milk and protein values of the producer milk used by the handler. The value of butterfat to handlers should not be pooled, but should be paid directly to the dairy farmers who produced it.

The differential value of each handler's producer milk receipts used in Class I and Class II should be calculated by multiplying the hundredweight of producer milk allocated to those classes by the difference between the appropriate class prices applicable at the location of the plant and the Class III price. In addition, the adjustments to the class values of producer milk that are currently included in determining the handler's value of milk should be included in the differential value. Those adjustments include the values of overage, beginning Class III inventory allocated to Class II or to Class I, other source and filled milk receipts allocated to Class I, and certain receipts from unregulated supply plants that are allocated to Class I.

The value adjustments for such receipts allocated to Class I should be determined by multiplying their Class I product pounds by the difference between the current month's Class I and Class III prices, skim milk pounds by the current month's skim milk price, and butterfat pounds by the current month's butterfat price. The product pounds of such receipts allocated to Class II should be priced at the difference between the current month's Class II and Class III prices, the Class II butterfat pounds at the butterfat price and the protein pounds pro-rated to the skim milk pounds allocated to Class II at the protein price. The value of Class III overage would be determined by multiplying the protein pounds pro-rated to Class III skim milk overage according to the protein content of the handler's producer skim milk by the protein price, and adding the value of butterfat overage allocated to Class III multiplied by the butterfat price. In the case of reclassified inventory, the value adjustment would be the difference between the current month's Class I and Class II values of the inventory and its value at the previous month's protein and butterfat prices.

The price to be paid to producers for the protein in their milk should be determined by combining the value of skim milk in Class I producer milk at the skim milk price with the value of protein in the skim milk in Class II and Class III producer milk at the protein price. The total of the skim and protein values, when divided by the total pounds of protein in pooled producer milk, will yield the price to be paid to producers for the protein in their milk. The price so computed should be referred to as the "skim milk/protein price."

Proponent witness proposed that only the differential value of producer milk used in Class I and Class II, with the adjustments for overage, reclassified inventory, etc., be pooled. In order to maintain the present pricing of Class I milk, proponents advocated the use of an adjustment to be deducted from the differential value of a handler's producer milk if the handler's receipts of producer milk contained more than the average percentage of protein in producer milk in the market. The adjustment would assure that the handler would pay no more for the extra protein in his Class I milk than he would if his producer milk receipts contained only the marketwide average percentage of protein. Under the proposal, producers would be paid directly by handlers for the protein in their milk. Protein value would not be included in the pool. Proponents also proposed that payment for the butterfat contained in producer milk be made directly from handlers to producers, and not be included in the pool.

A number of persons protested, at the hearing and in post-hearing briefs, that proponent's method of adjusting the value for protein in Class I milk would result in inequitable costs to handlers for milk used in Class I. According to those opposing such a pricing procedure handlers receiving producer milk with a protein content lower than the marketwide average would pay less for it under such a system than handlers receiving milk with an average or higher-than-average protein content. The witnesses pointed out that such a provision would violate the requirement of the Agricultural Marketing Agreement Act of 1937 that costs of milk to handlers under the order be uniform.

Producers could be paid for the protein contained in their milk without the value of the protein to handlers being pooled if it were not for the necessity of removing the effect of protein content from the value of Class I milk. Handlers apparently are unable to recover the costs of additional protein from the sale of milk containing higher-than-average protein levels, and are unable to separate unneeded protein from the skim milk in which it is contained. Proponents' proposal to remove the effect of charging handlers for protein used in Class I milk by reducing handlers' pool obligations when their producer receipts contain more than the marketwide average percent of protein would result in charging handlers different rates for their receipts used in Class I. Such an outcome would not be equitable, nor would it result in uniform costs to

handlers. Therefore, because of the constraints that must be considered in initiating protein pricing under a Federal milk order, handlers' pool obligations for protein and skim milk in producer milk, as adopted in this decision, would be determined on the basis of the skim milk used in Class I instead of the pounds of protein used in Class I. The value of protein in Class II and Class III producer milk would be pooled with the value of skim milk in Class I producer milk to determine the rate at which producers should be paid for the protein in their milk. The difference in pricing methods between Class I and Class II and III would allow for the fact that consumers apparently are unwilling to pay higher prices for milk containing higher percentages of protein, and would assure that handlers' pool obligations or payments to producers are not affected by the protein content of their producer milk receipts allocated to Class I. It is not expected that the skim milk/protein price computed to determine the price producers would be paid for the protein in their milk would differ by more than one cent from the price handlers would be required to pay for the protein in their producer milk receipts allocated to Class II and Class III.

In view of the fact that the skim value of producer milk would be included in the skim milk/protein pool and the butterfat value would be paid for outside of the pool, the differential values of milk used in Class I and Class II, and the adjustments normally made for overage, etc., should be shared among all of the producer milk in the pool through the operation of a differential pool. As proposed by proponent, the "weighted average differential price" that would be computed through the operation of the differential pool would represent the portion of the present uniform price that exceeds the Class III price because the protein, butterfat and skim milk prices will be derived from the Class III, or basic formula, price. As a result of the relationship between the component prices and the basic formula price, it will be possible to compute and announce a uniform price for informational and comparison purposes by simply adding the weighted average differential price to the basic formula price.

Handlers' payments to the producer settlement fund should be determined by subtracting the skim milk/protein and differential values of the producer milk for which the handler is obligated to pay from the use value of the handler's receipts of producer milk, as determined by the handler's obligations to the two pools. As proposed by proponent, only the amount in excess of the producer value of the handler's receipts should be due to the producer-settlement fund. Requiring handlers to pay the full use value of their producer milk to the market administrator would necessitate the movement of excessive amounts of money. It is sufficient that only the amounts of money necessary to equalize payments among producers for their shares of the differential and skim milk/protein pools move into and out of the producer-settlement fund.

None of the adjustments necessary to implement protein pricing apply in the case of butterfat. Both of the existing separate orders provide for handler payments to producers for butterfat in their milk without the necessity of pooling butterfat values. The current method of paying producers directly for the butterfat in their milk rather than including it in the marketwide pool should be continued under the merged order.

Although the total value of the pool would not be changed materially because of adoption of the component pricing system included herein, the distribution of obligations to handlers and payments to producers can be expected to change as they reflect the level of protein in milk as it is produced, received and used.

10. *Payments to producers.* Producer returns should be pooled on a marketwide basis under the merged order so that producers might share equitably in the proceeds from the sale of their milk. Marketwide pooling is now being used in both of the individual markets, and its continuation was incorporated in proponents' proposed order. There was no opposition to marketwide pooling of producer returns.

Adoption of a system of paying producers on the basis of the protein content of their milk, as well as its butterfat content and their share of the Class I and Class II use in the market, necessitates a change in the way payments to producers should be determined. Proponents' proposal of a weighted average differential price to distribute returns from fluid milk uses among producers should be adopted. In addition, instead of paying producers a protein price that is the same as the price charged to handlers for their use of protein in Class II and Class III, as proposed by proponents, the value of protein used in Class II and Class III should be combined with the value of skim milk used in Class I to determine the total value of protein in the pool. In most months, the combined value of Class II and Class III protein and Class I skim milk divided by the pounds of protein in producer milk will result in a skim milk/protein price to producers that is the same as the protein price to handlers when rounded to the nearest whole cent. Although there may be no difference between the protein price to handlers and the skim milk/protein price to producers, the Class I skim milk and Class II and III protein should be pooled to assure that predominantly fluid milk handlers are not required to pay for their Class I milk on the basis of its protein content.

Under the merged order, as under the present separate orders, there would be no need to pool butterfat. The price per pound of butterfat would be paid to producers by the handlers receiving it. Under the present pricing system, handlers are billed according to prices published on the basis of 3.5 percent butterfat. Blend prices to be paid to producers are also announced on a 3.5 percent butterfat basis. Producers, however, are actually paid for their butterfat according to the uniform price adjusted by the butterfat differential to the specific butterfat content of their milk. Amounts paid to producers for the butterfat in their milk should be the same under the component pricing system as under the current system. Also, the portion of the present blend prices under the two separate orders that is due to pooling the higher-valued fluid uses and adjustments would be completely reflected in the weighted average differential price. Only the skim milk/protein price to producers would represent any redistribution of pool proceeds to producers.

Payments to producers and cooperative associations. The merged order should provide for a partial payment to producers on or before the last day of the month, and for a final payment on or before the 17th day of the following month. The partial payment would be for milk received during the first 15 days of the month and should be paid at a rate of 1.2 times the Class III price for the preceding month, but not to exceed the Class I price for the current month. Any proper deductions authorized by the producer could be made from the partial payment for milk delivered by the producer during the first 15 days of the month. The final payment to each producer should be determined by the applicable weighted average differential price adjusted for the location at which the producer's milk is received and the skim milk/protein and butterfat prices, less any partial payment made to such producer and any proper deductions authorized by the producer. When payments are

made to a cooperative association in lieu of payments to individual producers, both the partial and final payments should be made prior to the date payments are due to individual producers.

As adopted herein, the payment schedule is the same as now provided in the present Great Basin order. Proponent proposed payment dates similar to those in the present Great Basin order, with some payment dates to cooperative associations and their members moved up by 1 or 2 days. There was no opposition to the proposed payment schedule at the hearing. However, in some cases it may be impossible for handlers to pay cooperative associations the full value of their receipts of the cooperative's member milk before the handler has had an opportunity to receive equalization payments from the producer-settlement fund. Because of the potential difficulties in making payments according to the proposed schedule, and because proponents did not explain the differences between their proposal and the payment dates in the present Great Basin order, the merged order should adopt the payment dates specified in the present Great Basin order.

Proponents included in the proposed merged order the present Great Basin rate of partial payment to producers for their milk deliveries during the first 15 days of the month of 1.2 times the previous month's Class III price. However, the witness representing Safeway Stores, Inc., proposed that the rate of partial payment be reduced to the level of the previous month's Class III price, as it is in most other Federal orders in the region, including the present Lake Mead order. In support of his proposal the witness testified that in 1961, when the higher partial payment rate was adopted, it resulted in prices lower than either the uniform price or the Class I price at the time. He stated that as the Class III price has increased, the partial payment rate has exceeded the uniform price and the Class I price. The witness said that the partial payment price has been as much as $1.66 over the uniform price and $.60 over the Class I price in recent years. He asserted that a partial payment should represent only a portion of the total amount due for the first 15 days' deliveries of milk, and certainly should not exceed the amount due for such milk. He argued that the proposed partial payment rate constitutes an overpayment for milk delivered during the first 15 days of the month, and should be reduced to the level of the previous month's Class III price.

A witness for IMPA testified that by the time producers are paid for milk delivered during the first 15 days of the month, they have already delivered 29 days' milk production without receiving any payment at all for the milk delivered. He characterized the present payment schedule as requiring a substantial extension of credit and credit risk which dairy farmers can ill afford. The witness stated that the partial payment provides cash to producers, enabling them to pay their bills and reducing the amount of credit they otherwise would be required to extend to handlers. He testified that farmers today are in a tight cash position, and should not be faced with reduced payments for the milk they have delivered. The witness admitted that a dairy farmer who ceased milk deliveries during the second half of the month could be overpaid for his total production if the partial payment for his first 15 days' milk deliveries is determined by the rate proposed by merger proponents. Proponent witness stated that he would not be opposed to allowing authorized deductions to be made from partial payments to producers.

The partial payment rate under the order applies only to milk delivered by producers during the first 15 days of the month. It seems clear that payments made for deliveries of milk during the period should not exceed the greatest possible pool value that might accrue to such deliveries. On the other hand, producers under the order usually have delivered nearly an entire month's production before receiving any payment for any of it. This problem could be addressed by requiring partial payments to producers to be made earlier, or by requiring partial payments to be made twice during the month rather than once. In any case, neither of those alternatives was proposed or discussed in any testimony. Accordingly, the partial payment rate determined by multiplying the previous month's Class III price by 1.2 should be adopted, but should never be allowed to exceed the level of the current month's Class I price.

Partial payments at the rate adopted should not be required in the case of producers who ship milk for only a small part of the second half of the month. Given the present relationship of the uniform price and the partial payment rate, such producers would very likely be paid more for their first 15 days' delivery of milk than their entire production for the month is worth. For this reason, partial payments would be required to be made only to producers who continue to ship milk through the 17th day of the month. In addition, overpayments to producers on a partial payment basis can be avoided more easily if deductions deemed proper by the market administrator and authorized by producers are allowed to be made from producers' partial payments. Such a provision would help to assure that producer payments are more evenly spaced throughout the month, and that the deductions to be made from a producer's final payment would not exceed the total amount due to the producer for his milk production during the second half of the month.

11. *Obligations of partially regulated distributing plant operators.* Two options for computing the obligation to the pool of the operator of a partially regulated distributing plant that is also regulated under a State order that provides for marketwide pooling of producer returns should be eliminated. Under the provisions adopted herein, such a handler may settle his obligation only by paying the amount that the Federal order Class I value of the fluid milk products that such plant distributes in the merged Great Basin marketing area (less Class I receipts from pool sources) exceeds the value of the milk at the applicable State order prices. Partially regulated distributing plant operators who are not regulated under a State order that provides for marketwide pooling would continue to have the same options under which their obligations to the pool are currently computed.

Under the present provisions of the Lake Mead order, every partially regulated distributing plant operator has three options that may be used in settlement of its pool obligations:

(a) The plant operator incurs no payment obligation if the operator purchases from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area. Such purchases, however, may not be used to offset any obligation under another Federal order.

(b) The plant operator incurs no obligation under the order, except for an administrative assessment charge on the volume of fluid milk products disposed of in the marketing area, if the operator's payments to dairy farmers and to the producer-settlement fund of any Federal order are not less than the pool obligation that such operator would have incurred if such plant had been fully regulated under the order. Under this option, which is commonly referred to as the "Wichita" option, a plant operator whose payments for milk are

less than the order's obligations may pay the difference either to its own dairy farmers or to the producer-settlement fund.

(c) The plant operator may choose to pay to the producer-settlement fund the difference between the Class I price and the producer blend price of the order [both prices adjusted for the location of the plant] on all fluid milk products distributed in the marketing area [less any purchases of milk classified and priced as Class I milk under any Federal order].

In addition, a partially regulated distributing plant operator regulated under a State order has a fourth option under which his pool obligation may be determined:

(d) The plant operator may choose to pay to the producer-settlement fund the difference between the Class I price applicable at the location of the plant and the applicable price for the fluid milk products distributed in the marketing area as determined under the State program.

The present Great Basin order contains only options (a), (b) and (c) for determining obligations of partially regulated distributing plants. Those options will be sufficient for determining the pool obligations of such plants not regulated under a State order. For determining the obligations of such plants that are State-regulated, options (a) and (d) will be sufficient.

An IMPA witness testified that some of the options currently available to determine the pool obligations of all partially regulated distributing plant operators are inappropriate for determining the obligations of such handlers that are regulated under a State order providing for marketwide pooling. According to the witness, approximately 20 percent of the fluid milk distributed within the current Lake Mead marketing area is distributed from plants located in southern California. He stated that these handlers are regulated under the California State Pooling Plan. Under the State Plan, he said, regulated handlers are required to pay for the milk they use, according to the class in which it is used, primarily on the basis of the butterfat and solids-not-fat contained in the milk. The value of all the milk received by each California handler is pooled on a marketwide basis and then redistributed to producers on the basis of the individual producer's production quota and base. As a consequence, the payments received by dairy farmers supplying individual plants have no direct relationship to the uses made of their milk by the handlers receiving it, or to the amounts paid into the pool by the receiving handlers.

The witness stated that the payment option currently available only to California State-regulated handlers, which prices sales in the marketing area at the difference between the State order and Federal order prices, is a precise method of determining the exact cost difference of the products. According to the witness, the other payment options available to partially regulated distributing plant operators have no validity in comparing the cost of the products under the State and Federal orders. The witness' position was that the costs attributed to the handler in payment options (b) and (c) above do not accurately represent the actual cost of the milk used by a California-regulated handler in the fluid products distributed within the Federal marketing area. He explained that under California regulation, the price paid by handlers for milk used in fluid products is publicly announced and strictly enforced. He stated further that the milk pooling plan operated by the State of California differs so greatly from the provisions of the Federal order that the values which must be computed under options (b) and (c) above are extremely difficult to determine for California-regulated handlers. Therefore, he concluded, only the present payment option that takes into account the actual prices paid by California handlers for milk used in fluid products should be used to determine the payment obligations of such handlers. Although California handlers would be the only ones affected by the proposed provision under present marketing conditions, the witness stated that the payment provision would apply to any partially regulated distributing plant operators regulated under any State order that provides for marketwide pooling.

The representative of Safeway Stores, Inc., a company operating multiple distributing plants, one of which is a large distributing plant in southern California with fluid milk sales in the Lake Mead marketing area, testified that the company would prefer to retain in the order all of the payment options currently available to the operator of a partially regulated distributing plant. The witness also proposed changing the language of the provisions governing the obligation of a partially regulated distributing plant operator regulated by a State order. The proposed modification would determine such an obligation on the basis of the difference in value of the fluid milk products distributed in the marketing area under the State and Federal order prices, rather than multiplying the pounds of such disposition by the difference between the applicable prices. The post-hearing brief filed on behalf of the handler expressed the opinion that the importance of retaining the present payment options of a partially regulated distributing plant operator is not as great as the handler considered it to be at the hearing.

The proponents' position with regard to partially regulated distributing plant obligations was supported by a witness representing a Great Basin pool distributing plant that had not yet begun operating at the time of the hearing. The witness supported the proposal in the interest of assuring that all handlers distributing fluid milk products in the marketing area have uniform costs for milk that is used in similar products.

Federal milk orders contain provisions that establish payment obligations of handlers who distribute fluid milk products within the marketing area, but not to an extent great enough to meet pooling standards. These obligations are imposed for the purpose of assuring that all handlers who distribute significant amounts of fluid milk products in the marketing area are subject to comparable costs for such milk. Payment obligations that would result in a cost of milk to a partially regulated distributing plant operator greater than that which would be imposed on a regulated handler would amount to a trade barrier. However, there is no indication that computing a partially regulated distributing plant operator's obligation to the pool on the basis of the difference between the values of the handler's milk under the Federal and State milk orders would be considered inequitable or a barrier to trade. Such a handler would be paying no more for milk distributed within the marketing area than the fully regulated handlers with whom the State-regulated handler is competing. At the same time, fully regulated handlers would be assured that the partially regulated handler has not obtained a competitive advantage by virtue of paying less than they are required to pay for milk used in fluid products.

Proponent witness' testimony in the hearing record is contradictory regarding proponents' intention as to whether the obligation of a partially regulated distributing plant operator should be determined on the basis of the difference in price between the Federal and State orders, or the difference in the values of the fluid milk products concerned as determined by the Federal and State orders. Most of the language in the section of the proposed merged order that deals with obligations of partially regulated distributing plant operators is identical to that in the

present separate orders. However, proponents have modified the language of the present Lake Mead order relating to such handlers that are State-regulated. The modification changes the determination of such a handler's obligation from the Class I price difference under the Federal and State orders to the difference between the value of the milk used in products disposed of in the marketing area at the Federal order Class I price, adjusted for location, and the amount paid for the milk by the handler under the State program. It seems apparent that if proponents wished to use the same method of determining the obligation of a partially regulated distributing plant operator as is currently in use under the Lake Mead order, their proposed order language would have continued to follow the present language of the Lake Mead order. Therefore, there is reason to conclude that proponent intended the State-regulated handler's actual cost of milk to be the amount compared to the Federal order value in computing the handler's pool obligation.

One of the principal points proponent witness made to justify using only the Federal-State value difference to compute partially regulated handler obligations, rather than allowing such handlers a choice of payment plans, was that the precise cost to the handler of the milk distributed in the marketing area by handlers regulated under a State order is known. Payments owed by California-regulated handlers for milk used in fluid products are determined by the amount of nonfat solids and butterfat contained in the milk, plus an added value for the volume of "fluid carrier" in which those components are contained.

For informational and comparison purposes, the State of California publishes a Class I price. This price, however, is not the basis of determining what any handler actually pays for milk used in fluid products. The published California Class I price is, rather, a reflection of the value of one hundred pounds of fluid milk containing a standard amount of butterfat and nonfat solids. As such, it should not be used to determine what a California-regulated handler has already paid for milk used in fluid products.

The value of milk pooled under the California State order is likely to be affected by the addition of nonfat solids for which the handler must pay. Although proponent witness indicated that proponent does not wish the addition of nonfat solids to be included in the value considered to have been paid by the handler under the State order, such fortification does, indeed, add to the handler's cost of milk. It would be inequitable to exclude the cost of fortification from the value to be credited against the Federal order value of milk distributed in the marketing area by a State-regulated handler. The value to be attributed to nonfat solids added to fluid milk products should be determined by the applicable State-announced prices.

There should be no difficulty in establishing the Federal order value of fluid milk products distributed in the marketing area by a state-regulated handler. The same prices per hundredweight of product pounds and skim milk, adjusted for location, that are used to determine the value of producer milk used in Class I should be used. In addition, the value of butterfat in such products can be determined by multiplying the pounds of butterfat by the butterfat price to be paid producers. If the actual values of the milk under the two pooling systems are compared, any obligation of a partially regulated distributing plant operator to the pool will have been determined equitably. Therefore, the difference in value of the in-area dispositions under the Federal and State pricing systems should be used to compute the pool obligations of partially regulated handlers, rather than the difference between the appropriate Federal and State order prices.

12. *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 and protein testing and market information should be 6 cents per hundredweight. The marketing service deduction is necessary to reimburse the market administrator for providing such services to producers for whom the services are not provided by a cooperative association.

Currently, the maximum rates under the separate orders are 6 cents under the Great Basin order and 7 cents under the Lake Mead order. A 6-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.

Because operation of the merged order would require that all producers' milk be tested for protein content, the market administrator would be authorized to establish, as well as verify, producer tests. Although not proposed, such a provision is necessary because it is apparent from the hearing record that not all of the handlers of producer milk in the merged order area are equipped to test for protein content.

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 to the appropriate combined fund under the merged order.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. It is anticipated that all handlers currently regulated under the 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 Great Basin 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 Great Basin 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 are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement, the Great Basin order which amends and merges the present Great Basin and Lake Mead 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 Great Basin marketing area and the minimum prices specified in the tentative marketing agreement and the merged Great Basin 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 merged Great Basin 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 Great Basin 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 pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with the respect to milk specified in § 1139.85 of the tentative marketing agreement and the merged Great Basin order.

Recommended Marketing Agreement and Order Amending the Orders

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the merged Great Basin order. The following order regulating the handling of milk in the Great Basin marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1136 and 1139

Milk marketing orders, Milk, Dairy products.

In Title 7 of the Code of Federal Regulations, it is proposed that Part 1136 be removed, and that Part 1139 be revised to read as follows:

PART 1136—[REMOVED]

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.

Definitions

Handler Reports

Classification of Milk

Class and Component Prices

Differential Pool and Handler Obligations

Payments for Milk

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

Subpart—Order Regulating Handling

General Provisions

§ 1139.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference, and made a part of this order.

Definitions

§ 1139.2 Great Basin marketing area.

"Great Basin marketing area" (hereinafter called the "marketing area") means all the territory, including all municipalities and government reservations and installations within, or partially within, the counties listed below:

Utah Counties:
All
Nevada Counties:
Clark, Elko, Lincoln and White Pine
Wyoming Counties:
Lincoln and Uinta
Idaho Counties:
Bannock, Bear Lake, Bingham, Bonneville, Caribou, Franklin, Jefferson, Madison, Oneida and Power

§ 1139.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product from a plant to a retail or wholesale outlet (including any delivery to a distribution point by a vendor, from a plant store, or through a vending machine). The term "route disposition" does not include a delivery to a plant defined in § 1139.7 (a) or (b).

§ 1139.4 [Reserved].

§ 1139.5 Distributing plant.

"Distributing plant" means a plant in which approved fluid milk products or filled milk are processed or packaged, and from which fluid milk products are disposed of on routes in the marketing area during the month.

§ 1139.6 Supply plant.

"Supply plant" means a plant from which approved fluid milk products or filled milk are transferred in bulk form during the month to a pool distributing plant.

§ 1139.7 Pool plant.

"Pool plant" means any plant, except a plant defined in § 1139.8, which meets the standards of one or more of the following paragraphs:

(a) A distributing plant from which not less than:

(1) 50 percent in any month of September through February, 45 percent in any month of March and April, and 40 percent in any month of May through August of the approved fluid milk products, except filled milk, received at such plant (excluding milk received at such plant from other order plants or dairy farms which is classified in Class II or Class III under this order and which is subject to the pricing and pooling provisions of any other order issued pursuant to the Act), are disposed of as route disposition; and

(2) 15 percent of such receipts are disposed of as route disposition in the marketing area during the month.

(3) If a handler operates more than one distributing plant, the combined receipts and fluid milk product dispositions of such plants may be used as the basis for qualifying all of the plants pursuant to paragraph (a)(1) of this section, provided the handler so notifies the market administrator in writing before the last day of the month for which such consolidation is desired.

(b) A distributing plant that meets the following conditions:

(1) The plant is located in the marketing area;

(2) The plant meets the requirements of paragraph (a)(1) of this section; and

(3) The principal activity of such plant is the processing and distribution of aseptically processed and packaged fluid milk products.

(c) A supply plant from which during the month not less than 50 percent of its approved milk receipts from dairy farmers is transferred to a pool distributing plant pursuant to paragraphs (a) or (b) of this section as fluid milk products. Any supply plant that has qualified as a pool plant in each of the immediately preceding months of August through February shall be a pool plant in each of the following months of March through July unless written request for nonpool status for any of such months is filed by the plant operator with the market administrator prior to the first day of the month the request is to be effective. A plant withdrawn from pool supply plant status may not be reinstated for any subsequent month of the March through July period unless it fulfills the transferring requirement of this paragraph for such month.

(d) Any manufacturing plant, or other plant not defined in paragraphs (a), (b) or (c) of this section, located within the marketing area at which milk is received from producers and which is owned and operated by a cooperative association or federation which delivers at least 45 percent of its producer milk (including that in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the amount in producer milk actually received at such plant) to pool distributing plants during the current month or the 12-month period ending with the current month.

(e) The pool plant performance standards in paragraphs (a)(1), (b), (c) or (d) of this section may be reduced or increased by 10 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

§ 1139.8 Nonpool plant.

"Nonpool plant" means any plant defined in this section, and any other milk receiving, manufacturing, or processing plant, other than a pool plant:

(a) "Producer-handler plant" means a plant operated by a producer-handler as defined in this, or any other order issued pursuant to the Act.

(b) "Other order plant" means a plant as specified under paragraph (b)(1), (2) or (3) of this section that is fully subject to the pricing and pooling provisions of another order issued pursuant the to Act:

(1) A distributing plant qualified pursuant to § 1139.7(a) that also meets the pool plant requirements of another Federal order, and from which the Secretary determines a greater quantity of Class I milk was disposed of as route disposition during the month in such other Federal order marketing area than was disposed of as route disposition in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to

all the provisions of this order until the third consecutive month in which a greater proportion of its Class I route disposition is made in such other marketing area;

(2) A supply plant qualified pursuant to § 1139.7(c) that also meets the pool plant requirements of another Federal order and from which a larger quantity of fluid milk products is transferred during the month to plants regulated under such other order than is transferred to distributing plants under this order, except that transfers to other order plants for Class III dispositions during the months of March through July shall be disregarded for purposes of this computation if the operator of the supply plant elects to retain pool status under this order; or

(3) A plant qualified pursuant to § 1139.7 (a), (b), or (c) which the Secretary determines, despite the provisions of this order, to be fully regulated under another Federal order.

(c) "Exempt plant" means a distributing plant:

(1) Having less than an average of one thousand pounds per day of route dispositions in the marketing area during the month;

(2) Operated by a governmental agency, or a duly accredited college or university, disposing of fluid milk products only through the operation of its own food service, and having no route dispositions in commercial channels; or

(3) From which the total route disposition is to individuals or institutions for charitable purposes without remuneration from such individuals or institutions.

(d) "Partially regulated distributing plant" means a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) "Unregulated supply plant" means a supply plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

§ 1139.9 Handler.

"Handler" means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative association with respect to producer milk diverted for the account of such association pursuant to § 1139.13;

(c) Any cooperative association or federation with respect to milk that is received at the farm 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 or federation; or

(d) Any person who operates a plant defined in § 1139.8 (a) through (e).

§ 1139.10 Producer-handler.

"Producer-handler" means any person who meets all of the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by such person in accordance with the conditions set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is such person's sole risk, and under such person's complete and exclusive management and control;

(2) Each such farm is owned or operated by and at the sole risk of such person, and under such person's complete and exclusive management and control; and

(3) Only such person, and no other person (except a member of such person's immediate family, or a stockholder in the case of a corporate operator) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(b) Operates a plant in which approved milk is processed or packaged and from which there is route disposition during the month in the marketing area, and:

(1) No fluid milk products are received at such plant during the month or by such person at any other location except:

(i) From the dairy farm(s) specified in (a) of this section; and

(ii) From pool plants by transfer or diversion, or from other order plants, in an amount that is not in excess of the larger of 5,000 pounds or 5 percent of such person's Class I disposition during the month;

(2) Such plant is operated under such person's complete and exclusive management and control and at such person's sole risk, and is not used during the month to process, package, receive or otherwise handle fluid milk products for any other person; and

(3) For the purpose of this section, all fluid milk products disposed of as route disposition or at stores operated by such person or by any person (including the operator of a plant, or vendor) who controls or is controlled by such person (e.g., as an interlocking stockholder) or in which such person (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at such person's plant; and the utilization for such plant shall include all such route and store dispositions; and

(c) Disposes of no other source milk (except in the fortification of fluid milk products) as Class I milk.

§ 1139.11 Approved milk.

"Approved milk" means any milk or fluid milk product that is approved for fluid consumption by a duly constituted regulatory authority.

§ 1139.12 Producer.

(a) Except as provided in paragraph (b) hereof, "producer" means any person:

(1) Who produces approved milk; and

(2) Whose milk is received at a pool plant or diverted to a nonpool plant within the limits set forth in § 1139.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined under any order (including this order) issued pursuant to the Act;

(2) Any person with respect to milk 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 § 1139.44(a)(8)(iii) and the corresponding step of § 1139.44(b);

(3) Any person with respect to milk diverted to another order plant if any part of such milk was allocated to Class I, or the other order defines such person as a producer; or

(4) Any person whose milk is received at a nonpool plant (except an other order plant) other than as a diversion from a pool plant after the first delivery of milk from such dairy farmer in any month was received as approved milk at a pool plant, or was otherwise qualified as producer milk.

§ 1139.13 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 § 1139.9(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 pool plant from a handler defined in § 1139.9(c); or

(3) Diverted to a nonpool plant subject to the conditions set forth in paragraph (d) of this section;

(b) Diverted by a handler defined in § 1139.9(b) to a nonpool plant subject to the conditions set forth in paragraph (d) of this section;

(c) Received by a handler defined in § 1139.9(c) from the producer's farm in excess of the producer's milk that is received at pool plants pursuant to paragraph (a)(2) of this section. Such producer milk shall be deemed to have been received by the handler at the location of the pool plant to which the milk was delivered;

(d) The following conditions shall apply to producer milk diverted to a nonpool plant:

(1) The milk shall be priced at the location of the plant to which diverted;

(2) A cooperative association or federation may divert for its account the milk of any of its member producers from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 60 percent in the months of April through August and 50 percent in other months of the producer milk which the association or federation causes to be delivered to pool plants or diverted to nonpool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of the producer milk which the cooperative associations cause to be delivered to pool plants or diverted pursuant to this section if each association has filed a request in writing with the market administrator before the first day of the month the agreement is effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative association according to a method approved by the market administrator;

(3) The operator of a pool plant (other than a cooperative association or federation) may divert for its account the milk of any producer (other than milk diverted pursuant to paragraph (d)(2) of this section) from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 60 percent in the months of April through August, and 50 percent in other months of the producer milk received at or diverted from such pool plant for which the operator of such plant is the handler during the month. The milk for which the operator of such plant is the handler for the month may not duplicate milk diverted pursuant to paragraph (d)(2) of this section;

(4) The diversion limits of this paragraph may be increased or decreased by up to 10 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the needs for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments;

(5) Diversions in excess of the percentages in paragraphs (d)(2) and (d)(3) of this section shall not be producer milk, and the diverting handler shall designate the milk which is not producer milk. If the handler fails to make such designation, no milk diverted by the handler shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by the producer during the month as producer milk will not be subject to § 1139.12(b)(4); and

(6) Milk of a dairy farmer who was not a producer in the preceding month shall not be eligible for diversion until after one day's milk production from such farmer has been received at a pool plant.

§ 1139.14 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 § 1139.40(b)(1) from any source other than producers, handlers defined in § 1139.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1139.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1139.40(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 § 1139.40(b)(1)) for which the handler fails to establish a disposition.

§ 1139.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in consumer-type packages), 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), whey, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers, and any product that contains by weight less than 6.5 percent nonfat milk solids; 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.

§ 1139.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1139.17 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 milk fat, 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).

§ 1139.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of dairy farmers, including producer, 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.

§ 1139.19 Product prices.

The prices specified in this section as computed and published by the Director of the Dairy Division, Agricultural Marketing Service, shall be used in

calculating the basic Class II formula price pursuant to § 1139.51(b) and the term "work-day" as used herein shall mean each Monday through Friday that is not a national holiday.

(a) "Butter price" means the simple average of the prices per pound of approved (92-score) butter on the Chicago Mercantile Exchange for the work-days during the first 15 days of the month, using the price reported each week as the price for the day of the report, and for each succeeding work-day until the next price is reported.

(b) "Cheddar cheese price" means the simple average for the work-days during the first 15 days of the month, of the prices per pound of cheddar cheese in 40-pound blocks on the National Cheese Exchange (Green Bay, WI). The price reported for each week shall be used as the price for the day on which reported, and for each succeeding work-day until the next price is reported.

(c) "Nonfat dry milk price" means the simple average of the prices per pound of nonfat dry milk for the work-days during the first 15 days of the month computed as follows:

(1) Use the prices (using the midpoint of any price range as one price) reported each week for high heat, low heat and approved nonfat dry milk, respectively, for the Central States production area;

(2) Compute a simple average of the weekly prices for the three types of nonfat dry milk in paragraph (c)(1) of this section. Such average shall be the daily price for the day on which the prices were reported and for each preceding work-day until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the work-days during the first 15 days of the month and compute the simple average thereof.

(d) "Edible whey price" means the simple average of the prices per pound of edible whey powder for the Central States production area for the work-days during the first 15 days of the month. The prices used shall be the price (using the midpoint of any price range as one price) reported each week as the daily price for the day on which reported, and for each preceding work-day until the day such price was previously reported.

§ 1139.20 Federation.

Federation means a business organization which is incorporated under state law that is owned and operated by two or more cooperative associations as defined in § 1139.18.

Handler Reports

§ 1139.30 Reports of receipts and utilization.

On or before the seventh day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for such month:

(a) Each handler who operates one or more pool plants shall report for each such plant the quantities of, and the pounds of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler, and the milk protein contained in such receipts;

(2) Receipts of milk from handlers defined in § 1139.9(c) and the milk protein contained in such receipts;

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1139.40(b)(1); and

(6) The utilization, disposition or month-end inventories of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required under paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk.

(c) Each handler as defined in § 1139.9(b) and (c) shall report:

(1) The quantities of, and pounds of skim milk, butterfat and milk protein contained in receipts of milk from producers; and

(2) The utilization or disposition of all skim milk, butterfat and milk protein in such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to all receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1139.31 Payroll reports.

(a) On or before the 21st day after the end of each month, each handler who pays producers pursuant to § 1139.74 shall submit a producer payroll to the market administrator which shall include the following information for each producer from whom milk was received during such month:

(1) The name and address of the producer;

(2) The total pounds and, with respect to final payments, the average butterfat and milk protein content of the milk, and the number of days on which milk was received from each producer;

(3) The minimum payment required by the order, and the amount paid if more than the minimum required;

(4) The amount and nature of any deductions from such payment;

(5) The net amount of payment to the producer; and

(6) The date the payment was made.

(b) On or before the 21st day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1139.76(a)(2) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1139.32 Other reports.

In addition to the reports required pursuant to §§ 1139.30 and 1139.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligations under this order.

Classification of Milk

§ 1139.40 Classes of utilization.

Except as provided in § 1139.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1139.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all butterfat and skim milk:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all butterfat and skim milk:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products

(other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese (all forms);

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers.

(c) *Class III milk.* Class III milk shall be all butterfat and skim milk:

(1) Used to produce:

(i) Cheese, other than cottage cheese in any form;

(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 milk 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 other dairy product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form, and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products, and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1139.15;

(6) In shrinkage assigned pursuant to § 1139.41(a) to the receipts specified in § 1139.41(a)(2) and in shrinkage specified in § 1139.41 (b) and (c).

§ 1139.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1139.30, 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 qualities 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, or received from handlers defined in § 1139.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from handlers defined in § 1139.9(c), except 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 protein and butterfat tests determined from farm bulk tank samples, the applicable percentage 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, 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 protein and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association or federation is the handler pursuant to § 1139.9 (b) or (c), but not in excess of 0.5 percent of skim milk and butterfat, respectively, thereof. 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 protein and butterfat tests determined from farm bulk tank samples, the applicable percentage for the cooperative association or federation shall be zero.

§ 1139.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred 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 both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computation pursuant to § 1139.44 (a)(12) and the corresponding step of § 1139.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1139.44(a)(7) or the corresponding step of § 1139.44(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 received during the month other source milk to be allocated pursuant to § 1139.44(a) (11) or (12) or the corresponding steps of § 1139.44(b), the skim milk or butterfat so transferred, 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.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of 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 or diverted 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 III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1139.40.

(c) *Transfers and diversions to producer-handlers and to exempt plants.* Skim milk or butterfat in the following forms that is transferred or diverted to a producer-handler under this or any other Federal order or to an exempt distributing plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the transferor-handler or divertor-handler so requests and 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 assignments 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 his report of receipts and utilization filed pursuant to § 1139.30 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 approved milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of approved milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of approved 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 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.

§ 1139.43 General accounting and classification rules.

(a) Each month the market administrator shall:

(1) Correct for mathematical and other obvious errors all reports filed pursuant to § 1139.30; and

(2) Compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1139.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1139.40, 1139.41, and 1139.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1139.9 (b) or (c) shall be such handler's classification of producer milk.

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1139.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1139.44 Classification of producer milk.

For each month the market administrator shall determine for each handler defined in § 1139.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1139.9(c) by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1139.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1139.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1139.40(b)(1) that were in inventory at the beginning of the month in packaged form but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1139.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (expect that received in the form of a fluid milk product) and packaged inventory at the beginning of the month of products specified in § 1139.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which approved milk status is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order, or from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from another order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of milk from a dairy farmer pursuant to § 1139.12(b)(4);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III;

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1139.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not

subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1139.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii) and (iii) 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 § 1139.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received; and

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to either paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such excess quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1139.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1139.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1139.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1139.45 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 § 1139.44(12) and the corresponding step of § 1139.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1139.44 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) Report to each cooperative association that so requests, on or before the 12th day after the end of each month, 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 and Component Prices

§ 1139.50 Class prices and component prices.

Subject to the provisions of § 1139.51 and § 1139.52, the class and component prices for the month, per hundredweight or per pound, 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, Agricultural Marketing Service, USDA, and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1139.51(b) 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 for the month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices and add 10 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.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

(d) *Butterfat price.* The butterfat price per pound shall be a figure computed as follows:

Subtract from the basic formula price an amount computed by multiplying the current month's butter price, based on the simple average of the wholesale selling prices per pound (using the mid-point of any price range as one price) of approved (92-score) bulk butter, f.o.b. Chicago, as reported by the Department for the month, by 4.025, and divide by 100. Add to the resulting amount the current month's butter price multiplied by 1.15. The sum thereof shall be the price per pound for producer butterfat for the month.

(e) *Milk protein price.* The price for milk protein per pound shall be computed by subtracting from the basic formula price the butterfat price multiplied by 3.5, and dividing the result by the average percentage of protein in all producer milk for the preceding month.

(f) *Skim milk price.* The skim milk price per hundredweight shall be the basic formula price for the month adjusted to remove the value of 3.5 percent butterfat and rounded to the nearest cent. Such adjustment shall be computed by multiplying the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of approved (92-score) bulk butter per pound at Chicago, as reported by the Department for the month, by 4.025 and subtracting the result from the basic formula price.

§ 1139.51 Basic formula prices.

(a) The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of approved (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

(b) The "basic Class II formula price" for the month shall be the basic formula price for the second preceding month plus or minus the amount computed pursuant to paragraphs (b) (1) through (4) of this section.

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1139.19 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:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(*a*) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(*b*) 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

(*c*) 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.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(*a*) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(*b*) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(*2*) 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.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) 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 (b)(3) (i) and (ii) of this section:

(i) Combine the total production of American cheese 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 cheddar cheese; and

(ii) 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.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

§ 1139.52 Plant location adjustments for handlers.

(a) The Class I price shall be adjusted for plants located in the zones set forth below as follows:

(1) *Zone 1*—0 adjustments

Utah Counties
Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Grand, Juab, Millard, Morgan, Rich, Salt Lake, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch and Weber.
Nevada Counties
Elko and White Pine

(2) *Zone 2*—Minus $0.25 adjustment

Idaho Counties
Bannock, Bear Lake, Caribou, Franklin, Oneida and Power

(3) *Zone 3*—Minus $0.30 adjustment

Idaho Counties
Bingham, Bonneville, Jefferson and Madison
Wyoming Counties
Lincoln and Uinta
Nevada Counties
Clark and Lincoln
Utah Counties
Beaver, Garfield, Iron, Kane, Piute, San Juan, Washington and Wayne

(b) For milk received from producers at a pool plant located outside the zones specified in paragraph (a) of this section, the Class I price applicable at the nearer of the Clark County, Nevada, courthouse or the Salt Lake County, Utah, courthouse shall be reduced by 1.5 cents per hundredweight for each ten miles or fraction thereof of distance by shortest hard-surfaced highway, as determined by the market administrator, between the plant and the nearer of the two courthouses.

(c) For purposes of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any Class I utilization at the transferee plant that is in excess of the sum of receipts at such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(d) The Class I differential applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) or (b) of this section, except that the differential shall not be less than zero.

§ 1139.53 Announcement of class and component prices.

The market administrator shall announce publicly on or before:

(a) The 5th day of each month, the Class I price for the following month;

(b) The 15th day of each month, the tentative Class II price for the following month; and

(c) The 5th day after the end of each month, the Class III price, the prices for butterfat, milk protein and skim milk computed pursuant to § 1139.50 (d), (e) and (f), and the final Class II price for such month.

§ 1139.54 Equivalent price.

If for any reason a price or pricing constituent required by this order for computing class prices or for other purposes is not available as prescribed in this order, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Differential Pool and Handler Obligations

§ 1139.60 Computation of handler's obligations to pool.

The market administrator shall compute each month for each handler defined in § 1139.9(a) with respect to each of such handler's pool plants, and for each handler defined in § 1139.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1139.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1139.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1139.44 multiplied by the difference between the Class II price and Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1139.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1139.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(14) and the corresponding step of § 1139.44(b), multiplied by the difference between the Class I price and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1139.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1139.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1139.44(a)(14) and the corresponding step of § 1139.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1139.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1139.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1139.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1139.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1139.44(a)(9) and the corresponding step of § 1139.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1139.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The Class I value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(9) and the corresponding step of § 1139.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The Class II value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1139.44(a)(9) and the corresponding step of § 1139.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The Class I value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(7) (i) through (iv) and (vii), and the corresponding step of § 1139.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the current month's protein and butterfat prices;

(f) The Class I value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(7) (v) and (vi) and the corresponding step of § 1139.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the current month's protein and butterfat prices;

(g) The Class I value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(11) and the corresponding step of § 1139.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the current month's protein and butterfat prices.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1139.44, multiplied by the skim milk price for the month computed pursuant to § 1139.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, multiplied by the protein price for the month computed pursuant to § 1139.50(e).

§ 1139.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1139.60, paragraphs (a) through (g), for all handlers who made reports pursuant to § 1139.30 and who made payments pursuant to § 1139.71 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1136.75;

(c) Add an amount equal to not less than one-half the unobligated balance in the producer-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;

(2) The total hundredweight for which a value is computed pursuant to § 1139.60(g).

(e) Subtract not more than 5 cents per hundredweight. The result is the "Weighted Average Differential Price".

§ 1139.62 Computation of skim milk/protein price.

For each month the market administrator shall compute the skim milk/protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1139.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1139.30 and who made payments pursuant to § 1139.71 for the preceding month;

(b) Divide the resulting amount by the total pounds of protein in producer milk; and

(c) Round to the nearest whole cent. The result is the "Skim milk/protein price."

§ 1139.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1139.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1139.73 and 1139.74.

§ 1139.64 Announcement of weighted average differential price, skim milk/protein price, and uniform price.

The market administrator shall announce publicly on or before the 12th day after the end of the month the weighted average differential price computed pursuant to § 1139.61, the skim milk/protein price computed pursuant to § 1139.62, and the uniform price computed pursuant to § 1139.63(a).

Payments for Milk

§ 1139.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit payments made by handlers pursuant to §§ 1139.71, 1139.76 and 1139.77, subject to the provisions of § 1139.78, and out of which he shall make payments pursuant to §§ 1139.72 and 1139.77. Payment due a handler from the fund shall be offset as appropriate against payments due from such handler.

§ 1139.71 Payments to the producer-settlement fund.

(a) On or before the 14th day after the end of the month, 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 amount specified in paragraph (a)(2) of this section:

(1) The total obligation of the handler for such month as determined pursuant to § 1139.60.

(2) The sum of:

(i) The value of such handler's receipts of producer milk and milk received from a handler defined in § 1139.9(c) at the weighted average differential price adjusted pursuant to § 1139.75, less the amount due from other handlers pursuant to § 1139.74(e); and

(ii) The value of the protein in such handler's receipts of producer milk and milk received from a handler defined in § 1139.9(c) at the skim milk/protein price computed pursuant to § 1139.62, less the amount due from other handlers pursuant to § 1139.74(e); and

(iii) The value at the weighted average differential price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1139.60(g).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route dispositions from such plant in the marketing area which was allocated to Class I at such plant; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim

milk by the difference between the Class I price f.o.b. the other order plant and the Class III price.

§ 1139.72 Payments from the producer-settlement fund.

On or before the 15th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1139.71(a)(2) exceeds the amount computed pursuant to § 1139.71(a)(1). If at such time 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 funds are available.

§ 1139.73 Value of producer milk.

(a) The partial payment for milk received from each producer during the first 15 days of the month shall be determined by a rate computed by multiplying the Class III price for the preceding month by 1.2, but not to exceed the current month's Class I price.

(b) The total value of milk received from producers during any month shall be computed as follows:

(1) The weighted average differential price computed pursuant to § 1139.61 subject to the appropriate plant location adjustment times the total hundredweight of milk received from the producer; plus

(2) The total milk protein contained in the producer milk received from the producer multiplied by the skim milk/protein price computed pursuant to § 1139.62; plus

(3) The total butterfat contained in the producer milk received from the producer times the butterfat price computed pursuant to § 1139.50(d).

§ 1139.74 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (c), (d) or (e) of this section, each handler shall, on or before the last day of each month, make a partial payment to each producer from whom milk was received during the first 15 days of the month, and who had shipped milk to such handler through the 17th day of the month, at the rate set forth in § 1139.73(a), less proper deductions authorized in writing by such producer;

(b) Except as provided in paragraphs (c), (d) or (e) of this section, each handler shall, on or before the 17th day of the following month, make a final payment to each producer for milk received from such producer during the month at no less than the total amount computed in accordance with the provisions set forth in § 1139.73(b) with respect to such milk:

(1) Less any deductions for marketing services pursuant to § 1139.86;

(2) Less payment made pursuant to paragraph (a) of this section for such month;

(3) Less proper deductions authorized in writing by such producer;

(4) Plus or minus adjustments for errors made in previous payments to such producer and proper deductions authorized in writing by such producer; and

(5) If by the date specified such handler has not received full payment from the market administrator pursuant to § 1139.72 for such month, the handler may reduce his payments to producers pro rata by not more than the amount of such underpayment. Payments to producers shall be completed thereafter no later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(c) In the case of a cooperative association authorized by its members to collect payment for their milk, and which has requested such payment from any handler in writing and has so notified the market administrator, payment shall be made for milk received during the month as follows:

(1) On or before the 3rd day prior the last day of the month for milk received from the members of such cooperative association at the rates set forth in § 1139.73(a); and

(2) On or before the 16th day of the following month such handler shall pay to such cooperative association the sum of the payments computed in accordance with the procedures set forth in § 1139.73(b) with respect to deliveries by producer-members of such cooperative association to handler(s) from whom payment has been requested, less the amounts of payments made to such cooperative association pursuant to paragraph (c)(1) of this section, and less the amount retained by handlers as authorized deductions.

(d) Each handler who received milk from producers for which payment is to be made to a cooperative association pursuant to paragraph (c) of this section shall report to such cooperative association and to the market administrator on or before the 7th day of the following month as follows:

(1) The total pounds of milk received during the month and, if requested, the pounds received from each member-producer;

(2) The amount of payment made pursuant to paragraph (c)(1) of this section and the quantity of milk to which such payment applied; and

(3) The amount or rate and nature of any proper deductions authorized to be made from such payments.

(e) Each handler shall pay a cooperative association for milk received from such cooperative association in its capacity as a handler defined in § 1139.9(c), or from a pool plant operated by such association as follows:

(1) On or before the 2nd day prior to the last day of each month for milk received during the first 15 days of the month an amount per hundredweight computed pursuant to the provisions of § 1139.73(a); and

(2) On or before the 15th day of the following month for milk received during the month at not less than the value computed for such milk in accordance with the provisions under § 1139.73(b), less the amounts of payments made to such cooperative association pursuant to paragraph (e)(1) of this section, and less the amount retained by handlers as authorized deductions.

§ 1139.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments computed pursuant to § 1139.72, the market administrator shall reduce the weighted average differential price computed pursuant to § 1139.61 by the location or zone differential applicable at the plant where such milk was first received from producers.

(b) The weighted average differential price applicable to other source milk pursuant to § 1139.71(a)(2)(iii) shall be adjusted at the rates set forth in § 1139.52(a) or (b) applicable at the location of the nonpool plant from which the milk was received (but not to be less than zero).

§ 1139.76 Payments by a handler operating a partially regulated distributing plant.

(a) Each handler who operates a partially regulated distributing plant that is not subject to a milk classification and pricing program that provides for marketwide pooling of producer returns and is enforced under the authority of a state government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a)(1) of this section, or, if the handler submits pursuant to §§ 1139.30(b) and 1139.31(b) the information necessary for making the appropriate computations, and so

elects, the amount computed pursuant to paragraph (a)(2) of this section:

(1) An amount computed as follows:

(i) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(ii) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;

(*a*) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(*b*) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(iii) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(iv) Multiply the remaining pounds by the weighted average differential computed pursuant to § 1139.61 as adjusted by the appropriate location or zone differential (but in no case less than 0);

(v) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(1)(iii) of this section by the difference between the Class I price adjusted to the appropriate plant location and the Class III price (but in no case less than 0).

(2) An amount computed as follows:

(i) Determine the value that would have been computed pursuant to § 1139.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(*a*) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(*b*) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (a)(2)(i)(*a*) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1139.60(e) shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price (or weighted average price) adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order;

(*c*) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1139.60 for such handler shall include in lieu of the value of other source milk specified in § 1139.60(g) less the value of such other source milk specified in § 1139.71(a)(2)(iii) a value of milk determined pursuant to § 1139.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1139.7(c) subject to the following conditions:

(*1*) The operator of the partially regulated distributing plant submits with reports filed for the month pursuant to §§ 1139.30(b) and 1139.31(b) similar reports for each nonpool supply plant;

(*2*) The operator of such nonpool supply plant maintains books and records showing the utilization of all milk and milk products received at such plant which are made available if requested by the market administrator for verification purposes; and

(*3*) The value of milk determined pursuant to § 1139.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(ii) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (a)(2)(i) of this section, subtract:

(*a*) The gross payment made by the operator of such partially regulated distributing plant, less the value of the butterfat at the butterfat price specified in § 1139.50(d), for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(*b*) If paragraph (a)(2)(i)(*c*) of this section applies, the gross payments by the operator of such nonpool supply plant, less the value of the butterfat at the butterfat price specified in § 1139.50(d), for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(*c*) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant, and like payments by the operator of the nonpool supply plant if paragraph (a)(2)(i)(*c*) of this section applies.

(b) Each handler who operates a partially regulated distributing plant which is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of a state government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund an amount computed as follows:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;

(i) As Class I milk from pool plants and other plants, except that subtracted under a similar provision under another Federal milk order;

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plants 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) Determine the value of the remaining pounds according to the Class I-Class III price difference applicable at the location of the partially regulated distributing plant (but not to be less than zero), the skim price and the butterfat price, as determined under this Part, and subtract the amount the handler pays under the state program, based on the classification and the appropriate class prices therefore of the products disposed of in the marketing area.

§ 1139.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in money due a producer, a cooperative association, or the market administrator from such handler or due such handler from the market administrator, 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 as set forth in the provisions under which such error occurred.

§ 1139.78 Charges on overdue accounts.

(a) Any unpaid balance due from a handler pursuant to §§ 1139.71, 1139.76, 1139.77, 1139.85 and 1139.86, or under this section shall be increased 1% per month on the next day following the due date of such unpaid obligation and any balance remaining unpaid shall likewise be increased on the first day of each month thereafter until paid.

(b) 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.

Administrative Assessment and Marketing Service Deduction

§ 1139.85 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 14th day after the end of the month at the rate of 4 cents per hundredweight, or such lesser amount as the secretary may prescribe, with respect to:

(a) Producer milk (including milk received from a handler defined in § 1139.9(c), but excluding in the case of a cooperative association which is a handler pursuant to § 1139.9(c), milk which was received at the pool plant of another handler) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1139.44(a) (7) and (11) and the corresponding steps of § 1139.44(b), except such other source milk that is excluded from the computations pursuant to § 1139.60 (d) and (g);

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the quantity subtracted pursuant to § 1139.76(a)(1)(ii).

§ 1139.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk pursuant to § 1139.74 (other than milk of the handler's own production) shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 14th day after the end of the month.

(b) The monies acquired by the market administrator pursuant to paragraph (a) of this section shall be expended by the market administrator to provide market information, and to verify or establish the weights, samples and tests of milk of any producer for whom a cooperative association is not performing the same services on a comparable basis as determined by the Secretary.

Signed at Washington, DC, on: July 14, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87-16289 Filed 7-20-87; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 87-048]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations by adding Minnesota to the list of States that have primary enforcement responsibility under the Swine Health Protection Act (Act) because it appears that Minnesota now meets the requirements for primary enforcement. This action would give Minnesota the responsibility for enforcing its laws and regulations concerning the treatment of garbage to be fed to swine and the feeding of that garbage to swine. Only in certain emergencies would the Secretary of Agriculture enforce in Minnesota the provisions of the Act and the Federal regulations. We are also proposing to make a corresponding change in the regulations by removing Minnesota from the list of States that do not have primary enforcement responsibility.

DATE: Consideration will be given only to comments postmarked or received on or before August 20, 1987.

ADDRESSES: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87-048. Comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Dale C. Gigstad, Senior Staff Veterinarian, Domestic Programs Support Staff, Veterinary Services, APHIS, USDA, Room 850, Federal Building, Hyattsville, Md 20782, 301-436-8715.

SUPPLEMENTARY INFORMATION:

Background

The "Swine Health Protection" regulations (contained in 9 CFR Part 166 and referred to below as the regulations) were established under the Swine Health Protection Act (contained in 7 U.S.C. 3801 *et seq.* and referred to below as the Act). These authorities contain provisions regulating the treatment of garbage to be fed to swine and the feeding of that garbage to swine. These provisions operate as safeguards against transmitting certain diseases of swine in the United States.

Primary Enforcement Responsibility in Minnesota

The Act provides that a State has primary enforcement responsibility for violations of laws and regulations concerning treatment of garbage to be fed to swine, and the feeding of that garbage to swine, whenever the Secertary determines that following: (1) That the State has adopted adequate laws and regulations concerning both the treatment of garbage to be fed to swine and the feeding of that garbage to swine that meet both the minimum standards of the Act and any regulations promulgated under the Act; (2) that the State has adopted and is implementing adequate procedures for the effective enforcement of these State laws and regulations; and (3) that the State keeps records and makes reports showing compliance with paragraphs (1) and (2) as the Secretary may require.

Minnesota currently is listed in § 166.15(b) of the regulations as a State that, under cooperative agreements with the Animal and Plant Health Inspection Service, issues licenses to persons desiring to operate a treatment facility for garbage that is to be treated and fed to swine, but does not have primary enforcement responsibility under the Act. However, it appears that Minnesota now meets the requirements for primary enforcement responsibility. We therefore are proposing to add it to the list in § 166.15(c) of States that have primary enforcement responsibility under the Act, and remove it from the list in § 166.15(d) of States that do not have primary enforcement responsibility. Therefore, except in certain emergency situations, the Secretary would not enforce in

Minnesota the provisions of the Act and that Federal regulations: the State of Minnesota would enforce its laws and regulations concerning the treatment of garbage to be fed to swine and the feeding of that garbage to swine.

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 complied by the Department, we have determined that this proposed rule 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 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.

For this action, the Office of Management and budget has waived its review process required by Executive Order 12291.

Almost all persons who operate facilities for the treatment of garbage to be fed to swine or who feed or permit the feeding of garbage to swine would be considered small entities. However, the proposed amendments made by this document would affect less than one percent of those persons who operate facilities for the treatment of garbage to be fed to swine and less than one percent of those persons who feed, or permit the feeding of, garbage to swine. These amendments would not cause significant changes in the requirements for affected persons.

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.

This proposed rule contains no information or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

Emergency Action

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Foot-and-mouth disease, Garbage, Hog cholera, Hogs, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, 9 CFR Part 166, would be amended as follows:

1. The authority citation for Part 166 continues to read as follows:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371.2(d).

§ 166.15 [Amended]

2. Paragraph (c) of § 166.15 would be amended by adding "Minnesota" immediately after "Michigan".

3. Paragraph (d) of § 166.15 would be amended by removing "Minnesota".

Done in Washington, DC, this 15th day of July, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-16505 Filed 7-20-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-80-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-10 and -30 Series, Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 series airplanes, which currently requires eddy current inspections and repair, if necessary, of the non-ventral aft pressure bulkheads. This action is prompted by reports of cracks found during an inspection of an aft pressure bulkhead on an airplane with a significantly lower number of accumulated landings than previously reported. This action would revised the existing AD to require the initial inspection on airplanes with a lower number of accumulated landings than previously required. This action is necessary to detect fatigue cracks that could lead to possible structural failure and loss of cabin pressurization.

DATE: Comments must be received no later than September 10, 1987.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-80-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-80-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion.

On March 22, 1984, FAA issued AD 84–07–04, Amendment 39–4838 (49 FR 13015; April 2, 1984), to require eddy current inspections of non-ventral aft pressure bulkheads on certain McDonnell Douglas Model DC–9 airplanes prior to the accumulation of 50,000 landings. The AD was prompted by reports of aft pressure bulkheads with local fatigue cracks in the web under the splice plates immediately above the floor line. This condition, if not corrected, could lead to structural failure and loss of pressurization.

Since issuance of that AD, there has been a report that crack indications were found during an inspection of the aft pressure bulkhead at a threshold significantly lower than that previously reported. The –184 web section with the crack indications was re-examined by eddy current inspection in the laboratory for verification of each location. Four cracks were positively identified directly below four of the inboard-most fastener holes. The web was subsequently sectioned in the laboratory to expose the fracture surfaces for examination. Examination revealed that the cracks were attributed to fatigue rupture. This airplane had accumulated 43,459 flight hours and 40,832 landing cycles.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would amend AD 84–07–04 to require the initial inspection of the aft pressure bulkhead of certain McDonnell Douglas DC–9 series airplanes, using eddy current non-destructive inspection (NDI) techniques prior to the accumulation of 37,500 landings, or within the next 2,500 landings after the effective date of the proposed AD

This proposed AD would not increase the economic burden significantly for any operator, since neither the applicability, the time intervals between inspections, the number of manhours to accomplish the modification, nor the parts used to accomplish the inspection would be changed from that required by the existing AD.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC–9 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising paragraph A. of AD 84–07–04, Amendment 39–4838 (49 FR 13015; April 2, 1984), to read as follows:

"A. Prior to the accumulation of 37,500 landings, or within the next 2,500 landings after the effective date of this AD, whichever occurs later, perform an initial eddy current inspection of the pressure bulkhead webs as shown on McDonnell Douglas Service Sketch 3483 of S/B 53–174, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publication and Training, C1–750 (54–60). This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on July 13, 1987

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–16436 Filed 7–20–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–AGL–13]

Proposed Alteration of Transition Area; Huntington, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notive proposes to alter the Huntington, IN, transition area to accommodate a new NDB Runway 9 Standard Instrument Approach Procedure (SIAP) to Huntington Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before August 20, 1987.

ADDRESS: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Regional Counsel, AGL–7, Attn: Rules Docket No. 87–AGL–13, 2300 East Devon Avenue, Des Plains, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The present transition area is being modified to accommodate a new NDB Runway 9 SIAP. The modification will consist of decreasing the radius from 7 miles to 5 miles and adding an extension from the 5–mile radius to 8.5 miles west of the airport.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views,

or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–AGL–13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Adminstration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area near Huntington, IN.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.18 [Amended]

2. Section 71.181 is amended as follows:

Huntington, IN [Amended]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Huntington Municipal Airport (lat. 40°51'12"N, long. 85°27'37"W); and within 3.5 miles each side of the 260° bearing from the Huntington NDB, extending from the 5-mile radius to 8.5 miles west of the airport, excluding those portions that overlie the Fort Wayne, IN and Wabash, IN transition areas.

Issued in Des Plaines, Illinois, on June 29, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87–16437 Filed 7–20–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–AWP–20]

Proposed Establishment of a Transition Area at Herlong, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a new transition area at Herlong, California. This transition area will provide controlled airspace for aircraft executing instrument approach procedures to Amedee Army Air Field (Amedee AAF), California.

DATE: Comments must be received on or before September 15, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP–530, Docket No. 87–AWP–20, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260, telephone (213) 297–1648.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–AWP–20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All

comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90260, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a new transition area at Herlong, California. This transition area will provide controlled airspace for aircraft executing instrument approach procedures to Amedee AAF, California. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Herlong, California [NEW]

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 40°20'15" N., long. 119°48'23" W., to lat. 40°07'58" N., long. 119°51'43" W., to lat. 40°11'30" N., long. 120°16'43" W., to lat. 40°20'32" N., long. 120°14'30" W., thence to the point of beginning; that airspace extending upward from 1,200 feet above the surface within an area bounded by the 23 mile and 12 mile arcs northeast of the Amedee. VOR (lat. 40°16'05" N., long. 120°09'03" W.) and the Amedee 039° and 179° radials; and that airspace extending upward from 9,500 feet MSL within an area bounded by a line beginning at lat. 40°20'15" N., long. 119°48'23" W., to lat. 40°16'52" N., long. 119°26'00" W., to lat. 40°04'25" N., long. 119°29'20" W., to lat. 40°07'58" N., long. 119°51'43" W., thence to the point of beginning.

Issued in Los Angeles, California, on July 8, 1987.

James A. Holweger,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87-16436 Filed 7-20-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 61 and 62

Claims for Compensation Under the War Hazards Compensation Act

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Proposed rule-extension of comment period.

SUMMARY: On June 1, 1987, the Department of Labor published a proposed rule in the **Federal Register** (52 FR 20536) which was intended to revise the regulations governing the administration of the War Hazards Compensation Act. Interested persons were requested to submit written comments by July 16, 1987. The Department of State recently requested that this period be extended to allow them additional time to review the proposal and to submit such comments as may be appropriate.

The Department of Labor believes that good reason exists for extending the comment period. Therefore, the comment period is extended until August 19, 1986.

DATE: Comments must be received no later than August 19, 1987.

ADDRESS: Send written comments to Thomas M. Markey, Associate Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S-3229, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523-7552.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, telephone (202) 523-7552

Signed at Washington, DC, this 15th day of July, 1987.

Richard A. Staufenberger,

Acting Director, OWCP.

[FR Doc. 87-16454 Filed 7-20-87; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

29 CFR Part 1953

Supplement to Oregon State Plan; Request for Public Comment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Request for Comment: Oregon State Standard.

SUMMARY: This notice invites comment on Oregon's independent State standard, Proximity to Overhead High Voltage Lines and Equipment. Oregon has adopted the standard as part of its general industry electrical standard to provide additional protective requirements for general industry regarding work activity in proximity to overhead high voltage lines and equipment. There are no requirements in OSHA's general industry electrical standards at 29 CFR Part 1910 Subpart S which are equivalent to Oregon's additional requirements.

Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard or is a State-initiated standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) requires that the State standard must be "at least as effective" providing safe and healthful employment and places of employment. In addition, if the standard is applicable

to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce. OSHA, therefore, seeks public comment as to whether the Oregon standard meets the above requirements.

DATE: Written comments should be submitted by August 20, 1987.

ADDRESS: Written comments should be submitted in quadruplicate to the Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3476, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION:

A. Background

The requirements for adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act are set forth in section 18(c) of the Act and 29 CFR Part 1902, 29 CFR 1952.7, and 29 CFR 1953.21, 1953.22, and 1953.23. OSHA regulations require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register** (29 CFR 1953.23(a)); a 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)(1)). Newly adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR Part 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon State plan and the adoption of Subpart D to Part 1952 containing the decision. The Oregon plan provides for the adoption of State standards in the following manner.

The Oregon Workers' Compensation Department adopts standards in response to Federal standards adopted by OSHA, or drafts such standards as it considers necessary in accordance with State safety and health experience, or upon consideration of recommendations from national standards-setting organizations, the U.S. Departments of Labor and Health and Human Services, employers, employees, and employee representatives.

The Oregon plan provides for adoption of permanent rules after giving public notice in the Secretary of State's rulemaking bulletin, to provide opportunity for the public to comment or request a hearing, considering comments and information gathered at hearings when appropriate and filing with the Secretary of State as an adopted rule.

The State has submitted a State-initiated plan change by letter, with attachments, dated October 18, 1984, from William J. Brown, Director of Oregon Workers' Compensation Department, to James W. Lake, Regional Administrator, and incorporated as part of its plan the standard on Proximity to Overhead Voltage Lines and Equipment. The standard prohibits employers from requiring or permitting employees to work in proximity to high-voltage lines unless accidental contact is effectively guarded against. Procedures for protecting employees against contact are set forth in the standard.

It should be noted that these rules were formerly a part of the Oregon electrical code, but were not included when Oregon adopted a new general industry electrical code consisting of substantially identical rules in response to the Federal electrical standards at 29 CFR Part 1910 Subpart S which were promulgated in 1981.

Pursuant to State procedures, Oregon provided notice in the Secretary of State's Administrative Rules Bulletin on August 15, 1984 and mailed copies of this notice to those on the Department's list of interested parties on August 10, 1984. No written comments or requests for hearings were received. Oregon then adopted its proposed rules on September 24, 1984, effective October 1, 1984.

B. Issues for Determination

The Oregon standard in question is now under review by the Assistant Secretary to determine whether it meets the requirements of section 18(c)(2) of the Act and 29 CFR Parts 1902 and 1953. Public comment is being sought by OSHA on the following issues.

1. "At Least as Effective" Requirement

The Oregon standard has been compared with the Federal 29 CFR Part 1910 Subpart S, and it has been determined that Oregon sets additional requirements for which there are no Federal equivalents. Oregon's standard does not appear to lessen the protections offered by Federal standards or general compliance policy which would otherwise apply. Therefore, OSHA has preliminarily determined that the State standard in question meets the "at least as effective" criterion of section 18(c)(2) of the Occupational Safety and Health Act. However, public comment on this issue is solicited for OSHA's consideration in its final decision on whether or not to approve the State standard.

2. Product Clause Requirement

On its face, the standard may set additional requirements for products (equipment) which are used and distributed in interstate commerce. OSHA is seeking through this notice public comment on this issue and whether the standard on Proximity to Overhead High Voltage Lines and Equipment:

(a) Is required by compelling local conditions; and (b) unduly burdens interstate commerce.

C. Public Participation

Interested persons are invited to submit written data, views and arguments with respect to the issues described above. These comments must be postmarked on or before August 20, 1987 and submitted in quadruplicate to the Director, Federal-State Operations, Room N–3476, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the position taken with respect to each issue. The Occupational Safety and Health Administration will consider all relevant comments, arguments and requests submitted concerning the supplement and will thereafter publish notice of the decision approving or disapproving it.

D. Location of Supplement for Inspection and Copying

A copy of Oregon's standard on Proximity to Overhead High Voltage Lines and Equipment along with approved State provisions for adoption of standards may be inspected and

copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administrator, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers Compensation Department, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Room N-3476, 200 Constitution Avenue, NW., Washington, DC 20210.

Authority: (Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).

Signed this 15th day of July, 1987 in Washington, DC.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 87-16430 Filed 7-20-87; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Surface Coal Mining Reclamation Operations; Initial and Permanent Regulatory Program; Excess Moisture Content Allowance; Reclamation Fees; Extension of Public Comment Period and Hearing Date

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

ACTION: Notice of extension of public comment period and public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) has previously published a proposed rule amending its regulations dealing with how the weight of each ton of coal produced is determined for reclamation fee purposes. The proposed rule would make the weight determination consistent with the method used for certain other tax purposes. OSMRE is now extending the comment period for the proposed rule and is also changing the public hearing date in Birmingham, Alabama.

DATES: The comment period on the proposed rule is extended until 5:00 p.m. Eastern time on August 7, 1987. The hearing date in Birmingham, Alabama is changed to July 31, 1987 at 9:00 a.m. local time.

ADDRESSES: The address for the Birmingham, Alabama hearing is the Ramada Hotel, 260 Oxmoor Road, Homewood, Alabama 35209.

Written comments may be mailed to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131-L, 1915 Constitution Avenue, NW., Washington, DC 20240; or hand-delivered to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jane Robinson, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone 202-343-2853 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: OSMRE published a proposed rule on May 18, 1987 (52 FR 18680) which would amend its regulations to provide consistency in the determination of the weight of coal for tax and reclamation fee purposes.

The proposed regulation would amend 30 CFR 870.5 to include a definition of excess moisture. Excess moisture would be defined to mean moisture found with the coal at the point of first disposition that was not part of the coal as removed from the seam. Moisture found with the coal as removed from the seam is defined as inherent moisture.

The proposed regulation would amend 30 CFR 870.12(i) to clarify that excess moisture would be included in the weight of the coal for determining the Abandoned Mine Lands (AML) fee liability unless the operator has made the reduction pursuant to the proposed 30 CFR 870.12(i)(B).

Proposed section 870.12(i)(B) would add procedures for obtaining the reduction in fees for the weight of the moisture. The proposed rule would require that an operator (1) establish the amount of reduction, i.e., the percentage of excess moisture, by standardized laboratory testing; (2) retain the results of the testing for a period of six years and (3) update the laboratory test results annually. The proposed rule should be consulted for additional details.

A request for a hearing on these proposals has been received. OSMRE has scheduled a hearing on July 31, 1987 at 9:00 a.m. at the Ramada Hotel, 260 Oxmoor Road, Homewood, Alabama 35209.

To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at the hearing give the transcriber a copy of their testimony.

Dated: July 16, 1987.

Robert E. Boldt,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87-16537 Filed 7-20-87; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 904

Reopening and Extension of Public Comment Period; Proposed Amendments to the Arkansas Permanent Regulatory Program

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

ACTION: Reopening and extension of public comment period.

SUMMARY: Arkansas submitted proposed program amendments to its approved permanent Regulatory Program on March 10, 1986, in response to OSMRE notifying the State that certain changes were necessary to ensure consistency with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and revised Federal regulations. OSMRE published a notice announcing receipt of the amendments and inviting public comment on the adequacy of the proposed amendments in the **Federal Register** (51 FR 12713-12714). In response to an OSMRE list of concerns with the submission, Arkansas submitted a revised package of proposed amendments. After reviewing the second submission, a second list of concerns was sent to the State. Arkansas addressed these concerns with the most recent submission. In addition, Arkansas submitted rewrites of three previously unsubmitted sections of the State's regulatory program. Therefore, OSMRE is reopening and extending the comment period on the State's proposed program amendments as modified on October 17, 1986 and May 1, 1987. This action is being taken to provide the public an opportunity to consider the adequacy of the revised proposed amendments.

DATE: Written comments relating to Arkansas' proposed modification of its program not received on or before 4 p.m. c.d.t. August 20 1987, will not necessarily be considered in the decision process. A public hearing on the adequacy of the amendments will be held upon request on August 17, 1987. Any person interested in making an oral or written presentation at the public hearing should contact Mr. James Moncrief at the Tulsa Field Office by 4 p.m. c.d.t. August 5, 1987. Contact the Tulsa Field Office at the address listed below in **"ADDRESSES"** for the time and location of the hearing. If no one has contacted Mr. Moncrief to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Moncrief, a public meeting may be held in place of the

hearing. If possible, a notice of the meeting will be posted in advance at the locations listed under **"ADDRESSES"**.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. James Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3014, Tulsa, Oklahoma 74103. Copies of the Arkansas program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the Tulsa Field Office, OSMRE Headquarters Office, and the office of the State regulatory agency listed below, during normal business hours Monday through Friday, excluding holidays. Each requester may receive, free of charge, one single copy of the proposed amendments by contacting OSMRE's Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 333 West 4th Street, Room 3014, Tulsa, Oklahoma 74103, Telephone: (918) 581–7927.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5315A, Washington, DC 20240, Telephone: (202) 343–4855.

Department of Pollution Control and Ecology, Surface Mining and Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72209, Telephone: (501) 562–7444.

FOR FURTHER INFORMATION CONTACT: Mr. James Moncreif, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3014, Tulsa, Oklahoma 74103, Telephone: (918) 581–7927.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1980, the Secretary of the Interior approved the Arkansas Permanent Regulatory Program. Information regarding the general background on the Arkansas State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of the approval of the Arkansas program can be found in the November 21, 1980 **Federal Register** (45 FR 77003–77017).

Subsequent actions taken with regard to Arkansas' approved program amendments and required amendments can be found at 30 CFR 904.10, 904.15, and 904.16.

II. Proposed Amendments

In accordance with the provisions of 30 CFR 732.17 (d) through (f), on April 17, 1985, OSMRE notified Arkansas of the changes necessary to ensure that the State's Act was no less stringent than SMCRA and that its regulations were no less effective than the Federal regulations, as revised since November 21, 1980, when the program was originally approved. To comply with this letter, the State of Arkansas completed a partial rewrite of the affected regulations governing its permanent regulatory program.

By letter dated March 10, 1986, Arkansas submitted these regulations to OSMRE as a program amendment (Administrative Record No. AR–302). The proposed regulations, consisting of sections 701.5, 761, 762.5, 764, 766, 771.23(c) (4), 772.2, 776, 779, 780, 784.20, 785, 788.18(d), 795, 800, 805, 806.11(b), 807.11(d) (2) (v), 808.14, 815.15(a), 816, 819.11(c) (1) & (2), 823, 826.12(c), 827.11, 842.16(a), 843.11(a) (2) & (3), and 845.12(b) would replace the currently approved regulations.

OSMRE announced receipt of the amendments and initiated a 30-day public comment period on April 15, 1986 (51 FR 12713–12714). During review of these amendments, OSMRE identified several concerns. A letter was sent to the State dated September 3, 1986, identifying 22 substantive changes that were required in order for the Director to approve these amendments. The letter also listed a number of minor typographical and editorial changes that would improve clarity and readability of the rules when they were adopted by Arkansas. In response to the letter, the State submitted a revised amendment to OSMRE on October 17, 1986 (Administrative Record No. AR–312). OSMRE reopened and extended the public comment period on November 24, 1986 (51 FR 42266–42267).

After considering comments and reviewing the revised proposed amendment, a letter was written to the State dated February 23, 1987, identifying nine changes that were required for approval. Many of them arose from the U.S. district court's decision on the challenged Federal regulations. By letter dated May 1, 1987, the State again submitted a revised amendment with the required changes and additional changes in the three sections: 816.133, 816.150, and 816.151 (Administrative Record No. AR–318).

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the proposed regulations satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17. If the amendments are found to be in accordance with SMCRA and no less effective than the Federal regulations, they will be approved and the amendment will become part of theArkansas Pemanent Regulatory Program.

III. Public Comment Procedures

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Tulsa, Oklahoma will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m. c.d.t. August 5, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare the adequate and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT"**. All such meetings will be open to the public. A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 904

Coal mining Intergovernmental relations, Surface mining, Underground mining.

Dated: July 6, 1987.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 87-16475 Filed 7-20-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 198a

Policies and Procedures of the Department of Defense Medical and Dental Care Review Board

AGENCY: General Counsel, DoD.

ACTION: Proposed rule.

SUMMARY: This part would establish policies and procedures for the Department of Defense (DoD) Medical and Dental Care Review Board. The Board will evaluate complaints that active-duty military personnel have received substandard medical or dental care provided directly by DoD (other than care provided by persons, such as contractors or contractors' employees, who are not full-time DoD employees or members). The Board's determinations will be provided to the Complainant, the military department(s) that provided the care, the Assistant Secretary of Defense (Health Affairs), and, at the Board's discretion, any other interested DoD component.

DATE: Written comments must be received by September 21, 1987.

ADDRESS: Office of the Assistant General Counsel (Personnel & Health Policy), Department of Defense, Pentagon, Room 3E999, Washington, DC 20301-1600.

FOR FURTHER INFORMATION CONTACT: Paul S. Koffsky, 202-695-3657.

SUPPLEMENTARY INFORMATION: To implement the Secretary of Defense's memorandum of May 11, 1987, entitled "Adequacy of Medical and Dental Care in Military Treatment Facilities," the Secretary proposes to prescribe the following interim policy, procedures, organization, and responsibilities for an operating entity to be known as the Department of Defense Medical and Dental Care Review Board (hereinafter referred to as "the Board"). After the Board has operated for at least six months under these procedures, the General Counsel shall submit a DoD directive for the Secretary's approval containing permanent policies, procedures, organization, and responsibilities. The proposed directive shall be developed by the General Counsel in consultation with the Assistant Secretaries of Defense for Health Affairs and for Force Management and Personnel.

List of Subjects in 32 CFR Part 198a

Health care, Organization and function (Government agencies.

Accordingly, Title 32 is proposed to be amended to add Part 198a as follows:

PART 198A—POLICIES AND PROCEDURES OF THE DEPARTMENT OF DEFENSE MEDICAL AND DENTAL CARE REVIEW BOARD

Sec.

Authority: 10 U.S.C. 113; 5 U.S.C. 301.

§ 198a.1 Mission of the Board.

(a) The Board shall receive and may evaluate complaints that active duty members of the armed forces (including members of the reserve components serving on active duty) obtained substandard medical or dental care provided directly by the Department of Defense (other than care provided by persons, such as contractors or contractors' employees, who are not full-time DoD employees or members). Such complaints may be filed by present or former members who receive that care or by their families if the member or former member is deceased or incompetent (hereinafter referred to as the "Complainant").

(b) Complaints will be considered and evaluated by the Board only if the military department that provided the allegedly substandard medical or dental care has confirmed that it has investigated the complaint and only if the care in question was received after June 30, 1985. The requirement of prior investigation shall be deemed to have been met if the Military Department to which a complaint of substandard medical or dental care was submitted does not take final action on that complaint within 180 days, unless unusual circumstances justify a longer period.

(c) The Board shall determine whether the questioned medical care was substandard in that it failed to meet reasonable medical or dental standards, and, if so, the individual provider or institutional systems responsible for such substandard care. The Board is not an extension of the quality assurance program of the Department of Defense for the purposes of 10 U.S.C.A. 1102 (West Supp. 1987). The report of the Board's determinations may not include information whose disclosure is prohibited by 10 U.S.C.A. 1102 (West Supp. 1987).

(d) The board's jurisdiction shall not include medical or dental care provided in direct connection with combatant activities of the armed forces or with emergency situations involving mass casualties.

(e) The Board's determination shall be conveyed to the Complainant, the military department(s) that provided the medical care, the Assistant Secretary of Defense (Health Affairs), and at the Board's discretion, any other component of the Department that may have an official interest in the determination.

(f) In establishing a mechanism for the review of medical and dental care directly provided by DoD to covered individuals, this part does not create any right or benefit, substantive or procedural, enforceable at law or equity against the United States or the Department of Defense.

§ 198a.2 Procedures of the Board.

(a) The Board may require the submission of complaints in a particular format or with other specific requirements as a prerequisite to its consideration of a complaint. Personal notification will be provided to an inquiring potential Complainant if any such format or requiremens are applicable.

(b) The Board shall receive the full cooperation of the military department(s) that provided the care that is the subject of the complaint. This cooperation includes full access to all pertinent records and the provision of pertinent information by the personnel of those military department(s).

(c) The Board may request further investigation consistent with the Inspector General Act of 1978, as amended, 5 U.S.C.A. app. 3 (West Supp. 1987), by the Inspector General of the Department of Defense, or the investigating components of the military departments, of the circumstances surrounding the controversial medical care, the quality assurance investigation, disposition of the complaint by the military department(s) concerned, and any other matter deemed by the Board relevant to the complaint.

(d) The Board may, in unusual circumstances where it belives it may be useful, interview Complainants, health care providers, and others who may have pertinent information.

(e) The Board shall meet at the call of the chairman, but not less frequently than once every three months.

(f) Every effort consistent with the purpose of the Board must be made to protect the personal privacy and professional reputation of all persons

identified in any report resulting from the investigation and evaluation of the complaint by the Board.

(g) Results of the Board's determination shall be final and not subject to further appeal or review. This, however, does no preclude other responsible DoD components or officials, such as medical or dental treatment facility commanders, from taking action that they believe is warranted. The copy of the Board's determinations conveyed to the Complainant shall be complete as is consistent with legal requirements or restrictions, such as the Privacy Act of 1974, 5 U.S.C. 552a, and 10 U.S.C.A. 1102 (West Supp. 1987).

§ 198a.3 Organization and responsibilities.

(a) The Board shall consist of at least three individuals selected by the Secretary of Defense. Once shall be a physician. The others shall be drawn from the fields of dentistry, nursing law, personnel administration, medical administration or investigative process, or shall possess other professional skills relevant to the functions of the Board. The Secretary shall designate one of the members as the chairman, and none of the members may be a regular, full-time employee of any component of the Department of Defense or a member of a uniformed service on active duty. Nominations for membership on the Board will be made by the General Counsel, in consultation with the Assistant Secretaries of Defense for Health Affairs and for Force Management and Personnel. Members of the Board shall be compensated at a rate not to exceed the statutory maximum, GS–15, step 10, pursuant to 5 U.S.C. 3109 (1982).

(b) The Board will be supported by an Executive Secretariat located in the Uniformed Services University of the Health Sciences. The Executive Secretary will be selected by the General Counsel, after consultation with the Assistant Secretaries of Defense for Health Affairs and for Force Management and Personnel. Each of the military departments will provide support as requested by the Executive Secretary, including the temporary assignment of military or civilian personnel, or both, to assist the Executive Secretary.

(c) The Uniformed Services University of the Health Sciences and the Armed Forces Institute of Pathology will provide expert medical evaluations to the Board upon its request. The Board may also use other consultants.

(d) The Secretaries of the Military Departments shall be responsible for reporting to the Assistant Secretary of Defense (Health Affairs) on all corrective actions taken as a result of findings by the Board of substandard care in the medical or dental treatment facilities of their military departments.

(e) The Inspector General of the Department of Defense shall develop a procedure for assisting the Board in its investigations and evaluations, including procedures for securing the assistance of investigative components of the military departments.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1987.

[FR Doc. 87–16474 Filed 7–20–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 3

Conduct of Persons and Traffic on the National Institutes of Health Federal Enclave; Prohibition of Smoking in Buildings

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to amend the regulations governing the conduct of persons and traffic on the NIH Federal enclave in Bethesda, Maryland, to implement the policy of the Secretary of Health and Human Services concerning a smoke-free environment in building space.

DATE: Written comments on the proposed regulations must be received on or before September 21, 1987.

ADDRESS: Send written comments on the proposed regulations to Mr. Lowell D. Peart, Regulations Officer, NIH, Building 31, Room 3B11, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: Dr. William Friedewald, Associate Director for Disease Prevention, NIH, Building 1, Room 216, Bethesda, Maryland 20892, telephone 301–496–1508.

SUPPLEMENTARY INFORMATION: On May 5, 1987, the Secretary of Health and Human Services directed officials of the Department of Health and Human Services (HHS) to establish a smoke-free environment in all HHS building space. Earlier, on April 28, 1987, the Director, NIH, had advised all NIH employees of plans to implement a smoke-free workplace policy. The purpose of this proposed rule is to implement the Secretary's directive as it concerns the NIH Federal enclave. Exceptions would be provided for approved research protocols. The rule would not apply in areas used as living quarters. (The Secretarial directive was signed after NIH announced its latest agenda of regulatory actions in the Federal Register of April 27, 1987, 52 FR 14330 et seq.).

The Secretary's directive states that "Employees of the Department of Health and Human Services deserve to work in the healthiest environment possible. We are keenly aware that smoking is injurious and know, too, that passive or secondary smoke is harmful. Our Surgeon General's latest report on smoking leaves absolutely no room for doubt on this issue. Therefore, I want to insure a smoke-free environment in all HHS building space."

The following statements are provided for the information of the public:

1. These proposed regulations would amend existing regulations to include the HHS policy limiting smoking in buildings. The economic impact of the amendment is insignificant. For this reason, the Director, NIH, has determined that this rule is not a "major rule" under Executive Order 12291, and that a regulatory impact analysis is not required. Further, these regulations will not have a significant economic impact on small entitites and, therefore, do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.).

2. Catalog of Federal Domestic Assistance: No assistance programs are affected.

3. Section 3.43, which is proposed to be amended, does not contain information reporting requirements and thus submission of this proposed rule to the Office of Management and Budget pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 [44 U.S.C. 3504(h)] is not required.

List of Subjects in 45 CFR Part 3

Conduct, Federal buildings and facilities, Government property, Smoking, Traffic regulations.

It is therefore proposed to amend Part 3 of Title 45 Code of Federal Regulations to add a new paragraph (g) to § 3.43 as set forth below.

Dated: June 26, 1987.

William F. Raub,

Deputy Director, National Institutes of Health.

PART 3—[AMENDED]

1. Revise the authority citation to Part 3 to read as follows:

Authority: 40 U.S.C. 318–318d, 486; Delegation of Authority, 33 FR 604.

2. Revise § 3.2(b)(2) to read as follows:

§ 3.2 Applicability.

* * * * *

(b) * * * (2) In the case of the following provisions: § 3.24 Parking permits; § 3.26 Servicing of vehicles; § 3.43(c) Hobbies and sports; and § 3.43(g) Smoking.

3. Amend § 3.43 by adding the following new paragraph (g):

§ 3.43 Other restricted activities.

* * * * *

(g) *Smoking.* Except as part of an approved medical research protocol, a person may not smoke in any building on the enclave.

[FR Doc. 87–16515 Filed 7–20–87; 8:45 am]

BILLING CODE 4140–01–M

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45 CFR Part 79

Program Fraud Civil Remedies

AGENCY: Office of the Secretary, HHS, Office of Inspector General, (OIG).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Program Fraud Civil Remedies Act of 1986, which authorizes the Department of Health and Human Services (and certain other federal agencies) to impose through administrative adjudication civil penalties and assessments against persons making false claims or statements to it.

DATE: To assure consideration, comments must be received on or before August 20, 1987.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Inspector General Division, Department of Health and Human Services, Room 5541 North, 330 Independence Avenue, SW., Washington, DC 20201 or delivered to that office between 9:00 a.m. and 5:30 p.m. Comments received may also be inspected in Room 5541 North between 9:00 a.m. and 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: D. McCarty Thornton, Office of the General Counsel (202) 245–6306.

SUPPLEMENTARY INFORMATION:

I. Background

These proposed regulations would implement the Program Fraud Civil Remedies Act (the Act), which was enacted on October 21, 1986 as sections 6103–6104 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509, 100 Stat. 1874), and codified at 31 U.S.C. 3801–3812. The Act establishes an administrative remedy against anyone who makes a false claim or written statement to any of certain Federal agencies, including the Department of Health and Human Services (the Department). In brief, any person who submits a claim or written statement to an affected agency knowing or with reason to know that it is false, fictitious, or fraudulent, is liable for a penalty of up to $5,000 per claim or statement and, in addition, with respect to claims, for an assessment of up to double the amount falsely claimed.

The Act requires each affected Federal agency to promulgate rules and regulations necessary to implement the provisions of the Act. 31 U.S.C. 3809. The Senate Governmental Affairs Committee stated in its report on the Act that it "expects that the regulations would be substantially uniform throughout government." S. Rep. No. 99–212, 99th Cong., 1st Sess. 12 (1985). In keeping with that expression, in November 1986 the President's Council on Integrity and Efficiency (PCIE) requested the Department to form a task force to develop model regulations for implementation of the Act by all affected Federal agencies. The Department was asked to lead the task force because it has since 1983 been administering a statute similar to the Act, the Civil Monetary Penalty Law, 42 U.S.C. 1320a–7a. (The Civil Monetary Penalty Law authorizes the Secretary to impose penalties and assessments against those who submit false claims to the Medicare, Medicaid, or the Maternal and Child Health Block Grant Programs.) The task force completed model set of regulations on March 6, 1987, and the PCIE recommended that all affected Federal agencies adopt them.

The Department here proposes to adopt the final model regulations recommended by the PCIE, incorporating, where appropriate, definitions specific to the Department's organization.

II. General Description of the Statutory Scheme

The Act provides for administrative adjudication of cases where a person makes a claim or written statement to the Department that the person knows, or has reason to know, is false, fictitious, or fraudulent. Liability attaches under the Act for any false, fictitious, or fraudulent claim for property, services, or money and for any written statement that is false, fictitious, or fraudulent with respect to any claim, contract, bid, proposal for contract, grant, loan or benefit.

If a person making such a claim or statement to the Department does so with actual knowledge or deliberate ignorance of its falsity, or acts with reckless disregard for the truth or falsity of the claim or statement, he or she can be held liable for a penalty of up to $5,000 per claim or statement. In addition, with respect to claims, the person may be subject to an assessment of up to double the amount falsely claimed.

Role of major actors in bringing cases

The Act prescribes roles for four major actors within the Department in bringing cases under the Act: the investigating official, the reviewing official, the presiding official, and the authority head.

The *investigating official* is vested with the authority to investigate all allegations of liability under the Act, including the power to subpoena documents and other information. If the investigating official concludes that an action under the Act is warranted, he or she submits a report of the investigation to the reviewing official.

The *reviewing official* must be someone within the Department independent of the investigating official. The reviewing official reviews the investigative report to determine whether there is adequate evidence to believe that the person named in the report is liable under the Act. If so, the reviewing official sends to the Department of Justice a written notice of intent to issue a complaint. The Act then gives the Attorney General, or a designated Assistant Attorney General, 90 days to approve or disapprove the issuance of a complaint.

If the appropriate Justice Department official approves a case, the reviewing official may serve a complaint on the defendant. The defendant may request a hearing by filing an answer within 30 days of receiving the complaint. If the defendant does so, the reviewing official sends the complaint and answer to a presiding officer, which in the Department as in most affected agencies, will be an administrative law judge (ALJ).

The *presiding officer* serves a notice of hearing upon the defendant, supervises discovery, rules on motions, conducts the hearing, and issues an initial decision. The initial decision will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed. Any defendant who is determined to be liable for a civil penalty or assessment in an initial decision, may appeal that decision to the authority head.

The *authority head* may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment. Should the authority head determine that the defendant is liable for a penalty or assessment, the defendant may obtain judicial review of such determination in an appropriate United States District Court.

These proposed regulations name as the investigating official the Inspector General of the Department, or a designee within the OIG compensated at or above the basic rate of pay for grade GS–16 under the General Schedule. The General Counsel or a designee within the Office of General Counsel, also compensated at or above that rate, will act as the reviewing official. ALJs will be presiding officers, and the Secretary or the Under Secretary of the Department will function as the authority head.

III. Discussion of Major Issuses

1. Definitions

Most of the proposed definitions set forth in 45 CFR 79.2 come directly from the Act. One exception is the proposed definition of "benefits," which is broad in scope for the purpose of describing "benefits" in the context of false statements. This definition stands in contrast to the "benefits" specifically listed in 31 U.S.C. 3803(c)(2) and in 45 CFR 79.3(c) for the purpose of limiting liability under the Act with respect to recipients of certain government benefits.

2. Basis for civil penalties and assessments

For the most part, proposed language contained in 45 CFR 79.3 comes directly from the Act or the legislative history. However, the proposed regulation provides that liability for assessments is joint and several among all defendants; whereas, each defendant may be held liable separately for a penalty of up to $5,000 per claim or statement.

Section 79.3(c) of the proposed regulations reflects the Act's restricted applicability with respect to beneficiaries of certain programs administered by the Department. Under this section, an individual beneficiary of any of the listed programs may be held liable for a false claim or statement relating to such benefits only if the false claim or statement is made in making application for such benefits, and is made with respect to such individual's eligibility to receive such benefits.

3. Investigation

The proposed regulations at 45 CFR 79.4 provide that the investigating official must submit a report to the reviewing official only where he or she concludes that action under the Act may be warranted. This section also would prescribe basic procedures for the investigating official to follow in issuing investigatory subpoenas under the Act for documents or other information. In addition, this section would make it clear that the Act does not prevent the investigating official from exercising the subpoena powers that he or she may have under other authorities or from pursuing other remedies.

4. Review by reviewing official

Section 3809 of Title 31 requires the reviewing official to determine that there is a reasonable prospect of collecting the amount of penalties and assessments for which a person may be liable. The proposed regulations at 45 CFR 79.5 would not interpret this to require the reviewing official to determine that a defendant could pay the statutory maximum, but rather that the defendant could pay an "appropriate amount."

5. Prerequisites for issuing a complaint

Most of the proposed language contained in 45 CFR 79.6 is derived directly from the Act. Under 31 U.S.C 3803(c)(1), the remedies provided in the Act do not apply with respect to any claim if the amount of money (or value of property or services) falsely demanded or requested in such claim or in a group of related claims submitted at the same time exceeds $150,000. This section interprets the term "related group of claims submitted at the same time" narrowly to prevent attempts to evade liability under the Act.

The proposed regulation also would make it clear that the reviewing official may join in a single complaint claims that are unrelated or that were not submitted at the same time, even if the total amount of money (or value of property or services) falsely claimed exceeds $150,000.

6. Issuance of complaints

The proposed regulations would specify what must be included in a complaint (45 CFR 79.7) and an answer by which a defendant requests a hearing (45 CFR 79.9). 45 CFR 79.8 would specify the means by which service of the complaint is made.

7. Default upon failure to file an answer

Regulations at 45 CFR 79.10 would require the ALJ (after another notice to the defendant) to impose penalties and assessments at the statutory maximum whenever the facts alleged in the complaint establish liability under the Act and the defendant fails to file a timely answer. An initial decision of the ALJ would become the final decision of the Department and would not be subject to further challenge unless the defendant could demonstrate that extraordinary circumstances prevented the filing of a timely answer.

8. Hearings

The provisions at 45 CFR 79.14 through 79.16 are designed to ensure the fairness of a hearing by (a) providing for the separation of functions among those within the agency investigating, litigating, and deciding these cases, (b) prohibiting ex parte contacts with the ALJ on any matters in issue, and (c) providing a mechanism for the disqualification of either a reviewing official or an ALJ.

9. Rights of parties; authorities of the ALJ

The provisions at 45 CFR 79.17 and 79.18 would list the rights of the parties and the authorities of the ALJ not specifically provided in other sections of the regulations.

10. Prehearing conferences

The ALJ may order a prehearing conference at his or her discretion, but must order at least one on the request of either party. Prehearing conferences may be held over the telephone at the ALJ's discretion. (45 CFR 79.19).

11. Disclosure of documents

The Act requires the disclosure of certain types of materials to the defendant. 31 U.S.C. 3803(e) (1) and (2). Generally speaking, these materials consist of any relevant and material documents and other materials that relate to the allegations in the complaint and upon which the findings and conclusions of the investigating official under 45 CFR 79.4(b) are based, unless such materials are subject to a privilege under Federal law. In addition, the defendant may also obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint. (45 CFR 79.20).

12. Discovery

Congress has provided for limited discovery in these proceedings. The Act provides only for such discovery as the ALJ determines is "necessary for the expeditious, fair, and reasonable consideration of the issues . . ." 31 U.S.C. 3803(g)(3)(B)(ii). In addition, the Senate Governmental Affairs Committee stated:

In the ordinary case, the committee anticipates that the timely exchange of proposed exhibits, witness lists and witness statements will constitute sufficient discovery. It is clearly the committee's hope that this alternative administrative mechanism will not become entangled in the unchecked "discovery wars" that render many court cases excessively costly and time-consuming.

S. Rep. No. 99–212, *supra*, at 15.

In order to ensure that discovery is reasonably controlled, the proposed regulation (45 CFR 79.21) provides that all discovery must be approved by the ALJ, unless the parties agree otherwise. The burden of proof with respect to a discovery request is on the proponent of that request.

13. Exchange of witness lists, statements, and exhibits

Proposed regulations at 45 CFR 79.22 would provide for the exchange of certain documents before the hearing, including witness lists, copies of prior statements of witnesses, and copies of hearing exhibits. The ALJ would be able to exclude witnesses and documents in instances where a party did not receive such documents before the hearing. In addition, any documents so exchanged would be deemed authentic for purposes of admissibility at the hearing unless a party objected before the hearing.

14. Subpoenas

45 CFR 79.23 would prescribe procedures for the ALJ to issue, and for parties and prospective witnesses to contest, subpoenas to appear at the hearing, as authorized by 31 U.S.C. 3804(b). 45 CFR 79.24 would permit parties and prospective witnesses to seek protective orders to restrict discovery or to limit the disclosure of information at the hearing.

15. Sanctions

The proposed regulations at 45 CFR 79.29 would expressly recognize an ALJ's authority to sanction parties and their representatives for failing to comply with regulations or orders of the ALJ. These sanction provisions are modeled on those of the Merit Systems Protection Board at 5 CFR 1201.43.

16. The hearing and burden of proof

45 CFR 79.30 would recognize that the Department has the burden of proof on the issues of liability and the existence of any factors that might aggravate or increase the amount of penalties and assessments that may be imposed. Conversely, the defendant has the burden of proof on any affirmative defenses and any factors that might mitigate or reduce the amount of penalties and assessments.

17. Determining the amount of penalties and assessments

The Act authorizes the imposition of penalties ranging up to $5,000 for each false claim or statement, and in addition, with respect to claims, an assessment ranging up to twice the amount falsely claimed. However, the Act is silent on how the appropriate amount of penalties or assessments should be determined. The proposed regulation at 45 CFR 79.31 would provide guidance to the ALJ and the Secretary in exercising this discretion. The proposed regulation notes that because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others, a significant penalty and double damages ordinarily should be imposed. It then lists factors that should be considered, but notes that the list is not exhaustive. The ALJ and Secretary remain free to consider other factors that may aggravate or mitigate the amount of penalties and assessments as such factors are presented in particular cases.

18. Witnesses

Under 45 CFR 79.33, the ALJ would allow testimony to be admitted in the form of a written statement or deposition so long as the opposing parties have a sufficient opportunity to subpoena the person whose statement is being offered.

Cross-examination may, at the discretion of the ALJ, exceed the scope of direct examination. The provisions in subparagraphs (c) and (e) are derived from Rule 611 of the Federal Rules of Evidence.

19. Evidence

Paragraphs (a) through (d) of 45 CFR 79.34 were included to comply with the recommendations of the Administrative Conference of the United States in Recommendation 86–2, 1 CFR 305.86–2, 51 FR 25,641 (July 16, 1986). The Federal Rules of Evidence are not, with some exceptions, generally binding on the ALJ. However, the ALJ may apply the Federal Rules of Evidence to exclude unreliable evidence.

20. Post-hearing briefs

It is within the ALJ's discretion to order post-hearing briefs, although parties are entitled to file one if they desire. (45 CFR 79.36).

21. Initial decision

The proposed regulation at 45 CFR 79.37 would provide that within 90 days of the filing of final post-hearing briefs, the ALJ shall serve on the parties an initial decision making specific findings of fact and conclusions of law on whether the claims or statements alleged in the complaint violate the Act and the appropriate amount of penalties and assessments considering any aggravating or mitigating factors in the case. The initial decision would become final within 30 days unless stayed by the filing of an appeal or a motion for reconsideration.

22. Reconsideration of initial decision

The Act expressly authorizes appeal of the ALJ's initial decision to the authority head by the defendant. 45 CFR 79.38 would permit any party to file with the ALJ a motion to the ALJ for reconsideration of the initial decision, allowing the primary decision-maker an opportunity to correct any errors in the initial decision.

23. Appeal to authority head

The proposed regulations at 45 CFR 79.39 would prescribe procedures for a defendant who has been found liable for penalties and assessments in an initial decision to appeal that decision to the authority head, as guaranteed by 31 U.S.C. 3803(i)(2). The rule would provide that there is no appeal of an ALJ's interlocutory orders.

24. Miscellaneous

The proposed regulations at 45 CFR 79.40 through 79.46 would largely reiterate statutory provisions, except § 79.41, which would provide that there will be no administrative stay of the authority head's final decision.

25. Limitations

The Act provides that the ALJ must serve a notice of hearing within six years of the date the claim or statement is made. The proposed regulation (45 CFR 79.47) would provide that service of a notice of intent to issue an initial decision in the event of default would be deemed to meet this statutory requirement.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (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, government agencies, or geographic regions; or (3) result in 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.

We have determined that these proposed regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. In general, the proposed rule would establish procedures governing the scope and conduct of administrative adjudications to impose civil penalties and assessments upon persons who submit false claims or statements to the Department. As such, this proposed rule would have no direct effect on the economy or on Federal or State expenditures. Consequently, we have concluded that an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 604(a)), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, these proposed regulations would not have a significant economic impact. While some of the penalties and assessments the Department could impose as a result of these regulations might have an impact on small entities, we do not anticipate that a substantial number of these small entities would be significantly affected by this rulemaking. Therefore, the Secretary certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980 (Pub. L. 96–511), all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. It has been determined that this proposed rulemaking does not contain specific information collection requirements and would not increase the Federal paperwork burden on the public and private sector.

V. Other Required Information

Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to these comments individually. However, in preparing the final rule, we shall consider all comments and shall respond to significant points in the preamble to that document.

List of Subjects in 45 CFR Part 79

Administrative practice and procedure, Fraud, Investigations, Organizations and functions (Government agencies), Penalties.

Title 45, Subtitle A of the Code of Federal Regulations would be amended to add a new Part 79 to read as follows:

PART 79—PROGRAM FRAUD CIVIL REMEDIES

Sec.

Authority: Secs. 6101–6104, Pub. L. 99–509, 100 Stat. 1874 (31 U.S.C. 3801–3812).

§ 79.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, §§ 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 79.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Department of Health and Human Services.

Authority head means the Secretary or the Under Secretary of the Department of Health and Human Services.

Benefit means, except as the context otherwise requires, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 79.7.

Defendant means any person alleged in a complaint under § 79.7 to be liable for a civil penalty or assessment under § 79.3.

Department means the Department of Health and Human Services.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by §§ 79.10 or 79.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Health and Human Services or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know, means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made,* shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, private organization, State, political subdivision of a State, municipality, county, district, and Indian tribe, and includes the plural of that term.

Representative means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

Reviewing official means the General Counsel of the Department or his or her designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)–

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from,

the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 79.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes, or is supported by, any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes, or is supported by, any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1). Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) *Applications for certain benefits.* (1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph (c)(2) of this section received by such individual, such individual may be held liable for penalties and assessments under this section only if such claim or statement is made by such individual in making application for such benefits with respect to such individual's eligibility to receive such benefits.

(2) For purposes of paragraph (c) of this section, the term "benefits" means—

(i) Benefits under the supplemental security income program under title XVI of the Social Security Act;

(ii) Old age, survivors, and disability insurance benefits under title II of the Social Security Act;

(iii) Benefits under title XVIII of the Social Security Act;

(iv) Aid to families with dependent children under a State plan approved under section 402(a) of the Social Security Act;

(v) Medical assistance under a State plan approved under § 1902(a) of the Social Security Act;

(vi) Benefits under title XX of the Social Security Act;

(vii) Benefits under § 336 of the Older Americans Act; or,

(viii) Benefits under the Low-Income Home Energy Assistance Act of 1981,

which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(d) No proof of specific intent to defraud is required to establish liability under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty.

(f) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 79.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official, or the person designated to receive the documents, a certification that—

(i) The documents sought have been produced;

(ii) Such documents are not available and the reasons therefor; or

(iii) Such documents suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 79.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 79.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 79.3, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 79.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money, or the value of property, services, or other benefits, requested or demanded in violation of § 79.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 79.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 79.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 79.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money, or the value of property or services, demanded or requested in violation of § 79.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 79.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 79.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 79.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment of the defendant or his or her representative.

§ 79.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

§ 79.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 79.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the defendant in the manner prescribed in § 79.8, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 79.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 79.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 79.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 79.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 79.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 79.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 79.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 79.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 79.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 79.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 79.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 79.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 79.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 79.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 79.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 79.9.

§ 79.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 79.22 and 79.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion

and/or a motion for protective order as provided in § 79.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 79.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 79.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 79.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 79.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 79.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 79.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 79.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 79.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 79.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative,

service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 79.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

§ 79.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 79.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 79.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 79.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 79.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 79.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 79.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 79.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 79.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 79.24.

§ 79.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 79.24.

§ 79.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 79.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 79.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 79.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all defendants with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 79.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by

mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 79.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 79.39.

§ 79.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 79.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30 day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 79.3 is final and is not subject to judicial review.

§ 79.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 79.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 79.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 79.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 79.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under §§ 79.42 or 79.43, or any amount agreed upon in a compromise or settlement under § 79.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 79.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 79.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 79.42 or during the

pendency of any action to collect penalties and assessments under § 79.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 79.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 79.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 79.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 79.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Dated: April 13, 1987.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: June 9, 1987

Otis R. Bowen,

Secretary.

[FR Doc. 87-16509 Filed 7-20-87; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 87-525, FCC-87-226]

Common Carrier Reporting Requirements; Elimination of Public Coast Station Operator Reports

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to eliminate Section 43.71 reports which are filed semi-annually by public coast station operators. Information in these reports is not used for periodic statistical compilation, and is seldom used in a special study, application or tariff review, or complaint investigation.

DATES: Comments must be received on or before August 31, 1987 and replies by September 15, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Feldman, Common Carrier Bureau, Industry Analysis Division, (202) 632-0745.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking, CC Docket 87-252, adopted June 29, 1987 and released July 13, 1987.

The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this Notice may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

Section 43.71 of the Commission's Rules and Regulations, 47 CFR 43.71, requires each common carrier operating public coast stations engaged in radiotelegraph communication with maritime mobile stations (other than on the Great Lakes and on inland waters) to file reports with this Commission containing data on radiotelegraph traffic. In this Notice of Proposed Rulemaking (Notice) we propose to eliminate a reporting requirement that is obsolete and unnecessary. The current reporting rules were promulgated in 1941 and have never been amended.

Pursuant to §43.71, reports are filed twice a year covering the periods January through June and July through December respectively. Eight companies filed reports for the first half of 1986. They were Atlantic Maritime Communications, Global Marine Communications, Inc., ITT World Communications, Inc., Mobile Marine Radio, Inc., Radiko KLC, Inc., RCA Global Communications Corp. Revenues earned by the reporting carriers, for this radiotelegraph service during the first half of 1986, ranged from a low of $21,000 to a high of slightly greater than $2 million.

To further reduce unnecessary regulatory paperwork, we propose to eliminate § 43.71 reports. The information in the reports has only been used by this Commission on an infrequent and limited basis. We do not compile or publish any information from these reports. Summary data are included in the annual reports filed by radiotelegraph, ocean-cable, and wire-telegraph carriers.

Eliminating the § 43.71 reports does not preclude us from directing the affected carriers to file detailed information should the need arise. We believe that most of our needs for data are adequately met with other reports. When necessary, special data requests can be tailored to specific needs. Since there is no ongoing need for semi-annual data, special studies will eliminate the need for carriers operating public coast station engaged in radiotelegraph communications with maritime mobile stations to submit reports semi-annually. This will not only reduce the costs to the carriers, it will also reduce this Commission's costs.

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to reduce information collection requirements on the public.

In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that the elimination of the § 43.71 reports will not have significant economic impact and will ease the recordkeeping and reporting requirement of these carriers. The rationale for the proposed elimination is outlined in the above discussions.

Ordering Clauses

Accordingly, it is ordered, that pursuant to the provision of section 219 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 219 and 403 there is hereby instituted a notice of proposed rulemaking into the foregoing matter.

It is further ordered, that all interested persons MAY FILE comments on the specific proposals discussed in the Notice on or before August 31, 1987. Reply comments shall be filed on or before September 15, 1987. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the documents will be available for public inspection in the Commission's Docket reference room; 1919 M Street, NW., Washington, DC.

List of Subjects in 47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements, Public coast station operators.

William J. Tricarico,

Secretary.

[FR Doc. 87-16482 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-373; RM-5424]

Radio Broadcasting Services; Cherryvale, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by John E. Hotaling proposing the allocation of FM Channel 263A to Cherryvale, Kansas. Petitioner failed to file comments expressing a continuing interest in the allotment in accordance with policies and procedures set forth in the Appendix to the *Notice*. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-373, adopted June 16, 1987, and releasd July 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau

[FR Doc. 87-16484 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-242, RM-5604]

Radio Broadcasting Services; Bastrop, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by North Delta Broadcasting, Inc. proposing the substitution of FM Channel 230C2 for FM Channel 232A at Bastrop, Louisiana and modification of license of Station KTRY-FM to specify operation on the Class C2 channel. Finalization of this proposal is contingent upon the outcome of a case pending before the U.S. Court of Appeals for the District of Columbia, specifically *James Reeder v. FCC*, No. 86-1045, (D.C. Cir., January 21, 1986).

DATES: Comments must be filed on or before September 3, 1987, and reply comments on or before September 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the peititioner, or its counsel or consultant, as follows: Erwin G. Krasnow, Esq., Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, 1600 L Street, NW.—Suite 1000, Washington, DC 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-242, adopted June 16, 1987, and released July 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-16486 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-254, RM-5724]

Radio Broadcasting Services; Garapan, Saipan

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by R.S.I. Corporation which seeks to allot Class C Channel 250 to Garapan, Saipan, as its first local service.

DATES: Comments must be filed on or before September 8, 1987, and reply comments on or before September 23, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Wayne Coy, Cohn and Marks, 1333 New Hampshire Avenue, NW., Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-254, adopted June 11, 1987, and released July 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-16489 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-240, RM-5785]

Radio Broadcasting Services; Morton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James S. Bumpous proposing the allotment of Channel 249C1 to Morton, Texas, as that community's first FM service. A site restriction of 13.7 kilometers (8.5 miles) southwest of the community is required.

DATES: Comments must be filed on or before September 3, 1987, and reply comments on or before September 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or its counsel or consultant, as follows: James S. Bumpous, Box 2445, Austin, Texas 78768 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-240, adopted June 19, 1987, and released July 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-16491 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-243, RM-5747]

Radio Broadcasting Services; Winfield, TX

AGENCY: Federal Communications Commisson.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Reynolds-Palmer, Inc., licensee of Station KLSB-FM, Channel 249A, Winfield, Texas, proposing the substitution of Channel 249C2 for 249A at Winfield and modification of its license to specify the higher class frequency, as that community's first wide coverage area station. A site restriction of 14.0 kilometers (8.7 miles) north of the city is required.

DATES: Comments must be filed on or before September 3, 1987, and reply comments on or before September 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Jr., Esquire, Attorney at Law, 1359 Black Meadow Road, Spotsylvania, Virginia 22553 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-243, adopted June 16, 1987, and released July 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocation's Branch Mass Media Bureau.

[FR Doc. 87-16492 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comments Period and Extension of Proposed Rule To List Sabal miamiensis (Miami Palmetto) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of deadline and reopening of the comment period.

SUMMARY: The Service announces that the deadline for taking final action on a proposed regulation to list *Sabal miamiensis* (Miami Palmetto) as an endangered species is extended for a period not to exceed 6 months in order to evaluate conflicting views on the taxonomic validity of this plant. The public comment period is reopened for 60 days. During this period the Service will review the information obtained from comments and from experts on the taxonomy of the plant. At the close of the six-month extension, the Service will decide whether or not *Sabal miamiensis* merits listing as an endangered species.

DATE: The public comment period is reopened until September 21, 1987.

ADDRESSES: Comments and materials concerning the status and taxonomy of *Sabal miamiensis* should be sent to the

Field Supervisor, Endangered species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Endangered Species Field Supervisor, at the above address (telephone: 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1986 (51 FR 40051), the Service published a proposed rule to list *Sabal miamiensis* (Miami Palmetto) as an endangerd species. The comment period for the proposal closed on January 5, 1987. One of the comments, submitted by a palm expert, expressed disagreement with recognition of *Sabal miamiensis* as a distinct species from the more widespread *Sabal etonia* (Scrub palmetto). As a result of this comment, and subsequent contact with its author, the Service now finds that there is substantial scientific disagreement regarding the taxonomic validity of *Sabal miamiensis*. If this plant is not distinct from *Sabal etonia* at the species, subspecies, or variety level, it would not be eligible for listing under the provisions of the Endangered Species Act of 1973, as amended. When such a scientific disagreement exists, the 1-year period within which the Service must ordinarily take final action on a proposed regulation to list a species may be extended for not more than 6 months in accordance with section 4(b)(6)(B)(i) of the Endangered Species Act 1973, as amended. Final action on the proposal must now be taken by May 4, 1988.

During this extension, the Service will contact scientists knowledgeable on palms of the southeastern United States. The Service will also consider any information submitted by the interested public. Based on relevant information obtained during the extension, the Service will either withdraw the proposed regulation to list *Sabal miamiensis* as an endangered species, or proceed with a final regulation to list it.

Author

The primary author of this notice is David Martin, Jacksonville Endangered Species Field Station (see address section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated July 10, 1987.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 87-16572 Filed 7-20-87; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 52, No. 139
Tuesday, July 21, 1987

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

Office of Energy

USDA National Panel on Cost Effectiveness of Fuel Ethanol Production; Meeting

AGENCY: Office of Energy, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Office of Energy, USDA announces a forthcoming meeting of the National Panel on Cost Effectiveness of Fuel Ethanol Production.

DATES AND TIME: August 6, 1987, 1:00 p.m. to 8:00 p.m., and August 7, 1987, 8:30 a.m. to 4:30 p.m.

ADDRESS: Main Conference Room, Fourth Floor, 4300 King Street, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Earle E. Gavett, Office of Energy, USDA, Washington, DC 20250–2600, 202–447–2634.

SUPPLEMENTARY INFORMATION: The USDA National Panel on Cost Effectiveness of Fuel Ethanol Production was established under section 13 of the Farm Disaster Assistance Act of 1987 (Pub. L. 100–45) to conduct a study of the cost effectiveness of fuel ethanol production for Congress and the Secretary of Agriculture. The Panel is comprised of seven members representing various agricultural, fuel ethanol and government interests. The meeting will be open to the public.

Agenda

August 6, 1987

1:00 p.m.
Opportunity for invited speakers to submit viewpoints.
Discussion/Analysis of issues.
8:00 p.m.
Adjourn.

August 7, 1987

8:30 a.m.
Preliminary analysis of recommendations.
Preliminary discussion of panel report.
4:30 p.m.
Adjourn.

Earle E. Gavett,

Director, Office of Energy.

[FR Doc. 87–16512 Filed 7–20–87; 8:45 am]

BILLING CODE 3410–73–M

Forest Service

Embudo Foothills Estates Venture Proposed Land Exchange

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service has withdrawn a Notice of Intent to prepare an environmental impact statement for the proposed land exchange by Embudo Foothills Estates Venture (Proponent) on the Sandia Ranger District, Cibola National Forest, Bernalillo County, New Mexico. The Notice of Intent has been withdrawn because the proponents have withdrawn their proposed offer for a land exchange.

FOR FURTHER INFORMATION CONTACT: Questions about this action should be directed to Allan Hinds, Recreation and Lands Staff Officer, Cibola National Forest, 10308 Candelaria NE, Albuquerque, New Mexico 87112, phone 505–275–5207.

SUPPLEMENTARY INFORMATION: The Notice of Intent was issued January 10, 1985. A Notice of Delayed Release of an Environmental Impact Statement and Record of Decision was issued on March 31, 1986.

Dated: July 13, 1987.

C. Phil Smith,

Forest Supervisor.

[FR Doc. 87–16518 Filed 7–20–87; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Environmental Impact Statement; Town Creek Watershed, MS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Town Creek Watershed, Lee, Pontotoc, Prentiss, and Union Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, 1321 Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for flood prevention. Alternatives under consideration to reach these objectives include eighteen floodwater retarding structures and channel improvement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Further information on the proposed action may be obtained from L. Pete Heard, State Conservationist, at the above address.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Dated: July 13, 1987.

L. Pete Heard,

State Conservationist.

[FR Doc. 87–16571 Filed 7–20–87; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings; Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 4:00 p.m., on August 7, 1987, at the Camelot Hotel, Markham and Broadway, Little Rock, Arkansas. The purpose of the meeting is to gather information at a community forum on equal educational opportunity in the Arkansas public school system, and to plan future activities. Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Acting Chairperson, Alan Patteson, Jr., or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 13, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–16461 Filed Filed 7–20–87; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting; Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m., on August 14, 1987, at Indiana University Northwest, 3400 Broadway, Gary, Indiana. The purpose of this meeting is to conduct a community forum on the status of civil rights in Indiana and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Acting Chairperson, Katherine Blanks, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 13, 1987.

Susan J. Prado)

Acting Staff Director.

[FR Doc. 87–16462 Filed 7–20–87; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting; Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m., on July 31, 1987, at the Vanderbilt Plaza Hotel, 2100 West End Avenue, Nashville, Tennessee. The purpose of the meeting is to receive a briefing on desegregation in public higher education in the State to determine the feasibility of conducting a community forum on this issue and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James F. Blumstein, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 13, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–16463 Filed 7–20–87; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting; Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m., on August 20, 1987, at the Concourse Hotel, One West Dayton Street, Madison, Wisconsin. The purpose of this meeting is to conduct a community forum on employment discrimination, State contract compliance efforts, State efforts to increase disadvantaged, business enterprise participation in State contracts, the extent to which economic development loans and grants benefit minorities and women, and to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Acting Chairperson, James L. Baughman, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 13, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–16464 Filed 7–20–87; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review.

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder

and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 83–A0027."

OETCA has received the following application for an amendment to Export Trade Certificate of Review #83–00027, which was issued on April 2, 1984 (49 FR 13723, April 6, 1984)

Applicant: SOR, Inc., 11705 Blackbob Road, P.O. Box 591, Olathe, Kansas 66061.

Application #: 83–A0027.

Date Deemed Submitted: July 7, 1987.

Members (in addition to applicant): SOR Texas, Inc., Houston, Texas; SOR Controls Group, Ltd., Olathe, Kansas; Roy E. Dunlap and Jim Johnson of SOR Controls Group, Ltd.; and SOR Europe Ltd., Sussex, England

Summary of the Application

SOR, Inc. was issued an export trade certificate of review on April 2, 1984 (Application #83–00027) (49 FR 13723, April 6, 1984). Members of its certificate currently are: Controls International, Ltd.; SOR Export, Inc.; Roy E. Dunlap; and Ross E. Johnson.

SOR, Inc. seeks to amend its certificate to make the following changes:

1. SOR Export, Inc. will be deleted as a "Member" of the certificate.

2. The current "Member", Controls International, Ltd., has changed its name to SOR Controls Group, Ltd. The "Member" name "Controls International, Ltd." will be replaced with the name "SOR Controls Group, Ltd."

3. SOR Texas, Inc. of Houston, Texas (formerly known as Magnetic Sensing Waves, Inc.), which has been acquired by SOR Controls Group, Ltd., will be added as a "Member" of the certificate.

4. Mr. Ross E. Johnson will be deleted as a "Member".

5. Mr. Jim Johnson will be added as a "Member".

6. SOR Europe Ltd. of Sussex, England, a subsidiary of SOR Controls Group, Ltd., will be added as a "Member".

7. "Liquid level and flow switches" will be added as "Products" under "Export Trade".

Dated: July 15, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87–16514 Filed 7–20–87; 8:45 am]

BILLING CODE 3510-DR-M

[C–614–701]

Preliminary Affirmative Countervailing Duty Determination: Certain Steel Wire Nails From New Zealand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in New Zealand of certain steel wire nails as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 5.77 percent *ad valorem* for all manufacturers, producers or exporters in New Zealand of certain steel wire nails.

We are directing the U.S. Customs Service to suspend liquidation of all entries of certain steel wire nails from New Zealand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net bounty or grant

If this investigation proceeds normally, we will make a final determination by September 28, 1987.

EFFECTIVE DATE: July 21, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Mark Linscott, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2438 or 377–8330.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that there is reason to believe or suspect that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in New Zealand of certain steel wire nails. For purposes of this investigation, the following programs are preliminarily found to confer bounties or grants:

- Export Performance Taxation Incentive (EPTI)
- Export Market Development Taxation Incentive (EMDTI)
- Sales Tax Exemption or Refunds on Machinery and Equipment Used in the Production of Goods for Export
- Export Suspensory Loan Scheme (ESLS)

We preliminarily determine the estimated net bounty or grnt to be 5.77 percent *ad valorem* for all manufacturers, producers or exporters in New Zealand of certain steel wire nails.

Case History

Since the last **Federal Register** publication pertaining to this investigation [the Notice of Initiation (52 FR 18590, May 18, 1987)], the following events have occurred. On May 20, 1987, we presented a questionnaire to the Government of New Zealand in Washington, DC concerning petitioners' allegations. On June 25, 1987, we received a response from the government and responses from Auto Machine Manufacturing Co., Ltd. (AM), Consolidated Metal Industries (South Island), Ltd. (CMI), and Pearson, Knowles, and Rylands Brothers (NZ) Ltd. (PKR). These companies are the only known manufacturers, producers or exporters of the subject merchandise to the United States. Both AM and CMI are subsidiaries of the same parent company, Consolidated Metal Industries.

Scope of Investigation

The products covered by this investigation are certain steel wire nails from New Zealand. These nails are: one-piece steel nails made of round wire, as currently provided for in *Tariff Schedules of the United States Annotated* item numbers 646.2500, 646.2610–90, and 646.3040; two-piece steel wire nails as currently provided for in item number 646.3200; and nails with steel wire shanks and lead heads, as currently provided for in item number 646.3600. These products are currently classifiable under *Harmonized System*

item numbers 7317.00.55, 7317.00.65, 7317.00.75 and 7616.10.10.

Analysis of Programs

Throughout this notice, we refer to certain principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1986. Each company has recently modified its fiscal year, and, currently, each operates on the same fiscal year. However, the companies will not complete identical fiscal years until June 30, 1988. In accordance with our practice in such situations, we have chosen the most recently completed calendar year as our review period. Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers or exporters in New Zealand of certain steel wire nails under the following programs:

A. Export Performance Taxation Incentive (EPTI)

Petitioners allege that the New Zealand steel wire nail industry receives EPTI tax credits on exports of qualifying goods. According to the response of the Government of New Zealand, exporters are entitled to receive a tax credit based on the f.o.b. value of qualifying goods exported under section 156A of the Income Tax Act of 1976, as amended. Credits are available as a deduction against income tax payable. If the tax credit exceeds the income tax payable, the remainder is paid to the taxpayer in cash. A credit cannot be carried forward and claimed on future tax returns.

The rate of the tax credit is dependent upon the government's predetermined value-added categories into which the exported products of a taxpayer fall. The amount of the tax credit is calculated by multiplying the rates corresponding to the value-added categories into which qualifying exports fall by the f.o.b. value of export sales. Steel wire nails fall into value-added category B, for which the corresponding rate is 5.25 percent. All three respondent companies claimed EPTI credits on their tax returns for the fiscal year ending in 1986. According to the responses, the rates specified under this program have been and will continue to be reduced in the tax years ending March 31, 1986, and March 31, 1987.

Because only exporters are eligible for this program, we preliminarily determine that it provides a bounty or grant to manufacturers, producers or exporters of certain steel wire nails within the meaning of the countervailing duty law.

New Zealand companies normally file their tax returns for a given fiscal year in the calendar year in which that fiscal year ends. CMI and PKR filed their tax returns for the fiscal year ending in 1986 during the review period. AM filed in 1985 its tax return for the fiscal year ending in 1985 but filed its tax return for the fiscal year ending in 1986 in February 1987. AM did not file a tax return during the review period. To avoid future situations where credits claimed on more than one tax return would be included within one review period, we used the EPTI credits claimed by AM on its return for the fiscal year ending in 1986, as if it were filed during the review period.

Under our tax methodology, we calculate the benefit from this program by dividing the amount of EPTI tax credits claimed for exports of steel wire nails to the United States on the tax returns filed during the review period by the total value of export sales of steel wire nails to the United States for the three respondent companies during the review period. According to its response, PKR claimed no EPTI credits for U.S. sales on the tax return filed during the review period. Therefore, we divided the EPTI credits claimed by AM and CMI for exports of steel wire nails to the United States by total export sales of steel wire nails to the United States to calculate an estimated net bounty or grant of 3.57 percent *ad valorem*.

B. Export Market Development Taxation Incentive (EMDTI)

Petitioners allege that the New Zealand steel wire nail industry receives EMDTI tax credits under section 156F of the New Zealand Income Tax Act of 1976, as amended, for qualifying export market development expenditures. According to the government's response, under the 1979 Amendment to the Income Tax Act of 1976, export market development expenditures, such as expenses incurred principally for seeking and developing markets, retaining existing markets, and obtaining market information, qualify as a tax credit amounting to 67.5 percent of the total expenditure. An exporter who takes advantage of this tax credit may not deduct the qualifing expenditures as ordinary business expenses in calculating the taxable income. The normal corporate tax rate in New Zealand is 45 percent.

Only AM reported in its response that it claimed EMDTI tax credits on its tax return filed during the review period for marketing expenses related to the United States.

Because only exporters are eligible for this program, we preliminarily determine that it provides a bounty or grant to manufacturers, producers or exporters of certain steel wire nails within the meaning of the countervailing duty law. Since exporters may claim a tax credit of 67.5 percent but may not deduct the expenditures in calculating taxable income, the net benefit to the exporters under this program is 22.5 percent of the qualifying expenditures. In its response AM did not specify what portion of qualifying expenditures was related to marketing efforts directed at the United States. We prorated AM's total qualifying expenditures by the proportion of AM's U.S. export sales to its total export sales to derive qualifying expenditures related to U.S. marketing efforts. To calculate the benefit, we divided 22.5 percent of the derived qualifying expenditures for U.S. marketing efforts by the total export sales to the United States for the three respondent companies during the review period. On this basis, we calculate an estimated net bounty or grant of 0.64 percent *ad valorem*.

C. Sales Tax Exemptions or Refunds on Machinery and Equipment Used in the Production of Goods for Export

Petitioners allege that the New Zealand steel wire nail industry receives sales tax exemptions or refunds on machinery and equipment used in the production of goods for export. Under Item 136 IV of the Sales Tax Exemption Order of 1979, machinery used in the production of goods for export may be exempt from the ten percent sales tax. Only PKR indicated in its response that it received sales tax refunds or exemptions under Item 136 IV during the review period.

Because the sales tax exemptions or refunds are provided only if the machinery and equipment are used in export production, we preliminarily determine that this program provides a bounty or grant to manufacturers, producers or exporters of certain steel wire nails within the meaning of the countervailing duty law.

To calculate the benefit, we divided the value of the sales tax waiver received by PKR during the review period for the purchase of equipment used to produce steel wire nails by the total export sales of steel wire nails for the three respondent companies during the review period. On this basis, we calculate an estimated net bounty or grant of 1.17 percent *ad valorem*.

D. Export Suspensory Loan Scheme (ESLS)

Petitioners allege that the New Zealand steel wire nail industry received loans at preferential rates or grants for the purchase of equipment used in the production of goods for export under ESLS. According to the government response, exporters may receive loans from the Development Finance Corporation (DFC) for the purchase of equipment used to expand production of exportable goods. If an exporter meets predetermined export sales targets for three consecutive years, its loans are converted to grants. The term for a loan is five years.

The company responses show that AM received a loan in 1982, which was converted to a grant in 1986, a second loan in 1984, and a third loan in 1985. CMI and PKR have not received ESLS loans or grants.

Because information provided in the government's response indicates that the suspensory loans under this program are made available only for purchasing equipment used in producing export goods, we preliminarily determine that this program provides a bounty or grant to manufacturers, producers or exporters of certain steel wire nails within the meaning of the countervailing duty law.

To calculate the benefit, we allocated the loan that was converted to a grant during the review period over 15 years, the average useful life of equipment used in the steel industry. Our preferred methodology is to allocate benefits over time using as our discount rate a weighted average of the firm's marginal costs of debt and equity for the year in which the grant was made. Because AM assumed no new long-term debt in 1986, when the first loan was converted to a grant, nor did it have any long-term debt outstanding during this period, other than export suspensory loans, we used as our discount factor New Zealand's national average cost of debt in 1986.

For the two loans which have not yet been converted, we compared the variable rate in force for each during the review period to New Zealand's national average short-term rate during the same period and expensed the differential in payment as a benefit received during the review period. We used the national average or company-specific variable rate or a company-specific short-term rate because these preferred alternatives were unavailable for the review period.

We added the benefit allocated to the review period for the grant to the benefit expensed to the review period for the two loans and divided by the total export sales for the three respondent companies during the review period to arrive at an estimated net bounty or grant 0.39 percent *ad valorem*.

II. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the programs described below were not used by manufacturers, producers or exporters in New Zealand of certain steel wire nails under the following programs:

A. Export Marketing Assistance

Petitioners allege that the New Zealand steel wire nail industry receives various types of export marketing and technical assistance from the New Zealand Export-Import Corporation, the Department of Trade and Industry, the Building Research Association of New Zealand, and the Standards Association of New Zealand. According to the responses, AM, CMI, and PKR received no assistance from any of these organizations.

B. Export Credits and Development Financing From the DFC

Petitioners allege that the New Zealand steel wire nail industry receives export credits on preferential terms from the DFC. Additionally, although not specifically alleged by petitioners, our notice of initiation included development financing from the DFC.

According to the responses, AM, CMI, and PKR have not received any export credits from the DFC. Furthermore, all three companies' financial statements submitted in their responses indicate that they had no development financing loans outstanding during the review period.

C. Export Programme Grant Scheme (EPGS)/Export Programme Suspensory Loan Scheme (EPSLS)

Petitioners allege that, under EPGS, the New Zealand steel wire nail industry is eligible to receive 64 percent of its approved overseas market development costs in advance. Although EPGS was superseded by EPSLS in June 1982, petitioners allege that grants under EPGS could continue until June 1985. EPSLS loans cover up to 40 percent of eligible expenditures. Repayment is forgiven if certain export targets to designated markets are met. Although ERSLS was terminated in 1985, assistance can continue through 1987 for agreements entered into prior to termination of the program.

According to the responses, AM, CMI, and PKR had no loans outstanding under this program during the review period.

D. Preferential Treatment to Exporters in Granting Import Licenses

Petitioners allege that import licensing concessions under the Export Production Assistance Scheme (EPAS) are provided to companies that import materials which are incorporated into goods to be exported. Such concessions may include additional availability of import licenses on components incorporated into exported goods for the purpose of increasing New Zealand's access to foreign markets. These concessions are not available to manufacturers producing for domestic consumption.

According to the responses, AM, CMI, and PKR received no import licensing concessions under the EPAS program during the review period.

E. Regional Development Investment Incentives

Petitioners allege that New Zealand steel wire nail producers receive a variety of regional development incentives administered by the department of Trade and Industry based on their location in regions classified as either priority or low growth.

According to the responses, AM, CMI, and PKR received no regional development incentives from the Department of Trade and Industry or any other government organization.

F. Export Manufacturing Investment Allowance (EMIA)

Petitioners allege that the New Zealand steel wire nail industry received EMIA deductions from taxable income of up to 20 percent of the value of capital investment in machinery and equipment under section 120 of the New Zealand Income Tax Act of 1976, as amended.

In previous New Zealand steel products investigations, we verified that the Government of New Zealand terminated this program on March 31, 1986, by the Income Tax Amendment Act (No. 3) of 1983. According to the responses, AM, CMI, and PKR claimed no EMIA deductions during the review period.

G. Supplementary Investment Allowances for Plant and Machinery

Petitioners allege that the New Zealand steel wire nail industry receives tax benefits from the Industrial Development Plan Investment Allowance under section 121 and the High Priority Activity Investment Allowance under section 121A of the New Zealand Income Tax Act of 1976, as amended.

According to the government response, no industrial development plan or high priority activity designation has been approved for the steel wire nail industry and, therefore, no producer or exporter of steel wire nails has qualified for these programs. AM, CMI, and PKR indicate in their reponses that they have not received benefits under these programs.

H. Research and Development Incentives

Although not specifically alleged by petitioners, our notice of initiation included research and development incentives under the Applied Technology Program administered by the DFC. According to the responses, no assistance has been provided under this program to AM, CMI, or PKR.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from New Zealand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for each entry of this merchandise equal to 5.77 percent *ad valorem*. This suspension will remain in effect until further notice.

Verification

In accordance with section 776(a) of the Act, we will verify the information used in making our final determination.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on September 1, 1987, at 10:00 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by August 25, 1987. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d), written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within ten days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act [19 U.S.C. 1671b(f)].

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

July 14, 1987.

[FR Doc. 87-16542 Filed 7-20-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-701]

Preliminary Affirmative Countervailing Duty Determination: Certain Steel Wire Nails From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminary determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters in Thailand of certain steel wire nails as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 1.10 percent *ad valorem* for all manufacturers, producers or exporters in Thailand of certain steel wire nails.

We are directing the U.S. Customs Service to suspend liquidation of all entries of certain steel wire nails from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net bounty or grant.

If the investigation proceeds normally, we will make a final determination by September 28, 1987.

EFFECTIVE DATE: July 21, 1987.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminary determine that there is a reason to believe or suspect that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Thailand of certain steel wire nails. For purposes of this investigation, the following programs are preliminarily found to confer bounties or grants:

- Export Packing Credits
- Tax Certificates for Exports
- Assistance to Trading Companies Under the Investment Promotion Act (Double Deduction of Foreign Marketing Expenses and Foreign Taxes)

We preliminarily determine the estimated net bounty or grant to be 1.10 percent *ad valorem* for all manufacturers, producers or exporters in Thailand of certain steel wire nails.

Case History

Since the last **Federal Register** publication pertaining to this investigation [the Notice of Initiation (52 FR 18591, May 18, 1987], the following events have occurred. On May 20, 1987, we presented a questionnaire to the Government of Thailand in Washington, DC concerning petitioners' allegations. On June 22, 1987, we received a response from the government and responses from two producers, K.Y. Intertrade Co., Ltd. (K.Y.I.) and Thai Nail Works Co., Ltd. Asoke International Trading Company (Asoke), a trading company through which K.Y.I. exported steel wire nails to the United States, also responded to our questionnaire.

Scope of Investigation

The products covered by this investigation are certain steel wire nails from Thailand. These nails are: one-piece steel nails made of round wire, as currently provided for in *Tariff Schedules of the United States Annotated* item numbers 646.2500, 646.2610-90, and 646.3040; two-piece steel wire nails as currently provided for in item number 646.3200; and nails with steel wire shanks and lead heads, as currently provided for in item number 646.3600. These products are currently classifiable under *Harmonized System*

item numbers 7317.00.55, 7317.00.65, 7317.00.75 and 7616.10.10.

Analysis of Programs

Throughout this notice, we refer to certain principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1986, which corresponds to all three companies' most recently completed fiscal year. Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers and exporters in Thailand of steel wire nails under the following programs.

A. Export Packing Credits

Export packing credits are short-term loans used for either pre-shipment or post-shipment financing. According to the government response, there have been several changes in this program since the Department's last investigation involving exports from Thailand [See *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Rice from Thailand,* (50 FR 12356, April 10, 1986) (*Rice from Thailand*)]. Under the "Regulations Governing the Purchase of Promissory Notes Arising from Exports" (B.E. 2528), effective January 2, 1986, the Bank of Thailand will repurchase promissory notes issued by creditworthy exporters through commercial banks. The central bank previously rediscounted promissory notes under this program.

Under the new regulations, exporters apply to commercial banks for export packing credits; the banks, in turn, must submit an application to the Bank of Thailand for approval. To qualify for the repurchase arrangement, promissory notes must be supported by a letter of credit, sales contract, purchase order, usance bill or warehouse receipt. The notes are available for up to 180 days, and interest is paid on the due date of the loan rather than the date of receipt.

From January 2, 1986 to March 26, 1986, commercial banks charged a maximum interest rate of eight percent per annum for export packing credits, and the Bank of Thailand repurchased these loans from commercial banks at five percent per annum. Effective March 27, 1986, the interest rates changed to seven percent and four percent per annum, respectively.

Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates. As the benchmark for short-term loans, it is our practice to use the national average commercial interest rate or the most comparable, predominant commercial interest rate for short-term financing. For purposes of this determination, we are using the weighted-average interest rate charged by commercial banks on short-term domestic loans, bills and overdrafts during 1986. The data used to calculate this weighted-average interest rate was provided in the government response. Comparing this weighted-average interest rate to the rate charged on export packing credits, we find that the rate on export packing credits is preferential and, therefore, these loans confer bounties or grants on the subject merchandise. Applying this weighted-average commercial bank interest rate as the benchmark, we calculate an estimated net bounty or grant of 0.50 percent *ad valorem* for steel wire nails.

B. Tax Certificates for Exports

The Government of Thailand issues tax certificates to exporters to rebate indirect taxes and import duties on inputs into exported products. This rebate program is provided for in the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act" (hereinafter the Tax and Duty Act). The rebate rates under the Tax and Duty Act are computed on the basis of an input/output (I/O) study initially published in 1980, based on 1975 data, and updated in 1985 using 1980 data.

Using the I/O study, the Thai Ministry of Finance computes the value of total inputs (both imports and local purchases) at ex-factory prices. It also calculates the import duties and indirect taxes on each input. The Ministry then calculates two rebate rates. The "A" rate includes both import duties and indirect domestic taxes. The "B" rate includes only indirect domestic taxes. The "B" rate is claimed when firms participate in Thailand's individual customs duty drawback program, duty exemption programs on imported raw materials, or when firms do not use imported materials in their production process. The "A" or "B" rate, as appropriate, is then applied to the FOB value of the export to determine the amount of rebate that will be provided.

Under the Tax and Duty Act, the rebates are paid to companies through tax certificates which can be used to pay other tax liabilities. These tax certificates can also be transferred to other companies which can use them to pay their tax liabilities.

The rebate rates in effect from December 1, 1981 to February 4, 1986 were set forth in the Notification of the Ministry of Finance No. Or. 1/2524. These rates were based on the I/O study published in 1980. The "A" and "B" rates for nail exports based on the I/O study published in 1980 were 3.71 percent and 1.96 percent, respectively. A new I/O study based on data collected in 1980 was completed in 1985. New rates announced February 5, 1986 were computed using the study published in 1985. Since February 1986, the "A" rate is 7.19 percent and the "B" rate is 0.59 percent for nail exports. According to the responses, Thai Nail Works claimed and received tax certificates at the "A" rate and K.Y.I. at the "B" rate. Furthermore, all certificates earned by Asoke, a trading company used by K.Y.I., on exports of K.Y.I. nails, were transferred back to K.Y.I.

To determine whether an indirect tax rebate system which incorporates rebates of import duties confers a bounty or grant, we must apply the following analysis. First, we examine whether the system is intended to operate as a rebate of both indirect taxes and import duties. Next, we analyze whether the government properly ascertained the level of the rebate. This includes a review of the sample used in the study, including the documentation and the accuracy of the information gathered from the sample on input coefficients, import prices and rates of duty on imported inputs, the ratio of imported inputs to domestically produced inputs (when, for a given

imported input, there is also domestic production of the input), and the exchange rates used to convert import prices denominated in a foreign currency to the local currency. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of duty and indirect taxes paid.

When the I/O study upon which the indirect tax and import duty rebate system is based meets these conditions, the Department will consider that the system does not confer a bounty or grant if the amount rebated for duties and indirect taxes on physically incorporated inputs does not exceed the fixed amount set in the rebate schedule for the exported product. When the system rebates duties and indirect taxes on both physically incorporated and non-physically incorporated inputs, we would find a bounty or grant exists to the extent that the fixed rebate exceeds the allowable rebate on physically incorporated inputs.

In the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Apparel from Thailand* (50 FR 9818, 9820, March 12, 1985) (*Apparel from Thailand*), we examined Thailand's rebate system under the Tax and Duty Act. We found that the program was intended to rebate indirect taxes and import duties and that the rebate rates had been reasonably calculated. However, to the extent that the program rebates indirect taxes and import duties on non-physically incorporated inputs, the remissions are excessive.

In this investigation, to determine whether, and the extent to which, the tax certificates confer an excessive remission of indirect taxes, we calculated the indirect tax incidence under the most recent I/O Table on physically incorporated inputs at FOB prices. We then calculated the percentage amount by which the authorized rebate rate exceeds the allowable rebate. Using this methodology, the overrebate on the "A" rate is 1.56 percent and the overrebate on the "B" rate is 0.20 percent.

To determine the estimated net bounty or grant, we weight-averaged the overrebates received by each producer under the current rates by each company's proportion of the value of Thai exports of steel wire nails to the United States. On this basis, we calculate an estimated net bounty or grant of 0.26 percent *ad valorem*.

C. Assistance to Trading Companies Under the Investment Promotion Act: Double Deduction of Foreign Marketing Expenses and Foreign Taxes.

Pursuant to section 16 of the Investment Promotion Act, the Board of Investment issued Announcement No. 40/2521. This announcement designated international trading companies as eligible for promotion. Although this program was terminated for international trading companies not granted promotion prior to March 2, 1981, companies granted promotion before the termination continued to be eligible for benefits under the program. Asoke received its investment incentive license on February 20, 1980, prior to the termination date. Pursuant to this license, Asoke was eligible to receive each of the benefits listed in the announcement. These benefits include:

- Duty exemptions for both raw and essential materials used in export production;
- Exemption of certain business taxes;
- Exemption of business taxes for the seller of domestic raw or essential materials to the promoted trading company;
- Exemption of business taxes to subcontractors;
- Permission to maintain foreign currency bank accounts;
- Entitlement to Export Packing Credits;
- Deduction from taxable income of taxes paid by branch offices outside Thailand; and
- A double deduction from taxable income of foreign marketing expenses.

The import duty exemption, according to the government responses and to previous investigations, functions in the same way as the duty drawback program in Thailand which we have determined does not confer a bounty or grant (See *Apparel from Thailand*). The second program listed above is discussed below under "Programs Determined Not To Confer Bounties or Grants." According to the responses, the remaining programs, with the exception of the last two, were not used.

With respect to the tax deduction programs, we preliminarily determine that both confer bounties or grants because they provide a benefit contingent upon export performance. The benefit is the amount of tax savings realized as a result of the additional tax deduction allowed under the program.

According to the government response, the deductions for taxes paid by foreign branch offices may also be doubled and subtracted from taxable income. Therefore, we considered both the double deduction of foreign marketing expenses and the double deduction for taxes paid by foreign branch offices in the benefit calculation. To calculate the estimated net bounty or grant, we first determined Asoke's tax savings based on the tax return filed during the review period. We then multiplied the tax savings by the proportion of Asoke's steel nail exports to the United States over its total export sales. We divided the resulting amount by total steel wire nail exports to the United States to derive the estimated net bounty or grant of 0.34 percent *ad valorem*.

II. Program Preliminarily Determined Not To Confer Bounties or Grants

Assistance to Trading Companies Under the Investment Promotion Act: Exemption From Certain Business Taxes. Under the Board of Investment Announcement No. 40/2521 discussed above, business tax exemptions are granted to producers who supply export commodities to promoted trading companies. Business tax exemptions are also provided on commission fees and export agency fees of promoted trading companies.

Business taxes in Thailand are excise taxes paid on monthly gross receipts by the seller. As such, these taxes are indirect taxes. The taxes exempted under this program are also final stage taxes. Under the Act, the non-excessive remission of, or exemption from, indirect taxes levied at the final stage is not considered a subsidy [See *Final Negative Countervailing Duty Determination: Oil Country Tubular Goods From Taiwan* (51 FR 19583, May 30, 1986)]. Therefore, we preliminarily determine that exemption from the business taxes described above does not confer a bounty or grant.

III Program Preliminarily Determined Not To Be Used

We preliminarily determine that the programs described below were not used by manufacturers, producers or exporters of steel wire nails from Thailand.

A. Repurchase of Industrial Bills

Petitioners alleged that producers and exporters of steel wire nails received preferential financing under "Regulations Governing the Rediscount of Promissory Notes Arising from Industrial Undertakings." According to the government response, this program has been changed since our last investigation involving exports from Thailand in which we examined this program (See *Rice from Thailand*).

Effective January 2, 1986, the "Regulations Governing the Purchase of Promissory Notes Arising from Industrial Undertakings" (B.E. 2528) institute several changes in this program. Under the new regulations, the Bank of Thailand purchases short-term promissory notes for certain industrial activities from producers through commerical banks. Commercial banks may charge their industrial customers a maximum of 7 percent per annum, while the rate charged to commercial banks by the Bank of Thailand for these notes is 5 percent per annum. Interest is paid on the due date of the loan rather than on the date of receipt.

B. Electricity Discounts for Exporters

Electricity authorities in Thailand provide discounts on electricity rates to exporters. The manufacturers, producers and exporters of steel wire nails in Thailand have never applied for or received such discounts.

C. Investment Promotion Act (Sections 31, 33, 34 and 36)

The Investment Promotion Act of 1977 (B.E. 2520) provides incentives for investment to encourage development of the Thai economy. Companies deemed eligible by the Board of Investment ("promoted companies") are granted various tax and customs duty exemptions under this program. The exact benefits a company is eligible for are indicated on the investment incentive license issued to the company.

Although K.Y.I. and Thai Nail Works received investment incentive licenses, according to the responses, neither company claimed or received any benefits under the program during the review period.

D. Export Processing Zones

In 1979, Export Processing Zones were authorized through the "Industrial Estates Authority of Thailand Act" (B.E. 2522). According to the responses, none of the manufacturers, producers or exporters of certain steel wire nails in Thailand are located in an export processing zone.

E. International Trade Promotion Fund

This program was alleged by petitioners under "Export Promotion Fund." Administered by the Department of Commercial Relations, this program is aimed at promoting Thai exports. The fund assists in the financing of export promotion activities such as marketing research and trade fairs. According to the responses, the companies under investigation did not claim or receive benefits under this program during the review period.

IV. Program Preliminarily Determined Not To Exist

According to the government response, the following program does not exist.

Business Tax Exemption for Manufacturers of Construction Materials. Petitioners alleged that manufacturers supplying construction materials to the Thai Contractors Consortium and Thai subcontractors of the Consortium are exempt from business taxes under this program.

Suspension of Liquidation

In accordances with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Thailand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for each entry of this merchandise equal to 1.10 percent *ad valorem*. This suspension will remain in effect until further notice.

Verification

In accordance with section 776(a) of the Act, we will verify the information used in making our final determination.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on September 1, 1987, at 2:30 P.M. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice in the **Federal Register**. Request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by August 25, 1987. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d), written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within ten days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act [19 U.S.C. 1671b(f)].

Gibert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

July 14, 1987.

[FR Doc. 87-16543 Filed 7-20-87; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

Comments should refer to this application as "Export Trade Certificate of Review, application number 87–00010." A summary of the application follows.

Applicant: The North Dakota Export Trading Company (NDETC), P.O. Box 1018, Grand Forks, North Dakota 58206, Controlling Entity: North Dakota Mill and Elevator Association, Contact: Allen Golberg, Manager, Telephone: (701) 237–4699

Application #87–00010

Date Deemed Submitted: July 6, 1987

Members (in addition to applicant): North Dakota Mill and Elevator Association and the Bank of North Dakota

Summary of the Application

A. Export Trade

Products: agricultural products, including edible beans, seed potatoes, wheat, corn, soybeans, durum, and livestock.

Export Trade Facilitation Services (as they relate to the export of Products): NDETC and its members intend to provide or arrange for the provision of shipping (including overseas freight transportation; inland freight transportation to U.S. export terminals, ports or gateways; packing and crating; warehousing; freight forwarding, including consolidation of shipments; and other services directly related to the movement of goods being exported or in the course of being exported), credit, financing, marketing services, and taking title to goods.

B. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Terrority of the Pacific Islands).

C. Export Trade Activities and Methods of Operation

NDETC and its members seek certification to:

1. Enter into joint discussions and negotiations with foreign buyers concerning:

(a) Standardized production specifications, quantities, timing, shipping, packing, credit, and banking terms necessary to meet the needs of the foreign buyer, NDETC and its members;

(b) Standardized commodity quality standards that meet foreign buyer specifications; and

(c) Standardized bidding procedures acceptable to foreign buyers.

2. Act jointly to negotiate charges and other terms and to negotiate contracts with providers of transportation services, including advantageous freight contracts with individual carriers and carrier conferences, chartering of vessels for NDETC and any or all members, and negotiations for inland transportation for goods in the course of being exported.

3. Enter into agreements among themselves on the terms of their participation in the negotiation and fulfillment of transportation contracts, including participation in inland transportation negotiations for goods to be exported.

4. Refuse to deal with an individual or company with respect to the export of any Product to a foreign buyer.

5. Refuse to deal with respect to the export of any Product to a foreign buyer with any member not complying with the standards or other terms of export trade set by NDETC and/or its members.

6. Exchange information and make agreements concerning the extent of member participation in transactions in which NDETC participates. The information to be exchanged includes:

(a) Information that is already available to the trade or to the general public;

(b) Information (such as selling strategies, prices, projected demand, customary terms of sale) solely about the export market;

(c) Information on costs specific to the export market (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents, commissions, export sales documentation and service, and export sales financing);

(d) Information about U.S. and foreign legislation and regulation affecting sales to export markets;

(e) Information about the price, quality, quantity, source, and delivery dates of Products available from members for export; and

(f) Information about terms and conditions of contracts for sales in the export markets to be considered and/or bid on by NDETC and its members.

7. Enter into exclusive or nonexclusive agreements with export intermediaries to appoint an export intermediary to act for NDETC and/or its members, whereby each export intermediary agrees not to represent NDETC's competitors in the sale of Products to any export market and not to buy any Products from any of NDETC's competitors for resale in any expert market.

8. Enter into exclusive or nonexclusive agreements with foreign customers, whereby each customer agrees not to purchase Products from NDETC's competitors.

9. Enter into exclusive or nonexclusive agreements with export intermediaries for the provision of Export Trade Facilitation Services.

10. Limit membership in NDETC to businesses operating in North Dakota and to North Dakota residents.

11. Enter into joint ventures with and to purchase Products from members and nonmembers (including nonmembers located outside North Dakota) that meet quality, quantity, and price specifications for transactions. When taking title to Products, NDETC will engage in price, quantity, quality, and other negotiations directly with the foreign buyer. Otherwise such specifications will be set by agreement between the NDETC member(s) and the customer.

Dated: July 16, 1987.

David M. Barton,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87–16544 Filed 7–20–87; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

Minority Business Development Center Program Applications; New York

AGENCY: Minority Business Development Agency.

ACTION: Notice

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Develpment Center (MBDC) Program to operate a MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve months is estimated at $165,000 for the project performance of December 1, 1987 to November 30, 1988. The MBDC will operate in the Buffalo Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in Non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local

and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is August 20, 1987. Applications must be postmarked on or before August 20, 1987.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director New York Regional Office at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information copies of application kits and applicable regulations can be obtained at the above address.

Dated: July 14, 1987.

William R. Fuller,

Acting Regional Director, New York Regional Office.

[FR Doc. 87–16444 Filed 7–20–87; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Proposed Additions; Correction

In FR Doc. 87–15697, appearing on page 26063 in the issue of Friday, July 10, 1987, make the following correction:

In the first column on page 26064, delete Commissary Warehouse Service, McConnell Air Force Base, Kansas.

C.W. Fletcher,

Executive Director,

[FR Doc. 87–16511 Filed 7–20–87; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Annual Review of the Manual for Courts-Martial

ACTION: Notice of the Annual Review of the Manual for Courts-Martial.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, Executive Order No. 12473, as amended by Executive Order No. 12484, Executive Order No. 12550, and Executive Order No. 12586. The proposed changes are part of the annual review required by the Manual for Courts-Martial and DOD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985, have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Department of Defense, the Military Departments, or any other government agency.

The proposed changes include modifications to the following Rules for Courts-Martial: R.C.M. 302, Apprehension Authority; R.C.M. 707, Speedy Trial; R.C.M. 905, Motions Generally; R.C.M. 913, Presentation of the Case on the Mertis; R.C.M. 1003, Punishments; R.C.M. 1103, Preparation of Records of Trial; R.C.M. 1105, Matters Submitted by the Accused; R.C.M. 1106, SJA or Legal Officer Recommendation; R.C.M. 1107, Action by Convening Authority; R.C.M. 1108, Suspension and Remission of Execution of Sentence; R.C.M. 1112, Review by a SJA; R.C.M. 1114, Promulgating Orders; and R.C.M. 1201, Action by the Judge Advocate General. They also include modifications to the following provisions of Part III, Military Rules of Evidence: M.R.E. 304, Confessions and Admissions; and M.R.E. 506, Government Privilege. Additionally, they include modifications to the following provisions of Part IV, Punitive Articles: Paragraph 10, Article 86—Absence Without Leave; Paragraph 101, Article 134—Requesting Commission of an Offense; and, Paragraph 105, Article 134—Soliciting Another to Commit an Offense. Finally, they include modifications to Part V, Nonjudicial Punishment Procedure: Paragraph 5, Punishments; and, Paragraph 6, Suspension, Mitigation, Remission, and Setting Aside.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985. It is intended only to improve the internal management of the federal government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

ADDRESS: Copies of the proposed changes, and the accompanying Discussion and Analysis, may be examined at the Office of the Judge Advocate General of the Navy, Military Justice Division, Room 9S09, Hoffman II, 200 Stovall Street, Alexandria, VA 22332–2400. A copy of the proposed changes and accompanying Discussion and Analysis may be obtained by mail upon request from the foregoing address, Attn: LCDR F. G. Morkunas.

DATE: Comments on the proposed changes must be received not later than October 5, 1987 for consideration by the Joint-Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander F. G. Morkunas, (703) 325–9890.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1987.

[FR Doc. 87–16478 Filed 7–20–87; 8:45 am]

BILLING CODE 3810–01–M

Renewal of the Defense Policy Board Advisory Committee

Under the provisions of Pub. L. 92–463, Federal Advisory Committee Act, notice is hereby given that the Defense Policy Board Advisory Committee (DPB) has

been found to be in the public interest in connection with the performance of duties imposed on the Department by law.

The Defense Policy Board will serve the public interest by providing the Secretary of Defense, Deputy Secretary and Under Secretary for Policy with independent, informed advice and opinion concerning major matters of defense policy. It will focus upon long-term, enduring issues central to strategic planning for the Department of Defense and will be responsible for research and analysis of topics, long or short range, addressed to it by the Secretary of Defense, Deputy Secretary and Under Secretary for Policy.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1987.

[FR Doc. 87-16477 Filed 7-20-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

International Energy Agency Group of Reporting Companies; Meeting on Voluntary Agreement and Plan of Action to Implement the International Energy Program

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the International Energy Agency (IEA) Group of Reporting Companies will be held on July 29, 1987, at the U.S. Department of State, Room 1107, 2201 C Street NW., Washington, DC 20520, beginning at 9:30 a.m. and continuing if necessary on July 30. The purpose of this meeting is to give each Reporting Company an opportunity to advise the IEA Secretariat on the company's views concerning the final draft "Amendments to the Voluntary Agreement and Plan of Action to Implement the International Energy Program" and Appendix B thereto entitled "Second Plan of Action to Implement the International Energy Program." The agenda for the meeting is under the control of the IEA. It is expected that the following draft agenda will be followed:

1. Opening remarks.
2. U.S. Plan of Action.
3. Closing remarks.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of the Group of Reporting Companies, their counsel, representatives of the IEA, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the Commission of the European Communities, and invitees of the IEA.

In order to facilitate admission to the Department of State building, organizations planning to send representatives to the meeting should advise Samual M. Bradley or Lise Courtney M. Howe, Office of General Counsel, U.S. Department of Energy, (202) 586-2900, by July 27, 1987, of the names of the representatives who will attend the meeting.

Issued in Washington, DC, July 16, 1987.

J. Michael Farrell,

General Counsel.

[FR Doc. 87-16521 Filed 7-20-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ID-2299-000]

Notice of Filing; Robert L. Albright

July 13, 1987.

Take notice that on July 8, 1987, Robert L. Albright filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—Duke Power Company
Director—NCNB National Bank of North Carolina

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-16556 Filed 7-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE80-37-001]

Application for Exemption; Jacksonville Electric Authority

July 14, 1987.

Take notice that Jacksonville Electric Authority (JEA) filed an application on June 19, 1987 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44FR58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1988 and biennially thereafter information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption JEA states that it should not be required to file the specified data for the following reasons:

JEA currently does not need or use the information reported pursuant to Subpart B, C, D, E for rate making purposes.

A majority of the information is already being filed with the Federal Energy Regulatory Commission and the Florida Public Service Commission.

The filing requirements under Subpart D is a real burden to the utility from a cost and manpower standpoint.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Ms. Ann Chawk, Chief, Electric Rates, Jacksonville Electric Authority, 233 West Duval Street, Jacksonville, Florida 32201.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-16557 Filed 7-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2300-000]

Notice of Filing; George Dean Johnson, Jr.

July 15, 1987.

Take notice that on July 9, 1987, George Dean Johnson, Jr. filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—Duke Power Company
Director—NCNB South Carolina

Any person desiring to be heard or to protect sad filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or portents should be filed on or before July 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-16558 Filed 7-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8957-001]

Surrender of Preliminary Permit; City of Morro Bay

July 14, 1987.

Take notice that the City of Morro Bay, permitted for the San Bernardo Creek Hydroelectric Project No. 8957, has requested that its preliminary permit be terminated. The preliminary permit was issued on October 15, 1985, and would have expired on September 30, 1988. The project would have been located on San Bernardo Creek, in San Luis Obispo County, California.

The permittee filed the request on June 23, 1987, and the preliminary permit for Project No. 8957 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-16554 Filed 7-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF87-218-001, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Howell Energy Associates, et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

July 14, 1987.

Take notice that the following filings have been made with the Commission.

1. Howell Energy Associates, a New Jersey Limited Partnership

[Docket No. QF87-218-001]

On July 2, 1987, Howell Energy Associates a New Jersey Limited Partnership (Applicant), of 87 Elm Street, Cohasset, Massachusetts 02025, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration will be located in Howell, New Jersey. The facility will consist of one (1) combustion turbine generator, one heat recovery steam generator and one extraction/condensing turbine generator. Thermal energy recovered from the facility will be utilized by Arnold Steel Co., Inc. in heat exchangers to provide the heating and cooling of the facility and also for treating and cleaning fabricated steel. The net electric power production capacity will be 140 megawatts. The primary energy source will be synthetic gas and natural gas, with oil used when natural gas is not available. Construction of the facility will begin on July 1, 1988.

By order issued March 17, 1987, the Director of Office of Electric Power Regulation granted certification of the facility as a cogeneration facility under Docket No. QF87-218-000.

The recertification is requested due to change in the primary energy source from coal and natural gas to natural gas. The number of combustion turbines has increased to two, and the net electric power production capacity has increased to 295 MW. Installation of the facility will begin on September 1, 1988. All other facility's characteristics remain unchanged.

2. United Development Group—Niagara, Inc.

[Docket No. QF87-498-000]

On June 22, 1987, United Development Group—Niagara, Inc. (Applicant), of 1122 Lady Street, Suite 1105, Columbia, South Carolina 29201, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration will be located in Niagara Falls, New York. The facility will consist of a circulating fluidized bed boiler and an extraction/condensing steam turbine generating unit. Extraction steam produced by the facility will be sold to Goodyear Tire and Rubber Company for process use. The net electric power production capacity of the facility will be 45 MW. The primary energy source will be coal. The installation of the facility will begin in the spring of 1988.

3. University of Medicine and Dentistry of New Jersey

[Docket No. QF87-513-000]

On July 2, 1987, the University of Medicine and Dentistry of New Jersey (Applicant), of 30 Bergen Street, Newark, New Jersey 07107-3007, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration will be located on the University of Medicine and Dentistry campus in Newark, New Jersey. The facility will consist of multiple combustion turbine generators and heat recovery steam generators. The thermal output of the facility will be utilized by Applicant for purposes of campus heating and cooling. The primary energy source will be natrual gas, with oil when natural gas is not available. The maximum net electric power production capacity of the facility will be 10.5MW. Construction of the facility is expected to begin by October 1, 1987.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-16555 Filed 7-20-87; 8:45 am]

BILLING CODE 6717-01-11

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3235-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that EPA has forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The ICRs that follow are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382-2712 (FTS 382-2712) or Jackie Rivers, (202) 382-2740 (FTS 382-2740).

Office of Air and Radiation

Title: NSPS for Flexible Vinyl and Urethane Coating and Printing, Information Requirements (EPA ICR #1157). (This is a renewal without change of a currently approved collection.)

Abstract: Affected facilities must notify EPA of the date of construction or reconstruction, start-up, shutdown, and malfunction; and of the results of each performance test. These facilities must install, calibrate, maintain, and operate a continuous monitoring system to measure sulfur dioxide emissions, and submit semiannual excess emission reports. The States and/or EPA use the data to ensure compliance with the standards, to target inspections, and, when necessary, as evidence in court.

Respondents: Owners and operators of rotogravure printing lines used to print or coat flexible vinyl or urethane products.

Estimated Annual Burden: 848 hours.

Region Five

Title: Survey Report on the Great Lakes Beach Closings (EPA ICR #0994). (This is a renewal without change of a currently cleared collection.)

Abstract: Public Law 92-500 requires EPA's Region 5 to collect data on the quality of water at their area Great Lakes beaches. The data are used to improve the quality of water at the beaches and to provide statistics for the biennial report of the International Joint Commission on Great Lakes Water Quality. The data are also available to the public.

Respondents: City and county health officials in Region 5.

Frequency of Collection: Annually.

Estimated Annual Burden: 63 hours.

Agency PRA Clearance Requests Completed by OMB

EPA ICR #1157, NSPS for Flexible Vinyl and Urethane Coating—Reporting and Recordkeeping, was extended 90 days (OMB #2060-0073; expires 9/30/87).

Send comments on the above abstract(s) to:

Patricia Minami, PM-223, U.S. Environmental Protection Agency, Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460.

and

Nicolas Garcia (ICR 1157) and Timothy Hunt (ICR 0994), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503.

Dated: July 15, 1987.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 87-16531 Filed 7-20-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44020; FRL-3236-3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces test data submissions received by EPA during April and June 1987 from voluntary industry testing programs on certain chemical substances or groups of chemicals considered by EPA under section 4 of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires the EPA to issue a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a). In the **Federal Register** of June 30, 1986 (51 FR 23705), EPA issued procedures for entering into Enforceable Consent Agreements (ECAs) under section 4 of TSCA. Those procedures provided that EPA will follow the procedures specified in section 4(d) in providing notice of test data received pursuant to ECAs. In addition, EPA from time to time receives industry submissions of test data developed voluntarily (i.e., not under test rules or ECAs) on chemicals EPA has considered for testing under section 4. Although not required by section 4(d), EPA issues periodically notices of receipt of such test data.

I. Test Data Submissions

This notice announces test data submissions received during April and June 1987 from voluntary industry testing programs.

The following table lists the chemicals by Chemical Abstracts Service Registry Number (CAS No.), date received, submitter, and study

TABLE 1—VOLUNTARY TEST DATA SUBMISSIONS UNDER TSCA SECTION 4, 3rd QUARTER (APRIL - JUNE FY 87

Chemical	CAS No.	Date rec'd.	Submitter	Study
2-Phenoxy-ethanol	122-99-6	Apr. 9, 1987	NDCP [1]	Phototoxicity, contact occlusive patches (24 h) in humans.

TABLE 1—VOLUNTARY TEST DATA SUBMISSIONS UNDER TSCA SECTION 4, 3rd QUARTER (APRIL - JUNE FY 87—Continued

Chemical	CAS No.	Date rec'd.	Submitter	Study
2-Phenoxy-ethanol	....do	....do	....do	Repeated insult, contact occlusive patches (24 h) in humans.
Cumene	98-82-8	Apr. 22,1987	CMA[2]	Salmonella/mammalian microsome preincubation mutagenicity assay (Ames test).
Cumene	....do	Jun. 2, 1987	....do	Chromosome aberrations in Chinese hamster ovary (CHO) cells.
2-Ethyl-hexanol	104-76-7	Jun. 3, 1987	....do	11-day dermal probe study in male and female B6C3Fl mice.
2-Ethyl-hexanol	....do	....do	....do	11-day dermal probe study in male and female Fischer 344 rats.
Cumene	98-82-8	Jun. 10, 1987	CMA[2]	Unscheduled DNA synthesis in rat primary hepatocytes.
Cumene	....do	....do	....do	CHO/HGPRT mutation assay.
Cumene	....do	Jun. 15, 1987	....do	Transformation of BALB/3T3 mouse embryo cells in absence of exogenous metabolic activation.
2-Ethyl-hexanoic acid	149-57-5	Jun. 22, 1987	....do	Acute toxicity (gavage) in female Fisher 344 rats.

[1] National Distillers and Chemical Corp.
[2] Chemical Manufacturers Association.

EPA has established a public record for this quarterly receipt of data notice (docket number OPTS-44020). 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 OPTS Reading Room, NE-G004, 401 M St., SW., Washington, DC 20460.

Dated: July 14, 1987.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 16534 Filed 7-20-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30000/54; FRL-3235-9]

EPN; Proposed Decision Not To Initiate a Special Review

AGENCY: Environmental Protection Agency.

ACTION: Notice: Proposed Decision Not To Initiate a Special Review.

SUMMARY: On March 26, 1987, EPA sent a written notice to the registrants of EPN pursuant to 40 CFR 154.21 in which the registrants were informed that the Agency was planning to initiate a Special Review of EPN based on data showing that EPN causes delayed neurotoxic effects in laboratory animals. On April 30, 1987, the Agency issued a Registration Standard for EPN in which it announced its decision to initiate the Special Review based on the determination that the risk criterion for delayed neurotoxic effects set forth in 40 CFR 154.7(a)(2) had been met. Subsequent to that time, all registrants of technical EPN and all registrants, except one, of formulated EPN products voluntarily cancelled their registrations. The one remaining registration for EPN has been suspended because the registrant has failed to comply with the Data Call-In issued pursuant to FIFRA section 3(c)(2)(B). Since there are no remaining viable registrations for EPN, the Agency has determined that a Special Review of EPN is not necesary at this time.

DATE: Comments on this Notice must be received by August 20, 1987.

ADDRESS: Submit three sets of written comments, bearing the document control number "OPP-30000/54"

By mail to: Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Room 236, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. The EPN public docket, which contains all non-CBI written comments and the corresponding index will be available for public inspection in Rm. 236 at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Spencer L. Duffy, Special Review Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460

Office location and telephone number: Rm. 1006, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-0276.

SUPPLEMENTARY INFORMATION: This Notice is organized in five units. Unit I is the Introduction. It provides the background information concerning the decision not to Special Review. Unit II summarizes the Agency's risk concerns Unit III addresses the comments received in response to the notification under 40 CFR 154.21. Unit IV sets forth the Agency's decision not to Special Review EPN and Unit V describes the comment opportunities and announces the availability of the public docket.

I. Introduction

A. Regulatory Background

EPN is the common name for O-Ethyl O-(p-nitrophenyl) phenyl-phosphonothioate, which is an acutely toxic organophosphate type insecticide and acaricide. It is used to control a wide variety of insects and was registered for use on a variety of terrestrial food and non-food crop sites. In 1985, approximately 99% of the total amount of EPN use in the United States was attributed to use on cotton (91%), corn (5%), and soybeans (3%).

EPN was first registered in 1950. In September, 1979, the Agency initiated a Rebuttable Presumption Against Registration (RPAR) review of EPN based in part on concerns about delayed neurotoxicity. The RPAR review was terminated on August 31, 1983 with the

publication of a Notice (48 FR 39494) in which the Agency canceled certain uses of EPN and placed terms and conditions on other uses, including label changes.

The Agency issued a Data Call-In (DCI) on May 31, 1985 pursuant to section 3(c)(2)(B) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requiring tetratogenicity, reentry protection, and delayed neurotoxicity data. These data were received and reviewed by the Agency. The Agency issued another DCI on December 19, 1986 to all technical and formulator EPN registrants requiring the submission of all remaining data to satisfy the data requirements in 40 CFR Part 158. One of the two registrants of technical EPN requested that its registration be suspended subsequent to the issuance of that DCI. On March 26, 1987, the Agency issued a preliminary notification of Special Review to the registrants of EPN pursuant to 40 CFR 154.21. On the same day, the sole remaining active registrant of technical EPN, Marubeni America, requested a voluntary cancellation of its registrations for technical EPN. As a result of Marubeni's action, the Agency reissued the December, 1986 DCI Notice on March 26, 1987 to all other remaining active registrants of EPN (i.e. formulators) informing them that the Agency could not exempt them from producing the required data to support continued registration of their EPN products since all the registrants of technical EPN had chosen to voluntarily cancel or suspend their registrations. On April 30, 1987, the Agency issued the Registration Standard, which included the data requirements set forth in the December 1986 DCI.

Subsequent to the reissuance of the December 1986 DCI to formulators on March 26, 1987, the remaining technical registrant, whose registration had been suspended, and all formulators of EPN voluntarily canceled their registrations, except for Ida, Inc. whose registration was suspended on July 8, 1987 for failure to comply with the requirements of the DCI.

B. Legal Background

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.). Before a product can be registered, it must be shown that it can be used without "unreasonable adverse effects on the environment." (FIFRA section 3(c)(5).) The term "unreasonable adverse effects on the environment" is defined in FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard, the Administrator may cancel this registration under section 6 of FIFRA.

The Special Review process provides a mechanism to permit public participation in EPA's deliberations prior to issuance of any Notice of Final Determination describing the regulatory action which the Administrator has selected. The Special Review process, which was previously called the Rebuttable Presumption Against Registration (RPAR) process, is described in 40 CFR Part 154, published in the **Federal Register** of November 25, 1985 (50 FR 49015).

The Special Review process is commenced by the issuance of a preliminary notification to registrants and applicants for registration pursuant to 40 CFR 154.21 that the Agency is considering commencing a Special Review. In the case of EPN, that notification was issued on March 26, 1987. Registrants and applicants for registration were given 30 days to comment on the Agency's proposal to commence a Special Review. One comment was received in response to the notification on behalf of Nissan Chemical Industries, Ltd., which is the only remaining manufacturer of technical EPN worldwide. This comment will be addressed in Unit III of this Notice.

If the Agency determines, after issuance of a notification pursuant to 40 CFR 154.21, that it will not conduct a Special Review, it is required under 40 CFR 154.23 to issue a proposed decision to be published in the **Federal Register.** This Notice is being issued under 40 CFR 154.23. That regulation requires that a period of not less than 30 days be provided for public comment on the proposed decision not to Special Review. Subsequent to receipt and evaluation of comments on the proposed decision not to Special Review, the Administrator is required by 40 CFR 154.25 to publish in the **Federal Register** his final decision regarding whether or not a Special Review will be conducted.

A document entitled "Guidance for the Reregistration of Pesticide Products Containing EPN as the Active Ingredient" (Registration Standard) was issued on April 30, 1987 and is available to the public. To receive a copy of the Registration Standard refer to the section of this Notice entitled **"FOR FURTHER INFORMATION CONTACT."** The Registration Standard provides a detailed explanation of the Agency's concerns regarding the risk of delayed neurotoxicity from use of EPN and also contains references, background information, data requirements, and other pertinent information.

II. Risk Concerns Underlying 40 CFR 154.21 Notification

A. Toxicological Concerns

The preliminary notification under 49 CFR 154.21 was issued because of Agency concerns regarding acute toxicity to aquatic organisms and delayed neurotoxic effects shown in studies in which EPN was administered to laboratory animals. A **Federal Register** notice of August 31, 1983 (48 FR 39494) eliminated the potential hazard of acute toxicity to aquatic organisms by cancelling the mosquito larvicide use.

The following summary presents the Agency's reevaluation of the data on delayed neurotoxicity. In an acute oral study in chickens, the preferred test animal for delayed neurotoxic effects, (Huntingdon Research Centre Ltd. NSA 19a/8646, May 9, 1986), a nominal LD50 of 175 mg/kg EPN produced signs of delayed neurotoxicity in 8 of 14 hens which survived the acute lethality of EPN. Histopathology characteristics of the syndrome were observed in the spinal cord and sciatic nerve. Two 90-day oral dosing studies, performed in hens using the same does (0.01, 0.1, 0.5, 1.0, 2.5 and 5.0 mg/kg/day by capsule) provided contradictory evidence as to a No Observed Effect Level (NOEL). In the first study Abu Donia (Toxicology and Applied Pharmacology 45:685–700, 1978) reported the NOEL for clinical neurotoxic signs (ataxia) as 0.01 mg/kg/day. The histopathologically determined NOEL was reported as 0.5 mg/kg/day. In the second study Huntingdon Research Centre, Ltd. (DAS 2181637, Mar. 3, 1982) the NOEL for clinical neurotoxic sign (ataxia) was reported as 1.0 mg/kg/day. The histopathologically determined NOEL was reported as 0.5 mg/kg/day. However, an evaluation of the report by the Agency concluded that histopathological changes were observed at doses as low as 0.1 mg/kg/day and that a dose of 0.01 mg/kg/day was a NOEL. Therefore, a NOEL of 0.1 mg/kg/day was used as a basis for the risk assessment of the delayed neurotoxic effects of EPN.

A recovery study (Huntingdon Research Centre Ltd., Report No. NSA 19(b)/86335, Jun. 20, 1986) has provided

new information on the long-term effects of a single dose of EPN On gait and on histopathology of the nervous system. It is known that humans and experimental animals poisoned by compounds producing delayed neurotoxicity have displayed a measure of 'recovery' in locomotor activity with time. The recovery study was designed to provide experimental information on recovery.

Of the hens which showed delayed ataxia during the study, five hens with mild ataxia recovered fully and seven hens with more severe ataxia showed some measure of improvement in their gait. Histopathology showed mild damage to the sciatic nerve and complete nerve recovery with time. After the 40-day sacrific all samples of the sciatic nerve were normal. However, in the spinal cord recovery was relatively minor from a generally more severe damage. The Agency considers that this cellular destruction in the spinal cord is serious because the damage is permanent.

An additional critical the unexpected observation was the lack of correlation between the severity of the histopathology and the occurrence of clinical signs of toxicity (ataxia). All 48 of the hens sacrificed at 40 days showed relatively significant signs of spinal cord damage yet only 12 of these hens showed ataxia. As noted above, at the time of the 40-day sacrifice, the sciatic nerves and branches were normal. There was nothing in the histopathology to distinguish any single hen showing signs of ataxia from the hens which did not show ataxia.

B. Non-Dietary Risk Assessment

Applicators and mixer/loaders are exposed to EPN during their work activities. Field workers are also exposed when entering areas treated with EPN. Typical activities of field workers include weeding and scouting.

The NOEL of 0.01 mg/kg/day for spinal histopathological effects was used to assess the non-dietary risk. Based on average exposure values from surrogate pesticide studies in which mixer/loaders wore gloves and typical work clothing and applicators wore only typical work clothing, MOSs were calculated for work activities for cotton, soybeans and field corn. MOSs for mixer/loaders ranged from 0.0003 for cotton to 0.5 for field corn. The daily MOS values for applicators for these crops ranged from 0.05 for cotton to 1.4 for field corn. The Agency usually considers an acceptable MOS value to be 100 or greater. Dermal absorption was assumed to be 31% based on a comparison of oral and dermal LD50 values.

The MOSs for field workers not wearing protective clothing and reentering treated fields were calculated for five crops (soybeans, cotton, corn, pecans and citrus) based on dislodgeable residue dissipation data for EPN. MOSs for *one-hour exposure* were under 100 for all crops even several days after application.

C. Dietary Risk Assessment

Dietary exposure occurs from consumption of food crops treated with EPN. The Agency assessed dietary exposure and risk under three scenarios: (1) EPN residues on food commodities are at the established tolerance levels and 100% of the crop acreage is treated, (2) for five which the Agency has actual crop residue data, EPN residues are at levels suggested by these data, and (3) Scenario 2, except assuming the appropriate percent of crop treated for each crop.

The analysis performed under the first scenario resulted in an extremely high percentage of the MPI being used and was considered not to be a realistic estimate because of the worst case assumption used in the caluclations.

The Agency has only a limited amount of data for more realistic estimates of EPN residue levels on the commodities and the percentage of crops' acreage treated. However, for five crops (soybeans, dry beans, tomatoes, corn, and cotton) the Agency has these data. The analysis performed under the second scenario for these crops also resulted in a very high figure which was considered unrealistic by the Agency. However, when the analysis is corrected for estimates for estimates of highest expected residue levels and percent of crop treated, the percentage of the MPI for these five crops falls to 120%.

In another dietary assessment of EPN residues, the Agency chose three commodities (cooked corn, corn on the cob and fresh whole tomatoes) to demonstrate the chronic dietary exposure and the Margins of Safety (MOSs) for the spinal histopathological effect as calculated using the Tolerance Assessment System. The MOSs are low for EPN exposure for adults and children who eat more than average amounts of corn and tomatoes during the fresh market season, falling to as low as 13 for children consuming two ears of corn on the cob in one day. The full range of assumptions and MOS calculations is included in the Registration Standard. An MOS of 100 is typically considered necessary to result in an acceptable level of risk.

III. Response to Comments

One set of comments was received in response to the notification issued under 40 CFR 154.21. The comments were submitted by Todhunter, Mandava & Associates on behalf of Nissan Chemical Industries, Ltd., a foreign manufacturer of technical EPN.

Comment: Nissan submitted neurotoxicity data in support of its contention that the NOEL is in excess of 0.5 mg/kg/day.

Response: The submitted data have been previously reviewed by the Agency. The Agency does not agree with the interpretation placed on the data by Nissan. The Agency's current position in regard to these data is set forth in the Registration Standard.

Comment: Nissan submitted exposure data. Nissan's position is that estimated margins of safety are within the Agency's norms.

Response: The data submitted by Nissan have been previously reviewed by the Agency. The Agency does not agree that the MOSs are within the acceptable range. The Agency's current position in regard to these data is set forth in the Registration Standard.

Comment: Nissan commented that with the voluntary cancellation of all uses except one which is suspended there will be no exposure.

Response: At the time Nissan submitted its comments it was anticipated that all uses would be cancelled except a use of earthworm farms. Since that time the registration for the earthworm farm use has been voluntarily cancelled. The Ida, Inc. registration for use on cotton and soybeans is suspended but has not been cancelled. As described in Unit IV of this Notice, the Agency has concluded that there will be no exposure at the current time and for that reason has decided not to initiate a Special Review at this time. When the Registration Standard was issued in which the decision to initiate a Special Review was announced, there were still registrations which had not been cancelled. If the suspension of Ida, Inc.'s registration were lifted, exposure could occur and a Special Review might be required.

IV. Agency's Decision Regarding Special Review

Subsequent to the issuance of the preliminary notification pursuant to 40 CFR 154.21 all registrants of technical EPN voluntarily cancelled their registrations and all registrants who formulate EPN except one voluntarily cancelled their registrations. The one

remaining formulator registrant is Ida, Inc. Ida has one registration for a product which is a mixture of EPN and ethyl parathion for use on cotton and soybeans for insect control. Ida's registration has been suspended for failure to comply with the DCI requirements for which all formulators became responsible after the voluntary cancellation of all technical registrants. There are no active registrations for EPN and the use of EPN in the United States is limited to existing stocks. Considering these facts and the resource demands on the Agency to conduct a Special Review, the Agency has determined that at this time it will not conduct a Special Review of EPN. However, since the Agency's concerns regarding delayed neurotoxic effects as set out in Unit II of this Notice remain, if Ida should attempt to terminate the suspension of its product by satisfying the requirements of the DCI, the Agency will reconsider its decision not to initiate a Special Review of EPN.

V. Public Comment Opportunity and Public Docket

The Agency is providing a 30-day period to comment on this Notice. Comments must be submitted by August 20, 1987. All comments and information should be submitted in triplicate to the address given in this Notice under

ADDRESS. The comments and information should bear the identifying notation OPP-30000/54. After receipt and evaluation of comments on this Notice, the Agency will publish a final decision in the Federal Register regarding whether or not a Special Review will be conducted.

The Agency has established a public docket (OPP-30000/54) for the proposal not to initiate a Special Review. This public docket will include this Notice; any other Notices pertinent to the Agency's decision regarding the Special Review of EPN; non-CBI documents and copies of written comments or other materials submitted to the Agency in response to the pre-Special Review registrant notification, this Notice, and any other Notice regarding Special Review of EPN; and a current index of materials in the public docket.

Dated: July 14, 1987.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 87-16533 Filed 7-20-87; 8:45 am]

BILLING CODE 6560-50-M

[MM Docket No. 87-250, File Nos. BPCT-861219KG, et al.]

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Global Information Technologies, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, city, and State	File No.	MM Docket No.
A. Global Information Technologies, Inc., Fredericksburg, TX.	BPCT-861219KG	87-250
B. John R. Powley, Fredericksburg, TX.	BPCT-870212KL	
C. Texstar Communications, Fredericksburg, TX.	BPCT-870212KM	
D. Frontier Southwest Broadcasting, Inc, Fredericksburg, TX.	BPCT-870212KN	
E. Telemundo Group, Inc., Fredericksburg, TX.	BPCT-870212KO	
F. Fredericksburg Channel 2, Fredericksburg, TX.	BPCT-870212KP	
G. Frederick Grimm d/b/a Mountlake Productions, LTD., Fredericksburg, TX.	BPCT-870212KQ	
H. International Broadcasting Network, Fredericksburg, TX.	BPCT-870212KR	
I. Fredericksburg Broadcasting Company, Fredericksburg, TX.	BPCT-870212KS	
J. Hal S. Widsten, Fredericksburg, TX.	BPCT-870212KT	
K. Stonewall Broadcasting Inc., Fredericksburg, TX.	BPCT-870212KU	
L. Fredericksburg Community Television, Inc., Fredericksburg, TX.	BPCT-870212KV	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading Applicant(s)

1. Air Hazard, A, C, D, E, F, H, I, J, K, L
2. Cross-interest, F
3. Comparative, A, B, C, D, E, F, G, H, I, J, K, L
4. Ultimate, A, B, C, D, E, F, G, H, I, J, K, L

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc,. 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87-16495 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-249; File Nos. BPH-860602MD and BPH-860602MJ]

Applications for Consolidated Hearings, Marilyn L. Clark and Group Three Broadcasters

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant city, and State	File No.	MM Docket No.
A. Marilyn A. Clark, Wartburg, TN.	BPH-860602MD	87-249
B. Group Three Broadcasters, Wartburg, TN.	BPH-860602MJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue is question applies to that particular applicant.

Issue Heading Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

3. A copy of the coplete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M

Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. J. Gay,

Assistant Chief, Audio Service Division, Mass Media Bureau.

[FR Doc. 87–16494 Filed 7–20–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–248; File Nos. BPH–8602030V et al]

Applications for Consolidated Hearing, William H. Lipsey et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant city and State	File No.	MM Docket No.
A. William H. Lipsey, Coal City,IL	BPH–8602030V	87–248
B. Don H. Barden, Coal City, IL,	BPH–8602030W	
C. Jesus F. Naftali, Sr., Coal City, IL	BHP–860317NO (Dismissed)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading Applicant(s)

1. Air Hazard, A, B
2. Main Studio, A
3. Comparative, A, B
4. Ultimate, A, B

3. If there is any non–standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Service Division, Mass Media Bureau.

[FR Doc. 87–16496 Filed 7–20–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–245; File Nos. BPH–850711PU et al.]

Applications for Consolidated Hearing, Mars Hill Broadcasting Co., Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Mars Hill Broadcasting Co., Inc., Little Falls, NY.	BPH–850711PU	87–245
B. Gary Van Veghten, Little Falls, NY.	BPH–850712T3	
C. Arch Communications Corp., Little Falls, NY.	BPH–850712T4	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Environmental, B
2. Air Hazard, A, B
3. Comparative, All.
4. Ultimate, All.

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–16497 Filed 7–20–87; 8:45 am]

BILLING CODE 6712–01–M

[CC Docket No. 87–253; File Nos. 652–CM–P–80 and 653–CM–P–80]

Applications for Construction Permits; Microwave Service Co. of Florida, Inc. and Video Communications Systems

Memorandum Opinion and Order

Adopted: June 30, 1987.

Released: July 14, 1987.

By the Common Carrier Bureau.

In reference to applications of Microwave Service Co. of Florida, Inc. and Video Communications Systems; CC Docket No. 87–253; File Nos. 652–CM–P–80 and 653–CM–P–80; for construction permits in the multipoint distribution service for a new station on Channel 1 at Vero Beach/Fort Pierce, Florida.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Vero Beach/Fort Pierce, Florida. The applications are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.[1]

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated, in a Consolidated Proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making

[1] Initially there were two additional applicants, Florida MDS, Inc. ("FMDS") and Astro-Stellar Communications, Inc. ("ASC"). One of them, ASC, also filed a petition to deny the application of Microwave Service Company of Florida, Inc. ("Microwave"). ASC's petition, however, fails for lack of standing because its application, pursuant to a settlement agreement, was subsequently dismissed. The FMDS application, on the other hand, was assigned to Robert A. Gordon, d/b/a The BA Company ("BA") and the BA application was also voluntarily dismissed, pursuant to a settlement agreement. Consequently the above-captioned applications are all that remain.

such a determination, the following factors shall be considered:[2]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. *It Is Further Ordered,* That Microwave Service Company of Florida, Inc, Video Communications Systems and the Chief of the Common Carrier Bureau, *Are Made Parties* to this proceeding.

5. *It is Further Ordered,* That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 87-16498 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-246; File Nos. BPH-850712 GV, et al.]

Applications for Consolidated Hearing; Warren Price Communications, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Application, city/State	File No.	MM Docket No.
Warren Price Communications, Inc. Bay Shore, NY.	BPH-850712GV	87-246
B. Jane R. Shaw, d/b/a, JRS Communications, Bay Shore, NY.	BPH-850712UR	
C. Bay Shore Community Broadcast Associates, Ltd., Bay Shore, NY.	BPH-850712US	
D. Bay Shore Broadcasting Corp., Bay Shore, NY.	BPH-850712UT	
E. Brenda R. Tanger, Bay Shore, NY.	BPH-850712UV	
F. Patricia Prie, Barbara J. Highley and Betty D. Fox d/b/a Fire Island Broadcasting, Bay Shore, NY.	BPH-850712UW	
G. Coqui Broadcasting Corp., Bay Shore, NY.	BPH-850712UX	
H. FM Bay Shore Limited Partnership, Bay Shore, NY.	BPH-850712UY	
I. Long Island Music Broadcasting Corp., Bay Shore, NY.	BPH-850712UZ	
J. Kandel Broadcasting Corp., Bay Shore, NY.	BPH-850712VA	
K. Everett A. Reese, Roni W. Poole and C. Wallace Schandalt, d/b/a, RPS Communications, Bay Shore, NY.	BPH-850712VB	
L. Pereira Communications, Inc., Bay Shore, NY.	BPH-850712VC	
M. Upper Room Ministries, Bay Shore, NY.	BPH-850712VD	
N. Susan Lundborg, Bay Shore, NY.	BPH-850712VE	
O. South Shore Media Corp., Bay Shore, NY.	BPH-850712VF	
P. Robert Davenport & Associates, Bay Shore, NY.	BPH-850712VN	
Q. Enrique Carlos Gross, Bay Shore, NY.	BPH-850712VQ	
R. Robert M. Lemmen *et al.*, d/b/a, Commerical Broadcast Co., Bay Shore, NY.	BPH-850712VR	87-246

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standarized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant

1. (See Applendix), C
2. (See Applendix), I
3. Environmental, A, B, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R
4. Air Hazard, B, C, D, E, G, J, K, M, N, O, P, Q, R
5. Comparative, All Applicants
6. Ultimate, All Applicants

3. If there is any non-standardized issues(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Additional Issue Paragraphs

1. To determine whether C (Bay Shore Community Broadcast Associates, Ltd.)'s proposal to serve Bay Shore would provide the coverage required by § 73.315(a) of the Commission's Rules and the *Report and Order* in MM Docket 84-293, and if not, whether circumstances warrant waiver of that Section.

2. To determine whether I (Long Island Music Broadcasting Corp.) solicted an improper *ex parte* presentation to the Commission as described in § 1.1223 of the Commission's Rules, and the effect thereof on its qualifications to be a licensee.

[FR Doc. 16499 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 86-484]

Reexamination of the Commission's Comparative Licensing, Distress Sale and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry; extension of reply comment deadline.

SUMMARY: This action grants a motion for extension of time for filing reply comments in response to the Notice of Inquiry in MM Docket No. 86-484 (Reexamination of the Commission's Comparative Licensing, Distress Sale and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications), 52 FR 596 (January 7, 1987). American Women in Radio and Television, Inc. (AWRT) requested that the deadline for filing reply comments be extended by 70 days, or from July 6, 1987, to September 20, 1987. AWRT stated that the extra time was necessary because the substantial number of comments filed require more time to analyze than the existing three-and one-half week reply comment period; that it had been asked to testify before Congress in late July 1987 on the issue of gender-based preference and will require time to prepare its testimony, and; that an extension of this magnitude would be appropriate due to the inevitable difficulty in coordinating with

[2] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain,* 77 FCC 2d 20 (1980).

widely dispersed parties during the summer months.

The Commission recognized that parties would need additional time in which to formulate reply comments, due to the number of comments filed in this proceeding and the complexity of the issues involved. However, in view of the fact that commenters had approximately 6 months in which to file initial comments, it found that an extension of 45 days would be sufficient to meet the concerns expressed by AWRT. Consequently, a 45-day extension of time in which to file reply comments, or until August 20, 1987, was granted.

DATES: Reply comments in this proceeding are now due by August 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Terry L. Haines, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Washington, DC 20037.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

[FR Doc. 87-16493 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

[Docket No. 1667]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

July 16, 1987.

Petitions for reconsideration and clarification have been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed [August 5, 1987] See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: MTS and WATS Market Structure. (CC Docket No. 78-72)

Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board. (CC Docket No. 80-286) Number of petitions received: 9

Subject: Interconnection Arrangements Between and Among the Domestic and International Record Carriers. (CC Docket No. 82-122)

The Western Union Telegraph Co. Revisions to Tariff F.C.C. Nos. 240 and 258 filed with Transmittal No. 7346; Revisions to Tariff F.C.C. Nos. 268 and 269 filed with Transmittal No. 7347 and 7348; Revisions to Tariff F.C.C. Nos. 229, 240, 254, 258, 260, 263, and 268 filed with Transmittal No. 7417. Number of petitions received: 1

Subject: Notice of Proposed Rulemaking to Amend Part 31 Uniform System of Accounts for Class A and Class B Telephone Carriers to account for judgments and other costs associated with anti-trust lawsuits, and conforming amendments to the Annual Report [Form M. (CC Docket No. 85-64)] Number of petitions received: 6

Subject: Amendment of § 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and

Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof

Communications Protocols Under § 64.702 of the Commission's Rules and Regulations. (CC Docket No. 85-229, Phase II) Number of petitions received: 9

Subject: Amendment of Subpart H, Part 1 of the Commission's Rules and Regulations Concerning Ex Parte Communications and Presentations in Commission Proceedings. (Gen Docket No. 86-225) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Station. (Blackshear, Richmond Hill and Folkston, Georgia) MM Docket No. 86-294, RM's 5029, 5155 & 5560) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Corinth, Hadley and Queensbury, New York) (MM Docket No. 86-331, RM's 5471 & 5614) Number of petitions received: 1

Subject: Amendment of §§ 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations. (MM Docket No. 86-406, RM-5480) Number of petitions received: 6

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-16481 Filed 7-20-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Applications To Engage de Novo in Permissible Nonbanking Activities; CCNB Corp., et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 13, 1987.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CCNB Corporation*, New Cumberland, Pennsylvania; to engage *de*

novo through its subsidiary, Inserve Life Insurance Company, Phoenix, Arizona, in reinsurance of credit life and credit disability insurance in connection with extensions of credit made by Applicant's two banking subsidiaries pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the counties of Cumberland, York, Perry, Dauphin, and Adams in Pennsylvania.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *The Citizens and Southern Corporation,* Atlanta, Georgia; to engage *de novo* through its subsidiaries, C&S Capital Corporation, Atlanta, Georgia, and Arlington, Texas, in the leasing of personal or real property pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in the states of Georgia and Texas.

C. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Midwest Financial Group, Inc.,* Peoria, Illinois; to engage *de novo* through its subsidiary, Midwest Financial Investment Management Company, Peoria, Illinois, in providing portfolio investment advice and furnishing general economic information and advice, general economic statistical forecasting services and industry studies pursuant to § 225.25(b)(4) of the Board's Regulation Y. Comments on this application must be received by August 10, 1987.

Board of Governors of the Federal Reserve System, July 15, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-16447 Filed 7-20-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Kenneth W. Cox et al.

The notificants listed below have 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 the 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 August 5, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Kenneth W. Cox,* Troy, Alabama; to retain 2.49 percent of the voting shares of State Bancshares, Inc., Enterprise, Alabama, and thereby indirectly acquire Coffee County Bank, Enterprise, Alabama.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Billy L. Brown,* Lake Dallas, Texas; to acquire 11.67 percent of the voting shares of Northway Bancshares, Inc., Richardson, Texas, and thereby indirectly acquire Great Western National Bank of Lewisville, Lewisville, Texas; Northway National Bank, Addison, Texas; and Richardson National Bank, Richardson, Texas.

2. *Sam B. Elrod,* Bluff Dale, Texas; to acquire 34.90 percent of the voting shares of Lake Granbury Financial Corpo, Granbury, Texas, and thereby indirectly acquire Lake Granbury National Bank, Granbury, Texas.

Board of Governors of the Federal Reserve System, July 15, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-16448 Filed 7-20-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Meridian Bancorp, Inc., et al.

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 August 13, 1987.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Meridian Bancorp, Inc.,* Reading, Pennsylvania; to acquire 100 percent of the voting shares of Delaware Trust Company, Wilmington, Delaware.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First United Bancorporation,* Anderson, South Carolina; to become a bank holding company by acquiring 100 percent of the voiting shares of Anderson National Bank, Anderson, South Carolina.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *M & F Capital Corporation,* Macon, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Merchants & Farmers Bank, Macon, Mississippi.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Banks of Mid-America, Inc.,* Oklahoma City, Oklahoma; to acquire 5.52 percent of the voting shares of F &M Bancorporation, Tulsa, Oklahoma, and thereby indirectly acquire F & M Bank and Trust Company, Tulsa, Oklahoma.

2. *Ottawa Bancshares, Inc.,* Ottawa, Kansas; to acquire 100 percent of the voting shares of Lyon County State Bancshares, Inc., Emporia, Kansas, and thereby indirectly acquire Lyon County State Bank, Emporia, Kansas.

3. *United Missouri Bancshares, Inc.,* Kansas City, Missouri; to acquire 100 percent of the voting shares of United Missouri Bank U.S.A., Wilmington, Delaware. Comments on this application must be received by August 7, 1987.

Board of Governors of the Federal Reserve System, July 15, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-16449 Filed 7-20-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 070187 AND 071487

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
(1) J Sainsbury plc, Shaw's Supermarkets, Inc., Shaw's Supermarkets, Inc	87-1837	07/02/87
(2) Western Dairymen Cooperative, Inc., Mountain Empire Dairymen's Association, Intermountain Milk Producers Association	87-1794	07/06/87
(3) Redland PLC, Monier Limited, Monier Limited	87-1814	07/06/87
(4) Ameritech Pension Trust, Meadows Realty Company, F & S Culver Center, a partnership	87-1823	07/06/87
(5) Louis J. Roussel, LifeSurance Corporation, LifeSurance Corporation	87-1862	07/06/87
(6) Royal Dutch Petroleum Company, Fluor Corporation, Marrowbone Development Company, Massey Coal Terminal	87-1901	07/06/87
(7) Rush-Presbyterian-St. Luke's Medical Center, Skokie Valley Health Services, Skokie Valley Health Services	87-1805	07/07/87
(8) Richard G. Fanslow, Beneficial Corporation, Northwestern Security Life Insurance Company	87-1857	07/07/87
(9) Ronald O. Perelman (Revlon Group, Inc.), Yves Saint Laurent S.A.R.L., Charles of the Ritz Group Ltd	87-1799	07/08/87
(10) The Firestone Tire & Rubber Company, The GCR Group, Inc., The GCR Group, Inc	87-1853	07/08/87
(11) Equiticorp Tasman Limited, Monier Limited, Monier Limited	87-1795	07/09/87
(12) Warburg, Pincus Capital Company, L.P., William H. Millard and Patricia Millard, IMS Associates, Inc	87-1819	07/09/87
(13) John Holland Holdings Limited, National Medical Enterprises, Inc., Stolte, Inc., NWS	87-1832	07/09/87
(14) Plains Cotton Cooperative Association, American Cotton Growers, American Cotton Growers	87-1836	07/09/87
(15) American Cablesystems Corporation, Heritage Communications, Inc., 2 California Cable Subs	87-1838	07/09/87
(16) Chrysler Corporation, Electrospace Systems, Inc., Electrospace Systems, Inc	87-1842	07/09/87
(17) British Aerospace plc, Reflectone, Inc., Reflectone, Inc	87-1851	07/09/87
(18) The Home Group, Inc., Gruntal Financial Corp., Gruntal Financial Corp.	87-1854	07/09/87
(19) Triangle Industries, Inc., Avery, Inc., Avery, Inc	87-1868	07/09/87
(20) The Home Group, Inc., Gruntal Financial Corp., Gruntal Financial Corp.	87-1871	07/09/87
(21) Ponce Federal Bank, F.S.B., Banco Central, S.A., Banco Central Corp.	87-1878	07/09/87
(22) Subaru of America, Inc., Larry B. Barnes, Subaru Northwest, Inc	87-1883	07/09/87
(23) General Electric Company, Kraft, Inc., D & K Financial Corporation	87-1885	07/09/87
(24) Franklin Savings Corporation, Underwood, Neuhaus Corporation, Underwood, Neuhaus Corporation	87-1889	07/09/87
(25) The Home Group, Inc., Gruntal Financial Corp., Gruntal Financial Corp.	87-1894	07/09/87
(26) Floyd Oil Participations, PLC, Texaco, Inc., Texaco (Spain) Inc	87-1897	07/09/87
(27) Network Security Corporation, Linear Corporation, Linear Corporation	87-1821	07/10/87
(28) Network Security Corporation, Linear Corporation, Linear Corporation	87-1872	07/10/87
(29) Kellwood Company, Robert E. Madden, Robert Scott Ltd. and voting securities of David Brooks	87-1892	07/10/87
(30) G. Heileman Brewing Company, Inc., American Bakeries Company, ABC Detroit; ABC Duluth; ABC Kansas City & ABC St. Paul	87-1816	07/13/87
(31) The Ochs Trust, The News Company, The News Company	87-1824	07/13/87
(32) Moore McCormack Resources, Inc., Gulf States Utilities Company, Prudential Oil & Gas, Inc	87-1827	07/13/87
(33) JWP Inc., Mr. Thomas Gibson, Thomas Gibson, Inc	87-1835	07/13/87
(34) Agip S.p.A., Steuart Investment Company, Steuart Petroleum Company	87-1863	07/13/87
(35) Presidio Oil Company, KaiserTech Limited, Kaiser Energy, Inc	87-1891	07/13/87
(36) Peter H. Pocklington, Garry V. Hughes, GAF Acquisition, Inc	87-1898	07/13/87
(37) R.R. Donnelley & Sons Company, Metromail Corporation, Metromail Corporation	87-1903	07/13/87
(38) R.R. Donnelley & Sons Company, Metromail Corporation, Metromail Corporation	87-1904	07/13/87
(39) FR Group plc, Moog, Inc., Carleton Components Division	87-1791	07/14/87
(40) Giant Group, Ltd., Media General, Inc., Media General, Inc	87-1829	07/14/87
(41) First Boston, Inc., BILA Partners, Big V Supermarkets, Inc	87-1856	07/14/87
(42) The Philp Co. Trust, The Southland Corp., The Southland Corp	87-1920	07/14/87
(43) The Philp Co. Trust, The Southland Corp., The Southland Corp	87-1921	07/14/87

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87–16442 Filed 7–20–87; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Request for Comments and Secondary Data on the Production, Use, and Health Effects of Glycol Ethers

AGENCY: National Institute for Occupation Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of request for comments and secondary data.

SUMMARY: NIOSH is requesting comments and secondary data from all interested parties concerning the potential exposure of workers to glycol ethers or to any products containing glycol ethers and the occurrence of adverse health effects in workers exposed to glycol ethers. For this purpose, the term "glycol ethers" is intended to include the derivatives of glycol ethers, such as the glycol ether acetates. Interested parties may submit data on (1) exposure concentrations during the manufacture or use of glycol ethers, (2) medical monitoring of exposed workers, (3) medical case reports of adverse health effects in exposed workers, or (4) any other information regarding the industries and occupations where workers may be exposed to glycol ethers. These data will be used by NIOSH to evaluate the adverse health effects of worker exposure to glycol ethers and to determine the need for preventive health measures and additional research.

DATE: Comments concerning this notice should be submitted by September 21, 1987.

ADDRESS: Any information, comments, suggestions, or recommendations should be submitted in writing to: Mr. Richard A. Lemen, Director, Division of Standards Development and Technology Transfer, NIOSH, CDC, 4676 Columbia Parkway, C–14, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia F. Robinson, Division of Standards Development and Technology Transfer, NIOSH, CDC, 14676 Columbia Parkway, C–32, Cincinnati, Ohio 45226, (513) 533–8324, or FTS 684–8324.

SUPPLEMENTARY INFORMATION: Under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.), NIOSH is directed to gather information for improving occupational safety and health. NIOSH has received reports indicating that exposure to some of the glycol ethers and their metabolites can cause adverse effects on reproduction in make and female rats, rabbits, and mice. Testicular atrophy, infertility, fetotoxicity, and fetal malformations have been reported.

Adverse hematologic effects following exposure to glycol ethers have occurred in male workers, and in rats, rabbits, and mice. These effects have included decreased white blood cell counts, severe anemias, and bone marrow depression. Effects on the immunologic system of rats and rabbits have included decreased thymus weight, and depletion of the thymus lymphoid population.

Adverse effects on the central nervous system have occurred in exposed workers. Neurotoxic effects in exposed workers have included ataxic gait, loss of sociability, seclusiveness, memory impairment, irritability, slurred speech, disorientation, somnolence, stupor, and toxic encephalopathy. Rats exposed to glycol ether have developed signs of central nervous system depression.

NIOSH is interested in obtaining existing and available materials (e.g., reports and research findings) on the following:

1. Names and quantities of glycol ethers manufactured or used in the workplace, and names and quantities of glycol ethers imported or exported.

2. Names of products that contain residual amounts of glycol ethers used during their formulation.

3. Measurements of residual quantities of glycol ethers in products in which glycol ethers were used during their formulation.

4. Industries producing or using any of the glycol ethers, and the occupations, job assignments, numbers, and sexes of workers potentially exposed.

5. Airborne exposure concentrations of glycol ethers for workers involved in the production, formulation, transportation, transfer, storage, or use of glycol ethers or products containing glycol ethers.

6. Work practices or engineering controls used in the workplace during production, formulation, manufacturing, transportation, transfer, storage, or use of glycol ethers or products containing glycol ethers.

7. Descriptions of chemical protective clothing and data on its ability to minimize or prevent skin contact with glycol ethers.

8. Names of substances used as substitutes for glycol ethers.

9. Adverse health effects observed in workers exposed to any glycol ethers or to products containing glycol ethers.

10. Concentrations of glycol ethers or their metabolites measured in the blood or urine of workers exposed to glycol ethers.

11. Extent of skin contact during the manufacture, formulation, or use of glycol ethers or products containing glycol ethers including surface area of contact, concentrations of glycol ethers in products, duration of exposure, and rates of absorption.

12. Animal toxicity, carcinogenicity, mutagenicity, or reproductive studies conducted with any glycol ether.

13. Results of short-term tests of genotoxicity that may pertain to adverse health effects of any glycol ether.

All information received in response to this notice, except that designated as trade secret and protected by section 15 of the Occupational Safety and Health Act, or personal identifying information contained in medical case reports or data, will be available for public examination and copying at the above address.

Dated: July 15, 1987.

Larry W. Sparks,

Executive Officer, National Institute for Occupational Safety and Health.

[FR Doc. 87–16445 Filed 7–20–87; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 87N–0231]

Drug Export; Kerlone® (betaxolol HC1) Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Lorex Pharmaceuticals has filed an application requesting approval for the export of the human drug Kerlone® (betaxolol HC1) Tablets to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm.

4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisified. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Lorex Pharmaceuticals, 4930 Oakton Street, Skokie, IL 60077, has filed an application requesting approval of the export of the drug Kerlone® (betaxolol HC1) Tablets to Canada. The drug is indicated for use in the treatment of hypertension. The application was received and filed in the Center for Drugs and Biologics on June 26, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 31, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated July 1, 1987.

Sammie R. Young,

Deputy Director, Office of Compliance.

[FR Doc. 87–16453 Filed 7–20–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–87–1714]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have 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 proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. 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, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list 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 number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection 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.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Affirmative Fair Housing Marketing Plan.

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and Its Proposed Use: This form is required for all applicants desiring to participate in HUD's insured housing programs and the Section 8 New Construction and Substantial Rehabilitation Programs. HUD uses this information to assess the adequacy of the applicant's proposed actions to carry out requirements specified in 24 CFR Part 200 and 24 CFR Part 108.

Form Number: HUD–935.2.

Respondents: State and Local Governments, Businesses or Other For-Profit, and Federal Agencies or Employees.

Frequency of Response: On Occasion.

Estimated Burden Hours: 4,950.

Status: Extension.

Contact: Mary T. George, HUD, (202) 755–2288, John Allison, OMB (202) 395–6880.

Proposal: Report on Occupancy for Public and Indian Housing.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The information collected on HUD–51234 provides HUD with occupancy information to monitor units vacant, demolished, under repair/modernization/rehabilitation, and/or converted to a non-dwelling status. This information is used to alert HUD to the possible need to intervene to avert a serious waste of program resources.

Form Number: HUD–51234.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Response: Annually.

Estimated Burden Hours: 3,330.

Status: Extension.

Contact: Edward C. Whipple, HUD, (202) 426–0744, John Allison, OMB, (202) 395–6880.

Proposal: Mortgagee's Certification and Application for Assistance or Interest Reduction Payments.
Office: Housing.
Description of the Need for the Information and its Proposed Use: The form is used by the mortgagee in the section 235 program to bill HUD for monthly assistance payments and handling charges. The information is needed by HUD to determine amounts billed and to provide a record of disbursements approved and made.
Form Number: HUD–93102.
Respondents: Businesses or Other For-Profit.
Frequency of Respondents: Monthly.
Estimated Burden Hours: 51,984.
Status: Reinstatement.
Contact: Florence B. Brooks, HUD, (202) 755–6672, John Allison, OMB, (202) 395–6880.

Proposal: Summary of Guaranty Agreement—Graduated Payment and Growing Equity.
Office: Government National Mortgage Association.
Description of the Need for the Information and its Proposed Use: In compliance with section 306(g) of the National Housing Act, GNMA is authorized to guarantee the timely payment of principal and interest on securities which are based on or backed by a pool composed of mortgages. Issuers of mortgage-backed securities pools use these forms to report monthly on their securities accounting.
Form Number: HUD–1748, 11748–A, 11748–B, and 11748–C.
Respondents: Businesses or Other For-Profit.
Frequency of Submission: On Ocassion.
Estimated Burden Hours: 1,000.
Status: Revision.
Contact: Patricia A. Gifford, HUD, (202) 755–5550, John Allison, OMB, (202) 395–6880.

Proposal: Rental Rehabilitation Program—Investor Owner Survey.
Office: Community Planning and Development.
Description of the Need for the Information and its Proposed Use: In the Rental Rehabilitation Program, Pub. L. 98–181 (Stat. 1153) authorizes the Department of Housing and Urban Development to adjust the allocation for a city, urban county, consortium, or State grantee administering a rental rehabilitation program. This allocation is done based upon an annual performance review.
Form Number: None.
Respondents: State or Local Governments.
Frequency of Response: Annually.
Estimated Burden Hours: 333.
Status: New
Contact: Frances W. Bush, HUD, (202) 755–6296, John Allison, OMB (202) 395–6880.
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: July 13, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87–16519 Filed 7–20–87; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–87–1691; FR–2330]

Availability of Funding Under the Fair Housing Assistance Program; Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of fund availability.

SUMMARY: This notice solicits applications, from eligible State and local fair housing agencies, for funding under the Fair Housing Assistance Program (FHAP). Agencies must meet specific eligibility criteria set forth in this notice and in 24 CFR Parts 111 and 115 in order to qualify for consideration under this program. This notice pertains to Type-II Competitive Funding applications only.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Holbert, Acting Director, Office of Fair Housing Enforcement and section 3 Compliance, Office of Fair Housing and Equal Opportunity, Room 5208, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone: (202) 755–0455. (This is not a toll-free number.) Application kits are available upon written or telephone request from the above. To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

DATE: An application for Type II competitive FHAP funding must be submitted between July 21, 1987 and September 4, 1987, unless it qualifies for a late application exception as specified in the application kit and is received before funds are awarded.

SUPPLEMENTARY INFORMATION: The Fair Housing Assistance Program (FHAP) was authorized by Congress to enhance the fair housing capabilities of State and local civil rights agencies. The FHAP has two types of funding: Type I-Non-Competitive Funding and Type II-Competitive Funding. Type I-Non-Competitive Funding includes capacity building, training, complaint monitoring and reporting systems, and contributions. Type II-Competitive Funding includes specialized project proposals developed by State and local agencies to enhance their fair housing programs. This announcement pertains to applications for Type II funding only.

Background

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19 (the Federal Fair Housing Law), prohibits discrimination in the sale, rental or financing of housing and in the provision of brokerage services. Section 810(c) provides that wherever a State or local fair housing law is recognized as providing rights and remedies substantially equivalent to those in the Federal Fair Housing Law, the Secretary is required to notify the appropriate State or local agency of any complaint filed with HUD that appears to constitute a violation of the State or local law. Section 816 provides that the Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, may use their services and their employees and may reimburse the agencies for services rendered in carrying out the Federal Fair Housing Law.

Other Matters

This program is described in the Catalog of Federal Domestic Assistance at 14.401, Fair Housing Assistance Program.

Application requirements associated with this program have been approved by OMB and assigned approval number 2529–0005.

Executive Order 12372

Applicants are advised that they must follow HUD procedures established to implement Executive Order 12372, "Intergovernmental Review of Federal Programs." On June 24, 1983 HUD published regulations in the Federal Register (48 FR 29206) to implement E.O. 12372. These procedures replace the intergovernmental consultation system developed under OMB Circular A–95, which expired on September 30, 1983. The Executive Order authorizes States to establish their own process for review and comment on the proposed Federal financial assistance programs. To comply with the Executive Order, all applicants for FHAP must provide an opportunity for review and comment to State and local elected officials if (1) the applicant's State has established a State

process and (2) the FHAP has been specifically identified for review by the State process. A list of State Single Points of Contact will be included with application kits requested under this announcement. If the Order applies, the applicant should submit its proposal to HUD and to the State process simultaneously.

Applicants must provide HUD with a written assurance certifying the date on which a copy of the proposal was furnished to the State process. A 60-day comment period will begin five days from the date identified in the certification.

The Single Point of Contact and other commenting parties must mail their comments to Director, Office of Fair Housing Enforcement and Section 3 Compliance, Office of Fair Housing and Equal Opportunity, Room 5208, 451 Seventh Street, SW., Washington, DC 20410–2000.

I. Eligibility

To be eligible to apply for funds under the Program, an agency must meet the criteria prescribed in 24 CFR 111.104. Specifically: (1) The State or local fair housing law administered by the agency must have been recognized (and such recognition must continue to be outstanding) as providing substantially equivalent rights and remedies to those provided by Title VIII of the Civil Rights Act of 1968, under HUD procedures set out in 24 CFR Part 115 and (2) the agency must have executed a written Memorandum of Understanding with HUD that describes the working relationship in effect between the agency and the appropriate Regional Office of Fair Housing and Equal Opportunity.

Notwithstanding the preceding paragraph, under 24 CFR 111.104(b), an agency may submit a funding proposal under the Fair Housing Assistance Program if HUD has determined that the State or local fair housing law administered by such agency provides, on its face, substantially equivalent rights and remedies, but has not yet granted recognition to such law in accordance with 24 CFR Part 115. Evidence of such a determination by the Department shall consist of: (1) Publication of an invitation for written comments as described in 24 CFR 115.6(b), or (2) publication of a proposal under 24 CFR 115.4(b), as in effect before October 8, 1984, to add the jurisdiction to the list of recognized jurisdictions. In either such case, the agency may enter into negotiations with the Regional Office of Fair Housing and Equal Opportunity in order to develop a Memorandum of Understanding and may, at the same time, submit a funding proposal. In the event that an agency that would otherwise qualify for funds has not been recognized as substantially equivalent by the time HUD has obligated funds to recognized, fundable agencies, HUD will obligate remaining funds to recognized agencies in accordance with the competitive provisions. No funds will be committed to any agency until it has been formally recognized as substantially equivalent. All proposals for Type II funding must have relevance to matters pertaining to housing discrimination based on an individual's race, color, religion, sex or national origin.

II. Method of Competition

A. Scope

Applications are solicited for specialized project proposals as described in 24 CFR 111.103. Funding priority will be given to proposals that address one or more of the first five of the following eight subject areas:

1. Proposals designed to develop and conduct a testing/auditing program for specific protected classes or special market areas for enforcement or litigation purposes;

2. Proposals designed to identify new or subtle practices of discrimination—for example, practices in rental, sales, terms and conditions, insurance or financing—and to implement programs to eradicate such practices;

3. Proposals designed to develop and implement outreach efforts to heighten public awareness of all forms of housing discrimination cognizable under Title VIII, and of fair housing rights and responsibilities, through the use of public education, outreach and/or technical assistance;

4. Proposals designed to address violence and intimidation in the sale or rental of housing directed against persons because of race, color, religion, sex or national origin. Activities may include education, technical assistance, or the development of programs of prevention and response;

5. Proposals designed to encourage the formulation and implementation of programs relating to the enforcement of fair housing by non-profit organizations;

6. Technical assistance projects to enable the agency to work with the real estate industry, private fair housing groups, educational institutions, and other government entities and similar constituents;

7. Projects designed to create, modify or improve local, regional or national data and information systems, and

8. Projects designed to improve an agency's capability to ensure fair housing through new or redirected approaches to the agency's internal structure or compliance techniques.

B. Geographic Competition

HUD has established three geographic areas for purposes of this Notice: Area A consists of agencies in the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, New Jersey, New York, Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. Area B consists of agencies in the States of Florida, Kentucky, North Carolina, Tennessee, New Mexico, Oklahoma, Texas, Iowa, Kansas, Missouri, and Nebraska. Area C consists of agencies in the States of Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, Colorado, Montana, South Dakota, Arizona, California, Hawaii, Nevada, Alaska, Oregon, and Washington.

C. Classes of Funding

HUD's previous experience in competitive funding under this program indicates that larger agencies—particularly those State agencies in the more populous States—have a decided advantage over smaller State and local agencies in an open competition for Type II funds. Accordingly, two classes of funding have been established.

1. Class A—Large jurisdictions. All agencies that serve jurisdictions with populations of 3 million or more, or that receive an annual housing discrimination complaint workload of 100 or more, will be treated as Class A agencies. For purposes of this determination, the complaint workload is evidenced either by the total number of cases dual-filed with the agency and with HUD during the period January 1, 1986 through December 31, 1986, *or* by the total number of cases received by HUD from the geographical area within the agency's jurisdiction during the same period—whichever is greater. All Class A agencies must compete within Class A.

2. Class B—Small jurisdictions. All agencies that serve jurisdictions with populations below 3 million *and* that receive an annual housing discrimination complaint workload of fewer than 100 complaints (as described above) will be treated as Class B agencies. Class B agencies may elect to compete in either Class A or Class B, but not in both.

3. *Multiple agency proposals.* Eligible agencies may wish to join together in submitting a proposal. Multiple agency proposals are acceptable subject to the following conditions:

(a) One agency must be designated as the applicant, submitting on its own behalf, with all others as proposed subcontractors. In the event of an award, the applicant will be treated as the recipient.

(b) Agencies electing to participate in a multiple agency proposal, whether as an applicant or as a subcontractor, may NOT submit individual proposals.

(c) Agencies submitting a multiple agency proposal must compete within Class A.

(d) A certification of agreement with the proposal from all jurisdictions with which the applicant fair housing agency proposes to subcontract must be included in the application.

D. Program Totals and Agency Maximums

Approximately $700,000 is available under this Notice. Each of the three identified geographic areas will compete for approximately $233,330. A total of $400,000 is available for award to Class A applicants, with a maximum of $100,000 per applicant for single agency proposals and $150,000 for multiple agency proposals. A total of $300,000 is available for award to Class B applicants, with a maximum of $75,000 per agency for single applicant proposals.

E. Applications

An agency may submit only one Type II proposal. Applicants must submit all information required in the Type II application kit and must include sufficient information to establish that the proposal meets the criteria set forth at 24 CFR 111.106. Proposals must include a clear narrative description of the project and a timetable delineating the points at which the various components of the project will be initiated and completed.

Projects should be no longer than 18 months in duration. Applicants should note that any research activities must serve to enhance the agency's fair housing program. Projects shall not be proposed that are planned for implementation with agency funds and would simply substitute FHAP funds for agency funds. Projects that appear to be aimed solely or primarily at research or data gathering unrelated to existing or planned fair housing enforcement or outreach programs will not be approved. Data gathering activities will require OBM approval under the Paperwork Reduction Act before commencement of the activity.

F. Award Procedures

Applications for Type II funding will be evaluated competitively within each geographic area by Class, and awarded points based on the Factors for Award identified below. Proposals will be reviewed by geographic area Review Teams. The final decision rests with the Assistant Secretary or his or her designee.

Factors for Award

1. Substantive Factors. (60 points total)

a. Degree to which a proposed project addresses problems or issues that are in one or more of the five funding priority areas identified in II. A. above. (20 points)

b. Degree to which a proposed project addresses problems and issues that are significant fair housing problems and issues within the jurisdiction, as explained in the proposal or based upon other information available to HUD. (10 points)

c. Degree to which the project can be expected to have a successful impact upon the problems or issues that the proposal addresses, including the degree to which the project is of continuing use in dealing with housing discrimination. (10 points)

d. Clarity and thoroughness of project description. (10 points)

e. Degree to which proposal includes the participation of private nonprofit fair housing, civil rights and legal assistance groups. (10 points)

2. Planning and Management Factors. (40 points total)

a. Reasonableness of estimated timetable for implementation and completion of project. (10 points)

b. Adequacy and clarity of proposed procedures to be used by the agency for monitoring progress of the project and ensuring timely completion. (10 points)

c. Degree to which applicant's most recent past performance in similar projects demonstrates timely and quality completion. This includes but is not limited to, Type I projects, Type II projects and other specialized project activities undertaken by the agency within the last two years. (20 points)

Inasmuch as Type I projects are related to housing discrimination complaint processing activities, performance under the five standards for the enforcement of fair housing laws, as stated at 24 CFR Section 115.4 will be included under this factor. Pursuant to those standards, the agency must:

(i) Consistently and affirmatively seek the elimination of all prohibited practices under their fair housing law;

(ii) Consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices;

(iii) Establish a mechanism for monitoring compliance with any agreements or orders entered into or issued by the State or local agency to resolve discriminatory housing practices;

(iv) Engage in comprehensive and thorough investigative activities, and

(v) Commence and complete the administrative processing of a complaint in a timely manner, i.e., the average time, under ordinary circumstances, for investigating a complaint and, where applicable, setting it for conciliation or other remedial actions—should be 45 days or less.

3. Cost Factors—The proposal's projected cost, while secondary, will be considered in addition to the factors stated above to determine the proposal or proposals most advantageous to the Government. Cost will be the deciding factor when proposals ranked under the above factors are considered acceptable, fall within a competitive range and are substantially equal. Furthermore, an applicant's proposal may not be funded when costs are determined to be unrealistically low or unreasonably high.

III. Applicant Notification and Award Procedures

A. Notification

No information will be available to applicants during the period of HUD evaluation except for notification in writing to those applicants that are determined to be ineligible. Awards for Type II projects are expected to be announced by HUD within three months of the closing date.

B. Negotiations

After HUD has ranked the applications and made an initial determination of applicants whose scores are above the funding threshold (but before the actual award), HUD may require that applicants in this group participate in negotiations and submit application revisions resulting from those negotiations. In cases where it is not possible to conclude the necessary negotiations successfully, awards will not be made. Negotiations will not be used to raise the rankings of proposals that would otherwise fall below the funding threshold.

If an award is not made to an applicant whose proposal is above the initial funding threshold because of an inability to complete successful negotiations, and if funds are available to fund any proposals that may have fallen below the initial threshold, HUD will establish a new funding threshold

and proceed as described in the preceding paragraph.

C. Funding Instrument

It is HUD's normal practice to fund successful applicants under cost-reimbursable Cooperative Agreements. HUD reserves the right to employ the form of agreement determined to be most appropriate after negotiation with the applicant.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3601–19); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: July 10, 1987.

Judith Y. Brachman,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR. Doc. 87–16520 Filed 7–20–87; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–940–07–4212–13; A–22080]

Conveyance of Public Land; Order Providing for Opening of Lands; Arizona

DATE: July 10, 1987.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Bureau of Land Management, Arizona State Office (602) 241–5534.

SUMMARY: Notice is hereby given of the completion of an exchange between the United States and CALF Properties, an Arizona general partnership. The Bureau of Land Management transferred the following described land on June 25, 1987, by Patent No. 02–87–0033, pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 20 N., R. 21 W.,
Sec. 18, lot 4, SE¼SW¼, S½SE¼.

Containing 160.15 acres in Mohave County, Arizona.

In exchange the surface in the following described land was reconveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 14 N., R. 12 W.,
Sec. 1, lots 1–4, inclusive, S½N½, NE¼SW¼, SE¼.
T. 17 N., R. 16 W.,
Sec. 7, lots 1–4, inclusive, E½, E½W½.

Containing 1,155.60 acres in Mohave County, Arizona.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and the acquisition of private land by the Federal Government.

The surface of the land acquired by the Federal Government in this exchange will be open to entry under the public land laws, subject to valid existing rights and requirements of applicable law, at 9:00 a.m., thirty days from publication of this notice. The mineral estate is owned by the Santa Fe Pacific Railroad Company and, therefore, will not be subject to entry under the United States mining or Mineral Leasing Laws.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–16466 Filed 7–20–87; 8:45 am]

BILLING CODE 4310-32-M

Intent To Prepare Resource Management Plans

AGENCY: Bureau of Land Management, Interior.

ACTION: Initiation of resource management plans and invitation to participate in the identification of issues and criteria.

SUMMARY: The Steese/White Mountains District will prepare two Resource Management Plans (RMPs), each including an Environmental Impact Statement (EIS), pursuant to Pub. L. 99–606, which is known as the Military Lands Withdrawal Act of 1986. One plan will address the non-military activities and resources on the Fort Greely Maneuver Area and the Fort Greely Air Drop Zone. The other plan will cover the non-military activities and resources on the Fort Wainwright Maneuver Area. The former plan will encompass approximately 623,585 acres; the latter will include about 247,951.67 acres. The planning effort will be conducted in coordination with the Army 6th Infantry Division (Light) and will follow the Code of Federal Regulations, Title 43, Subpart 1600. The public is invited to participate in the planning process, beginning with the identification of issues and criteria.

SUPPLEMENTARY INFORMATION: The anticipated issues for the Fort Wainwright withdrawal are grouped under four major headings. (1) Military Use—Which parts of the withdrawals, because of other resources and potential uses, are least suitable for additional development of military activities? What lands in the withdrawals are most suitable for more intensive military use? How can hazardous wastes in the withdrawals, if any, be identified, and how can the public be protected from them? What archeological and historical sites should be excavated or relocated to allow for military use of these areas? (2) Economic Development—To what extent can the withdrawal areas meet national needs for stategic and energy minerals? On which lands should exploration and development of locatable, leaseable, and saleable minerals be allowed, and under what conditions and mitigation measures? In what areas and under what physical and environmental conditions should forest products be made available? In what areas and under what circumstances should opportunities for guiding, trapping, and other commercial activities be allowed? (3) Recreation—To what extent can recreational activities be accommodated in the withdrawals? What recreation-related facilities are needed within the withdrawals? (4) Access—To what extent should access to adjacent lands and mining claims be provided? What access should be provided for consumptive and non-consumptive uses of the withdrawal? What areas should be designated opened or closed to ORVs, or for only limited ORV use, and what types of ORVs should be allowed? Which roads and trails are state-claimed RS 2477 right-of-ways? To what extent can recreation use via aircraft be accommodated?

The anticipated issues for the withdrawals on Fort Greely include all the above as well as the following items listed under the heading of Wildlife and Habitat: What restrictions, if any, should there be on the time and location of military activities to protect wildlife and habitat? What non-military activities are consistent with wildlife and habitat protection and enhancement? What steps should be taken to improve or move the bison calving grounds and protect sharptail grouse dancing grounds, sandhill crane roosting areas, and caribou calving grounds?

The preliminary planning criteria are:

1. All non-military activities on the withdrawals will be subject to conditions and restrictions necessary to permit military use of the land.

2. Valid existing rights will be protected.

3. The withdrawal plans will be consistent with plans and policies of adjacent land owners and local governments to the maximum extent allowable by federal law.

4. The plans will consider wildlife and wildlife habitat, control of predatory and other animals recreation, prevention and appropriate suppression of fires from non-military activities.

5. Wildlife and wildlife habitat will be managed consistent with a 1986 cooperative agreement between the Army, the Alaska Department of Fish and Game, and the U.S. Fish and Wildlife Service.

6. The plans will consider opening of lands to the mining laws.

7. Public access needs will be addressed, though military necessity, security, and public safety dictate that general public access will not be permitted on certain portions of the withdrawals.

8. Subsistence use and needs will be considered in accordance with Sec. 810 of the Alaska National Interest Lands Conservation Act.

9. The plans will not make wilderness suitability recommendations.

10. The plan will utilize existing data, information, plans, land use analyses, and Environmental Impact Statements.

11. The BLM and military will cooperate in preparing the plans and the plans will be limited to resources and uses under BLM's administration and control.

12. The plans will specify decisions to the maximum extent practical and minimize the preparation of more specific activity plans.

13. The plans will not address contamination/decontamination as an issue. Sec. 7 of the Military Lands Withdrawal Act establishes the Army's responsibilities for these actions.

These issues and criteria are presented for public comment and are subject to change based on such comment. Comments should be received by September 1, 1987.

The RMP will be developed by an interdisciplinary team composed of BLM and Army specialists. The team will have a team leader and specialists in realty, fish and wildlife, forestry, fire management, recreation, archeological and historical resource protection, minerals, subsistence protection, soil/water/air, plant ecology, environmental protection, Army training and operations, Army testing, Air Force range utilization, and Army law enforcement.

The planning team will seek public comment throughout the planning process by direct-mailings, media coverage, person-to-person contacts, and coordination with local, state, and other federal agencies. Meetings to gather comments on the preliminary issues and criteria are scheduled for:

August 18, 1987, 2–4p.m., 6–9 p.m., Delta Junction Community Center.

August 19, 1987, 2–4p.m., 6:30–8:30 p.m., Noel Wien Library, 1215 Cowles Street, Fairbanks.

Complete records of all phases of the planning process will be available for public review at the Bureau of Land Management's Office of Management, Planning, and Budget in the Alaska State Office, 701 C Street, Anchorage, Alaska, 99513. Draft and final documents of the RMP will be available upon request.

For information about this planning effort or to be placed on mailing list, please contact Jim Ducker, Military Withdrawals Planning Team Leader at Bureau of Land Management, Alaska State Office, Office of Management, Planning, and Budget, 701 C Street, Box 13, Anchorage, Alaska, 99513 (907–271–5595).

Michael J. Penfold,

State Director.

July 13, 1987.

[FR Doc. 87–16446 Filed 7–20–87; 8:45 am]

BILLING CODE 4310–JA–M

[CA–060–4333–12]

California Desert District; Emergency Limitation of Vehicle Route CO 76 in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency limitation notice for one vehicle route of travel in Barstow Resource Area of San Bernardino County.

SUMMARY: This emergency limitation notice affects vehicle Route CO 76 in the Stoddard Valley area, San Bernardino County, CA under the administrative responsibility of the Barstow Resource Area, California Desert District.

The limited segment of Route CO 76 is located ½ mile to the east of Highway 247 at the east boundary of Sec. 30, T. 8N., R. 1W. where on the powerline road it runs ½ mile west.

The limitation of Route CO 76 encompasses .25 acre. This route is limited to use by licensed street legal vehicles only under the authority of 43 CFR 8341.2 in order to prevent unauthorized use of private land.

This emergency limitation is in effect and shall remain in effect until such time as it is determined that the effects have been eliminated or formal route designation under 43 CFR Part 8342 is completed.

The route will be signed to prevent use by unlicensed vehicles. A copy of this order and a map showing the location of the affected route is available from the Bureau of Land Management, 150 Coolwater Lane, Barstow, California 92311.

Any person who fails to comply with this emergency order may be subject to a fine of up to $1,000 or imprisonment of up to 12 months, or both, under 43 CFR 8340.0–7.

FOR FURTHER INFORMATION, CONTACT: Alden Sievers, Area Manager, Barstow Resource Area.

Wesley T. Chambers,

ADM, Lands & Renewable Resources.

[FR Doc. 87–16465 Filed 7–20–87; 8:45 am]

BILLING CODE 4310–40–M

[UT–040–07–4212–14; U–58153, U–60059, U–61964]

Realty Action; Competitive and Noncompetitive Sale of Public Lands in Washington County, UT

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 USC 1713) it is proposed to sell the following described public lands:

Parcel No.	Legal description, township and range	Acreage	Appraised FMV
U–58153	T. 43 S., R. 10 W., SLB&M, Sec. 33, Lot 2	37.44	$34,750.00
U–60059	T. 43 S., R. 10 W., SLB&M, Sec. 33, Lot 3	37.58	45,000.00
U–61964	T. 43 S., R. 10 W., SLB&M, Sec. 33, Lot 4	37.73	45,000.00

Parcel U–58153 will be sold by direct sale at the appraised fair market value to the Town of Hildale, Utah. Parcels U–60059 and U–61964 will be sold by competitive bidding at no less than the appraised fair market value.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this Notice, whichever occurs first.

SUMMARY: The purpose of this sale is to dispose of lands which are needed for community expansion, or are difficult and uneconomical to manage by a government agency.

DATES: Comments should be submitted to the address listed below by September 7, 1987. The sale will be held September 30, 1987 at 2:00 p.m., MST.

ADDRESS: Detailed information concerning the sale, including bidding procedures, is available at the Dixie

Resource Area Office, 225 North Bluff Street, St. George, Utah 84770. The sale will be held at the same address.

SUPPLEMENTARY INFORMATION: The terms and conditions aplicable to the sale are:

1. There is reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 USC 945).

2. The sale will be for surface estate only. Minerals will remain with the United States Government.

3. Title transfer will be subject to all valid existing rights including rights-of-way U–58198 (buried telephone line), U–58199 (electric distribution line), and U–0144212 (telephone line).

4. Parcel U–60059 contains two archaeological sites (42Ws 2195 and 2196). The buyer will be required to mitigate impacts to these sites as directed by BLM, prior to obtaining title. The estimated cost of this mitigation is not to exceed $40,000 and will be borne entirely by the buyer.

5. Unsold parcels will be offered competitively on a continuing basis until sold or withdrawn from the market, at the Dixie Resource Area. Sale will be by sealed bid. Sealed bids will be opened on the first and third Tuesdays of each month at 11:45 a.m. All bids must be received at the office no later than 4:30 p.m. on the day before the sale.

Any comments or objections received during the comment period will be evaluated and the District Manager may vacate or modify this realty action.

In the absence of any objections, this realty action notice will be the final determination of the Department of the Interior.

Dated: July 13, 1987.

Morgan S. Jensen,

District Manager.

[FR Doc. 87–16573 Filed 7–20–87; 8:45 am]

BILLING CODE 4310–DQ–M

Minerals Management Service

Development Operations Coordination Document; Conoco, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0577, Block 208, portion, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on July 10, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additonally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 13, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–16468 Filed 7–20–87; 8:45 am]

BILLING CODE 4310–MR–M

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), U.S. Department of the Interior.

ACTION: Notice of the availability of environmental documents prepared for Outer Continental Shelf (OCS) Minerals Exploration Proposals on the Alaska OCS.

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas exploration activities proposed on the Alaska OCS. This listing includes all proposals for which FONSI's were prepared by the Alaska OCS in the 3-month period preceding this Notice.

Proposal

The modification of the Sale BF Federal Stipulation No. 8 as presently administered. The seasonal drilling restriction generally restricts drilling during the period September 1 through October 31, but the actual closure dates "float," recognizing that whales may reach the sale area before or after September 1 and may depart before or after October 31. The modification would lift the restriction on the following leases.

Location

Lease	Block(s)
OCS–Y 0188	561, 562, 605, 606, 607
OCS–Y 0190	609, 753
OCS–Y 0191	610, 654, 698
OCS–Y 0192	655, 656
OCS–Y 0193	699, 743
OCS–Y 0194	700, 701
OCS–Y 0195	744
OCS–Y 0196	745, 746
OCS–Y 0197	788, 789
OCS–Y 0198	792, 793, 836

Environmental Assessment

EA No. AK 87–01.

FONSI Date

May 29, 1987.

Activity/Operator

Amoco, as operator for itself, has proposed to drill up to three wells to explore two leases (known as the Thorgisl Prospect) in the Eastern Alaskan Beaufort Sea approximately 28 miles (45 km) from Barter Island. In addition, Amoco requested an exception to the Sale 87 seasonal drilling stipulation. The EA assesses the potential effects of the exploration of the Thorgisl Prospect and a modification of Stipulation No. 4—namely, a one-time (1987 drilling season) exception to the seasonal drilling restriction.

Location

Lease	Block(s)
OCS-Y 0903	492
OCS-Y 0904	493

Environmental Assessment

EA No. AK 87-02.

FONSI Date

May 22, 1987.

Proposal

Amoco Production Company, as operator for itself and others, had an Exploration Plan (EP) approved on July 3, 1985, to drill up to two exploratory wells with a floating, ice-strengthened drilling vessel. Amoco has requested a modification in Beaufort Sea Sale 87 Stipulation No. 4, the seasonal drilling restriction, as it applies to their approved EP. Amoco also proposes to conduct a study on the possible effects of drilling noise from their drilling vessel on migrating bowhead whales. The proposal will require an exception, for 1987 only, from the requirements of Stipulation No. 4 which prohibit exploratory drilling during the bowhead whale migration. The FONSI and associated EA address the possible effects of the exception.

Location

Lease	Block(s)
OCS-Y 0917	724

Environmental Assessment

EA No. AK 87-03.

FONSI Date

May 29, 1987.

FOR FURTHER INFORMATION: Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS are encouraged to contact the MMS office in the Alaska OCS Region.

The FONSI and associated EA are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Library, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508, phone: (907) 261-4435.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Alaska OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: July 8, 1987.

Alan D. Power,

Regional Director, Alaska OCS Region.

[FR Doc. 87-16487 Filed 7-20-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

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 July 11, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evalutation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by August 5, 1987.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Coconino County

Flagstaff, *South Beaver School*, 506 S. Beaver St.

Santa Cruz County

Nogales, *US Custom House (Nagales MRA)*, Jct. of International & Terrace Sts.

ARKANSAS

Dallas County

Fordyce, *Charlotte Street Historic District (Dallas County MRA)*, Roughly bounded by Holmes, Charlotte, Broadway, & E. College Sts.

Mississippi County

Osceola, *Bank of Osceola MRA)*, 207 E. Hale St.
Osceola, *Florida Brothers Building, (Osceola MRA)*, 319 W. Hale St.
Osceola, *City Hall (Osceola MRA)*, 316 W. Hale St.
Osceola, *Hale Avenue Historic District (Osceola MRA)*, Roughly bounded by Hale Ave., Poplar St., Ford Ave., & Walnut St.
Osceola, *Mississippi County Jail (Osceola MRA)*, 300 S. Poplar St.
Osceola, *Old Bell Telephone Building (Osceola MRA)*, 100 blk. Ash St.
Osceola, *Osceola Times Building (Osceola MRA)*, 112 N. Poplar St.
Osceola, *Planters Bank Building (Osceola MRA)*, 200 E. Hale St.

FLORIDA

Dade County

Opa-Locka, *Baird House (Opa-Locka TR)*, Dunad Ave.
Opa-Locka, *Bush Apartments (Opa-Locka TR)*, 12140 Sesame St.
Opa-Locka, *Cravero House (Opa-Locka TR)*, 1011 Sharar Ave.
Opa-Locka, *Crouse House (Opa-Locka TR)*, 1156 Peri St.
Opa-Locka, *Etheredge House (Opa-Locka TR)*, 915 Sharar Ave.
Opa-Locka, *Griffiths House (Opa-Locka TR)*, 826 Superior St.
Opa-Locka, *Haislip House (Opa-Locka TR)*, 1141 Jann Ave.
Opa-Locka, *Helm Stores and Apartments (Opa-Locka TR)*, 1217 Sharazad Blvd.
Opa-Locka, *Helms House (Opa-Locka TR)*, 721 Sharar Ave.
Opa-Locka, *Higgins Duplex (Opa-Locka TR)*, 1210-1212 Sesame St.
Opa-Locka, *King Trunk Factory and Showroom (Opa-Locka TR)*, 951 Superior St.
Opa-Locka, *Long House (Opa-Locka TR)*, 613 Sharar Ave.
Opa-Locka, *Opa-Locka Fire and Police Station (Opa-Locka TR)*, 124 Perviz Ave.
Opa-Locka, *Root Building (Opa-Locka TR)*, 111 Perviz Ave.
Opa-Locka, *Taber Duplex (Opa-Locka TR)*, 1214-1216 Sesame St.
Opa-Locka, *Tinsman House (Opa-Locka TR)*, 1110 Peri St.
Opa-Locka, *Tooker House (Opa-Locka TR)*, 811 Dunad Ave.
Opa-Locka, *Wheeler House (Opa-Locka TR)*, 1035 Dunad Ave.

GEORGIA

Clarke County

Athens, *Oglethorpe Avenue Historic District*, Oglethorpe Ave.

Cobb County

Mableton, *Mable, Robert, House and Cemetery*, 5239 Floyd Rd.

Fulton County

Atlanta, *Garden Hills Historic District*, Roughly bounded by Delmont, Breentwood & N. Hills Drives, Piedmont, E. Wesley, & Peachtree Rds.

Long County

Walthourville, *Walthourville Presbyterian Church*, Allenhurst Antioch Rd.

Richmond County

Hepzibah, *Seclusaval and Windsor Spring*, Jct. of Einsor Spring and Tobacco Rds.

Walker County

Kensington, *Miller Brothers Farm*, GA 912

ILLINOIS

Edgar County

Paris, *Paris Elks Lodge No. 812 Building*, 111 E. Washington St.

MISOURI

St. Louis (Independent City)

Lambskin Temple, 1054 S. Kingshighway Blvd.

NEVADA

Clark County

Las Vegas, *Las Vegas Hospital*, 201 N. Eighth St.

Las Vegas, *Whitehead, Stephen R., House*, 333 N. Seventh St.

NEW JERSEY

Essex County

South Orange, *Stone House By the Stone House Brook*, 219 S. Orange Ave.

NEW YORK

Rockland County

Palisades, *Concklin, Abner, House*, Closter Rd.

RHODE ISLAND

Providence County

Burrillville, *Oakland Historic District*, Victory Hwy.

WASHINGTON

Grays Harbor County

Hoquiam, *Seventh Street Theater*, 313 Seventh St.

Lewis County

Curtis, *Boistfort High School*, 983 Boistfort Rd.

[FR Doc. 87-16381 Filed 7-20-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-30029]

Andrews Van Lines, Inc., et al.; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of declaratory order proceeding.

SUMMARY: By petition filed February 5, 1987, Andrews Van Lines, Inc., Mitchell & Sons Moving & Storage, Inc., and Security Van Lines, Inc., petitioners, jointly request a declaratory order that discount tariff provisions of household goods carriers that contain ranges of discounts are contrary to 49 U.S.C. 10735, 10761, and 10762. They ask the Commission to order such tariff provisions stricken. Interstate Van Lines, Inc., has been granted leave to intervene in support of the petition. In Special Tariff Authority No. 86-159, *Household Goods Carriers' Bureau Discounts for Uniquely Assigned Shippers* (not printed), served February 24, 1987, the Commission stated it would institute a proceeding to consider the lawfulness of these kinds of discount tariff provisions. By issuing a decision instituting this declaratory order proceeding, the Commission has done so. The Commission seeks comments from interested parties as to whether the involved discount tariff provisions comply with 49 U.S.C. 10761 and 10762 and whether the binding estimate provisions of 49 U.S.C. 10735 modify sections 10761 and 10762 so as to authorize the involved discount tariffs.

DATE: Comments are due on or before September 4, 1987.

ADDRESS: The original and, if possible, 10 copies of comments referring to No. MC-C-30029 should be addressed to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Richard Johnson, (202) 275-7939

or

Andrew Lyon, (202) 275-7691

SUPPLEMENTARY INFORMATION: Andrews Van Lines, Inc., Mitchell & Sons Moving & Storage, Inc., and Security Van Lines, Inc. (petitioners), have requested that the Commission issue a declaratory order finding that Item 454 of Tariff ICC HGB 104-B, Section 2934, published for the account of Aero Mayflower Transit Company, Inc. is unlawful. Petitioners further request a ruling that similar tariff items of other household goods carriers are unlawful, and an order directing that all such tariff provisions be stricken. Interstate Van Lines, Inc., is permitted to intervene in support of petitioners' position.

Petitioners allege that the involved variable discount rates provisions violate the requirements of 49 U.S.C. 10735, 10761, and 10762. They further contend that these tariff provisions are similar to other tariff provisions the Commission and a Federal court have found violate the statute.

Additional information is contained in the Commission's decision. Copies of the decision may be purchased T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission Building, Washington, DC 20423, or by calling (202) 289-4357.

Authority: 5 U.S.C. 554(e), and 49 U.S.C. 10735, 10761, and 10762.

Decided: July 10, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-16523 Filed 7-20-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 200X]

CSX Transportation, Inc.; Exemption; Abandonment in Glynn and Camden Counties, GA

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to its 25.18 mile line of railroad between milepost S-568.25 at Bladen and milepost S-593.43 at Seals, in Glynn and Camden Counties, GA. The Railway Labor Executives' Association seeks imposition of labor protective conditions.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local government 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.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abndonment.

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).[1]

The exemption will be effective 30 days from service of this decision (unless stayed pending reconsideration). Petitions to stay must be filed by [10 days after service], and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by [20 days after service] 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 representatives: Patricia Vail, Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: July 15, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-16545 Filed 7-20-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 209X)]

CSX Transportation, Inc. Exemption; Abandonment in Fannin and Gilmer Counties, GA

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between milepost KX-398.7 at Blue Ridge, and milepost KX-404.8 near Ellijay, GA, a distance of 8.1 miles in Fannin and Gilmer Counties, GA. The Railway Labor Executives' Association seeks imposition of labor protective conditions.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that 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.

Applicant has filed an environmental report which shows that no signficant environmental or energy impacts are likely to result from this abandonment.

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—Gosher*, 360 I.C.C. 91 (1979).[1]

The exemption will be effective 30 days from service of this decision (unless stayed pending reconsideration). Petitions to stay must be filed by [10 days after service], and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by [20 days after severice] 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 representatives: Patricia Vail, Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ad initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: July 15, 1987.

By the Commission, Jane F. Mackall, Director, Office of Procedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-16546 Filed 7-20-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-No. 98X)]

Chesapeake and Ohio Railway Co.; Exemption; Abandonment in Raleigh County, WV

The Chesapeake & Ohio Railway Company (C&O) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 14.5-mile line of railroad between milepost 5.45 at Affinity and milepost 19.95 at Stone Coal Jct., in Raleigh County, WV. The Railway Labor Executives' Association seeks imposition of labor protective conditions.

C&O has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that 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 on 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.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

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*, 260 I.C.C. 91 (1979).[1]

The exemption will be effective 30 days from service of this decision (unless stayed pending reconsideration). Petitions to stay must be filed by [10 days after service], and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by [20 days after service] 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: Patricia Vail, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: July 16, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-16547 Filed 7-20-87; 8:45 am]

BILLING CODE 7035-01-M

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[1] The Railway Labor Executives' Association filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 10903, whereby the imposition of labor protective conditions is mandatory, those conditions have been routinely imposed.

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[Docket No. AB-18 (Sub-No. 99X)]

The Chesapeake and Ohio Railway Co.; Abandonment Exemption in Washington County, OH

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 0.52-mile line of railroad between milepost 44.97 (valuation station 2376+00) and milepost 45.49 (valuation station 2403+50) near Relief, in Washington County, OH. The Railway Labor Executives' Association seeks imposition of labor protective conditions.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that 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.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

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).[1]

The exemption will be effective 30 days from service of this decision (unless stayed pending reconsideration). Petitions to stay must be filed by [10 days after service], and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by [20 days after service] 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 representatives: Charles M. Rosenberger, Patricia Vail, CSX Transportation, 500 Water Street, Jacksonville, FL 32202.

[1] The Railway Labor Executives' Association filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 10903, whereby the imposition of labor protective conditions is mandatory, those conditions have been routinely imposed.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: July 16, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-16548 Filed 7-20-87; 8:45 am]

BILLING COEE 7035-01-11

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Judgment; Material Handling Institute, Inc., et al.

Notice is hereby given that the Material Handling Institute, Incorporated ("MHI") and five other trade associations have filed with the United States District Court for the Western District of Pennsylvania a motion to terminate the final judgment in *United States v. The Material Handling Institute, Inc.*, Civil Action No. 72-659; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent receipt of public comments. The five other trade association defendants are the Hoist Manufacturers Institute, Industrial Truck Association, Rack Manufacturers Institute, Monorail Manufacturers Association and Crane Manufacturers Association of America, Inc. The compliant in this case (filed on August 10, 1972), alleged that MHI, *et. al.* had combined and conspired to restrain trade in material handling equipment. The judgment (entered on March 21, 1973), requires, among other things, that defendants: (1) Cancel and terminate all association by-laws, rules, regulations and practices which restrict eligibility for membership to firms who manufacture within the United States at least 75% of the material handling equipment which they sell domestically; (2) not limit their membership to persons demonstrating any particular percentage of "domestic content" in their U.S. sales; (3) not condition their membership upon any limits to manufacture or sale of foreign-made equipment; (4) not adopt any unreasonable, discriminatory or arbitrary membership rules; (5) permit any manufacture of material handling equipment, wherever made, to exhibit at trade shows sponsored by defendants; (6) not adopt any rules or practices which limit their members in dealing with foreign equipment manufacturers, or in exhibiting or selling foreign-made equipment in the United States.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, defendants' motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Room 3233, Antitrust Division, Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone 202-633-2481), and at the Office of the Clerk of the United States District Court for the Western District of Pennsylvania, U.S. Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within the sixty day period established by court order, and will be filed with the court. Comments should be addressed to Charles S. Stark, Chief, Foreign Commerce Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone 202-633-2464).

Dated: July 13, 1987.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-16459 Filed 7-20-87; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984; Corporation for Open Systems International

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 (the "Act") the Corporation for Open Systems International ("COS") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on June 12, 1987 Disclosing a change in the membership of COS. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust

plaintiffs to actual damages under specified circumstances.

On May 14, 1986, COS filed its original notification pursuant to section 6(b) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant, to section 6(b) of the Act on June 11, 1986. 51 FR 21260. On August 6, 1986, September 30, 1986, January 2, 1987, and March 24, 1987, COS filed additional written notifications. The Department published notices in the Federal Register in response to these additional notifications on September 4, 1986 (51 FR 31735), on October 28, 1986 (51 FR 39434), on February 13, 1987 (52 FR 4671) and on April 24, 1987 (52 FR 13769), respectively.

On May 1, 1987 Honeywell Bull Inc. Became a party to COS. On March 17, 1987 Dart & Kraft Inc. withdrew as a member to COS.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-16460 Filed 7-20-87; 8:45 am]

BILLING CODE 4410-01-M

Office of Justice Programs

Law Enforcement Training and Technical Assistance Grant

AGENCY: Office for Victims of Crime, Office of Justice Programs, Department of Justice (DOJ).

ACTION: Notice of the availability of funds and request for applications for Law Enforcement Training and Technical Assistance Grant.

SUMMARY: Fiscal Year 1987 funds are available to provide regionally-based training and technical assistance to local and state law enforcement agencies in methods for responding to incidents of family violence. The Office for Victims of Crime (OVC) anticipates that $500,000 will be available.

DATE: Applications for these funds must be received by August 21, 1987.

ADDRESS: Address applications to: Office for Victims of Crime, 633 Indiana Avenue NW., Washington, DC 20531, Attention: John Veen.

FOR FURTHER INFORMATION CONTACT: John Veen (202) 272-6500.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1984, the President signed into law the Child Abuse Amendments of 1984 (Pub. L. 98-457, 42 U.S.C. 10401 et seq.). Title III of these Amendments, entitled the "Family Violence Prevention and Services Act" (the Act), enumerates the responsibilities of the Department of Justice and Health and Human Services, pursuant to section 311 of the Act, "Law Enforcement Training and Technical Assistance Grants and Contracts." In order to carry out these responsibilities, a transfer of funds from the Secretary of Health and Human Services to the Attorney General of the United States is underway.

The overall purposes of the Act are to: assist states in efforts to prevent family violence; provide immediate shelter and related assistance for victims of family violence and their dependents; and provide technical assistance and training relating to family violence programs for state and local public agencies (including law enforcement agencies), nonprofit organizations, and other persons seeking such assistance.

Section 311 of the Act provides for regionally-based training and technical assistance to personnel of local and state law enforcement agencies to prepare them with the means for responding to incidents of family violence. The Act states that "applications which propose projects or programs which will develop, demonstrate, or disseminate information with respect to improved techniques for responding to incidents of family violence by law enforcement officers shall be given priority."

This announcement applies only to section 311 of the Act. Also, for purposes of this program announcement, the term "family violence" as defined in section 309 of the Act, means any act or threatened act of violence, including any forceful detention of an individual, which:

a. Results or threatens to result in physical injury; and

Is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or with whom such person is or was lawfully residing.

Statement of Problem

The problem of family violence has existed for generations, yet only recently has it begun to receive any degree of attention. The Reagan Administration focused special attention on this issue with initiation of the Attorney General's Task Force on Family Violence which issued its final report in September, 1984. Based upon considerable research, including testimony received from public hearings held across the country, the Task Force found that a law enforcement agency is usually the first and often the only agency called upon to intervene in family violence incidents. Public safety officers are in the forefront of the effort to preserve peace, even with families. But the Task Force discovered that—largely as a result of traditional community attitudes which considered violence within the family to be a private, less serious matter than violence between strangers—calls to police involving family violence are usually given a low priority. The Task Force research also indicated that in carrying out the community's priorities and law enforcement agency practices, police dispatchers and emergency call operators may often give the impression that a family violence call is a nuisance. Accordingly, minimal information is requested from the caller and the dispatcher or emergency call operator assigns the call a low dispatch priority. As a result, the intervention by the patrol officer may be slow and inconsistent.

The F.B.I. has reported that nearly 20 percent of all homicides in this country occur among family members. To reduce this high incidence of violence and prevent these tragic consequences, it is essential that all law enforcement agencies publish operational procedures that establish family violence as a priority response. Implementation must begin with the police chief or sheriff and continue down the chain of command to the individual patrol officer. Consequently, patrol officers, and the training officers who provide training both at the academies and within the departments, should be trained to understand the need for swift and responsive law enforcement intervention, the need to respond with caution and understanding of the seriousness of the situation, the proper methods of screening and classifying family violence calls, and the appropriate referral and disposition of family violence victims and perpetrators.

The Attorney General's Task Force on Family Violence made several recommendations for the justice system, law enforcement and education and training. Among the recommendations were that:

1. Family violence should be recognized and responded to as a criminal activitiy.

2. Law enforcement agencies should publish operational procedures that establish family violence as a priority response and require officers to file written reports on these incidents. In addition, the operational procedures should require officers to perform a variety of activities to assist the victim.

3. Consistent with state law, the chief executive of every law enforcement

agency should establish arrest as the preferred response in cases of family violence.

4. Law enforcement officials should maintain a current file of all protection orders valid in their jurisdiction.

5. Law enforcement officers should respond without delay to calls involving violations of protection orders.

6. Federal, state, and local government should train relevant personnel to diagnose and appropriately intervene in family violence cases.

A significant number of law enforcement agencies have made marked progress in addressing the recommendations and in responding to the handling of family violence incidents since the report was issued. Many agencies have indicated their interest in further improving their operational procedures and response to family violence incidents.

In order to support efforts by State and local law enforcement agencies to improve their response to family violence incidents, the Office of Justice Programs is issuing this program announcement.

Program Description

The grantee selected will be required to perform the following tasks:

1. Develop a training program for law enforcement training officers (persons have responsibility for training law enforcement officers) which reflects an understanding and knowledge of existing visual aids, training curricula, training models, and existing training programs.

• The program should utilize and/or expand the manuals developed for the law enforcement executive training sessions under an award made in September, 1986 by the Office of Justice Programs to the Victim Services Agency in New York City. The project, "Training and Operational Procedures: A coordinated response to Domestic Violence", was funded under the provisions of the Family Violence Prevention Services Act. The project is designed to develop domestic violence training materials for law enforcement executives.

• Develop a "trainer's manual" for "patrol officers" and "dispatchers" which implements the "model" operational procedures and policies designed under the above referenced Victim Services Agency project.

• Develop "training videotapes which provide background information about domestic violence and also depict various family violence incidents to which law enforcement officers commonly respond." These "training videotapes" are to be used for training patro officers at individual police or sheriff's departments, during "roll call" or other periods set aside for training.

2. Develop a series of regional training sessions (no fewer than four) for training officers. The training sessions should focus on how to best utilize the material that was developed under the grant.

3. Develop a procedure and mechanism for responding to requests for information and assistance from various law enforcement agencies and serve as a broker and/or provider of technical assistance and expertise. A description of how individual technical assistance and information requests will be processed should be included.

4. Develop and utilize a multi-disciplinary advisory board for project activities.

Selection Criteria

The selection of the grantee will be based on:

1. Understanding of the problem. (10 points)

2. Appropriations of program design and approach. (25 points)

3. Soundness of methodology. (30 points)

4. Financial and technical capability of the organization. (10 points)

5. Cost effectiveness. (10 points)

6. Accuracy and completeness of required information. (5 points)

7. The expertise and background of the employees assigned to the effort. (10 points)

Funds Available

Up to $500,000 will be available from the Office for Victims of Crime for the purpose of awarding one grant (cooperative agreement) in accordance with the provisions of section 311 of the Act.

Grant Period and Award Amount

The cooperative agreement will be for eighteen (18) months and will cover 100% of the project costs (no matching funds required). The total award amount for this project will be a maximum of $500,000.

Eligible Applicants

Eligible applicants are private nonprofit organizations or governmental units which have experience in providing training and technical assistance on a national and/or regional basis to personnel of local and state law enforcement agencies related to the prevention of and response to family violence incidents.

Submission Deadlines

Applications must be received by August 21, 1987. Applications which are hand delivered must be received by the close of business (5:00 p.m.) August 21, 1987.

Applications

Applicants should submit three (3) copies of their complete proposal by the deadline established above.

Submissions must include:

A. A completed and signed Federal Assistance application on the current Standard Form 424. Copies of the required forms, and any information or clarification regarding them, may be obtained by writing or calling the Office for Victims of Crime, National Victims Initiative Section, 633 Indiana Avenue, NW., Washington, DC 20531. (202) 272–6500.

B. An abstract of the full proposal, not to exceed one page.

C. A program narrative of not more than fifteen (15) single-spaced typed pages should include:

1. A clear, concise statement of the issues surrounding the problem area. A discussion of the relationship of the proposed work to the existing training literature is also expected;

2. A clear statement of the project objectives including a list of the major milestones of events, activities, products, and a timetable for completion;

3. A clear statement which describes the approach and strategy to be utilized in responding to each of the tasks identified in the program description;

4. The proposed organization and management plan to be used including, at a minimum, the staff of the project, with their experience, and the time commitments of key staff to individual project tasks. A full time project director must be allocated to the project.

D. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, project advisory board costs and overhead, and a short narrative justification of each budgeted cost.

E. Copies of vitae for the professional staff which summarize education, research and training experience, and bibliographic information related to the proposed work. Detailed technical material that supports or supplements the description of the proposed effort, but is not integral to it, should be included in an appendix.

All three copies of the application must be sent or hand delivered to: Office for Victims of Crime, National Victims Initiative Section, 633 Indiana Avenue, NW., Washington, DC 20531.

For further information contact: John Veen, National Victims Initiative Section (202) 272–6500. Information

concerning model programs and practices is available from the National Criminal Justice Reference Service, located in Rockville, Maryland.

Notification under Executive Order 12372

This program, recently authorized and funded by Congress, provides support for training and technical assistance for law enforcement and other personnel to assist in addressing issues related to family violence. The Department of Health and Human Services, under whose authority these funds are transferred to the Department of Justice, excludes this program from coverage under Executive Order 12372. This training and technical assistance program is national in scope and the statutory requirement for "regionally based training" will be offered by the single national grantee in only a few cities/states nationwide. Therefore, the requirements of Executive Order 12372 are waived.

Richard B. Abell,

Assistant Attorney General, Office of Justice Programs.

Jane Nady Burnley,

Acting Director, Office for Victims of Crime.

[FR Doc. 87-16552 Filed 7-20-87; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Child Labor Advisory Committee; Establishment

In accordance with the provisions of the Federal Advisory Committee Act and after consultation with GSA, the Secretary of Labor has determined that the establishment of the Child Labor Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by the Fair Labor Standards Act.

The Committee will advise the Secretary of Labor on the effective administration of the child labor provisions of the Fair Labor Standards Act.

The Committee will consist of 21 members representing child advocacy groups, employers, unions, the education community, civic organizations, State officials, child guidance professionals, and safety groups.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the Child Labor Advisory Committee. Such comments should be addressed to Paula V. Smith, Administrator, U.S. Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW., Room S3502, Washington, DC 20210, (202) 523-8305.

Signed at Washington, DC, this 16th day of July 1987.

William E. Brock,

Secretary of Labor.

[FR Doc. 87-16565 Filed 7-20-87; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

[TA-W-19,461]

Amended Certification Regarding Eligibility, To Apply for Worker Adjustment Assistance, American Electric Co., (Formerly Elektripak Division of Midland Ross) Pittsfield, NH

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 29, 1987 applicable to all workers of American Electric Company, Pittsfield, New Hampshire. The Certification was published in the **Federal Register** on June 16, 1987 (52 FR 22861).

Additional information furnished by the company indicates that worker separations occurred immediately after the purchase of the plant on November 24, 1986 by the American Electric Company from the Elektripak Division of Midland Ross.

Accordingly, the Department is amending the subject certification by inserting a new impact date of November 24, 1986.

The intent of the amended certification is to cover all workers of American Electric Company, formerly Elektripak Division of Midland Ross, Pittsfield, New Hampshire who were adversely affected by import competition of electrical outlets.

The certification applicable to TA-W-19,461 is hereby amended as follows:

All workers of American Electric Company, formerly Elektripak Division of Midland Ross, Pittsfield, New Hampshire who became totally or partially separated from employment on or after November 24, 1986 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of July 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-16455 Filed 7-20-87; 8:45 am]

BILLING CODE 4510-30-M

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance, Coastal Oil and Gas Corp., et al.

In the matter of Coastal Oil and Gas Corporation, Exploration and Production Division, Houston, Texas TA-W-17, 838 and all other locations of the exploration and production division in the following states; Alabama, TA-W-17, 838A; California, TA-W-17, 838B; Colorado, TA-W-17, 838C; Kansas, TA-W-17, 838D; Louisiana, TA-W-17, 838E; Michigan, TA-W-17, 838F; Mississippi, TA-W-17, 838G; Montana, TA-W-17, 838H; Nevada, TA-W-17, 838I; North Dakota, TA-W-17, 838J; Oklahoma, TA-W-17, 838K; Texas, TA-W-17, 838L; Utah, TA-W-17, 838M; Virginia, TA-W-17, 838N; Wyoming, TA-W-17, 838O.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 22, 1986 applicable to all workers of the Exploration and Production Division of the Coastal Oil and Gas Corporation, headquartered in Houston, Texas. The Certification was published in the **Federal Register** on January 21, 1987 (52 FR 2305).

The certification notice is amended to identify the states in which the Exploration and Production Division maintains operations. The Division has oil fields in numerous states as well as offices which support crude oil production. Worker separations have occurred throughout the Division.

The intent of the certification is to cover all workers of the Exploration and Production Division in all locations. The amended notice applicable to TA-W-17, 838 is hereby issued as follows:

All workers of the Exploration and Production Division of the Coastal Oil and Gas Corporation headquartered in Houston, Texas and operating in the states of Alabama, California, Colorado, Kansas, Louisiana, Michigan, Mississippi, Montana, Nevada, North Dakota, Oklahoma, Texas, Utah, Virginia and Wyoming who became totally or partially separated from employment on or after July 17, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of July, 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-16456 Filed 7-20-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19, 347]

Negative Determination Regarding Application for Reconsideration; Memtec Caribe, Inc., Luquillo, PR

By an application dated June 15, 1987, a company official requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Memtec Caribe, Inc., Luquillo, Puerto Rico. The denial notice was signed on May 14, 1987 and published in the **Federal Register** on May 27, 1987 (52 FR 19783).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company official claimed that the subject firm lost business because of foreign imports and provided the names of two customers who allegedly switched their purchases from Memtec Caribe to a domestic firm which imports.

Workers at Memtec Caribe in Luquillo, Puerto Rico produce computer subsystems comprised of tape drives and printed circuit boards. Findings in the investigation show that the "contributed importantly" test of the increased import criterion of Section 222 of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the subject firm's customers. The Department's survey revealed that customers accounting for over 100 percent of the firm's sales decline in 1986 did not import products that are like or directly competitive with the tape drives produced at Memtec Caribe.

One of the two customers, alleged to have switched purchases from the subject firm to a domestic firm which imports, upgraded his product. The customer decreased its purchases from Memtec to a technologically improved tape drive backup system which permits the use of his own controller board in selling the backup system. The new product is a cassette tape drive that permits the use of the Quik 36 interface for more storage. These qualities were not provided with Memtec's cartridge tape drive. Technological unemployment would not form a basis for certification. The remaining alleged customer was only a potential customer and did not purchase tape drives during the period relevant to the investigation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of July, 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-16457 Filed 7-20-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,454]

Negative Determination Regarding Application for Reconsideration; The West Bend Co., West Bend, WI.

By an application dated June 29, 1987, the Allied Industrial Workers of America (AIW) requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at the West Bend Company, West Bend, Wisconsin. The denial notice was signed on May 29, 1987 and published in the **Federal Register** on June 16, 1987 (52 FR 22860).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that the company lost its market share because of foreign imports. The union claims that over the years employment and the number of products produced at the West Bend plant has declined mainly because of foreign competition. The union states that the company sold its pot and pan products and humidifier business in 1982 and that the Department only considered products currently being manufactured at the West Bend plant.

Findings in the investigation show that the workers produce small electric housewares, stainless steel cookware, and physical fitness equipment and that the workers are not separately identifiable by product. The production of small electric housewares accounted for an overwhelming majority of the subject plant's sales during the period under investigation. Sales of small electric houseware products increased in 1986 and in the first quarter of 1987 compared with the corresponding periods one year earlier.

Stainless steel cookware accounted for an important proportion of total production while physical fitness equipment accounted for a very small share of total production at the subject plant. However, the export sales decline of stainless steel cookware accounted for all of the stainless steel cookware sales decline in the first quarter of 1987 compared to the same quarter in 1986 and a major proportion of the sales decline of stainless steel cookware in 1986. Lost export sales are not a basis for certification under the terms of the Trade Act of 1974.

Domestic sales of stainless steel cookware and physical fitness equipment represented a relatively small proportion of the plant's total production; and, since workers at the plant were not separately identifiable by product, declines in this segment could not have contributed importantly to overall employment declines at the subject firm. In addition, domestic sales of stainless steel cookware increased in the first quarter of 1987 compared to the same quarter in 1986.

Worker separations resulting from lost production in earlier years are not a relevant issue since section 223(b)(1) of the Trade Act does not allow the Department to certify workers laid off more than one year prior to the date of the petition. The date of the worker petition is March 16, 1987. The Department only considers sales, production, employment, and import data that are relevant to the period under investigation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify

reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of July, 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-16458 Filed 7-20-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,902, TA-W-19,903, TA-W-19,904]

Termination of Investigation; Sun Exploration and Production Co.

Pursuant to section 221 of the trade Act of 1974, investigations were initiated in response to worker petitions received on July 13, 1987 which were filed on behalf of workers at the following Sun Exploration and Production Company locations: Gulf Coast District in Midland, Texas; Gulf Coast District in Lafayette, Louisiana; and Southwestern District in Midland, Texas.

Active certifications covering the petitioning groups of workers remain in effect for all company locations in Louisiana (TA-W-19,643D), and for all company locations in Texas (TA-W-19,643I). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 14th day of July 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-16566 Filed 7-20-87; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Arco Healdton Sub Office et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 3, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 31, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 13th day of July 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
ARCO, Healdton Sub-Office (workers)	Ardmore, OK	7/13/87	6/29/87	19,886	Oil & gas.
Art Embroidery (workers)	New York, NJ	7/13/87	7/1/87	19,887	Emblems.
Central Oil Field Supply Co. (workers)	Wooster, OH	7/13/87	7/6/87	19,888	Oil.
Clevite Industries, Inc. (USWA)	Bridgeport, OH	7/13/87	6/23/87	19,889	Engine bearings.
Clevite Industries, Inc. (USWA)	Bellaire, OH	7/13/87	6/23/87	19,890	Engine bearings.
E.J. Fennel, Inc. (ILGW)	Hagerstown, MD	7/13/87	7/6/87	19,891	Clothing.
Enserch Exploration Inc. (workers)	Midland, TX	7/13/87	6/30/87	19,892	Oil & gas.
FPCO Oil & Gas (workers)	Houston, TX	7/13/87	7/1/87	19,893	Oil & gas.
HPM Corporation (IAM&AW)	Hartford, CT	7/13/87	6/24/87	19,894	Machines.
Helfrecht Corp (workers)	Traverse City, MI	7/13/87	7/3/87	19,895	Machine tools.
Johnson Control, Inc. (workers)	Owosso, MI	7/13/87	7/7/87	19,896	Batteries.
Kennedy Van Saun, Corp. (USW)	Danville, PA	7/13/87	7/2/87	19,897	Machinery.
Litton Industrial Auto. Systems, (IAM-AW)	New Britain, CT	7/13/87	6/24/87	19,898	Machine tools.
North Pacific Plywood Inc. (company)	Tocoma, WA	7/13/87	6/29/87	19,899	Plywood.
Parker Hannifin Corp. (workers)	Plymouth, MI	7/13/87	6/26/87	19,900	Power cylinders.
Rohm & Haas Chemical, Co. (workers)	Redwood City, CA	7/13/87	6/8/87	19,901	Ion exchange resins.
Sun Exploration & Production Co. (G.C.Dist.) (workers)	Midland, TX	7/13/87	6/13/87	19,902	Oil & gas
Sun Exploration & Production Co. (G.C.Dist.) (workers)	Lafayette, LA	7/13/87	6/13/87	19,903	Oil & gas
Sun Exploration & Production Co. (S.W.Dist.) (workers)	Midland, TX	7/13/87	7/1/87	19,904	Oil & gas
Terex Corporation (company)	Cleveland, OH	7/13/87	6/25/87	19,905	Tractors.
Texas Industries, Inc. (workers)	Midlothian, TX	7/13/87	6/30/87	19,906	Cement.
Total Minatome Corp. (workers)	Houston, TX	7/13/87	7/8/87	19,907	Oil & gas.
United Pipe & Supply, Inc. (company)	Midland, TX	7/13/87	7/2/87	19,908	Pipes.

[FR Doc. 87-16567 Filed 7-20-87; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; V & O Press Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 6, 1987–July 10, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–19,686; V & O Press Co., Inc., Hudson, NY

TA–W–19,676; Lamb-Grays Harbor Co., Hoquiam, WA

TA–W–19,677; Metaramics, Sunnyvale, CA

TA–W–19,534; Warner Jewelry Case Co., Buffalo, NY

TA–W–19,658; Bonanza Packing Co., Spokane. WA

TA–W–19,678; National Forge Co., Irvine, PA

TA–W–19,661; Calloy Corp., Pittsburgh, PA

TA–W–19,708; Ingersoll Rand Mining Machinery, Beckley, WV

TA–W–19,698; Freeport Brick Co., Freeport, PA

TA–W–19,654; American Tubular Systems, Inc., Oklahoma City, OK

TA–W–19,555; Photech Imaging Systems, Inc., Newton, NJ

TA–W–19,684; Telesciences Co. Systems, Inc., Fairfield, NJ

TA–W–19,671; Hobart Corp., Torrence Street, Dayton, OH

TA–W–19,671A; Hobart Corp., Huffman Avenue, Dayton, OH

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–19,685; Union Carbide Corp., Linde Div., Tonawanda, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,694; Cuero Contracting Co., Cuero, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,737; Multi-Repairs, Inc., Summersville, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,709; International Brotherhood of Electrical Workers, St. Joseph, MO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,757; DeNovo Oil and Gas, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,811; Kestran, Inc., Stafford, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,699; General Motors Corp., Fisher Guide Divisions, Columbus, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,693; Compressor Systems, Inc., Odessa, TX

U.S. imports of reciprocating compressors used in the oil industry are negligible.

TA–W–19,695; Dunlop Tire Corp., Utica, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19, 692; Beecham Products, Cranford, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19, 653; AT&T Information System, New Brighton, MN

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19, 651; ACCO Babcock Industries, Inc. South Bend, IN

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19, 688; Whirlpool Corp., St Division, St. Joseph, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19, 738; Oscar Mayer Foods Corp., Beardstown, IL

Imports of pork hams and shoulders declined in 1986 compared to 1985. Imports of sausage and bacon are negligible.

TA–W–19, 754; Henry Richard Co., Inc., New Haven, CT

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–19, 700; Global Marine Drilling Co., Lafayette, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19, 667; Crown Cork and Seal Co., Inc., Can Plant, Baltimore, MD

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19, 788; Peabody Coal Co., Charleston, WV

U.S. imports of bituminous steam coal, lignite, anthracite and metallurgical coal are negligible.

TA–W–19, 789; Peabody Coal Co., Twilight, WV

U.S. imports of bituminous steam coal, lignite, anthracite and metallurgical coal are negligible.

Affirmative Determinations

TA–W–19, 683; Stackpole Carbon Co., St. Marys, PA

A certification was issued covering all workers producing carbon, copper and graphite brushes separated on or after April 22, 1986.

TA–W–19, 505; Springfever Ltd, Springvale, ME

A certification was issued covering all workers of the firm separated on or after March 24, 1986.

TA–W–19, 659; Borg Warner Automotive Climate Control System, Decatur, IL

A certification was issued covering all workers of the firm separated on or after May 1, 1986.

TA–W–19, 687; Wainoco Oil and Gas Co., Houston, TX

A certification was issued covering all workers of the firm separated on or after April 14, 1986.

TA–W–19, 662; Carborundum Abrasives Co., Niagara Falls, NY

A certification was issued covering all workers of the firm separated on or after April 28, 1986.

TA–W–19, 743; Seasons Best, New York, NY

A certification was issued covering all workers of the firm separated on or after May 11, 1986.

TA–W–19, 733; Middlesex Manufacturing Co., Inc., Everett, MA

A certification was issued covering all workers of the firm separated on or after May 11, 1986.

TA–W–19, 800; AEI (Audio Environment, Inc.,), Seattle, WA

A certification was issued covering all workers of the firm separated on or after June 1, 1986.

TA–W–19, 780; Hewit & Dougherty, Refugio, TX

A certification was issued covering all workers of the firm separated on or after May 22, 1986.

TA–W–19, 725; Inmos Corp., Colorado Springs, CO

A certification was issued covering all workers of the firm separated on or after May 15, 1986 and before December 31, 1986.

TA–W–19, 672; Jantzen, Inc., Hood River, OR

A certification was issued covering all workers of the firm separated on or after May 1, 1986.

TA–W–19, 750; Wilker Brothers Co., Inc., McKenzie, TN

A certification was issued covering all workers of the firm separated on or after May 17, 1987.

TA–W–19,643; Sun Exploration and Production Co., Corpus Christi, TX

A certification was issued covering all workers of the firm separated on or after April 21, 1986.

TA–W–19,643A; Sun Exploration and Production Co., California

A certification was issued covering all workers of the firm separated on or after April 21, 1986.

TA–W–19,643B; Sun Exploration and Production Co., Florida

A certification was issued covering all workers of the firm separated on or after April 21, 1986.

TA–W–19,643C; Sun Exploration and Production Co., Kansas

A certification was issued covering all workers of the firm separated on or after April 21, 1986.

TA–W–19,643D; Sun Exploration and Production Company, Louisiana

A certification was issued covering all workers of the firm separated on or after April 21, 1986.

TA–W–19,643E; Sun Exploration and Production Co., Michigan

A certification was issued covering all workers of the firm separated on or after April 21, 1986.

TA–W–19,643F; Sun Exploration and Production Company, Mississippi

A certification was issued covering all workers of the firm separated on or after April 21, 1986.

TA–W–19,643G; Sun Exploration and Production Co., New Mexico

A certification was issued covering all workers of the firm separated on or after April 21, 1986.

TA–W–19,643H; Sun Exploration and Production Co., Oklahoma

A certification was issued covering all workers of the firm separated on or after April 21, 1986.

TA–W–19,643I; Sun Exploration and Production Co., Texas

A certification was issued covering all workers of the firm separated on or after April 21, 1986.

TA–W–19,643J; Sun Exploration and Production Co., WY

A certification was issued covering all workers of the firm separated on or after April 21, 1986.

TA–W–19,643K; Sun Exploration and Production Co., Colorado

A certification was issued covering all workers of the firm separated on or after April 21, 1986.

I hereby certify that the aforementioned determinations were issued during the period July 6, 1987—June 10, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 14, 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

[FR Doc. 87–16568 Filed 7–20–87; 8:45 am]

BILLING CODE 4510–30–M

Employment And Training Administration

Ammonium Paratungstate and Tungstic Acid

On June 5, 1987, the U.S. International Trade Commission (ITC) determined that market disruption exists with respect to imports of ammonium paratungstate and tungstic acid from the People's Republic of China, provided for in items 417.40 and 416.40, respectively, of the Tariff Schedules of the United States. (52 FR 23087)

Section 202(c)(1) of the Trade Act of 1974 directs the U.S. Department of Labor to report to the President certain information whenever ITC finds, as a result of an investigation under section 406 of the Act, that imports of a given article from a Communist country are the cause of market disruption with respect to like or directly competitive articles produced by the domestic industry.

The purpose of the report is to provide the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance, and the extent of which existing Department programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make the report public (with the exception of information which the Secretary determines to be confidential).

The U.S. Department of Labor has concluded its report on ammonium paratungstate and tungstic acid. The report found as follows:

1. Average employment of production and production-related workers producing ammonium paratungstate and tungstic acid declined steadily during 1982–1984, fell noticeably in 1985 and dropped sharply in 1986. Permanent employment levels are expected to continue declinging during 1987–1988. Temporary layoffs are also expected.

2. The Department of Labor (DOL) has received and processed three petitions involving workers in the ammonium paratungstate and tungstic acid industry since April 3, 1975, the effective date of the worker trade adjustment assistance (TAA) program. Two were received in 1982, and one in 1983. All three petitions were certified, covering 110 industry workers. One petition covering about 27 workers was in process at the time this report was being prepared.

As of May 31, 1987, DOL had paid $14,240 in trade readjustment allowances (TRA) to 11 workers formerly employed by firms producing ammonium paratungstate and tungstic acid. Job search allowances of $1,150 were paid to five industry workers, relocation allowances of $1,556 were paid to two industry workers, and $7,464 were spent on training for 12 industry workers.

3. Most of the production workers' occupations involved in ammonium paratungstate and tungstic acid operations are considered semiskilled to skilled, while those of most production-related workers are considered highly skilled.

4. Unemployment rates for two of the six areas with facilities producing ammonium paratungstate and tungstic acid during 1982–1986 were above the national unemployment rate of 7.2 percent (unadjusted) for May 1987. Reemployment prospects for most present and potential separated ammonium paratungstate and tungstic acid workers appear to be poor to fair.

5. A total of $29.9 million was available in Fiscal Year (FY) 1987 to provide training, job search and relocation allowances and related services, and an estimated $176.0 million is available to provide TRA payments to all eligible workers of U.S. industries, including eligible ammonium paratungstate and tungstic acid industry workers adversely affected by import competition.

Available FY 1987 training funds were fully allocated to the States by April 1987. State agencies have since been encouraged to examine the use of funds available under Title III of the Job Training Partnership Act (JTPA) as a resource to provide training services to trade impacted dislocated workers for the remainder of FY 1987. Dislocated workers from the ammonium paratungstate and tungstic acid industry may be eligible for benefits and services under this Title. Total Title III funding for Program Year 1987 (July 1, 1987–June 30, 1988) is $200.0 million. In addition, Congress has proposed and is considering at the time of preparation of this report a $15.8 to $20.0 million supplemental appropriation for TAA to be applied to training, job search, relocation and related services for the balance of FY 1987.

The Administration recently proposed a new Worker Readjustment Assistance Program (WRAP). WRAP will replace both the worker TAA and JTPA Title III programs, and will provide comprehensive coverage (including income maintenance payments) to dislocated workers regardless of the cause of their dislocation. Since WRAP is scheduled to commence during FY 1988, no FY 1988 funding requests have been made for the worker TAA program. Funding for both the worker TAA and JTPA Title III programs will be subsumed in FY 1988 by the $980.0 million proposed for the delivery of WRAP's benefits and services.

Copies of the Department's report containing nonconfidential information developed in the course of the three-month investigation may be purchased by contacting Larry Ludwig, Office of Trade Adjustment Assistance, U.S. Department of Labor, 601 D Street, NW., Room 6434, Washington, DC 20213 (phone 202–376–2646).

Singed at Washington, DC, this 15th day of July 1987.

Roberts T. Jones,

Deputy Assistant Secretary of Labor.

[FR Doc. 87–16564 Filed 7–20–87; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–19,145]

Negative Determination Regarding Application for Reconsideration; Pennzoil Exploration and Production Company Denver District Office Denver, CO

By an application dated May 15, 1987, the petitioners requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at the Denver District Office of the Pennzoil Exploration and Production Company (PEPCO). The denial notice was signed on April 17, 1987 and published in the **Federal Register** on May 12, 1987 (52 FR 17852).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners claim that the workers were employed by PEPCO, a division of Pennzoil Company, and had nothing to do with the sale of refined products. The petitioners also claim that decreased profits resulting from falling crude oil prices were responsible for worker separations at Denver. Finally, petitioners claim that workers of at least six other integrated oil and gas companies in Colorado have been certified eligible for adjustment assistance while workers at the Denver District Office of PEPCO were not.

Investigation findings show that workers at the Denver District Office managed the Western Division of PEPCO. The Denver office provided management and administrative services for the exploration and production of natural gas and crude oil. In 1986, the Houston, Texas corporate office assumed the duties formerly provided by the Denver office as part of a company wide cost reduction program brought about by decreased revenues and falling crude oil prices. However, falling crude oil prices and decreased profits, in themselves, do not form a basis for certification. Prices and profits are not criteria for a worker group certification under the Trade Act.

Investigation findings show that the Western Division of PEPCO produced mainly crude oil with some natural gas. Workers are not separately identifiable by product. The findings show that sales and production of crude oil in the Western Division of PEPCO, increased in 1986 compared to 1985. With respect to the entire PEPCO operation, production of crude oil, condensate and natural gas liquids decreased somewhat in 1986 compared to 1985; however, domestic production of crude oil in areas outside of the Gulf Coast and the Appalachian basin increased in 1986 compared to 1985. PEPCO does not import crude oil. With respect to natural gas, U.S. imports of dry natural gas declined absolutely and relative to domestic shipments in 1986 compared with 1985.

The Department addressed Pennzoil's refined production in its negative determination to show that support workers at the Denver District Office do not qualify for adjustment assistance under the integration of production principle. Under certain conditions, service or support workers may become eligible for benefits. In general, the conditions are that the reduction in demand for services must be determined to have originated at a production facility related to the workers' firm by ownership whose workers independently meet the statutory criteria for certification. However, these conditions do not exist for workers of the Denver District Office since there are no Pennzoil Company facilities where workers are certified eligible to apply for adjustment assistance. Petitions for workers of the Pennzoil Company, in Houston, Texas (TA–W–18,025); Charleston, West Virginia (TA–W–18,967) and Parkersburg, West Virginia (TA–W–18,968) also were recently denied.

With respect to the claim that workers at Exxon, Tenneco, Chevron, Cities Service, Total Petroleum and American Petrofina in Denver, Colorado were certified eligible for adjustment assistance and workers at the Denver Office of Western Division of PEPCO were not, the Department's records show that workers at these companies met the statutory worker group certification criteria of section 222 of the Trade Act. Investigation findings for Chevron (TA–W–18,381); Fina Oil (TA–W–18,541); and Exxon (TA–W–19,193) showed increased company imports of crude oil in 1986 compared to 1985 or in the case of Total Petroleum (TA–W–19,322) increased reliance on imported crude oil in 1986 compared to 1985. Investigation findings for Cities Service (TA–W–18,064) and Tenneco (TA–W–18,503) showed that their customers had increased purchases of imported crude oil in 1986 compared to 1985 while decreasing purchases from Cities Service and Tenneco.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify

reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of July 1987.

Barabara Ann Farmer,

Acting Director, Office of Program Management, UIS.

[FR Doc. 87-16563 Filed 7-20-87; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-127-C]

Petition for Modification of Application of Mandatory Safety Standard; Aspen Mining Company, Inc.

Aspen Mining Company, Inc., P.O. Box 149, Durbin, West Virginia 26264 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Enviro No. 3 Mine (I.D. No. 46-06362) located in Randolph County, West Virginia. 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 return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to the remote nature of the entries, it would be hazardous to examine them in their entirety. In many locations, the floor is mostly mud and water. Mobility of equipment within the affected area is very difficult and in some instances impossible. Therefore, if an individual were injured while performing the weekly examination, it would be very time consuming if not impossible to reach the individual with the necessary emergency equipment.

3. Petitioner further states that these conditions do not effect the velocity or quantity of air passing through the return air entries. Rehabilitation of the area would be exposing miners to hazardous conditions.

4. As an alternate method, petitioner proposes to establish weekly check points to evaluate the quantity of air passing through the affected areas.

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 August 20, 1987. Copies of the petition are available for inspection at that address.

Dated: July 14, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-16560 Filed 7-20-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-131-C]

Petition for Modification of Application of Mandatory Safety Standard; K & M Coal Company, Inc.

K & M Coal Company, Inc., HC 73, Box 180, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 6 Mine (I.D. No. 15-14635), its No. 7 Mine (I.D. No. 15-15517), and its No. 8 Mine (I.D. No. 15-15538) all located in Knox County, Kentucky. 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 a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alternatives or modifications will be made in addition to the manufacturer's specifications.

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 August 20, 1987. Copies of the petition are available for inspection at that address.

Date: July 14, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-16561 Filed 7-20-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-136-C]

Petition for Modification of Application of Mandatory Safety Standard; Minton Hickory Coal Company, Inc.

Minton Hickory Coal Company, Inc., P.O. Box 922, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 3 (I.D. No. 15-16001) located in Whitley County, Kentucky. 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 a methane monitor be installed on any electric face cutting

equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissable DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petititioner 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 August 20, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-16562 Filed 7-20-87; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-61)]

NASA Advisory Council (NAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, NASA announces a forthcoming meeting of the NASA Advisory Council, Informal Space Life Sciences Committee.

DATES AND TIME: August 17, 1987, 9 a.m. to 5 p.m. and August 18, 1987, 9 a.m. to 3 p.m.

ADDRESS: The Boston Park Plaza Hotel, Park Plaza at Arlington Street, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Dr. James H. Bredt, Code EBR, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1540).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Informal Space Life Sciences Committee was established to formulate a comprehensive strategic plan for space life sciences, identify essential efforts with appropriately phased objectives, and define efficient implementing strategies to pursue these goals. The Committee, chaired by Dr. Frederick C. Robbins, has 18 members.

This meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including Committee members and other participants).

Type of Meeting: Open.

Agenda: August 17, 1987, 9 a.m.—Opening Remarks.

9:15 a.m.—Study Group Reports and Discussion.

5 p.m.—Adjourn.

August 18, 1987, 9 a.m.—Plans for Final Report Preparation.

3 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

July 15, 1987.

[FR Doc. 87-16510 Filed 7-20-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESS: Comments should be addressed to Director, Division of Personnel and Management, National Science Foundation, Room 208, 1800 G Street, NW, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Mr. John Wilkinson or Ms. Patricia Bond at the above address or (202) 357-7857.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Permanent Membership

John H. Moore, Deputy Director, Chairperson

Jeff Fenstermacher, Assistance Director for Administration, Executive Secretary

Rotating Membership

Judith S. Sunley, Director, Division of Mathematical Sciences, Directorate for Mathematical and Physical Sciences

Frank L. Huband, Director, Division of Emerging Engineering Technologies, Directorate for Engineering

Ian D. MacGregor, Deputy Director, Division of Earth Sciences, Directorate for Geosciences

William L. Stewart, Director, Division of Science Resources Studies, Directorate for Scientific, Technological and International Affairs

W. Franklin Harris, Deputy Director, Division of Biotic Systems and Resources, Directorate for Biological, Behavioral and Social Sciences

Robert F. Watson, Head, Office of College Science Instrumentation, Directorate for Science and Engineering Education
James M. McCullough, Director, Evaluation Staff, Office of Budget, Audit and Control, Office of the Director
Charles N. Brownstein, Executive Officer, Directorate for Computer and Information Science and Engineering

Margaret L. Windus,

Director, Division of Personnel and Management.

July 15, 1987.

[FR Doc. 87-16443 Filed 7-20-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Decay Heat Removal Systems; Meeting

The ACRS Subcommittee on Decay Heat Removal Systems will hold a meeting on August 5, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, August 5, 1987—8:30 A.M. Until the Conclusion of Business

The Subcommittee will review the resolution status for: (1) GI 23: "RCP Seal Failure," (2) GI 93: "Steam Binding of AFW Pumps, and (3) GI 124: "AFW System Reliability."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: July 15, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87-16540 Filed 7-20-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Submmmittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hyraulic Phenomena will hold a meeting on August 4, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, August 4, 1987—8:30 A.M. Until the Conclusion of Business

The Subcommittee will: (1) Review development of Uncertainty Methodology for BE ECCS Codes, (2) review status of the Generic Issue addressing Steam Generator/Steal Line Overfill Issues, (3) discuss the status of the Water Hammer Issue, (4) discuss a potential issue regarding long-term core cooling given a LOCA, and (5) discuss proposed review of the NRC-RES thermal hydraulic research Program.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: July 15, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87-16539 Filed 7-20-87; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, MS 527-4 (which should be mentioned in all correspondence concering this draft guide), is proposed Revision 1 to Regulatory Guide 7.8, "Load Combinations for the Structural Analysis of Shipping Casks for Irradiated Fuel." This guide is being revised to present the initial conditions that are considered acceptable by the NRC staff for use in the structural analysis of Type B packages used to transport irradiated nuclear fuel.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both the guide (including any implementation schedule) and the value/impact statement. Comments on the draft value/impact statement should be accompanied by support data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Comments will be most helpful if received by September 18, 1987.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Pubic Document Room, 1717 H Street, NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

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

Dated at Rockville, Maryland, this 15th day of July 1987.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 87-16559 Filed 7-20-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 55-60755, ASLBP No. 87-551-02-SP]

Senior Operator License for Bearer Valley Power Station, Unit 1; Hearing; Alfred J. Morabito

July 15, 1987.

Before Administrative Judge: Charles Bechhoefer.

Notice is hereby given that the Nuclear Regulatory Commission, by Order dated July 1, 1987, has granted the request of Alfred J. Morabito for a hearing on the NRC Staff's denial of his application for a senior operator license for the Beaver Valley Nuclear Power Station. The Commission authorized an informal hearing, which is to be conducted by the undersigned Presiding Officer. The parties to this proceeding are limited to Mr. Morabito and the NRC Staff.

Further details are provided in the Presiding Officer's Memorandum and Order dated July 15, 1987. As there set forth, the Presiding Officer has determined to follow for guidance the Commission's proposed rules entitled "Informal Hearing Procedures for Materials Licensing Adjudications," published at 52 FR 20089 (May 29, 1987). This informal adjudication may be decided entirely on the basis of the parties' written filings, together with relevant documents. In addition, the Presiding Officer has discretion to entertain oral presentations from the parties. Any oral presentation will be held in the vicinity of Mr. Morabito's business location (i.e., near Pitsburgh, PA) or at such other location as may be agreed upon by the parties and approved by the Presiding Officer.

Members of the public are invited to submit limited appearance statements with regard to the license application, as permitted under proposed 10 CFR 2.1211 (see 52 FR at 20094). If an oral presentation is held, members of the public will be afforded the opportunity to make oral limited appearance statements. In any event, written statements may be submitted. Written statements, or requests to make oral statements if an oral presentation is to be held, should be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, 1717 H Street, NW., Washington, DC 20555. A copy of such a statement or request should also be served on the Presiding Officer.

Dated at Bethesda, Maryland, this 15th day of July, 1987.

Presiding officer.

Charles Bechhoefer,

Administrative Judge.

[FR Doc. 87-16541 Filed 7-20-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24706; File No. SR-MBS-87-6]

Self-Regulatory Organizations; Proposed Rule Change by MBS Clearing Corporation Relating to a Proposal To Offer Clearing and Recording Services for Option Contracts; Notice of Filing

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 25, 1987 the MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is a proposed rule change to the Clearing Division ("Clearing Division") rules of MBS Clearing Corporation ("Corporation") which reflect the Corporation's proposal to offer clearing and recording services for option contracts involving "government securities", as defined in section 3(a)(42) of the Securities Exchange Act of 1934, as amended.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Clearing Division

to offer clearing and recording services in option contracts where the underlying contract or arrangement concerns the purchase or sale of government securities. The proposed rule changes are intended to make it clear that only contracts for the purchase of Eligible Mortgage Backed Securities (not Eligible Government Securities) are eligible for clearance through the Settlement Balance Order ("SBO") and Trade-for-Trade Systems.

To reflect the new service, the proposed rule change would add new definitions for "Mortgage Backed Securities" and "Government Securities". Mortgaged Backed Securities are those which previously were identified in the Clearing Division Rules as "Securities", while Government Securities are "government securities", other than Mortgage Backed Securities, as defined in the Securities Exchange Act of 1934. The term "Securities" now includes both Mortgage Backed Securities and Government Securities. The definition of "Eligible Securities" has been expanded to cover option contracts for Government Securities with respect to which the Corporation will offer recording services ("Eligible Government Securities"). Those securities previously designated as eligible for clearance through the Clearing Division's Trade-for-Trade or SBO System are referred to as "Eligible Mortgage Backed Securities".

The definitions have been modified to indicate where various terms are applicable only to Mortgage Backed Securities (e.g., Delayed Delivery Contract, FHLMC Securities, FNMA Securities, GNMA Securities, Guaranteed Coupon, Par/Price Cap, Principal and interest Payment Date, PSA Guidelines, Reclamation Record Date, SBO Amortized Value Adjustment, Settlement Class, and Specified Transaction).

The Corporation is also given the authority to designate Mortgage Backed Securities eligible for clearance through the Trade-for-Trade or SBO System and Government Securities eligible for recording as option contracts. The rules make it clear that only contracts for the purchase or sale or Eligible Mortgage Backed Securities are eligible for clearance through the Trade-for-Trade or SBO System. The Corporation will merely provide recording services (including computation and collection of Market Margin Differential pursuant to Article IV, Rule 2, Sec. 1) for unexpired and unexercised option contracts for Eligible Government Securities. No services will be provided with respect to contracts for purchase or sale of Government Securities upon exercise of option contracts.

The proposed rule change (i) expands the provisions specifying the time for submitting trade input to cover option contracts, (option contracts, for this purpose, have heretofore been viewed as Trade-for-Trade transactions), (ii) clarifies that certain information to be submitted with respect to option contracts is applicable only to option contracts for Eligible Mortgage Backed Securities, and (iii) clarifies that only contracts for the purchase or sale of Eligible Mortgage Backed Securities upon exercise of option contracts may be entered into the Trade-for-Trade or SBO System. A new provision also specifies a cut-off time for submitting corrections to purchase and sales reports pertaining to option contracts.

Upon approval by the Commission of the proposed rule changes, option contracts involving U.S. Treasury notes and bonds will be eligible for clearance by the Corporation.

The proposed rule change is consistent with the Securities Exchange Act of 1934 in that it facilitates the prompt and accurate clearance and settlement of transactions in option contracts involving government securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change have not yet been solicited or received. However, copies of the text of the proposed rule change will be distributed to Clearing Division Participants for comments. The Corporation will notify the Securities and Exchange Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) ask to which the self-regulatory organization consents, the Commission will: (A) by order approve the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to the File No. SR–MBS–87–6 and should be submitted by August 11, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 15, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–16500 Filed 7–20–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24705; File No. SR–MCC–87–03]

Self-Regulatory Organizations; Midwest

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 2, 1987, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On June 26, 1987, MCC amended this filing to reflect that MCC will guarantee the completeness of all pending Continuous Net Settlement trades as of 11:59 p.m. (EST), rather than midnight, of the day trades are reported to Participants, as compared. 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

Attached as Exhibit A is a copy of a Bulletin for Midwest Clearing Corporation ("MCC") which announces the implementation of a policy to guarantee all pending Continuous Net Settlement ("CNS") trades as of midnight on the day trades are reported to Participants, as compared, along with appropriate changes to the calculation of Participants Fund contributions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will authorize MCC to implement a policy of guaranteeing the completeness of all pending CNS settling trades as of midnight of the day the trades are reported to Participants, as compared. The proposed rule change would also authorize MCC to revise its Participants' Fund contribution calculation so as to help offset the increased risks to MCC or its Participants because of the improved trade guarantee.

MCC's rules provide that, under certain circumstances, MCC may either (i) eliminate from its operation any and all pending transactions to which a Participant is a party, or (ii) complete such transactions. (MCC Article VII, Rule 2 and Rule 3). At the present time, MCC guarantees Regional Interface Organization (RIO) trades with other clearing corporations as of the fourth day after trade date (T+4). All other settling trades are guaranteed as of the actual settlement date. Until T+4 or the applicable settlement date, the Participant incurs the risk for the contra-side of the trade defaulting if MCC ceases to act for a Participant experiencing difficulty. Pending CNS trades that do not meet specified guarantees are then cancelled and "existed" from the CNS System. It is then the responsibility of the defaulting and non-defaulting firms to settle the transaction on an individual basis.

Under the proposed new Trade Guarantee policy, MCC will interpose itself between parties to trades under CNS and guarantee the completeness of all CNS settling trades as of midnight the day the trades are reported to Participants, as compared. Any "locked-in" or automatically compared trades will be guaranteed as of midnight on T+1. The guarantee for all other trades will become effective as of midnight the trades are reported to Participants as compared (usually T+2). Upon the execution of agreements with other clearing agencies, RIO CNS trades listed on the "Purchase and Sales" Report will be guaranteed by the receiving clearing agency as of midnight the day the trades are reported to such agencies' participants, as compared. MCC will not, however, guarantee such trades to any clearing agency unless such agency has also adopted a comparable trade guarantee.

In order to help minimize any additional risks to MMC or its Participants resulting from the new Trade Guarantee, and to more adequately collateralize any CNS system risks, MCC also proposes modifications to the existing MCC Participant Fund Contribution. Additional formula Participant contributions, determined by daily net debit exposure, may be required to be deposited to the Participants Fund.

For the effective date of the proposed Trade Guarantee Policy, contributions to the Participants' Funds will be assessed to Participants based on the following formula: (i) All pre-settlement long and short settling CNS trades will be summarized daily for a twenty-day period terminating on a date approximately two-weeks before the effective date of the Trade Guarantee policy, (ii) for each day that a firm has a net debt exposure, based on mark to market, such firm will be assessed at a rate of 102% of the net debit exposure; and (iii) the average twenty-day net debit exposure figure will serve as the additional Participants' Fund contribution. Participants whose average net debit exposure for the twenty day period is below the initial $5,000 Participants' Fund deposit will not be required to provide additional funds.

Procedures pertaining to contributions to the Fund after the effective date will be as follows: (i) Calculation of fund requirements will take place daily, (ii) increases of the net debit exposure, less than or equal to 10%, of the twenty-day net debit exposure moving average will be assessed weekly, and (iii) a net debit exposure increase of more than 10% over the twenty-day net delivery exposure moving could be requested the day of calculation. However, senior MCC management may, in its discretion, pend such requests until the weekly assessment. Any interest received from the investment of Participants' Funds, less a daily service charge of .05% to cover the administration of such Funds, shall accrue to the Participants.

MCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934 in that the new Trade Guarantee policy provides for the prompt and accurate settlement of securities transactions through increased stability and accounting in the securities markets. In addition, MCC's modifications to the existing MCC Participants' Fund contributions are necessary to more adequately protect MCC for additional risks assumed in the proposed Trade Guarantee, including potential defaults of Participants or risks incurred due to trades which have not settled and payment has not been received.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have not generally been solicited or received regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Soliciation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 11, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 15, 1987.

Jonathan G. Katz,

Secretary.

Exhibit A

June 1, 1987.

All MCC Participants
Chief Financial Officers/Partners
Chief Operations Officers/Partners
New Service—Guarantee of Pending Trades

Effective upon approval by the Securities and Exchange Commission, Midwest Clearing Corporation (MCC) plans to implement an improved Trade Guarantee policy that will benefit all Participants. MCC will guarantee all pending Continuous Net Settlement (CNS) settling trades as of midnight of the day the trades are reported to members, as compared, thus helping to reduce the risks currently borne by MCC Participants.

MCC's rules currently provide that MCC may, under certain circumstances, eliminate from its operations any or all pending transactions to which a Participant is a party or complete such transactions. At the present time, MCC guarantees Regional Interface Organization (RIO) with other clearing corporations trades as of the fourth day after trade date (T+4) and all other settling trades as of settlement date. Until T+4 or the applicable settlement date, the Participant incurs the risk for the contra-side of the trade defaulting if MCC ceases to act for a Participant experiencing financial or operational difficulty. Pending CNS trades that do not meet specified guarantees are then cancelled and exited from the CNS system. It is then the responsibility of the defaulting and non-defaulting firms to settle the transaction on an individual basis.

In order to more fully meet the needs of Participants, as well as provide for increased stability and certainty in the securities markets, MCC has determined to implement a policy of guaranteeing the completeness of all CNS settling trades as of midnight the day the trades are reported to Participants, as compared. Any "locked-in" or automatically compared trades will be guaranteed as of midnight on T+1. The guarantee for all other trades will become effective as of midnight the day the trades are reported to Participants as compared (usually T+2). Upon the execution of agreements with other clearing agencies, RIO CNS trades listed on the "Purchase and Sales Report" will be guaranteed by the receiving clearing agency as of midnight the day the trades are reported to such agencies' participants, as compared. However, MCC will not guarantee such trades to any clearing agency unless such agency has also adopted a comparable trade guarantee.

MCC's rules provide that a Participant's contribution to the MCC Participants' Fund may be increased from time to time based on the Participant's anticipated usage of MCC's facilities. In connection therewith, and in order to help minimize any additional risk to MCC or its Participants because of the assumption of per-settlement trades, modifications to the existing MCC Participant Fund contribution formula are necessary. Additional Participant contributions, determined by daily net debit exposure, may be required to be deposited to the Participant's Fund.

Contributions to the Participant's Fund, for the effective date of the new Trade Guarantee, will be assessed to Participants based on the following formula:

- All per-settlement long and short settling CNS trades will be summarized daily for a twenty-day period terminating on a date approximately two-weeks before the effective date of the new Trading Guarantee Policy. For each day that a firm has a net debit exposure, based on mark to market, it will be assessed at a rate of 102% of such exposure. The average twenty-day net debit exposure figure will serve as the additional Participant Fund contribution. Participant whose average net debit exposure for the twenty-day period is below the initial $5,000 Participant Fund deposit will not be required to provide additional funds.
- All Participants will be required to meet their obligations according to MCC Article IX, Rule 2, Section 1 (Contributions of Participants to Participants Fund). As defined in this rule, cash, negotiable debt securities guaranteed by the U.S. Government, and qualifying letters or credit are acceptable means of meeting this obligation. MCC will notify any Participant of any increase that may be required in a Participant's initial contribution in the Participant's fund.

Procedures pertaining to contributions to the Fund after the effective date will be as follows:

- Calculation of fund requirements will take place daily.
- Increases of the net debit exposure, less than or equal to 10%, of the twenty-day net debit exposure moving average will be assessed weekly. Phone notification will be made and a follow-up letter issued.
- A net debit exposure increase of more than 10% over the twenty-day net debit exposure moving average could be requested the day of calculation. However, MMC senior management may, in its discretion, pend such requests until the weekly assessment.
- Participant electing to meet their obligations for the pre-settlement portion of the Clearing Participant Fund with cash will have these funds invested in accordance with MCC Article IX, Rule 2, Section 2 (Investing of Participant Fund). Any interest received from such investments, less a daily service charge of. 05% to cover the administration of this fund, shall accrue to the Participant. MCC's Surveillance Department will provide a monthy statement detailing the earnings of these funds as well as reporting total Participants' Funds on deposit.

Refund requests of contributions made in excess of the required CNS Trade Guarantee amount may be submitted in writing to the MCC Surveillance Department.

MCC is currently negotiating with the Options Clearing Corporation (OCC) in order to extend this guarantee to trades resulting from the exercise of an option to buy or sell securities. Further details concerning this development will be provided in future administrative bulletins.

Participants comments or questions regarding this notice may be directed to Stephen F. Mazur, MCC/MSTC Manager of Controls, at (312) 663-2531 or to the undersigned at (312) 663-2393.

William P. Alberth,

Senior Vice-President MCC/MSTC

[FR Doc. 87-16501 Filed 7-20-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24707; File No. SR-CBOE-87-20]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on May 7, 1987, submitted to the Securities and Exchange Commission a proposed rule change relating to Exchange investigations. The proposed rule change was published for comment in Securities Exchange Act Release No. 24538 (June 3, 1987), 52 FR 22015. No comments were received.

The proposed Interpretation to CBOE Rule 17.2 would provide that a failure to furnish testimony, documentary evidence or other information requested

[1] 15 U.S.C. 78s(b)(1) (1984).
[2] 17 CFR 240.19b-4 (1986).

by the Exchange during an inquiry or investigation on the date or in the time period specified by the CBOE would be presumed to be obstructive of an Exchange inquiry or investigation, in violation of Rule 17.2. By stating that a late response creates only a presumed violation, the amendment would allow for consideration of mitigating circumstances.

According to the CBOE, the amendment would improve the Exchange's ability to investigate violations within its disciplinary jurisdiction and dispose promptly of pending matters. In particular, the CBOE notes that investigations concerning insider trading and frontrunning would be enhanced by timely submissions of information by member firms.

The Commission believes that the proposed amendment will enhance the CBOE's ability to conduct investigations in a timely manner, without burdening unduly the members being investigated. The amendment therefore will help to protect investors and the public interest and prevent fraudulent and manipulative acts and practices.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [3] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 15, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-16570 Filed 7-20-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1090]

International Radio Consultative Committee; Meeting of the National Committee of the U.S. Organization

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on August 4, 1987, at 10:00 a.m. in Room 1205, Department of State, 2201 C Street, NW., Washington, DC.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCIR activities; provides advice on matters of policy and positions in preparation for CCIR Plenary Assemblies and meetings of the international Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCIR which are submitted to the Committee for consideration.

The main purpose of the meeting will be:

1. Report on CCIR preparations for Space WARC (to be discussed 10:00–12:00 a.m.)

—National conference preparations

—Contributions to the Joint Interim Working Party, December 7–18, 1987

2. High definition television (HDTV) (to be discussed approximately 1:30–4:00 p.m.)

—Report on recent international meetings (e.g., IWP 11/6)

—Relevant national activities

—Discussion of future strategy

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Richard Shrum, Department of State, Washington, DC.; telephone (202) 647–2592. All attendees must use the C Street entrance to the building.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

July 2, 1987.

[FR Doc. 87-16469 Filed 7-20-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1092]

International Telegraph and Telephone Consultative Committee (CCITT); Meeting of the Integrated Services Digital Network (ISDN), Joint Working Party and Study Group C of the U.S. Organization

Notice of Meeting

The Department of State announces that the ISDN Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on August 5, 1987 in the Offices of Bell Communications Research, Inc, 2101 L Street, NW., 6th Floor, Rooms B1 and B2.

The schedule will be:

9:30 a.m.—12:00 noon Study Group C (non-ISDN contributions to Study Group XI)

1:00 p.m.—4:00 p.m. JWP (ISDN contributions to Study Group XI)

The agenda will cover the Report of the recent Study Group XVIII Meeting in Hamburg; consideration of contributions to Study Group XI Working Parties Meeting in Geneva, beginning August 17 and the Nominations for U.S. Delegation to CCITT.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should do so by calling Lorrie McMullin at 201 758–2468.

Date: July 1, 1987.

Earl S. Barbely,

Director Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 87-16470 Filed 7-20-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1093]

International Telegraph and Telephone Consultative Committee (CCITT); Meeting of Study Group D of the U.S. Organization

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on August 21, 1987 at 10:00 a.m. in Room 1408, Department of State, 2201 C Street, NW, Washington, DC.

The purpose of the meeting will be to review results of Study Group VII meeting and prepare and approve U. S. Contributions to upcoming meeting of Study Group XVII.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653–6102. All attendees must use the C Street entrance to the building.

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[3] 15 U.S.C. 78f (1984).

[4] 15 U.S.C. 78s(b)(2) (1984).

Date: July 9, 1987.

Earl Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 87-16471 Filed 7-20-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1091]

Shipping Coordinating Committee, Meeting of the Subcommittee on Safety of Life at Sea Working Group on Fire Protection

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will conduct an open meeting on Thursday, August 13, 1987, at 9:30 in Room 2415 of the Coast Guard Headquarters Building, 2100 Second Street, SW. Washington, DC 20593.

The purpose of this meeting will be to discuss results of the 32nd session and plans for the 33rd session of the International Maritime Organization (IMO) Subcommittee on Fire Protection, February 15–19, 1988, including: fire test procedures, smoke and toxicity issues, line clearing in chemical tankers, location and separation of spaces, ships carrying dangerous goods, ventilation openings in doors, devices to prevent the passage of flame, materials other than steel for pipes, fire protection systems for passenger ship safety, below deck openings to cargo tanks, and other miscellaneous subjects.

Members of the public may attend up to the seating capacity of the room. For information contact: Ms. Marjorie Murtagh, U.S. Coast Guard (G-MTH-4), 2100 Second Street SW., Washington, DC 20593; Telephone: (202) 267-2997.

Date: July 9, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87-16472 Filed 7-20-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of Hearings

[Docket No. 44719]

USAir-Piedmont Acquisition Case; Hearing

Served: July 17, 1987.

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on July 21, 1987, at 1:00 p.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC, before the undersigned administrative law judge.

Dated at Washington, DC, July 17, 1987.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 87-16613 Filed 7-17-87; 2:02 pm]

BILLING CODE 4910-62-M

Federal Aviation Administration

Flight Service Station at Bryce Canyon, UT; Closing

Notice is hereby given that on or about July 30, 1987, the Flight Service Station at Bryce Canyon, Utah will be closed. Services to the aviation public formerly provided by this facility will be provided by the Automated Flight Service Station in Cedar City, Utah. This information will be reflected in the FAA Organization Statement the next time it is issued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Seattle, Washington, on July 9, 1987.

F. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-16439 Filed 7-20-87; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station at Dallesport, WA; Closing

Notice is hereby given that on or about July 30, 1987, The Dalles, Oregon Flight Service Station located at Dallesport, Washington will be closed. Services to the aviation public formerly provided by this facility will be provided by the Automated Flight Service Station in Seattle, Washington. This information will be reflected in the FAA Organization Statement the next time it is issued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Seattle, Washington, on July 9, 1987.

F. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-16439 Filed 7-20-87; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station at Hoquiam, WA; Closing

Notice is hereby given that on or about July 30, 1987, the Flight Service Station at Hoquiam, Washington will be closed. Services to the aviation public formerly provided by this facility will be provided by the Automated Flight Service Station in Seattle, Washington. This information will be reflected in the FAA Organization Statement the next time it is issued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Seattle, Washington, on July 9, 1987.

F. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-16439 Filed 7-20-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 15, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0087
Form Number: 1040-ES, 1040-ES (NR), 1040-ES (Espanol)
Type of Review: Revision
Title: Estimated Tax for Individuals (3 forms) 1) U.S. Citizens and Residents, 2) For Nonresident Aliens, 3) For use in Puerto Rico (in Spanish)
Description: Form 1040-ES is used by individuals (including self-employed) to make estimated tax payments if their estimated tax is $500 or more. IRS uses the data to credit taxpayers' accounts and to determine if the estimated tax has been properly computed and timely paid.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 5,078,672 hours

OMB Number: 1545-0879
Form Number: None
Type of Review: Extension
Title: Exclusion from Gross Income Attributable to Unsold Magazines, Paperbacks, or Records Returned Within A Certain Time
Description: The regulations provide rules relating to an exclusion from gross income for certain returned merchandise. The regulations provide that in addition to physical return of the merchandise, a written statement listing certain information may constitute evidence of the return. Taxpayers who receive physical evidence of the return may, in lieu of

retaining the physical evidence, retain documentary evidence of the return. Taxpayers in the trade or business of selling magazines, paperbacks, or records, who elect to use a certain method of accounting, are affected.

Respondents: Businesses

Estimated burden: 1 hour

Clearance Officer: Garrick Shear, (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20305

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 87-16563 Filed 7-20-87; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 19-87]

Treasury Notes of July 31, 1989, Series AB-1989

Washington, July 16, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of July 31, 1989, Series AB-1989 (CUSIP No. 912827 VC 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agenst for foreing and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated July 31, 1987, and will accrue interest from that date, payable on a semiannual basis on January 31, 1988, and each subsequent 6 months on July 31 and January 31 through the date that the principal becomes payable. They will mature July 31, 1988, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2 The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3 The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitives or in bearer form.

2.5 The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, July 22, 1987. Noncompetitive tenders as defined below below will be considered timely if postmarked no later than Tuesday, July 21, 1987, and received no later than Friday, July 31, 1987.

3.2 The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tenders form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, no make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purposes are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted

competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whose or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, July 31, 1987. Payment in full must accompany tenders submitted by all other investors. Payment be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institition to which the tender was submitted, which must be received from institutional investors no later than Wednesday, July 29, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, July 31, 1987. When payment has been submitted with the tender and the puchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notices.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendment do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-16683 Filed 7-20-87; 10:44 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

American Studies Winter Institute

Contingent upon the availability of funds, the Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) will sponsor a *Winter Institute in American Studies* for thirty to thirty-five secondary school teachers of English, History and Social Studies. Participants will come from countries in Latin America and Africa. USIA is asking for detailed proposals from institutions which have an acknowledged reputation in American Studies and special expertise in handling cross-cultural programs.

The objective of the Institute is to support and encourage the efforts of other countries to improve the quality of teaching about American society and culture at the secondary level. The program should be designed for teacher educators and/or secondary-level classroom teachers with responsibilities in curriculum planning and course and materials development whose teaching assignments require a general-up-to-date knowledge of American civilization and culture. Their academic preparation can be in the field of American history, literature, geography and language.

Time Frame and General Description

The Institute should be programmed to last approximately 45 days, beginning on or about Thursday, January 7 and ending on or about Saturday, February 20, 1988. The participants may arrive directly to the campus site from their home country or in Washington, DC. It is expected that the university program staff will make arrangements to have participants met upon arrival in the U.S. Few if any participants will have visited the United States previously. In view of this, an initial orientation to the U.S. should be considered an integral part of the Institute and should be held on the first two or three days of the program on the university campus or in Washington. The applicant is asked to design a two-part program: (a) A 4-week academic program at the university and (b) a two-week accompanied tour of different regions of the United States, planned and arranged by the Program Director and principal university staff. The tour segment should be seen as an integral part of the program, complementing and reinforcing the academic material. The tour should include a three-to four-day visit to Washington, DC at the end of the tour before participants depart for their home countries. Programming in Washington should include a briefing session at U.S. Information Agency.

Program Objectives

The Institute should be a graduate level, multidisciplinary academic program aimed at improving the participants' understanding of American society and institutions and contemporary issues most relevant to shaping of these institutions. The Institute should provide a basic overview of key events, themes and documents in U.S. history, and should

include materials accordingly. In addition, academic instruction should address a range of views on American values and character; social, economic and literary history; geographical features; forms of creative expression; and education, religion, industry and technology. The academic program should maintain a relative balance among plenary sessions, lectures, workshops and practicums. Lengthy lectures should not be the usual format. The prosposal should include a detailed syllabus and bibliography.

Activities should include an orientation to the U.S. and the university community, field trips to palces of local interest, home stays with families in the area (other secondary educators if possible), and events which will bring the participants into contact with Americans from different walks of life. These encounters will give the participants a chance to experience American society, its institutions and language and observe the variety of attitudes that constitute one of our country's most striking characteristics.

In addition to the substantive presentations and discussions about American society, the Institute should focus upon pedagogical concerns, materials and curricular development for teaching about the U.S., and available materials and audio-visual resources. It should be noted that these participants will come from several different disciplines—EFL, History, Geography, and Literature—and from a variety of educational systems. Most systems have rigorous teacher training programs for certification, and classroom methods evaluated and approved by regional inspectors. Similarly, some systems require adherence to an assigned textbook while others allow significant flexibility to teachers in determining what materials they will use in presenting a lesson. The variety of approaches and experiences should provide the basis for interaction which will be both culturally and professionally stimulating to the entire group.

All programming and administrative logistics, management of the academic program, and cultural tour will be the responsibility of the university. A project secretary and/or project assistant is required to carry out administrative duties required for the smooth operation of the Institute during the program grant period and completion of required reports to USIA. USIA will be responsible for all communications to and from the U.S. Information Service posts abroad and will be happy to offer any advice or guidance the University might find useful. To assist the university with programming facilitative services during the tour, there is a possibility of utilizing the programming and hospitality services of volunteer community groups across the country that are affiliated with the National Council for International Visitors, a nation-wide network that provides hospitality and program assistance to foreign visitors.

If your university decides to submit a proposal, it should provide a detailed plan in response to the needs and priorities outlined above. Applicants should draw imaginatively on the full range of resources offered by their universities but may involve outstanding professionals from other universities and organizations. The proposal must clearly demonstrate quality on-site management capabilities for both the residential and itinerant programs. The overall quality and effectiveness of the Institute hinges upon good administrative and organizational capabilities to manage the interactions between foreign educators and Americans. The University should indicate the tour sites, not to exceed three cities in addition to Washington, DC.

A panel of senior USIA officers experienced in American studies, the exchange of international educators, and foreign affairs will use the following criteria when evaluating proposals:

(1) Quality and creative and imaginative design of the Institute;

(2) Quality, rigor, and appropriateness of proposed syllabus to goals of the Institute;

(3) Clear evidence of the ability to deliver a substantive academic and pedagogical American studies program;

(4) Demonstrated high quality American studies programs—experience with foreign teachers is desirable;

(5) A quality evaluation at the conclusion of the Institute;

(6) Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken;

(7) The experience of professionals and staff assigned to the program;

(8) The ability to tap local and state resources for the orientation and Institute;

(9) Quality of proposed cultural tour to complement academic program;

(10) Cost-effectiveness.

Budget Guidelines

For your guidance, our experiences with similar institutes indicates that the cost to organize and administer the 45-day academic and group tour segment of this Institute would range from $1,200–$1,500 per person based on a group of 30 to 35 participants, excluding international and domestic air travel expenses and cost for room and board on campus and hotel and meals on tour.

The proposal should provide a detailed line-item budget outlining specific expenditures and source(s) from which funds are anticipated. The budget should include any in-kind and cash contributions to the program from universities, contributions, cost-sharing, or private sector.

Included in the budget worksheet should be budget explanations detailing how costs were computed; i.e., salaries should include position title, annual salary, and percent of effort used for this program.

Please note that American Studies Institutes are considered a training program and are subject to 8% indirect costs. The budget should elaborate on and include the following information:

Administrative

(1) Salaries, benefits, and services (including support staff) for the program.

(2) Overhead costs: a copy of the indirect cost rate of the cognizant agency should be included.

(3) Administrative costs, ground transportation (including tour and transfer buses to and from airports), and group tour admission costs for *all* activities during the course of the on-site university Institute and subsequent cultural tour.

Program

(1) Miscellaneous such as honoraria, film rental, and support material.

(2) University escort travel and expenses.

(3) Workshops, working lunches, orientation and briefing sessions.

For Previous Grantees Only

If grantee was funded for a similar program last year, the budget should include last year's detailed line-item budget. Significant differences for each item must be noted and justified.

Funding Arrangements

(a) Lodging and Meals

Each participant will receive a per diem for the 45-day program. This should cover the costs of room and board while on campus and during the tour and personal expenses. Although they should not be included as part of the budget, please indicate the costs for lodging and meals and an estimated cost of the books required by the program so that a per diem can be calculated so that

participants will have sufficient funds to cover basic living expenses for the 45 days of the Institute. Recommended cultural allowance should also be included. For participants coming from countries that cannot issue U.S. dollars, the grantee institution may be requested to disburse per diem and other allowances approved for the program. Participant program funds cannot be subject to indirect costs.

(b) International and Domestic Air Travel

International travel arrangements are made and paid by USIS Posts abroad. The university is responsible for booking all domestic flights with a U.S. carrier through Omega Travel Washington Office. All domestic air tickets for the tour segment of the program for participants and university escorts will be issued through Omega Travel. Flight information is cabled to the Posts through USIA cable services. Applicants should submit *ten copies each* of a 500-word summary, a proposal not to exceed 20 typed, double-spaced pages addressing the points outlined above, the detailed budget, and completed and signed application cover sheet (enclosed). Final proposals must be received in the Agency by September 18, 1987. The proposal package should be submitted to: Dr. Mark Blitz, Associate Director, Bureau of Educational and Cultural Affairs, ATTN: E/AA, U.S. Information Agency, 301 4th St. SW., Rm. 849, Washington, DC 20547.

We will make every effort to provide the grantee with complete information on participants as far in advance of the beginning of the program as possible so adjustments can be made to suit participants' needs. If you have questions, please contact Dr. Katherine Passias, USIA, at the Bureau of Educational and Cultural Affairs, 301 4th St. SW., Room 256, Washington, DC 20546; or you may call her at (202) 485–2553.

Dated: July 17, 1987.

Jeanne J. Smoot,

Director, Office of Academic Programs.

[FR Doc. 87–16593 Filed 7–20–87; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice on or before September 21, 1987.

DATED: July 15, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Reinstatement

1. Department of Medicine and Surgery.
2. Application for Participation in the Veterans Administration Health Professional Scholarship Program.
3. VA Forms 10–003 & 10–003a–c.
4. This information is needed to determine eligibility of applicants for award of scholarships.
5. Annually.
6. Individuals or households; Businesses or other for-profit; and Non-profit institutions.
7. 4,000 responses.
8. 4,000 hours.
9. Not applicable.

Extension

1. Department of Medicine and Surgery.
2. Funeral Arrangements.
3. VA Form 10–2065.
4. This information is required to make funeral arrangements for a VA beneficiary whose death occurred while in a VA medical facility.
5. One time.
6. Individuals or households.
7. 55,000 responses.
8. 4,510 hours.
9. Not applicable.

Extension

1. Department of Memorial Affairs.
2. Application for Standard Government Headstone or Marker for Installation in a Private or Local Cemetery.
3. VA Form 40–1330.
4. This information is used to determine eligibility of the deceased veteran and to provide the necessary data required to obtain this benefit.
5. On occasion.
6. Individuals or households.
7. 245,000 responses.
8. 61,250 hours.
9. Not applicable.

Reinstatement

1. Department of Memorial Affairs.
2. Request for Disinterment.
3. VA Form 40–4970.
4. This information or a court order provide the required authorization for VA to disinter remains from a national cemetery.
5. Issued upon request to a person wishing to make a disinterment.
6. Individuals or households.
7. 77 responses.
8. 77 hours.
9. Not applicable.

[FR Doc. 87–16451 Filed 7–20–87; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Native American Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that the 3rd meeting of the Advisory Committee on Native American Veterans will be held in Seattle, Washington on August 4 through 6, 1987, at the Federal Building, 915 2nd Avenue, Seattle, WA (South Auditorium, 4th floor). The purpose of the meeting is to address issues and recommendations developed at the 2nd meeting of the Committee on April 6 through 8, 1987. All meetings will convene in the South Auditorium at 8:30 a.m., and will continue until 4:30 p.m.

All sessions will be open to the public up to the seating capacity of the room. To assure adequate accommodations, those who plan to attend should contact Mr. John Fulton, M.S.W., Committee Manager, Advisory Committee on Native American Veterans, at (202) 233–2614.

Dated: July 9, 1987.

By direction of the Administrator.

Robert W. Schultz,

Associate Deputy Administrator for Public Affairs.

[FR Doc. 87–16452 Filed 7–20–87; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 139
Tuesday, July 21, 1987

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: Approximately 12:45 p.m., Friday, July 24, 1987, following a recess at the conclusion of the open meeting.

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.

Dated: July 17, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-16608 Filed 7-17-87; 12:20 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, July 24, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed factors for evaluating inter-District consolidations of priced service activities. (Proposed earlier for public comment; Docket No. R-0586)

Discussion Agenda

2. Proposed amendment to the Board's policy statement regarding risks on large dollar payment systems. (Proposed earlier for public comment; Docket Nos. R-0587, R-0588, R-0589, and R-0590)
3. Proposed amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) to modify certain conditions governing the acquisition by bank holding companies of thrift institutions. (Proposed earlier for public comment; Docket No. R-0572)
4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 17, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-16609 Filed 7-17-87; 12:20 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 52, No. 139
Tuesday, July 21, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Justice Management Division

28 CFR Part 11

[Order No. 1201-87]

Federal Claims Collection; Retention of Private Counsel

Correction

In rule document 87-14857 beginning on page 24448 in the issue of Wednesday, July 1, 1987, make the following correction:

On page 24448, in the third column, under **FOR FURTHER INFORMATION CONTACT**, in the fifth line, the telephone number should read "(202) 633-5343".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 77 (Revision 21)]

Delegation of Authority

Correction

In the notice document beginning on page 26624 in the issue of Wednesday, July 15, 1987, make the following correction:

On page 26625, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 87-16040 Filed 7-14-87; 8:45 am]

BILLING CODE 1505-01-D

federal register

Tuesday
July 21, 1987

Part II

Department of Commerce

International Trade Administration

15 CFR Parts 379 and 399

Revisions to the Export Administration Regulations Based on COCOM Review; Final Rules

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 379 and 399

[Docket No. 70625-7125]

Revisions to the Export Administration Regulations Based on COCOM Review

AGENCY: Export Administrations, International Trade Administration Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends a number of List entries in the categories of electrical and power-generating equipment; general industrial equipment; transportation equipment; metals, minerals, and their manufactures; and chemicals, metalloids, petroleum products and related materials.

These amendments have resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to potential adversaries. With the concurrence of the Department of Defense, the Department of Commerce has determined that these revisions to the CCL are necessary to protect U.S. national security interests.

This rule also adds some types of technical data to Supplement No. 4 to Part 379 of the Export Administration regulations. This Supplement lists certain specifications for technical data that require a validated license for export to any destination except Canada.

EFFECTIVE DATE: This rule is effective July 21, 1987.

FOR FURTHER INFORMATION CONTACT: For questions of a general nature, call John Black or Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-2440.

For questions of a technical nature regarding electrical and power-generating equipment, call Monty Baltas, Telecommunications Technology Center, export Administration, Telephone: (202) 377-0730.

For questions of a technical nature regarding general industrial equipment call Surendra Dhir, Capital Goods Technical Center, Export Administration, Telephone: (202) 377-8550.

For questions of a technical nature regarding transportation equipment and chemical and petroleum equipment, call Bruce Webb, Capital Goods Technical Center, Export Administration, Telephone: (202) 377-3442.

For questions of a technical nature regarding chemicals and materials, call Jeffrey Tripp, Capital Goods Technical Center, Export Administration, Telephone: (202) 377-1309.

SUPPLEMENTARY INFORMATION:

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before (two weeks after date of publication) may be exported under the general license provisions up to and including (four weeks after date of publication). Any such items not actually exported before midnight (four weeks date of publication) require a validated export license.

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 of 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 has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, 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 also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. 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.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

List of Subjects in 15 CFR Parts 379 and 399

Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

1. The authroity citation for Parts 379 and 399 continues 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 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 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 (October 2, 1986); E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

2. Section 379.4 is amended by removing the word "and" from the end of paragraph (d)(18); by redesignating paragraph (d)(19) as (d)(20); and by adding a new paragraph (d)(19) to read as follows:

§ 379.4 General License GTDR: technical data under restriction.

* * * * *

(d) Restrictions applicable to all destinations except Canada.

* * * * *

(19) Technical data for application to non-electrical devices to achieve:

(i) Inorganic overlay coatings or inorganic surface modification coatings—(*a*) specified in column 3 of the Table set forth in Supplement No. 4 to Part 379, (*b*) on substrates specified in column 2 of that same Table, (*c*) by

processes as defined in Technical Note (a) to (h) and specified in column 1 of that same Table, and specially designed software therefor; and

* * * * *

3. Supplement No. 4 to Part 379 is amended by adding paragraph (3), as follows:

Supplement No. 4 to Part 379

Additional Specifications for Certain Technical Data Requiring a Validated License to All Destinations Except Canada.

* * * * *

(3) Technical data for application to non-electrical devices to achieve:

(i) Inorganic overlay coatings or inorganic surface modification coatings,

(A) Specified in column 3 of the Table below,

(B) On substrates specified in column 2 of the Table below,

(C) By processes as defined in Technical Note (a) to (h) and specified in column 1 of the Table below, and specially designed software therefor (§ 379.4(d)(19)):

TABLE

[This Table should be read to control the technology of a particular coating process only when the resultant coating in column 3 is in a paragraph directly across from the relevant substrate under column 2. For example, chemical vapor deposition coating process technical data *are controlled* for the application of noble metal modified aluminides to superalloy substrates, but are *not controlled* for the application of noble metal modified aluminides to titanium alloys. In the second case, the resultant coating is *not* listed in the paragraph under column 3 directly across from the paragraph under column 2 listing "Titanium alloys".]

1. Coating process [1]	2. Substrate	3. Resultant coating
A. "Chemical Vapor Deposition" (CVD)	Superalloys	Aluminides for internal surfaces, Alloyed aluminides, [2] or Noble metal modified aluminides. [3]
	Titanium or Titanium alloys	Carbides, Aluminides, or Alloyed aluminides. [2]
	Ceramics	Silicides or Carbides.
	Carbon-carbon, Carbon-ceramic, or Metal matrix composites.	Silicides, Carbides, Mixtures thereof, [4] or Dielectric layers.
	Copper or Copper alloys	Tungsten or Dielectric layers.
	Silicon carbide or Cemented tungsten carbide.	Carbides, Tungsten, Mixtures thereof, [4] or Dielectric layers.
B. "Electron-Beam Physical Vapor Deposition" (EB–PVD).	Superalloys	Alloyed silicides, Alloyed aluminides, [2] MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium), [5] Modified zirconia (*except* calcia-stabilized zirconia), or Mixtures thereof (including mixtures of the above with silicides or aluminides). [4]
	Ceramics	Silicides or modified zirconia (*except* calcia-stabilized zirconia).
B. "Electron-Beam Physical Vapor Deposition" (EB–PVD).	Aluminum alloys [6]	MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium), [5] Modified zirconia (*except* calcia-stabilized zirconia) or mixtures thereof. [4]
	Corrosion resistant steel [7]	MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium) [5] or Modified zirconia (*except* calcia-stabilized zirconia).
B. "Electron-Beam Physical Vapor Deposition" (EB–PVD).	Carbon-carbon, Carbon-ceramic, or Metal matrix composites.	Silicides, Carbides, Mixtures thereof, [4] or Dielectric layers.
	Copper or Copper alloys	Tungsten or Dielectric layers.
	Silicon carbide or Cemented tungsten carbide.	Carbides, Tungsten, Mixtures thereof, [4] or Dielectric layers.
C. "Electrophoretic deposition"	Superalloys	Alloyed aluminides [3] or Noble metal modified aluminides. [3]
D. "Pack cementation" (see also A above) [8].	Superalloys	Alloyed aluminides [2] or Noble metal modified aluminides. [3]
	Carbon-carbon, Carbon-ceramic, or Metal matrix composites.	Silicides, Carbides, or Mixtures thereof. [4]
	Aluminum alloys [6]	Aluminides or alloyed aluminides. [2]
E. "Plasma spraying" (high velocity or low pressure only).	Superalloys	MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium), [5] Modified zirconia (*except* calcia-stabilized zirconia), or Mixtures thereof. [4]
E. "Plasma spraying" (high velocity or low pressure only).	Aluminum alloys [6]	MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium), [5] Modified zirconia (*except* calcia-stabilized zirconia), Silicides, or Mixtures thereof. [4]
	Corrosion resistant steel [7]	MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium), [5] modified zirconia (*except* calcia-stabilized zirconia), or Mixtures thereof. [4]
E. "Plasma spraying" (high velocity or low pressure only).	Titanium or Titanium alloys	Carbides or Oxides.
F. "Slurry deposition"	Refractory metals [9]	Fused silicides or Fused aluminides.
	Carbon-carbon, Carbon-ceramic, or Metal matrix composites.	Silicides, Carbides, or Mixtures thereof. [4]

TABLE—Continued

[This Table should be read to control the technology of a particular coating process only when the resultant coating in column 3 is in a paragraph directly across from the relevant substrate under column 2. For example, chemical vapor deposition coating process technical data *are controlled* for the application of noble metal modified aluminides to superalloy substrates, but are *not controlled* for the application of noble metal modified aluminides to titanium alloys. In the second case, the resultant coating is *not* listed in the paragraph under column 3 directly across from the paragraph under column 2 listing "Titanium alloys".]

1. Coating process [1]	2. Substrate	3. Resultant coating
G. "Sputtering" (high rate, reactive, or radio frequency only).	Superalloys	Alloyed silicides, Alloyed alumi- nides [2], Noble metal modified aluminides [3], MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium),[5] Modified zirconia (*except* calcia-stabilized zirconia), Platinum, or Mixtures thereof (including mixtures of the above with silicides or aluminides).[4]
	Ceramics	Silicides, Platinum, or Mixtures thereof.[4]
G. "Sputtering" (high rate, reactive, or radio frequency only).	Aluminum alloys [6]	MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium),[5] Modified zirconia (*except* calcia-stabilized zirconia), or Mixtures thereof.[4]
	Corrosion resistant steel [7]	MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium),[5] Modified zirconia (*except* calcia-stabilized zirconia), or Mixtures thereof.[4]
G. "Sputtering" (high rate, reactive, or radio frequency only).	Titanium or Titanium alloys	Borides or Nitrides.
	Carbon-carbon, Carbon-ceramic, or Metal matrix composites.	Silicides, Carbides, Mixtures thereof,[4] or Dielectric layers.
	Copper or Copper alloys	Tungsten or Dielectric layers.
	Silicon carbide or Cemented tungsten carbide.	Carbides, Tungsten, or Dielectric layers.
H. "Ion implantation"	High temperature bearing steels	Additions of chromium, tantalum, or niobium (columbium).
	Beryllium or Beryllium alloys	Borides.
	Carbon-carbon, Carbon-ceramic, or Metal matrix composites.	Silicides, Carbides, Mixtures thereof,[4] or Dielectric layers.
	Titanium or Titanium alloys	Borides or Nitrides.
	Silicon nitride or Cemented tungsten carbide.	Nitrides, Carbides, or Dielectric layers.
H. "Ion implantation"	Sensor window materials transparent to electromagnetic waves, as follows: silica, alumina, silicon, germanium, zinc sulphide, zinc selenide, or gallium arsenide.	Dielectric layers.

Footnotes:

1 Coating process includes coating repair and refurbishing as well as original coating.

2 Multiple-stage coatings in which an element or elements are deposited prior to application of the aluminide coating, even if these elements are deposited by another coating process, are included in the term "alloyed aluminide" coating, but the multiple use of single-stage "pack cementation" processes to achieve alloyed aluminides is not included in the term "alloyed aluminide" coating.

3 Multiple-stage coatings in which the noble metal or noble metals are laid down by some other coating process prior to application of the aluminide coating are included in the term "noble metal modified aluminide" coating.

4 Mixtures consist of infiltrated material, graded compositions, co-deposits and multilayer deposits and are obtained by one or more of the coating processes specified in this Table.

5 MCrAlX refers to an alloy where M equals cobalt, iron, nickel or combinations thereof, and X equals hafnium, yttrium, silicon or other minor additions in various proportions and combinations.

6 Aluminum alloys as a substrate in this Table refers to alloys usable at temperatures above 500K (227°C).

7 Corrosion resistant steel refers to AISI (American Iron and Steel Institute) 300 series or equivalent national standard steels.

8 Refractory metals as a substrate in this Table consist of the following metals and their alloys: niobium (columbium), molybdenum, tungsten, and tantalum.

9 This does not control technical data for single-stage "pack cementation" of solid airfoils.

Technical Note: The definitions of processes specified in column 1 of the Table are as follows:

(a) "Chemical Vapor Deposition" (CVD) is an overlay coating or surface modification coating process wherein a metal, alloy, composite, or ceramic is deposited upon a heated substrate. Gaseous reactants are reduced or combined in the vicinity of a substrate resulting in the deposition of the desired elemental, alloyed, or compounded material on the substrate. Energy for this decomposition or chemical reaction process is provided by the heat of the substrate.

Note 1: CVD includes the following processes: out-of-"pack", pulsating, controlled nucleation thermal decomposition (CNTD), plasma enhanced or plasma assisted.

Note 2: "Pack" denotes a substrate immersed in a powder mixture.

Note 3: The gaseous material utilized in the out-of-"pack" process is produced using the same basic reactions and parameters as the "pack cementation" process, except that the substrate to be coated is not in contact with the powder mixture.

(b) "Electron-Beam Physical Vapor Deposition" (EB–PVD) is an overlay coating process conducted in a vacuum chamber, wherein an electron beam is directed onto the surface of a coating material causing

vaporization of the material and resulting in condensation of the resultant vapors onto a substrate positioned appropriately.

Note: The addition of gases to the chamber during the processing is an ordinary modification to the process.

(c) "Electrophoretic deposition" is a surface modification coating or overlay coating process in which finely divided particles of a coating material suspended in a liquid dielectric medium migrate under the influence of an electrostatic field and are deposited on an electrically conducting substrate.

Note: Heat treatment of parts after coating materials have been deposited on the substrate, in order to obtain the desired coating, is an essential step in the process.

(d) "Pack cementation" is a surface modification coating or overlay coating process wherein a substrate is immersed in a powder mixture, a so-called "pack," that consists of:

(1) The metallic powders that are to be deposited (usually aluminum, chromium, silicon, or combination thereof);

(2) An activator (normally a halide salt); and

(3) An inert powder, most frequently alumina.

The substrate and powder mixture is contained within a retort that is heated to between 1030K to 1375K for sufficient time to deposit the coating.

(e) "Plasma spraying" is an overlay coating process wherein a gun (spray torch), which produces and controls a plasma, accepts powdered coating materials, melts them and propels them towards a substrate, whereon an integrally bonded coating is formed.

Note 1: "High velocity" means more than 750 meters per second.

Note 2: "Low pressure" means less than ambient atmospheric pressure.

(f) "Slurry deposition" is a surface modification coating or overlay coating process wherein a metallic or ceramic powder with an organic binder is suspended in a liquid and is applied to a substrate by either spraying, dipping or painting; subsequently, air or oven dried; and heat treated to obtain the desired coating.

(g) "Sputtering" is an overlay coating process wherein positively charged ions are accelerated by an electric field towards the surface of a target (coating material). The kinetic energy of the impacting ions is sufficient to cause target surface atoms to be released and deposited on the substrate.

Note: Triode, magnetron, or radio frequency sputtering to increase adhesion of coating and rate of deposition are ordinary modifications to the process.

(h) "Ion implantation" is a surface modification coating process in which the element to be alloyed is ionized, accelerated through a potential gradient and implanted into the surface region of the substrate. The definition includes processes in which the source of the ions is a plasma surrounding the substrate and processes in which ion implantation is performed simultaneously with "electron beam physical vapor deposition" or "sputtering."

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power Generating Equipment), ECCN 1203A is amended by revising paragraph (c) and adding a paragraph (d), as follows:

Supplement No. 1 to § 399.1—Commodity Control List.

* * * * *

1203A Electric vacuum furnaces, specially designed components and controls therefor.

* * * * *

List of Electric Vacuum Furnaces Controlled by ECCN 1203A

(a) * * *

(b) * * *

(c) "Vacuum induction furnaces" allowing the molten metal to be poured into a mold within the same vacuum chamber without breaking the vacuum and having all of the following characteristics:

(1) A capacity in excess of 2,275 kg (5,014 lbs);

(2) Designed to operate at pressures lower than 6.67 Pa (0.0667 mbar); *and*

(3) Designed to operate at temperatures in excess of 1,373 k (1,100 °C);

Note: "Vacuum induction furnaces" include all portions of the furnaces system within the vacuum chamber. (See also ECCNs 1080A and 1301A.)

(d) Induction furnaces having both of the following characteristics:

(1) A diameter inside the induction coil of 155 mm or more (6.1 inches or more); *and*

(2) Designed to heat a workpiece with a diameter of 130 mm or more (5.1 inches or more) to a temperature in excess of 2,273k (2,000 °C);

Note: This ECCN does not control susceptors made of graphite that are not controlled for export elsewhere on the Commodity Control List.

Advisory Note: * * *

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power Generating equipment), ECCN 1205A is amended by revising paragraph (a) (2) (i), (ii), and (iii); redesignating and revising (a)(3) as (a)(4) and adding a new (a)(3); and revising Note 2 following paragraph (c), as follows:

1205A Electrochemical, semiconductor and radioactive devices for the direct conversion of chemical, solar, or nuclear energy to electrical energy.

* * * * *

List of Electrochemical, Semiconductor, and Radioactive Devices Controlled by ECCN 1205A

(a) * * *

(1) * * *

(2) * * *

(i) Reserve (water, electolyte or thermally activated) batteries possessing a means of activation and having a rated unactivated storage life of three years or more at an ambient temperature of 297k (24 °C, 75 °F);

(ii) Utilizing lithium or calcium [including alloys in which lithium or calcium are constituents) as electrodes and having an energy density at a discharge current equal to C/24 hours [C being the nominal capacity at 297K (24 °C, 75 °F) in ampere-hours] of more than 250 watt-hours per kg (114 watt-hours per lb) at 297K (24 °C, 75 °F) and more than 80 watt-hours per kg (36 watt-hours per lb at 244K (-29 °C −20°F);

Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times the average current in amperes) by the duration of the discharge in hours to 80% of the open-circuit voltage and dividing by the total mass of the cell (or battery) in kg.

(iii) Using an air electrode together with either lithium or aluminum counter-electrodes and having a power output of 5 kW or more or an energy output of 5 kW-hours or more;

(3) Secondary (rechargeable) cells and batteries having any of the following characteristics after more than 20 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere-hours):

(i) Utilizing nickel and hydrogen as the active constituents and having an energy density of 55 watt-hours per kg (25 watt-hours per lb) or more at 297K (24 °C, 75 °F);

(ii) Utilizing lithium or sodium as electrodes or reactants and having an energy density of 55 watt-hours per kg (25 watt-hours per lb) or more at the rated operating temperature;

Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open-circuit voltage and dividing by the total mass of the cell (or battery) in kg;

(4) Molten salt electrolyte cells and batteries that normally operate at temperatures of 773 °K (500 °C, 932 °F) or below;

(b) * * *

(c) * * *

Notes: 1. * * *

2. This ECCN does not control the following cells and power source devices, and specially designed components therefor (nothing in this Note shall be construed as permitting the export of technology for such cells, power source devices or specially designed components):

(a) Fuel cells controlled for export by paragraph (a)(1), provided they are not "space qualified," with a maximum output power of more than 10kW and that use gaseous pure hydrogen and oxygen/air reactants, alkaline electrolyte and a catalyst supported by carbon either pressed on a metal mesh electrode or attached to a conducting porous plastic;

(b) Lithium primary cells or batteries controlled for export by sub-paragraph (a)(2)(ii) that:

(1) Are specially designed for consumer applications and used in watches, pacemakers, calculators or hearing aids; *or*

(2) Are specially designed for consumer or civil industrial applications and have a nominal capacity less than or equal to 35 ampere-hours and a discharge current of less than C/10 hours (C as defined in sub-paragraph (a)(2)(i));

(c) Lithium secondary (rechargeable) cells and batteries controlled for export by sub-paragraph (a)(3)(ii) that:

(1) Are specially designed for previously determined consumer applications; *or*

(2) Have a nominal capacity less than or equal to 0.5 ampere-hour and an energy density of less than 40 watt-hours per kg (18 watt-hours per lb) at 273K (0°C, 32°F) and a discharge current of less than C/10 hours (C as defined in paragraph (a)(3));

(d) Sodium secondary (rechargeable) cells and batteries controlled for export by sub-paragraph (a)(3)(ii) that are specially designed for consumer or civil industrial applications and that are not "space qualified";

Technical Note: The term "space qualified" used in this ECCN refers to products that are stated by the manufacturer as designed and tested to meet the special electrical, mechanical or environmental requirements for use in rockets, satellites or high-altitude flight systems operating at altitudes of 100 km or more.

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power Generating Equipment), ECCN 1206A is amended by revising the heading and adding a "List of Equipment Controlled by ECCN 1206A" consisting of paragraphs (a), (b) and (c), and a Note, reading as follows:

1206A Electric arc devices (or plasma torches) and equipment and specially designed components, accessories and controls therefor.

* * * * *

Special Licenses Available: * * *

List of Equipment Controlled by ECCN 1206A:

(a) Electric arc devices for generating a flow of ionized gas in which the arc column is constricted, *except*:

(1) Devices with less than 100 kW arc power for welding, melting, plating or spraying; *or*

(2) Devices with less than 235 kW arc power for cutting;

(b) Equipment incorporating electric arc devices with a constricted arc column and capable of having a programmable increment (for the continuous movement of the device) less (finer) than 0.01 mm;

(c) Test equipment incorporating electric arc devices controlled for export by paragraph (a).

Note: This ECCN does not control plasma torches for industrial gas heating that use a non-constricted arc column with an operating pressure of 1 to 15 bar inclusive.

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1312A is amended by placing the term "isostatic presses" in quotation marks wherever it appears; by revising the phrase "or greater" in paragraph (a) to read "or more"; and by revising the first Note and redesignating it as a Technical Note, reading as follows:

1312A "Isostatic presses"; specially designed dies and molds (*except* those used in "isostatic presses" operating at ambient temperatures), components, accessories and controls therefor.

* * * * *

List of Equipment Controlled by ECCN 1312A

(a) * * *

(b) * * *

Technical Note: "Isostatic presses" are equipment capable of pressurizing a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal pressure in all directions within the cavity upon a workpiece or material.

* * * * *

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1354A is amended by revising the word "covered" in paragraph (b)(5) to read "controlled"; by adding the word "*or*" at the end of paragraph (f)(2); by revising paragraphs (b) (3) and (4), (c), (d), (e) introductory text, (f) introductory text, and (g); by adding a Technical Note (that contains another Note) after paragraph (g); by redesignating Note 1 as a "Note"; and by removing Note 2, as follows:

1354A Equipment designed for the manufacture or testing of printed circuit boards and specially designed components and accessories therefor.

* * * * *

List of Equipment Controlled by ECCN 1354A

(a) * * *

(b) * * *

(1) * * *

(2) * * *

(3) Generation of data or "programs" for "stored program controlled" printed circuit board drilling equipment;

(4) Generation of data or "programs" for "stored program controlled" printed circuit board shaping and profiling equipment; *or*

(5) * * *

(c) High speed automated continuous panel processors for plating capable of delivering more than or equal to 860 Am^2 (80 A/ft^2) of plate current. (This does not include processors specially designed for, and restricted to, plating tab (edge) connectors.);

(d) "Stored program controlled" inspection equipment for the detection of defects in printed circuit boards using optical pattern comparison or other machine scanning techniques;

(e) "Stored program controlled" electrical test equipment for the identification of open and short circuits on bare printed circuit boards, capable of:

(1) * * *

(2) * * *

(f) "Stored program controlled" multispindle drills and routers that have any of the following characteristics:

(1) * * *

(2) * * *

(3) * * *

(g) "Stored program controlled" cyclic volta-metric stripping equipment specially designed for printed circuit board plating bath monitoring and analysis;

Technical Note: "Stored program controlled" is defined as a control using instructions stored in an electronic storage that a processor can execute in order to direct the performance of predetermined functions.

Note: Equipment may be "stored program controlled" whether the electronic storage is internal or external to the equipment.

Note: * * *

Technical Note: * * *

Advisory Note for the People's Republic of China: * * *

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1355A is amended—

a. By revising paragraph (b) introductory text and the Note following paragraph (b)(1) introductory text;

b. By revising paragraphs (b)(1)(i), (b)(1)(iii)(*a*), (b)(1)(iv)(*b*), (b)(1)(xii)(*c*), and (b)(1)(xiii);

c. By removing and reserving paragraph (b)(1)(xi);

d. By revising paragraphs (b)(2) (ii) and (iii) introductory text, (b)(2)(iv) (*b*) and (*d*), (b)(2)(v), (b)(2)(vi) (*c*) and (*f*), and (b)(2)(ix);

e. By revising paragraphs (b) (3) and (4) introductory text;

f. By revising paragraphs (b)(5) introductory text, (b)(5) (i) and (ii);

g. By revising paragraphs (b)(6) introductory text, (b)(7) [and its sub-paragraphs], and (b)(8); and

h. By revising the Technical Note 4 following paragraph (b)(8), as follows:

1355A Equipment for the manufacture or testing of electronic components and materials; and specially designed components, accessories and "specially designed software" therefor.

* * * * *

List of Equipment Controlled by ECCN 1355A

(a) * * *

(b) Equipment specially designed for the manufacture or testing of semiconductor devices, integrated circuits and "assemblies", as follows, and systems incorporating or having the characteristics of such equipment:

(1) * * *

Note: This ECCN does not control quartz crucibles specially designed for equipment controlled for export by paragraph (b)(1).

(i) Equipment for producing polycrystalline silicon controlled for export by ECCN 1757A(f) having a purity of 99.99% or more in the form of rods (ingots, boules), pellets, sheets, tubes or small particles;

[b,1] (ii) * * *

(iii) * * *

(*a*) Types with specially designed "stored program controlled" temperature, power input or gas, liquid or vapor flow;

* * * * *

(iv) * * *

(*b*) "Stored program controlled";

* * * * *

(xi) [Reserved];

(xii) * * *

(*c*) Capable of polishing and lapping wafers exceeding 76.2 mm (3 inches) in diameter;

(*d*) * * *

(xiii) Interconnection equipment that may include common single or multiple vacuum chambers specially designed to permit the integration of equipment controlled for export by this ECCN into a complete system;

(b)(2) * * *

(i) * * *

[b,2] (ii) Hard surface (e.g., chromium, silicon, iron oxide) coated "substrates" (e.g., glass, quartz, sapphire) for the preparation of masks having dimensions exceeding 76.2 × 76.2 mm (3 × 3 inches);

(iii) Computer aided design (CAD) equipment for transforming schematic or logic diagrams into designs for producing semiconductor devices or integrated circuits, having any of the following functions:

* * * * *

(iv) * * *

(*b*) Pattern generators specially designed for the generation or manufacture of masks or the creation of patterns in photosensitive layers and with placement precision finer than 10 micrometers;

(*c*) * * *

(*d*) Equipment and holders for altering masks or reticles or adding pellicles to remove defects;

(For electron-beam systems, see sub-paragraph (b)(1)(x) above.)

(v) Mask, reticle or pellicle inspection equipment, as follows:

(*a*) For comparison with a precision of 0.75 micrometer or finer over an area of 63.5 × 63.5 mm (2.5 × 2.5 inches) or more;

(*b*) "Stored program controlled" equipment with a resolution of 0.25 micrometer or finer and with a precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm (2.5 inches) or more;

[b,2,v] (*c*) "Stored program controlled" defect inspection equipment;

Note: Conventional scanning electron microscopes, except when specially designed and instrumented for automatic pattern inspection, are not controlled for export by this sub-paragraph (v).

(vi) * * *

(*c*) Field coverage exceeding 76.2 × 76.2 mm (3 × 3 inches);

* * * * *

(*f*) Projection image transfer for processing slices (wafers) of 50.8 mm (2 inches) or larger in diameter; Note: Non-contacting (proximity) image transfer equipment is controlled for export only by these sub-paragraphs (a) to (e) above.

* * * * *

(ix) Mask contact image transfer equipment for imaging a field larger than 76.2 × 76.2 mm (3 × 3 inches).

(3) "Stored program controlled" inspection equipment for the detection of defects in processed wafers, substrates or chips using optical pattern comparison or other machine scanning techniques;

Note: Conventional scanning electron microscopes, except when specially designed and instrumented for automatic pattern inspection, are not controlled by this paragraph (b)(3).

(4) Specially designed "stored program controlled" measuring and analysis equipment, as follows:

* * * * *

(5) Equipment for the assembly of integrated circuits, as follows:

(i) "Stored program controlled" die (chip) mounters and bonders with a positioning accuracy finer than 50 micrometers or incremental steps finer than 6.4 micrometers;

(ii) "Stored program controlled" wire bonders and welders for performing consecutive bonding operations;

* * * * *

(6) "Stored program controlled" wafer probing equipment, as follows:

* * * * *

(7) Test equipment as follows (for standard test instruments, see ECCN 1529A):

(i) "Stored program controlled" equipment specially designed for testing discrete semiconductor devices and unencapsulated dice, capable of performing any of the following functions:

(*a*) Measurement of time intervals of less than 10 nanoseconds;

(*b*) Measurement of parameters (e.g., f_T, S-parameters, noise figure) at frequencies greater than 250 MHz;

[b,7,i] (*c*) Resolution of currents of less than 100 picoamperes;

or

(*d*) Measurement of spectral response at wavelengths outside the range from 450 to 950 nanometers;

(ii) "Stored program controlled" equipment specially designed for testing integrated circuits and "assemblies" thereof, capable of performing any of the following functions:

(*a*) Functional (truth table) testing at a pattern rate greater than 2 MHz;

(*b*) Resolution of currents of less than 1 nanoampere;

(*c*) Testing of integrated circuits (not mounted on circuit boards) in packages having more than a total of 24 terminals

(**Note:** Sub-paragraph (b)(7)(ii)(*c*) does not control equipment specially designed for and dedicated to the testing of integrated circuits not controlled for export by ECCN 1564A.); *or*

(*d*) Measurement of rise time, fall times and edge placement times with a resolution of less than 20 nanoseconds.

Technical Notes: 1. The terms "intergrated circuit" and "assembly" are defined in ECCN 1564A.

2. Test equipment that is not of a general purpose nature and that is specially designed for, and dedicated to, testing "assemblies" or a class of "assemblies" for home and entertainment applications is not controlled for export by sub-paragraph (b)(7)(ii).

Note: Test equipment that is not of a general purpose nature and that is specially designed for, and dedicated to, testing electronic components, "assemblies" and integrated circuits specifically excluded by ECCN 1564A is not controlled for export by sub-paragraph (b)(7)(ii), provided that such test equipment does not incorporate computing facilities with user-accessible programing capabilities.

[b,7] (iii) Equipment specially designed for determining the performance of focal plane arrays at wavelengths of more than 1,200 nanometers, using "stored program controlled" measurements or computer-aided evaluation and having any of the following characteristics:

(*a*) Using scanning light spot diameters of less than 0.12 mm (0.005 inch);

(*b*) Designed for measuring photosensitive performance parameters and for evaluating frequency response, modulation transfer function, uniformity of responsivity or noise;

(*c*) Designed for evaluating arrays capable of creating images of greater than 32 × 32 line elements;

(iv) Specially designed for bubble memories;

[b] (8) Class 10 filters capable of providing an environment of 10 or less particles of 0.3 micrometer or more per cubic foot and filter materials therefor;

Note: * * *

Technical Note 3: * * *

Technical Note 4: For the purposes of this ECCN, "stored program control" is defined as a control using instructions stored in an electronic storage that a processor can execute in order to direct the performance of predetermined functions.

Note: Equipment may be "stored program controlled" whether the electronic storage is internal or external to the equipment.

Advisory Note for the People's Republic of China: * * *

* * * * *

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1360A is amended by revising the heading and first sentence to read as follows:

1360A "Stored program controlled" equipment capable of automatic X-ray orientation and angle correction of double-rotated stress-compensated (SC) quartz crystals controlled for export by ECCN 1587A with a tolerance of 10 seconds of arc maintained simultaneously in both angles of rotation.

(For the definition of "stored program controlled," see ECCN 1355A.)

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1417A is amended by revising the heading and paragraphs (a), (b) introductory text, (c)(1) introductory text and (2), and (d) introductory text; by adding paragraphs (e) and (f); by redesignating Note 1 as 2 and adding a new Note 1; by revising Note 2 and redesignating it as 3; by redesignating Note 3 as 4; and by redesignating Note 4 as 5, as follows:

1417A Submersible systems (even when incorporated in a submersible vehicle) and specially designed components therefor.

* * * * *

List of Equipment Controlled by ECCN 1417A

(a) Automatically controlled atmosphere regeneration systems specially designed or modified for submersible vehicles that, in a single chemical reaction cycle, ensure carbon dioxide removal and oxygen renewal;

(b) Systems specially designed or modified for the automated control of the motion of a submersible vehicle using navigation data

and having closed-loop servo-control(s) so as to:

* * * * *

(c) * * *

(1) Television systems (comprising camera, lights, monitor and signal transmission equipment) specially designed or modified for remote operation with a submersible vehicle, having a "limiting resolution", when measured in the air, more than 500 lines, using IEEE Standard 208/1960 or any equivalent standard;

Technical Note: * * *

(2) Systems specially designed or modified for remote operation with a submersible vehicle employing techniques to minimize the effects of back-scatter, such as range-gated illuminators;

(d) Remotely controlled articulated manipulators specially designed or modified for use with submersible vehicles and having any of the following characteristics:

* * * * *

(e) Photographic cameras and associated equipment specially designed or modified for use under water, having a film format of 35 mm or larger, and capable of any of the following:

(1) Film advancement of more than 5 frames per second;

(2) Annotating the film with data provided by a source external to the camera;

(3) Taking more than 250 full frame exposures without changing the film;

(4) Autofocussing specially designed or modified for use under water; *or*

(5) Operating at depths of more than 1,000 meters;

(f) Light systems specially designed or modified for use under water, as follows:

Stroboscopic lights capable of:

(i) Light output energy of more than 150 joules per flash; *or*

(ii) Flash rates of more than 5 flashes per second at a light output energy of more than 10 joules per flash;

(2) Other lights and associated equipment, capable of operating at depths of more than 1,000 meters.

(For underwater "robots," see ECCN 1391A.)

Notes.—This ECCN does not control specially designed components for equipment that would not have been controlled for export had it not been modified.

2. * * *

3. Sub-paragraph (b) does not control automated control systems incorporated in underwater bulldozers of trench-cutters not capable of operating at depths of more than 100 meters and possessing only negative buoyancy.

* * * * *

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 4417B is removed.

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1418A is amended by adding the phrase "or modified" immediately before the phase "associated systems" in the heading and in the undesignated paragraph immediately below "List of Equipment Controlled by ECCN 1418A."

14. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1460A is amended by removing the fifth undesignated paragraph beginning "Protective coating technology . . ." in Note 8 under "I. Materials and manufacturing procedures."

15. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals and Their Manufactures), ECCN 1631A is amended by revising paragraph (c), by removing paragraphs (c)(1) and (2), by revising paragraphs (e)(1) and (2), and adding a new paragraph (f), as follows:

1631A Magnetic metals of all types and of whatever form.

* * * * *

List of Magnetic Metals Controlled by ECCN 1631A

* * * * *

(c) Capable of an energy product of 200,000 J/m^3 (25×10^6 gauss-oersteds) or more;

(d) * * *

(e) * * *

(1) Saturation magnetostriction more than 5×10^{-4}; or

(2) Magnetomechanical coupling factor (k) more than 0.8;

(f) Amorphous alloy strips having both of the following characteristics:

(1) Composition having a minimum 75 weight percent of one or more of the elements iron, cobalt and nickel; *and*

(2) Saturation magnetic induction (B_s of 1.6 tesla or more, and either:

(i) Strip thickness of 0.020 mm (0.0008 inch) or less; *or*

(ii) Electrical resistivity of 2×10^{-4} micro-ohm. cm. or more.

16. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals and Their Manufactures), ECCN 1675A is amended by revising paragraph (a) to read as follows:

1675A Superconductive materials of all types and processed conductors containing at least one superconducting constituent, designed for operation at temperatures below 103K (−170° C, −274° F); *except* processed conductors possessing all of the characteristics listed in this entry.

* * * * *

List of Items Controlled by ECCN 1675A

(a) The superconducting constituent, when evaluated in sample lengths of less than one meter, does not remain in the superconducting state when exposed to a magnetic induction in excess of 12 tesla at a temperature of 4.2k (−268° C, −451.8° F);

* * * * *

17. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Products), ECCN 1715A is amended by removing paragraph (a), revising paragraph (b) and redesignating it as (a), and redesignating paragraph (c) as (b), as follows:

1715A Boron, as described in this entry.

* * * * *

List of Boron, Controlled by ECCN 1715A

(a) Boron element (metal) in all forms; and

(b) * * *

18. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1746A is amended by revising paragraph (c), adding paragraphs (g) through (j), and adding Notes, as follows:

1746A Polymeric substances and manufactures thereof, as described in this entry.

* * * * *

List of Polymeric Substances and Manufactures Controlled by ECCN 1746A

* * * * *

(c) Aromatic polyamides, *except:*

(1) Filament yarns, staple fibers, chopped fibers, spun yarns or threads, having both of the following characteristics:

(i) A "fiber modulus" of 22.075 mN per tex or less; *and*

(ii) A "tenacity" of 970 mN per tex or less;

(2) Pulp made from materials described under paragraph (c)(1);

* * * * *

(g) Polystyrylpyridine (P.S.P.);

(h) Thermoplastic liquid crystal copolyesters, as follows:

(1) Ethylene copolyesters of terephthalic acid and parahydroxybenzoic acid, *except* manufactures thereof having both of the following characteristics:

(i) A tensile modulus of less than 15 GPa; *and*

(ii) Specially designed for non-aerospace, non-electronic civil applications;

(2) Phenylene or biphenylene copolyesters of terephthalic acid and parahydroxybenzoic acid;

(i) Polybenzoxozoles;

(j) Aromatic polyether ether ketones (PEEK)

Note. This ECCN does not control manufactured articles where the value of the polymeric component together with materials controlled for export by other ECCNs with the code letter "A" is less than 50% of the total value of the materials used.

Technical Note: The characteristics referred to in paragraph (c) are defined as follows, in accordance with ASTM standards:

(a) "Tenacity" is defined as tensile stress expressed as force per unit linear density of the unstrained specimen, *i.e.*, mN per tex;

(b) "Fiber modulus" (secant modulus) is defined as the ratio of change in stress to change in strain between two points on a stress-strain curve, particularly the points of

zero stress and breaking stress, and is expressed in mN per tex;

Note. "Tex" is the number of grams in 1,000 meters of material.

19. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1754A is amended by revising the heading, the "List of Fluorocarbon Compounds and Manufactures Controlled by ECCN 1754A", and the Advisory Note, as follows:

1754A Fluorocarbon compounds, materials and manufactures as described in this entry.

* * * * *

List of Fluorocarbon Compounds, Materials and Manufactures Controlled by ECCN 1754A

Fluorocarbon compounds, materials and manufactures, as follows:

(a) Compounds, as follows:

(1) Dibromotetrafluoroethane, *except* that having a purity of 99.8% or less and containing at least 25 particles of 200 microns or larger in size per 100 ml;

(2) Perfluoroalkylamines;

(b) Polymeric materials, unprocessed, as follows:

(1) Polychlorotrifluorethylene, oily and waxy modifications only;

(2) Fluoroelastomers composed of any combination of the following monomers: tetrafluoroethylene, chlorotrifluoroethylene, vinylidene fluoride, hexafluoropropylene, bromotrifluoroethylene and iodotrifluoroethylene;

(3) Polybromotrifluoroethylene;

(4) Copolymers of vinylidene fluoride having 75% or more beta crystalline structure without stretching;

(c) Manufactures, as follows:

(1) Greases, lubricants and dielectric, damping and flotation fluids made wholly of any of the materials in paragraph (a) or (b);

(2) Electric wire and cable coated with or insulated with any of the materials in paragraph (b)(2), *except* oil well logging cable;

(3) Seals, gaskets, rods, sheets, sealants or fuel bladders made of more than 50% of any of the materials in paragraph (b)(2), specially designed for aerospace and aircraft use;

(4) Piezoelectric polymers and copolymers made from vinylidene fluoride having both of the following characteristics:

(i) In sheet or film form; *and*

(ii) With a thickness of more than 200 micrometers.

Advisory Note: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of up to 18.9 liters (5 US gallons) of polychlorotrifluoroethylene-based lubricating oils controlled for export by both paragraphs (b)(1) and (c)(1) for bona fide civil uses.

20. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1755A, the List of Silicone Fluids and Greases Controlled by ECCN 1755A is amended by adding introductory text and by revising paragraph (a) as follows:

1755A Silicone fluids and greases as described in this entry.

* * * * *

List of Silicone Fluids and Greases Controlled by ECCN 1755A

Silicone fluids and greases, as follows:

(a) Fluorinated silicone fluids, *except* those with kinematic viscosity of 5,000 centistokes or higher, measured at 25° C;

* * * * *

21. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1757A is amended by revising paragraphs (e), (g) and (k) and adding a paragraph (m), as follows:

1757A Compounds and materials as described in this entry.

* * * * *

List of Compounds and Materials Controlled by ECCN 1757A

* * * * *

(e) Elemental Cd and Te of purity levels equal to or more than 99.9995% and CdTe compounds of a purity level equal to or more than 99.00% or single crystals of CdTe of any purity level;

(f) * * *

(g) Compounds having a purity level based upon the amount of the primary constituent of 99.5% or better and used in the synthesis of the materials controlled for export by paragraph (f), or used as the silicon source in the deposition of epitaxial layers of silicon, silicon oxide or silicon nitride;

Note.—$SiCl_2H_2$ is controlled for export by this paragraph (g) when having a purity level of 97.0% or better.

* * * * *

(k) Resist materials, as follows:

(1) Negative resists whose spectral response has been adjusted for use below 350 nanometers;

(2) All positive resists;

(3) All resists for use with E-beams or ion beams with a sensitivity of 100 microcoulomb/cm^2 or better;

(4) All resists for use with X-rays with a sensitivity of 500 mJ/cm^2 or better; *or*

(5) All resists specified or optimized for dry development;

(l) * * *

(m) Metal-organic or hydride compounds of beryllium and magnesium (Group IIA); zinc, cadmium and mercury (Group IIB); aluminum, gallium and indium (Group IIIA); phosphorus, arsenic and antimony (Group VA); and selenium and tellurium (Group VIA) having a purity (metal basis) of 99.999% or better.

Note: * * *

Advisory Notes: * * *

22. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1760A is amended by revising paragraph (a), as follows:

1760A Compounds of tantalum and niobium (colombium).

* * * * *

List of Forms of Compounds of Tantalum and Niobium (Colombium) Controlled by ECCN 1760A

(a) Tantalates and niobates having a purity of 99% or better, *except* fluorotantalates; and

* * * * *

Dated: July 15, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-16372 Filed 7-20-87; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Parts 379 and 399

[Docket No. 70626-7126]

Revisions to the Export Administration Regulations Based on COCOM Review: Electronics and Precision Instruments

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends a number of CCL entries in the category of electronics and precision instruments. In addition, export controls on software related to certain of these commodities are added to Part 379, "Technical Data," of the Export Administration Regulations.

These amendments have resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to potential adversaries. With the concurrence of the Department of Defense, the Department of Commerce has determined that these amendments to the Export Administration Regulations are necessary to protect U.S. national security interests.

EFFECTIVE DATE: This rule is effective July 21, 1987.

FOR FURTHER INFORMATION CONTACT: For questions of a general nature, call John Black or Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-2440.

For questions of a technical nature on electronics and precision instruments,

call Randy Williams, Electronic Components and Instrumentation Tech Center, Export Administration, Telephone: (202) 377–3109.

SUPPLEMENTARY INFORMATION:

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before (two weeks after date of publication) may be exported under the general license provisions up to and including August 18, 1987. Any such items not actually exported before midnight August 18, 1987, require a validated export license.

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 of 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 has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, 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 also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. 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.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects in 15 CFR Parts 379 and 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368 through 399) are amended as follows:

PARTS 379 AND 399—[AMENDED]

1. The authority citation for Parts 379 and 399 continues 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 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 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 (October 2, 1986); E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

2. In Supplement No. 3 to Part 379, "Computer Software," the "List of Software Subject to This Supplement to Part 379" is amended by revising paragraph (a)(3)(ii), adding a Note after paragraph (b)(2)(i), and adding paragraphs (c), (9) and (10), as follows:

Supplement No. 3 to Part 379

Computer Software

* * * * *

List of Software Subject to This Supplement to Part 379

(a) * * *

(3) * * *

(ii) One or more of the functions described in ECCN 1565A(h)(1)(i) (A) to (J) and (M)) or for "digital computers" or "related equipment" designed or modified for such functions, *except* the minimum "specially designed software" in machine executable form for "digital computers" and "related equipment" therefor that are freed from export controls only by ECCN 1565A(h)(2) (i) or (ii), and only when supplied with the equipment or systems;

* * * * *

(b) * * *

(2) * * *

(i) * * *

Note.—For "cross-hosted" compilers or "cross-hosted" assemblers that have to be used in conjunction with microprocessor or microcomputer development instruments or systems described in ECCN 1529A, see that ECCN.

* * * * *

(c) * * *

(9) Equipment controlled under ECCN 1529A;

(10) Equipment controlled under ECCN 1533A;

* * * * *

2(a). In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), the heading of ECCN 1522A and the "List of Lasers and Laser Systems Controlled by ECCN 1522A" is revised to read as follows:

1522A "Lasers" and "Equipment Containing Lasers"

* * * * *

List of "Lasers" and "Equipment containing lasers" controlled by ECCN 1522A.

(a) "Lasers" and specially designed components therefor, including amplification stages, *except the following when not specially designed for equipment covered by paragraph (b) below:*

(i) *Argon, krypton, or non-"tunable" dye "lasers" having one of the following sets of characteristics:*

(1) *An output wavelength between 0.2 and 0.8 micrometer, a pulsed output energy not exceeding 0.5 joule per pulse and an average or continuous-wave maximum rated single- or multi-mode output power not exceeding 20 watts; or*

(2) *An output wavelength between 0.8 and 1.0 micrometer, a pulsed output energy not exceeding 0.25 joule per pulse and an average or continuous-wave maximum rated single- or multi-mode output power not exceeding 10 watts;*

(ii) *Helium-cadmium, nitrogen and multigas "lasers" not otherwise specified in this ECCN with both of the following characteristics:*

(1) *An output wavelength shorter than 0.8 micrometer; and*

(2) *A pulse output not exceeding 0.5 joules per pulse and an average or continuous wave maximum rated single- or multi-mode output power not exceeding 120 watts;*

(iii) *Helium-neon "lasers" with an output wavelength shorter than 0.8 micrometer;*

(iv) *Ruby "lasers" with both of the following characteristics:*

(1) *An output wavelength shorter than 0.8 micrometer; and*

(2) *An energy output not exceeding 20 joules per pulse;*

(v) CO_2, CO or CO/CO_2 "lasers" having either of the following characteristics:

(1) *An output wavelength in the range of 9 to 11 micrometers and a pulsed output energy not exceeding 2 joules per pulse and a maximum rated average single- or multi-mode output power not exceeding 1.2 kW or a continuous-wave maximum rated single- or multi-mode output power not exceeding 5.0 kW; or*

(2) *An output wavelength in the range of 5 to 7 micrometers and having a continuous wave maximum rated single- or multi-mode output power not exceeding 50 watts;*

(vi) *Nd:YAG "lasers" having an output wavelength of 1.064 micrometers with either of the following characteristics:*

(1) *A pulsed output not exceeding 0.5 joules per pulse and maximum rated average single- or multi-mode output power not exceeding 10 watts or a continuous wave maximum rated single- or multi-mode output power not exceeding 50 watts;* or

(2) *A pulsed output not exceeding 10 joules per pulse with a pulse width not less than 50 microseconds and maximum rated average single- or multi-mode output power not exceeding 50 watts;*

(vii) *Nd:Glass "lasers" with both of the following characteristics:*

(1) *An output wavelength in the range of 1.05 to 1.06 micrometers;* and

(2) *A pulsed output not exceeding 2 joules per pulse;*

(viii) *Tunable CW dye "lasers", with both of the following characteristics:*

(1) *An output wavelength shorter than 0.8 micrometer;* and

(2) *An output not exceeding an average or continuous wave maximum rated single- or multi-mode output power of 1 watt;*

(ix) *"Tunable" pulsed "lasers" (for argon and krypton "lasers", see paragraph (a)(i) above), including dye, having all of the following characteristics:*

(1) *An output wavelength between 0.15 and 0.8 micrometer;*

(2) *A pulse duration not exceeding 100 nanoseconds;*

(3) *A pulsed output energy not exceeding 0.5 joule per pulse;* and

(4) *An average power not exceeding 10 watts;*

(x) *Single-element semi-conductor "lasers" with a wavelength shorter than 1 micrometer designed for, and used in, equipment as defined in paragraphs (b) (xiii), (xiv), (xix) or (xx) below;*

(b) "Equipment containing lasers" and specially designed components therefor, *except the equipment listed below that contain "lasers" excluded from export controls by paragraph (a) above:*

(i) *Specially designed for industrial and civilian intrusion detection and alarm systems;*

(ii) *Specially designed for medical applications;*

(iii) *Equipment for educational and laboratory purposes;*

(iv) *Specially designed for traffic and industrial movement control and counting systems;*

(v) *Specially designed for detection of environmental pollution;*

(vi) *Optical spectrometers and densitometers;*

(vii) *Equipment containing continuous wave helium-neon gas "lasers"* (but see paragraph (c) of this ECCN);

(viii) *Textile-cutting and textile bonding equipment;*

(ix) *Paper cutting equipment;*

(x) *Equipment containing "lasers" for drilling diamond dies for the wire drawing industry;*

(xi) *Electronic scanning equipment with auxiliary electronic screening unit specially designed for printing processes, including such equipment when used for the production of color separations;*

(xii) *Laser-radar (lidar) equipment specially designed for surveying and meteorological observation;*

(xiii) *Consumer-type reproducers for video or audio discs, employing non-erasable media;*

(xiv) *Price scanners (point of sales);*

(xv) *Equipment designed for surveying purposes, provided there is no capability of measuring range;*

(xvi) *Equipment specially designed for the marking of components;*

(xvii) *Specially designed gravure (printing plate) manufacturing equipment;*

(xviii) *Equipment specially designed for visual entertainment purposes (laser light shows) provided it has no holographic capability;*

(xix) *Electronic printers, including those capable of being used with "digital computers", not exceeding 2,000 lines (30 pages) per minute or 300 characters per second;*

(xx) *Electronic copiers, including those capable of being used with "digital computers", not exceeding 30 pages per minute and that do not include any of the following:*

(1) *Optical character recognition (OCR) equipment that is not released by ECCN 1565A(h)(2)(v)(K);*

(2) *Digitizing equipment that is not released by ECCN 1565A(h)(2)(v)(H); or*

(3) *"Image enhancement" capability;*

(c) Measuring systems that have both of the following characteristics:

(1) Contain a "laser"; and

(2) Maintain for at least 48 hours, over a temperature range of ±10K around a standard temperature and at a standard pressure:

(i) A resolution over their full scale of ±0.1 micrometer or better; *and*

(ii) An accuracy of ±1 part per million or better;

Technical Note.—Standard temperatures and standard pressures as indicated in IEC Publication 160.

(d) Particle measuring systems employing helium-neon "lasers", designed for measuring particle size and concentration in gases, that have both of the following characteristics:

(1) Capable of measuring particle sizes of 0.3 micrometer or less; *and*

(2) Capable of characterizing Class 10 clean air or better.

Technical Note 1.—"Tunable" refers to the ability of a laser to produce an output at any wavelength within its tuning range. A line-selectable laser that can operate only on discrete wave-lengths is not considered tunable.

Technical Note 2.—The term "specially designed components" is intended, among other things, to include active and passive components in semifabricated forms as well as in fabricated forms.

Technical Note 3.—A "laser" is an assembly of components to produce coherent light that is amplified by stimulated emission of radiation.

Technical Note 4.—"Equipment containing lasers" uses coherent light in the equipment for a certain application.

Note 1.—Paragraph (a) does not control uncooled, unsegmented mirrors with glass or dielectric substrates for use as end reflectors for "laser" resonators. (For segmented mirrors, see ECCN 1556A.)

Note 2.—This ECCN 1522A is intended to cover semiconductor "lasers" but not non-coherent light-emitting diodes and assemblies or integrated circuits containing such light-emitting diodes. (See ECCNs 1544A and 1564A.)

Note 3.—For "laser" feedback systems and "laser" interferometers, see also ECCN 1093A(c).

Note 4.—*Reserved.*

(Advisory) Note 5.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment listed in paragraph (b) containing "lasers" described in sub-paragraphs (a)(vi)(1) and (a)(vii), provided that the "lasers" have a maximum pulsed output not exceeding 2 joules per pulse. The shipment of spare "laser" rods for equipment exported under this Advisory Note will be restricted to rods having no greater output power energy capability than those originally exported with the equipment.

(Advisory) Note 6.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of semi-conductor "lasers", designed and destined for use with civilian fiber-optic communication systems, either uncontrolled or eligible for export, having an output wavelength not longer than 1,000 nanometers and not exceeding 100 mW CW.

(Advisory) Note 7.—Licenses are likely to be approved for export to Country Groups QWY of Nd:YAG "lasers" controlled for export by paragraph (a) when used for pumping "tunable" pulsed dye "lasers" excluded from export controls under sub-paragraph (a)(ix), and having all of the following characteristics:

(a) An output wavelength of 1.064 micrometer;

(b) A pulsed output energy not exceeding 1.5 joule per pulse; *and*

(c) A maximum rated average single- or multi-mode output power not exceeding 25 watts.

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1529A is amended by revising the heading;

By revising paragraph (b), (including removing the Note after (b)(5) and adding new Notes, and adding Notes after (b)(6));

By revising paragraph (c) of Note 2 following paragraph (f)(3);

By revising Technical Notes 6 and 7 and removing Technical Note 8; and

By revising Notes 1, 2 and 3 and removing 4, as follows:

1529A Electronic equipment for testing, measuring (e.g., time interval measurement), calibrating or counting, or for microprocessor/microcomputer development.

Note.—For "specially designed software", see Supp. No. 3 to Part 379.

* * * * *

List of Equipment Controlled by ECCN 1529A

(a) * * *

(b) Instruments of the following description:

(1) Instruments designed for use at frequencies exceeding 18 GHz;

(2) "Comb frequency generators" designed and rated for use at frequencies exceeding 12.5 GHz;

(3) Instruments designed for use at frequencies exceeding 1 GHz, as follows:

(i) "Swept-frequency network analyzers" for the automatic measurement of complex equivalent circuit parameters over a range of frequencies;

(ii) Specially calibrated microwave instrumentation receivers capable of measuring amplitude and phase simultaneously;

(iii) Automatic "frequency (heterodyne) converters" and "transfer oscillators";

(iv) Instruments in which the functions can be controlled by the injection of digitally coded electrical signals from an external source;

[b](4) Instruments having both of the following characteristics:

(i) "User-accessible programability". *and*

(ii) A user-alterable "program" and data storage of more than 65,536 bit;

Note 1.—This paragraph does not control instruments, the "user-accessible programability" of which is provided by, or with the legal agreement of, the original "manufacturer" and limited to:

(a) The replacement of fixed storage devices (e.g., ROMs) that do not change the export control status of the instrument; *or*

(b) The selection of pre-programed functions from a menu.

Note 2.—For the purposes of this ECCN 1529A, the "manufacturer" is the individual or organization designing the instrument for the intended application (in contrast to an individual or organization merely programing an instrument at, or in accordance with, a user's request).

Note.—The instrument concerned must be designed to ensure that any "software" (ROM replacement) would not enable the instrument to be enhanced to a level where it would become controlled for export.

[b](5) Test instruments with "user-accessible programability" and having any of the following characteristics:

(i) Specially designed to examine or compare one or more binary coded streams of electrical signals;

(ii) A maximum sampling rate of more than 100 MHz;

(iii) A maximum of more than 32 channels excluding a maximum of 6 qualifier channels;

(iv) A "figure of merit" of more than 400;

(v) A capability of state coupled timing analysis (*i.e.*, synchronized mode state/timing analysis);

(vi) A total acquisition memory for word storage exceeding 32,768 bit with an acquisition memory for bit storage per channel exceeding 1,024 bit; *or*

(vii) A total acquisition memory for word storage exceeding 16,384 bit with an acquisition memory for bit storage per channel exceeding 2,048 bit;

Technical Note.—The term "figure of merit" in sub-paragraph (b)(5)(iv) is defined as the product of the maximum sampling rate (in MHz) and the number of input channels (excluding qualifier channels).

Note 1.—Paragraph (b)(5) includes instruments such as:

(a) Digital circuit testers;

(b) Logic state and/or timing analyzers;

(c) Bus analyzers;

(d) Serial data analyzers;

(e) Digital word generators.

Note 2.—Paragraph (b)(5) does not control:

(a) Logic probes, logic pulsers, digital current tracers (current "sniffers"), signature analyzers and other digital circuit testers for observing single events or providing stimuli at single test points;

(b) Logic clips and logic comparators;

(c) Digital word generators capable of operating at a maximum clock rate of 2 MHz or less with word lengths of 8 bit or less.

[b](6) Microprocessor or microcomputer development instruments or systems, capable of developing "software" for, or capable of, programing micro-circuits controlled for export by ECCN 1564A;

Note 1.—Paragraph (b)(6) does not control microprocessor or microcomputer development instruments or systems that can be used to develop "software" for, or to program, a "family" of microprocessor or microcomputer microcircuits not designed or produced within a country in Country Groups QWY, provided:

(a) The instruments or systems cannot be used for microprocessor or microcomputer microcircuits having an operand (data) word length of more than 8 bit and having an arithmetic logic unit (ALU) wider than 8 bit; *and*

(b) The "family" contains at least one microprocessor or microcomputer microcircuit that is not controlled for export by ECCN 1564A.

Note.—For the purposes of paragraph (b)(6), a "family" consists of microprocessor or microcomputer microcircuits that have:

(a) The same architecture;

(b) The same basic instruction set; *and*

(c) The same basic technical data (e.g., only NMOS or only CMOS).

Note 2.—This paragraph (b)(6) includes accessories specially designed for microprocessor or microcomputer instruments or systems such as:

(a) "Cross-hosted" assemblers, "cross-hosted" compilers;

(b) Adapter interfaces for prototypes or emulation probes;

(c) Debuggers;

(d) Programable read-only memory (PROM) programers;

(e) Programable read-only memory (PROM) copiers;

(f) So-called 'personality' modules that contain more than one of the accessories enumerated under paragraphs (a) to (e) of this Note.

Note 3.—"Cross-hosted" compilers or "cross-hosted" assemblers, needed for use with a particular microprocessor or microcomputer development instrument or system, not controlled for export by paragraph (b)(6), must contain only the minimum "software" in machine executable form to perform the functions for which they were designed. To make other incompatible instruments or systems perform the same functions must require:

(a) Modification of this "software";

(b) Addition of "programs".

Note 4.—For "cross-hosted" compilers or "cross-hosted" assemblers that are not specially designed for use with microprocessor or microcomputer development instruments or systems described in this paragraph (b)(6), see Supplement No. 3 to Part 379.

(c) * * *

* * * * * *

(f) * * *

(3) * * *

Notes.—1. * * *

2. Paragraph (f) of this ECCN does not control—

(a) * * *

(b) * * *

(c) Industrial telemeasuring devices in which a pre-set storage value is used as a basis for measuring.

(g) * * *

Technical Notes.—1. * * *

* * * * * *

6. "User-accessible programability" as used in paragraphs (b) (4) and (5) of this ECCN is defined as the facility allowing a user to insert, modify or replace "programs" by means other than:

(a) A physical change in wiring or interconnections; *or*

(b) The setting of function controls including entry of parameters.

7. "Burst frequency measurement" counters (paragraph (c)(3)) contain special gating circuits that start only when the input signal is present and stop counting at the completion of the burst.

Note.—Instrumentation incorporating computing facilities remains controlled under this ECCN 1529A even if the computing facility has been removed. Such instrumentation *cannot* be classified under ECCN 6599G.

Note 1.—For signal analyzers, see ECCN 1533A;

For microwave equipment, see also ECCN 1537A;

For analog-to-digital converters, other than digital voltage measuring instruments, see ECCN 1568A;

For frequency synthesizers, see ECCN 1531A.

See also ECCNs 1355A, 1485A(j), and Supplement No. 2 to Part 370.

(Advisory) Note 2.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment controlled for export by sub-paragraph (a)(2)(i), provided:

(a) It is designed for fixed ground use;

(b) The long-term drift (ageing) over 24 hours or more is not better than 5 parts in 10^{10}; *and*

(c) The equipment is a reasonable requirement for the stated legitimate civil end-use.

(Advisory) Note 3.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of instruments defined in paragraph (b)(4) of this ECCN, provided that:

(a) The instruments have been designed for non-strategic use and by nature of design, software, microprogram control (firmware), specialized logic control (hardware), or performance are substantially restricted to the particular application for which they have been designed.

(b) The instruments are not covered by any other part of ECCN 1529A and do not exceed the limits of Advisory Note 4 to ECCN 1565A.

Advisory Note for the People's Republic of China: * * *

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1531A is amended by revising paragraphs (b) (1) and (2) and adding a Note following (b)(2), as follows:

1531A Frequency synthesizers.

* * * * *

Illustrative List of Frequency Synthesizers Controlled by ECCN 1531A

* * * * *

(b) * * *

(1) A maximum synthesized output frequency of more than 550 MHz;

(2) Any of the following noise characteristics:

(i) A single sideband (SSB) phase noise better than −120 dBc/Hz when measured at a 20 kHz offset from the carrier frequency;

(ii) A single sideband (SSB) phase noise better than −106 dBc/Hz when measured at a 100 Hz offset from the carrier frequency;

(iii) An integrated phase noise better than −60 dBc/Hz referred to a 30 kHz band centered on the carrier and excluding the 1 Hz band centered on this carrier; *or*

(iv) An integrated AM phase noise better than −70 dBc/Hz referred to a 30 kHz band centered on the carrier and excluding the 1 Hz band centered on this carrier;

Note.—Synthesized signal generators that are controlled for export only by paragraphs (b)(1) or (b)(2)(i) may be exported up to a maximum synthesized output frequency of 1,200 MHz or down to a single sideband phase noise of −136 dBc/Hz when measured at an offset of 20 kHz from a carrier frequency of 100 MHz, provided the technology supplied is only the minimum necessary for the use (*i.e.*, installation, operation and maintenance) of such generators.

[b] (3) * * *

* * * * *

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1532A is amended by revising paragraphs (a) through (d), adding a paragraph (e), adding new Technical Notes, and revising the word "and" in the Advisory Note to read "or", as follows:

1532A Precision linear and angular measuring systems and specially designed components therefor.

* * * * *

List of Precision Linear and Angular Measuring Systems and Specially Designed Components Therefor Controlled by ECCN 1532A

(a) Contact-type systems or linear voltage differential transformers (LVDT) therefor, as follows:

(1) Contact type measuring systems having all of the following characteristics:

(i) Range equal to or less than 5 mm;

(ii) "Linearity" equal to or better than ± 0.1%; *and*

(iii) Drift equal to or less than 0.1% per day at a standard ambient test room temperature ± 1K;

(2) Linear voltage differential transformers with no compensation networks and having either of the following characteristics:

(i) Range equal to or less than 5 mm: *or*

(ii) "Linearity" equal to or better than ± 0.2%;

Note.—"Linearity" limits apply to measurements made in the static mode.

(b) Linear measuring machines having all of the following characteristics:

(1) Two or more axes;

(2) Range in any axis greater than 200 mm; *and*

(3) "Accuracy" (including any compensation) better than ±0.0008 mm per any 300 mm segment of travel;

Note.—This paragraph (b) does not control optical comparators.

(c) Angular measuring systems having an "accuracy" equal to or better than ±1 second of arc;

Note.—This paragraph (c) does not control optical instruments, such as autocollimators, using collimated light to detect angular displacements of a mirror.

(d) Non-contact type measuring systems having, at a standard ambient test room temperature ±1K, either of the following pairs of characteristics:

(1) Effective probe measurement diameter less than 0.5 mm and drift less than 0.5% per day; *or*

(2) "Linearity" better than ±0.3% and drift less than 0.5% per day;

(e) Contact-type measuring systems specially designed for combined, simultaneous linear-angular inspection of hemishells, having both of the following characteristics:

(1) Linear "accuracy" equal to or better than ±0.005 mm in any 5 mm; *and*

(2) Angular "accuracy" equal to or better than ±1 minute in any 90° of arc.

Technical Notes.—1. "Accuracy" is usually measured in terms of inaccuracy. It is defined as the maximum deviation, positive or negative, of an indicated value from an accepted standard or true value.

2. "Linearity" is usually measured in terms of non-linearity. It is defined as the maximum deviation of the actual characteristic (average of upscale and downscale readings), positive or negative, from a straight line so positioned as to equalize and minimize the maximum deviations.

Advisory Note.—* * *

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1533A is amended by revising the heading;

By revising paragraphs (d) through (g) and adding paragraphs (h) and (i);

By revising the Technical Note;

By revising the word "cover" to read "control" in NOTE 1;

By removing NOTE 3, redesignating NOTE 2 as 3 and revising the word "covered" to read "controlled";

By adding a new NOTE 2;

By revising NOTE 4;

By revising the word "defined" to read "controlled" in NOTE 5; and

By adding a new NOTE 6, as follows:

1533A Signal analyzers (including spectrum analyzers), with any of the following characteristics, and specially designed components and accessories therefor.

Note.—For "specially designed software", see Supp. No. 3 to Part 379.

* * * * *

List of Equipment Controlled by ECCN 1533A

* * * * *

(d) Incorporating:

(1) "User-accessible programability"; *and*

(2) A user-alterable "program" and data storage of more than 8,192 bit;

Notes.—1. This paragraph (d) does not control instruments, the "user-accessible programability" of which is provided by the original "manufacturer" and limited to:

(a) The replacement of fixed storage devices (e.g., ROMs) that do not change the export control status of the instrument; *or*

(b) The selection of preprogramed functions from a menu.

2. For the purposes of this ECCN 1533A, the "manufacturer" is the individual or organization designing the instrument for the intended application (in contrast to an individual or organization merely programing an instrument at, or in accordance with, a user's request).

(e) Including a scanning preselector or analyzing frequencies of more than 1 GHz;

(f) Incorporating a tracking signal generator for analyzing frequencies of more than 1 GHz;

(g) Radio frequency analyzers having an overall display dynamic range of better than 80 dB;

(h) Employing time compression of the input signal;

(i) Employing fast Fourier transform techniques.

Technical Note.—Signal analyzers are instruments capable of measuring the basic properties of a signal in the time or frequency domain.

Note 1.—* * *

Note 2.—Fast Fourier transforms are described in, e.g., 'Gauss and the History of the Fast Fourier Transform' by M.T. Heideman, D.H. Johnson and C.S. Burrus in IEEE ASSP Mag. 1, No. 4, (October), 12–21, 1984.

Note 3.: * * *

Note 4.—If the signal analyzer is an oscilloscope plug-in for the associated mainframe, see ECCN 1584A.

Note 5.— * * *

Note 6.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment controlled by paragraphs (h) or (i) having any of the following characteristics:

(a) Capable of computing 512 complex spectral lines in 200 milliseconds or more;

(b) Capable of computing 512 real spectral lines in 100 milliseconds or more; or

(c) Having no zoom capability and capable of computing 512 complex spectral lines in 100 milliseconds or more, or capable of computing 512 real spectral lines in 50 milliseconds or more.

Technical Note.—Zoom capability (range translation) permits a spectrum analysis starting from an arbitrary frequency rather than at frequency zero, leading to an improved resolution.

(For logic and network analyzers and transient recorders, see ECCN 1529A.)

Advisory Note for The People's Republic of China.— * * *

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1537A is amended by revising the heading;

By adding a paragraph (c)(4);

By revising paragraph (d);

Moving the note at the end of the entry to follow paragraph (g);

By redesignating the current paragraph (h) as (i) and adding a new (h);

By redesignating the current paragraph (i) as (j), (j) as (k), (k) as (l), and removing the current (l);

By revising the phrase "(c)(3) and (d)" to read "(c)(3) and (d)(1)" in Advisory Note 1;

By revising the phrase "paragraph (h)" to read "paragraph (i)" in Advisory Note 4;

By revising the phrase "paragraph (j)" to read "paragraph (k)" in Advisory Note 5; and

By adding a Note after Advisory Note 5, as follows:

1537A Microwave, including millimetric wave, equipment, including parametric amplifiers, capable of operating at frequencies over 1 GHz (other than microwave equipment controlled for export by ECCNs 1501A, 1517A, 1520A, or 1529A).

* * * * *

List of Equipment Controlled by ECCN 1537A

* * * * *

(c) * * *

(3) * * *

(4) Diode waveguide components using diodes controlled for export by ECCN 1544A;

(d) Transverse electromagnetic mode (TEM) devices:

(1) Using magnetic, including gyromagnetic, properties; or

(2) Using diodes controlled for export by ECCN 1544A;

* * * * *

(g) * * *

Note.— * * *

(h) Other antennae specially designed for operation at frequencies above 30 GHz having a diameter of less than 1 meter, and specially designed components therefor;

* * * * *

Advisory Note for The People's Republic of China.—* * *

Advisory Notes.—* * *

5. * * *

Note.—Nothing in the following shall be construed as permitting the export of technical data, except the minimum technical data for the use (*i.e.*, installation, operation and maintenance), of the following equipment:

Paragraphs (j) and (k) do not control microwave assemblies, sub-assemblies or amplifiers (or combinations thereof), having all of the following characteristics:

(a) Fixed tuned at the time of manufacture to operate only within the ITU satellite broadcasting band from 11.7 to 12.5 GHz;

(b) Not capable of being returned to a new frequency band by the user; *and*

(c) Specially designed for use with, or in, civil television receivers.

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1544A is amended by revising the heading;

By redesignating paragraph (a) as (b) and adding a new (a);

By redesignating paragraph (b) as (c) and revising the word "greater" in the new (c)(1) and (2) to read "more";

By redesignating paragraphs (c), (d), (e) and (f) as (d), (e), (f) and (g);

By revising the reference to paragraphs "(a) and (d)" in Note 1 following paragraph (g) to read "(b) and (e)";

By revising the reference to paragraph "(f)" in (Advisory) Note 2 following paragraph (g) to read "(g)"; and

By adding a new (Advisory) Note 4, as follows:

1544A Semiconductor diodes and dice and wafers therefor.

Note.—This ECCN does not cover semiconductor diodes based upon germanium, selenium or copper oxide.

* * * * *

List of Semiconductor Diodes and Dice and Wafers Therefor Controlled by ECCN 1544A

(a) Semiconductor diodes, designed or rated for use at input or output frequencies exceeding 12.5 GHz;

* * * * *

(g) * * *

* * * * *

(Advisory) Note 4.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of varactor diodes controlled by paragraph (d) for *bona fide* civil use, as follows:

(a) Silicon tuning varactor diodes for use at input or output frequencies not exceeding 9 GHz;

(b) Silicon multiplier varactor diodes for use at input or output frequencies not exceeding 5 GHz; *or*

(c) Silicon multiplier varactor diodes for use at input or output frequencies above 5 GHz and not exceeding 9 GHz with a power output of 0.5 W or less.

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1545A is amended by revising the "List of Transistors and Dice and Wafers Therefor Controlled by ECCN 1545A," as follows:

1545A Transistors and dice and wafers therefor (for phototransistors, see ECCN 1548A).

Controls for ECCN 1545A

* * * * *

List of Transistors and Dice and Wafers Therefor Controlled by ECCN 1545A

(a) Transistors based upon silicon and having any of the following characteristics:

(1) An "operating frequency" exceeding 1.5 GHz;

(2) An "operating frequency" not exceeding 1.5 MHz and a "maximum collector dissipation" of more than 300 W;

(3) An "operating frequency" exceeding 1.5 MHz and a "maximum collector dissipation" of more than 250 W;

(4) An "operating frequency" exceeding 200 MHz and a product of the "operating frequency" (in GHz) times the "maximum collector dissipation" (in watts) of more than 10; *or*

(5) Being majority carrier-type transistors, including but not limited to junction field-effect transistors (FETs) and metal-oxide semiconductor transistors (MOS), *except* field-effect transistors having:

(i) A maximum power dissipation of no more than 6 W and an "operating frequency" not exceeding 1.0 GHz; *or*

(ii) A maximum power dissipation of no more than 1 W and an "operating frequency" not exceeding 2.0 GHz;

(b) Transistors based upon gallium arsenide and having any of the following characteristics:

(1) An "operating frequency" exceeding 1 GHz;

(2) A maximum power dissipation of more than 1 W; *or*

(3) A noise figure of less than 3 dB;

Note.—Nothing in this paragraph (b) is intended to release any technical data unique to transistors based upon gallium arsenide.

(c) Transistors based upon any semiconductor material other than germanium, silicon or gallium arsenide.

Technical Note 1.—The "maximum collector dissipation" is defined as the continuous dissipation measured under the optimum cooling conditions specified by the manufacturer.

Technical Note 2.—"Operating frequency" is defined as the frequency used in measuring any of the following:

(a) Output power;

(b) Power gain (G_{pE}, G_{pB}, G_{pC}, G_{pS}, or G_{pO});

(c) Gain bandwidth product (f_T); *or*

(d) Noise figure.

(Advisory) Note 1.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of transistors controlled for export by sub-paragraphs (a)(2), (a)(3) or (a)(4), and having the following characteristics:

(a) Specially designed for:
(1) Television transposers; or
(2) Civil mobile communication equipment; *and*
(b) Having a product of the "operating frequency" (in GHz) times the "maximum collector dissipation" (in watts) of no more than 20.

(Advisory) Note 2.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of transistors defined in paragraph (a)(4) that are suitable for and will be used in civil TV, AM or FM receivers or audio frequency equipment.

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1547A is amended by revising paragraph (d), removing paragraph (e), and adding two Technical Notes, as follows:

1547A Thyristors and dice and wafers therefor.

* * * * *

List of Thyristors and Dice and Wafers Therefor Controlled by ECCN 1547A

* * * * *

(d) Having a rated turn-off time of from 2.3 to 10 microseconds and a figure of merit of more than 100.

Technical Notes.—1. The figure of merit is here defined as the product of the repetitive peak off-state voltage (V DRM) in kilovolts and the repetitive peak on-state current (I TRM) in amperes as shown on the thyristor data sheets.

2. The turn-off time for gate-turn-off thyristors is defined as the sum of the gate controlled delay time T_{DG} and the gate controlled fall time T_{fg} to reach 10% of the initial on-state current.

(Advisory) Notes.—* * *

11. In Supplement No. 1 to §399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1558A is amended by revising the heading and paragraphs (b) and (c), adding a paragraph (j), designating the first NOTE as 1 and revising it, and revising the period at the end of paragraph (b) of Note 2 to a semicolon and adding a paragraph (c), as follows:

1558A Electronic vacuum tubes (valves) and cathodes and other components specially designed for those tubes.

* * * * *

List of Electronic Vacuum Tubes (Valves) and Cathodes, and other Components Specially Designed for those Tubes, Controlled by ECCN 1558A

* * * * *

(a) * * *

(b) Tubes that utilize interaction between a beam of electrons and microwave elements and in which the electrons travel in a direction perpendicular to the applied magnetic field, including but not limited to magnetrons, crossed-field amplifier tubes and crossed-field oscillator tubes, *except*

(1) *Fixed frequency and tunable pulsed magnetrons and crossed-field amplifier tubes that are in normal civil use in equipment that may be exported under the terms of the Commodity Control List, having the following characteristics:*

(i) *Magnetrons designed to operate at frequencies below 3 GHz with a maximum rated peak output power of 5 MW or less, or between 3 to 12 GHz with the product of the maximum rated peak output power (expressed in kW) and the frequency (expressed in GHz) less than 4,200 and a "frequency tuning time" of more than 100 milliseconds;*

Technical Note.—"Frequency tuning time" is the time required to change the operating frequency from a starting frequency, through the maximum frequency, through the minimum frequency, and return to the starting frequency, *i.e.*, one complete tuning cycle.

$$\text{("Frequency tuning time": } T = \frac{1}{2f_o}$$

[f_o: dither rate])

(ii) *Crossed-field amplifier tubes designed to operate at frequencies below 4 GHz with a maximum rated average output power of 1.2 kW or less, a bandwidth of 200 MHz or less and a gain of less than 15 dB;*

(2) Fixed frequency continuous wave magnetrons designed for medical use or for industrial heating or cooking purposes operating at a frequency of 2.375 GHz ±0.05 GHz or 2.45 GHz ±0.05 GHz with a maximum rated output power not exceeding 6 kW or, at a frequency lower than 1 GHz, with a maximum rated output power not exceeding 35 kW;

(c) Tubes that utilize the interaction between a beam of electrons and microwave elements or cavities and in which the electrons travel in a direction parallel to the applied magnetic field (e.g., klystrons or travelling wave tubes), *except:*

(1) *Continuous wave tubes, having all of the following characteristics:*

(i) *Designed for use in civil ground communication;*

(ii) *An instantaneous bandwidth of half an octave or less, i.e., the highest operating frequency is not higher than 1.5 times the lowest operating frequency;*

(iii) *The product of the rated output power (expressed in W) and the maximum operating frequency (expressed in GHz) no more than 300;*

(iv) *An operating frequency no higher than 20 GHz;*

(v) *No multiple grid electron guns; and*

(vi) *Collectors with no more than two depressed stages;*

(2) Pulsed tubes, having all of the following characteristics:

(i) For civil applications;

(ii) An instantaneous bandwidth of half an octave or less, *i.e.*, the highest operating frequency is not higher than 1.5 times the lowest operating frequency;

(iii) Collectors with no more than two depressed stages; *and*

(iv) Either of the following:

(A) A peak saturated output power not exceeding 1 kW, an average output power not exceeding 40 W and the operating frequency not exceeding 10 GHz; *or*

[c. 2, iv] (B) A peak saturated output power not exceeding 100 W, an average output power not exceeding 20 W and the operating frequency between 10 and 20 GHz;

(3) Pulsed tubes, having all of the following characteristics:

(i) For civil applications;

(ii) Designed for fixed frequency operation;

(iii) Operating frequencies below 3.5 GHz;

(iv) A peak output power of 1.5 MW or less; *and*

(v) An operating bandwidth of less than 1%;

(4) Tubes, having all of the following characteristics:

(i) Used as fixed-frequency or voltage-tunable oscillator tubes;

(ii) Designed to operate at frequencies below 20 GHz; *and*

(iii) A maximum output power of less than 3 W;

(d) * * *

(j) Cathodes for electronic vacuum tubes, as follows:

(1) Specially designed for tubes controlled for export by paragraphs (a) to (i) of this ECCN; *or*

(2) Impregnated cathodes capable of producing a current density exceeding 0.5 A/cm^2 at rated operating conditions.

Note 1.—Nothing in the following shall be construed as permitting the export of technical data for electronic vacuum tubes or specially designed components therefor (for manufacturing equipment, see ECCN 1355A(a)). This ECCN 1558A does not cover the following electronic vaccuum tubes and specially designed components therefor:

Tubes covered by paragraphs (a) and (c), specially designed for civil telecasting according to CCIR or OIR standards.

(Advisory) Note 2.—* * *

(c) Magnetrons and klystrons controlled for export by paragraphs (b) or (c) of this ECCN, specially designed for particle accelerators for medical radiation therapy, having all of the following characteristics:

(1) Capable of operation only at a frequency of 3,000 MHz±15 MHz or at a frequency of 2,856 MHz±15 MHz;

(2) Not capable of being tuned mechanically or electronically outside the above bands;

(3) Mechanically tuned within the above bands; *and*

(4) Having a peak output power not exceeding 10 MW and an average output power not exceeding 15 kW.

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1561A is amended by revising paragraph (c), as follows:

1561A Materials specially designed and manufactured for use as absorbers of electromagnetic waves having frequencies

greater than 2×10^3 Hz and less than 3×10^{12} Hz, *except* materials as follows:

* * * * *

(c) *Absorbers having all of the following characteristics:*

(1) *Made of:*

(i) *Plastic foam materials (flexible or non-flexible) with carbon-loading providing absorption;* or

(ii) *Organic binders with magnetic material loading that do not provide "broad-band absorption performance with low reflectivity";*

Technical Note:—"Broad-band absorption performance with low reflectivity" is defined as less than 5% echo compared with metal over a bandwidth greater than ±15% of the center frequency of the incident energy.

(2) *The incident surface is planar;*

(3) *Their tensile strength is less than* 7×10^6 *N/m²* (1,016 psi);

(4) *Their compressive strength is less than* 14×10^6 *N/m²* (2,032 psi); and

(5) *They cannot withstand more than 450 K (177 °C, 350 °F).*

Note: * * *

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1573A is amended by revising paragraphs (a) and (b)(3), as follows:

1573A Superconductive electromagnets and solenoids.

* * * * *

List of Items Controlled by ECCN 1573A

Superconductive electromagnets and solenoids, as follows:

(a) Those that have a non-uniform distribution of current-carrying windings, measured along the axis of symmetry when specially designed for gyrotron applications, *except* those rated for both:

(1) Magnetic induction of less than 1 tesla; *and*

(2) "Overall current density" in the windings of less than 10,000 A/cm²;

(b) * * *

(3) They are rated for magnetic induction of more than 8 tesla or "overall current density" in the windings of more than 10,000 A/cm².

Technical Note.—* * *

14. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1586A is amended by revising paragraph (c) and the (Advisory) Note 1, as follows:

1586A Acoustic wave devices and specially designed parts therefor.

* * * * *

List of Acoustic Wave Devices and Specially Designed Components Controlled by ECCN 1586A

* * * * *

(c) Acousto-optic signal-processing devices employing an interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including but not limited to spectral analysis, correlation or convolution;

* * * * *

(Advisory) Note 1.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of the following devices controlled for export by sub-paragraph (a)(1) that are specially designed for civil applications and that operate at frequencies below 1 GHz:

(a) Devices for civil television equipment;

(b) Devices for video or AM and FM broadcasting equipment;

(c) Non-reprogramable devices for pagers, cellular radio communication equipment, automobile radio communication equipment or cordless telephone sets.

* * * * *

Dated: July 15, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-16376 Filed 7-20-87; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 399

[Docket No. 70624-7124]

Revisions to the Export Administration Regulations Based on COCOM Review; Electronic Component Assemblies

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends the CCL by revising Export Control Commodity Number (ECCN) 1564A, which controls a variety of electronic components.

This revision has resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to potential adversaries. With the concurrence of the Department of Defense, the Department of Commerce has determined that this rule is necessary to protect U.S. national security interests.

EFFECTIVE DATE: This rule is effective July 21, 1987.

FOR FURTHER INFORMATION CONTACT: For questions of a general nature, call John Black or Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-2440.

For questions of a technical nature regarding equipment controlled for export under entry 1564A, call Randy Williams, Electronic Components and Instrumentation Tech Center, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-3109.

SUPPLEMENTARY INFORMATION:

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before (two weeks after date of publication) may be exported under the general license provisions up to and including August 18, 1987. Any such items not actually exported before midnight (four weeks after date of publication) require a validated export license.

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 of 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 has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, 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 also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. 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.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368 through 399) are amended as follows:

1. The authority citation for Part 399 continues 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 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 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 (October 2, 1986); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1564A is revised to read as follows:

1564A "Assemblies" of electronic components, "modules", printed circuit boards with mounted components, "substrates" and integrated circuits, including packages therefor.

Controls for ECCN 1564A

Unit: Report in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security.

Special Licenses Available: See Part 373.

G–COM Eligibility: Commodities that meet technical specifications described in (Advisory) Notes 3 and 4 under this ECCN regardless of end-use, subject to the prohibitions contained in § 371.2(c).

List of Equipment Controlled by ECCN 1564A

Note.—Integrated circuits are categorized as follows:

"Monolithic integrated circuits"
"Microcomputer microcircuits"
"Microprocessor microcircuits"
"Multichip integrated circuits"
"Film type integrated circuits"
"Hybrid integrated circuits"
"Optical integrated circuits"

For a list of definitions of terms used in this ECCN 1564A, see the Technical Note at the end of the entry.

(a) "Substrates" for printed circuit boards, including ceramic "substrates" and coated metal "substrates" (single-sided, double-sided or multilayer) and thin copper foils therefor, *except:* (1) Printed circuit boards manufactured from any of the following materials:

(A) Paper base phenolics;

(B) Glass cloth melamine;

(C) Glass epoxy resin uncoated or coated with copper foil of a thickness of 18 micrometers (0.00071 inch) or more;

(D) Polyethylene terephthalate; *or*

(E) Any other insulating material having all of the following characteristics:

(a) A maximum continuous rated operating temperature not exceeding 423 K (150 °C);

(b) A dissipation factor equal to or more than 0.009 at 1 MHz;

(c) A relative dielectric constant equal to or less than 8 at 1 MHz; *and*

(d) A coefficient of expansion equal to or more than $\pm 10^{-5}$/K over a temperature range of 273 K to 393 K (0 °C to 120 °C);

(2) Ceramic "substrates" having no more than two layers of interconnections, including the ground plane; *or*

(3) Copper foil having a thickness of 18 micrometers (0.00071 inch) or more;

(b) Ceramic packages for integrated circuits that are designed for hermetically sealed pin or pad grid array, leadless carrier or surface-mounted configurations, *except* when having all of the following characteristics:

(1) Single-in-line, dual-in-line or flat-pack configuration;

(2) Pin, pad or lead spacings of 2.50 mm or more, or 100 mil or more; *and*

(3) 40 leads or less;

(c) "Assemblies", "modules" and printed circuit boards with mounted components, with any of the following characteristics:

(1) They include "substrates" for printed circuit boards controlled for export by paragraph (a); *or*

(2) They contain controlled components, *except* when:

(A) The only controlled components they contain are capacitors;

(B) They are power supply "assemblies";

(C) They are non-coherent light-emitting alphanumeric displays that incorporate "monolithic integrated circuits" having both of the following characteristics:

(a) Used for decoding, controlling or driving the display; *and*

(b) Not integral with the actual display device; *or*

(D) They are simple encapsulated photo-coupler (transopter) "assemblies" having both of the following characteristics:

(a) Electrical input and output; *and*

(b) An incorporated light-emitting diode that can only emit non-coherent light;

Note.—Sub-paragraph (c)(2) does not control "assemblies", "modules" or printed circuit boards with mounted components, having both of the following characteristics:

(a) Designed for equipment not controlled for export by any other ECCN with the code letter "A"; *and*

(b) Substantially restricted to the particular application for which they have been designed by nature of either:

(1) Design;

(2) Performance;

(3) Lack of "user-accessible microprogramability";

(4) Lack of "user-accessible programability";

(5) "Software";

(6) "Microprogram" control; *or*

(7) Specialized logic control.

Notes.—1. For the export control status of "assemblies", "modules" or printed circuit boards with mounted components that are designed for, or that have the same functional characteristics as, electronic computers or "related equipment", see ECCN 1565A.

2. "Assemblies", "modules" or printed circuit boards with mounted components that are designed for, or that have the same functional characteristics as, controlled equipment shall be rated against the parameters of the appropriate equipment ECCN. In such cases, however, the relevant temperature parameters have to be changed into: Below 218 K (−55 °C) or above 358 K (85 °C).

(d) "Monolithic integrated circuits", "microcomputer microcircuits", "microprocessor microcircuits", "multichip integrated circuits", "film type integrated circuits", "hybrid integrated circuits" and "optical integrated circuits", *except*

(1) Encapsulated passsive networks;

Note.—Technology for the manufacture of thin film passive networks is not released from export control by this paragraph.

(2) Encapsulated integrated circuits, having all of the following characteristics:

(A) Not designed or rated as radiation hardened;

(B) Not rated for operation at an ambient temperature below 233 K (−40 °C) or above 358 K (85 °C);

(C) Packaged in any of the following casings:

(a) TO–5 outline cases (diameter 7.7 to 9.4 mm, *i.e.*, 0.305 to 0.370 inch); *or*

(b) Non-hermetically sealed cases;

(D) Being any of the following types:

(a) Bipolar "monolithic integrated circuits" having all of the following characteristics:

(1) Designed to perform a single digital logic function or a combination of digital logic functions;

(2) Encapsulated in packages having 24 terminals or less;

(3) A "basic gate propagation delay time" of no less than 3 ns;

(4) A "basic gate power dissipation" of no less than 2 mW; *and*

(5) A product of the "basic gate propagation delay time" and the "basic gate power dissipation" per gate of no less than 30 pJ for types having a "basic gate propagation delay time" of 3 ns or more and less than 5 ns;

(b) Bipolar "monolithic integrated circuits" having all of the following characteristics:

(1) Designed for operation in civil applications;

(2) Being either:

(A) Electronic switches, externally controlled by inductive, magnetic or optical means; *or*

(B) Threshold value switches; *and*

(3) With switching times of 0.5 microsecond or more;

(c) Complementary metal-oxide semiconductor (CMOS) "monolithic integrated circuits" having all of the following characteristics:

(1) Designed for operation as digital logic circuit elements but limited to gates, inverters, buffers, flip-flops, latches, multivibrators, bilateral switches, display drivers, fixed counters, fixed frequency dividers, storage registers, decoders, voltage translators, encoders, Schmidt triggers, delay timers, carry generators, clock generators or any combination of the above digital logic functions;

(2) Encapsulated in packages having 24 terminals or less; *and*

(3) A minimum value of the "basic gate propagation delay time" under any rated condition of no less than 10 ns;

(d) Positive-channel type or negative-channel type metal-oxide semiconductor (PMOS or NMOS) "monolithic integrated circuits" having all of the following characteristics:

(1) Designed for and by virtue of circuit design limited to use as serial digital shift registers;

(2) A maximum clock rate of 10 MHz; *and*

(3) A maximum of 1,024 bit per package;

(e) Silicon "microcomputer microcircuits" having all of the following characteristics:

(1) Mask programed by the "manufacturer" for a civil application prior to shipment;

(2) A word size to "speed" ratio of less than or equal to 1.1 bit per microsecond;

(3) A "speed-power dissipation product" of more than or equal to 1.2 microjoule;

(4) Not containing on-the-chip:

(A) A read-only storage (ROM) of more than 4,096 byte;

Note.—This does not include the storage space needed for the "microprogram".

(B) A random access storage (RAM) of more than 128 byte;

(C) A programable read-only storage (PROM);

(D) Multiplication capabilities;

(E) General purpose operating systems (e.g., CP/M); *or*

(F) High order languages (e.g., Tiny Basic);

(5) An operand (data) word length of less than or equal to 8 bit;

(6) Not capable of using storage off-the-chip for "program" storage; *and*

(7) Not rated for operation at an ambient temperature below 253 K (−20 °C) or above 348 K (75 °C);

Note.—Bit-slice "microcomputer microcircuits" are not released from export control by this subparagraph (e).

(f) Silicon "monolithic integrated circuits", "microcomputer microcircuits", "microprocessor microcircuits", "multichip integrated circuits", "film type integrated circuits", "hybrid integrated circuits" or "optical integrated circuits", having both of the following characteristics:

(1) No "user-accessible microprogramability"; *and*

(2) Designed or programed by the "manufacturer" for any of the following applications only:

(A) Car electronics (e.g., entertainment, instrumentation, safety, comfort, operations or pollution);

(B) Home electronics (e.g., audio and video equipment, appliances, safety, education, comfort, remote controlled toys or amusement);

(C) Timekeeping applications (e.g., watches or clocks);

(D) Personal communications up to 150 MHz, including amateur radio communication and intercom;

(E) Uncontrolled cameras including cine cameras but excluding imaging microcircuits; *or*

(F) Medical electronic prostheses (e.g., cardiac pacemakers, hearing aids);

Note.—The temperature limits specified in subparagraph (d)(2)(B) do not apply to subparagraphs (d)(2)(D)(f)(2) (A) or (F).

(g) "Monolithic integrated circuits" or "hybrid integrated circuits", having all of the following characteristics:

(1) Not capable of addressing off-the-chip storage;

(2) No "user-accessible microprogramability" *and*

(3) Designed for and by virtue of circuit design limited to use in simple calculators having both of the following characteristics:

(A) Performing a single function in response to a keystroke; *and*

(B) Capable of performing floating point additions of a maximum of 13 decimal digits (mantissa only) in no less than 20 ms;

(h) "Monolithic integrated circuits" or "hybrid integrated circuits", having both of the following characteristics:

(1) No "user-accessible microprogramability"; *and*

(2) Designed for and by virtue of circuit design limited to use in simple key programable calculators having both of the following characteristics:

(A) Capable of executing a sequence of no more than 256 "program" steps introduced into a "program" storage on-the-chip by a sequence of keystrokes; *and*

(B) Capable of performing floating point additions of a maximum of 13 decimal digits (mantissa only) in no less than 20 ms;

(i) Silicon "microprocessor microcircuits" having all of the following characteristics:

(1) A word size to "speed" ratio of less than or equal to 1.25 bit per microsecond;

(2) A "speed power dissipation product" of more than or equal to 2 microjoule;

(3) Not containing on-the-chip:

(A) Read-only storage (ROM);

(B) Programable read-only storage (PROM);

(C) Random-access storage (RAM) of more than 1,024 bit; *or*

(D) Multiplication instructions;

(4) Capable of addressing storage off-the-chip of no more than 65,536 byte;

(5) An operand (data) word length of less than or equal to 8 bit;

(6) An arithmetic logic unit (ALU) not wider than 8 bit; *and*

(7) Not rated for operation at an ambient temperature below 253 K (−20 °C) or above 348 K (75 °C);

Note.—Bit-slice "microprocessor microcircuits" are not released from export control by subparagraph (d)(2)(D)(i).

(j) Storage "monolithic integrated circuits" or "multichip integrated circuits", as follows:

(1) Read-only (ROMs) having all of the following characteristics:

(A) Mask programmed by the "manufacturer" for a civil application prior to shipment;

(B) A maximum of 8,192 bit per package;

(C) A maximum access time of no less than 450 ns; *and*

(D) Not rated for operation at an ambient temperature below 253 K (−20 °C) or above 348 K (75 °C);

(2) Positive-channel type or negative-channel type metal-oxide semiconductor read-only (PMOS- or NMOS-ROMs) having all of the following characteristics:

(A) Mask programed by the "manufacturer" for a civil application prior to shipment;

(B) A maximum of 32,768 bit per package;

(C) A maximum access time of no less than 450 ns; *and*

(D) Not rated for operation at an ambient temperature below 253 K (−20 °C) or above 348 K (75 °C);

(3) Positive-channel type or negative channel type metal-oxide semiconductor read-only (PMOS- or NMOS-ROMs) having all of the following characteristics:

(A) Mask programed or designed as character generators for a standard character font;

(B) A maximum access time of no less than 250 ns; *and*

(C) Not rated for operation at an ambient temperature below 253 K (−20 °C) or above 348 K (75 °C);

(4) Programable (non-erasable) read-only (PROMs) having all of the following characteristics:

(A) Programed by the "manufacturer" for a civil application prior to shipment;

(B) A maximum of 2,048 bit per package;

(C) A maximum access time of no less than 250 ns; *and*

(D) Not rated for operation at an ambient temperature below 253 K (−20 °C) or above 348 K (75 °C);

(5) Programable (non-erasable) read-only (PROMs) having all of the following characteristics:

(A) Programed by the "manufacturer" for a civil application prior to shipment;

(B) A maximum of 8,192 bit per package;

(C) A maximum access time of no less than 450 ns; *and*

(D) Not rated for operation at an ambient temperature below 253 K (−20 °C) or above 348 K (75 °C);

(6) Bipolar random-access (RAMs) having any of the following characteristics:

(A) A maximum of 64 bit per package *and* a maximum access time of no less than 30 ns;

(B) A maximum of 256 bit per package *and* a maximum access time of no less than 40 ns;

(C) A maximum of 1,024 bit per package *and* a maximum access time of no less than 45 ns;

(7) Metal-oxide semiconductor dynamic random access (MOS-DRAMs) having all of the following characteristics:

(A) A maximum of 4,096 bit per package;

(B) A maximum access time of no less than 250 ns; *and*

(C) Not rated for operation at an ambient temperature below 253 K (−20 °C) or above 348 K (75 °C);

(8) Metal-oxide semiconductor static random access (MOS-SRAMs) having both of the following characteristics:

(A) A maximum of 1,024 bit per package; *and*

(B) A maximum access time of no less than 450 ns;

(k) Amplifier "monolithic integrated circuits", "multichip integrated circuits", "film type integrated circuits" or "hybrid integrated circuits", as follows:

(1) Audio amplifiers having a maximum rated continuous power output of 50 W or less at an ambient temperature of 298 K (25 °C);

Note.—For audio amplifiers, the 358 K (85 °C) upper temperature limit specified in (d)(2)(B) is not applicable. The lower limit of 233 K (−40 °C) is applicable.

(2) Instrumentation amplifiers having all of the following characteristics:

(A) A best-case rated linearity no better than ±0.01% at a gain of 100;

(B) A maximum gain-bandwidth product of no more than 7.5 expressed in MHz (e.g., a maximum bandwidth of 75 kHz at (−3)dB and a gain of 100); *and*

(C) A typical slew rate at unity-gain not exceeding 3 V/microsecond;

(3) Isolation amplifiers;

(4) Operational amplifiers having all of the following characteristics:

(A) A typical unity-gain open-loop bandwidth of no more than 5 MHz;

(B) A typical open-loop voltage gain of no more than 10^6, *i.e.*, 120 dB;

(C) Either:

(a) A maximum intrinsic rated input offset voltage of no less than 1.0 mV; *or*

(b) A maximum input offset voltage drift of no less than 5 microvolt/K;

(D) A typical slew rate at unity-gain not exceeding 5 V/microsecond; *and*

(E) A typical power dissipation of more than 10 mW per amplifier, if the typical slew rate at unity-gain exceeds 2.5 V/microsecond; *or*

(5) Untuned alternating current (AC) amplifiers having both of the following characteristics:

(A) A bandwidth of less than 3 MHz; *and*

(B) A maximum rated power dissipation of 5 W or less at an ambient temperature of 298 K (25 °C);

(l) Analog multiplier or divider "monolithic integrated circuits", "multichip integrated circuits", "film type integrated circuits" or "hybrid integrated circuits", having both of the following characteristics:

(1) A best-case rated linearity of no better than ±0.5% of full scale; *and*

(2) A (−3)dB small signal bandwidth of no more than 1 MHz;

(m) Converter "monolithic integrated circuits", "multichip integrated circuits", "film type integrated circuits" or "hybrid integrated circuits", as follows:

(1) Analog-to-digital converters having both of the following characteristics:

(A) A maximum conversion rate to rated accuracy of no more than 50,000 complete conversions per second, *i.e.*, a conversion time to maximum resolution of no less than 20 microsecond; *and*

(B) An accuracy of no better than ±0.025% of full scale over the specified operating temperature range;

(2) Analog to-digital converters having both of the following characteristics:

(A) Designed for digital voltmeter applications; *and*

(B) Permitting characteristics corresponding to those of instruments free from export control under paragraph (f) of ECCN 1529A;

(3) Digital-to-analog converters having both of the following characteristics:

(A) A maximum settling time to rated linearity of no less than:

(a) 5 microsecond for voltage output converters; *or*

(b) 250 ns for current output converters; *and*

(B) A non-linearity (*i.e.*, deviation from an ideal straight line) of equal to or worse than ±0.025% of full scale over the specified operating temperature range;

(4) Voltage (rms-to-DC) converters; *or*

(5) Voltage-to-frequency converters having all of the following characteristics:

(A) Not employing delta or delta/sigma modulation techniques;

(B) A rated accuracy of no better than ±0.01% of full scale; *and*

(C) A 'gain drift' of no less than $\pm 50 \times 10^{-6}$/K at rated frequency;

Note.—'Gain drift' specifies the maximum change in gain over a specified temperature range.

Note.—See ECCN 1527A for coders, decoders or coders/decoders (codec), all when designed for voice.

(n) Interface "monolithic integrated circuits", "multichip integrated circuits", "film type integrated circuits" or "hybrid integrated circuits", as follows:

(1) Line drivers and line receivers having a 'typical propagation delay time' from data input to output of no less than 15 ns;

(2) Peripheral or display drivers having all of the following characteristics:

(A) A maximum rated output current of 500 mA or less;

(B) A 'typical propagation delay time' from data input to output of no less than 20 ns; *and*

(C) A maximum rated output voltage of 80 V or less;

(3) Sense amplifiers having both of the following characteristics:

(A) A 'typical propagation delay time' from data input to output of no less than 15 ns; *and*

(B) A typical input threshold voltage of no less than 10 mV; *or*

(4) Storage or clock drivers having all of the following characteristics:

(A) A maximum rated output current of 500 mA or less;

(B) A maximum rated output voltage of 30 V or less; *and*

(C) A "typical propagation delay time" from data input to output of no less than 20 ns;

Note.—When the "typical propagation delay time" is not specified, the typical turn-on or turn-off time, which ever is less, should be used.

(o) Peripheral positive-channel type or negative-channel type metal-oxide semiconductor (PMOS or NMOS) "monolithic integrated circuits" or "multichip integrated circuits", designed only for:

(1) The support of "microprocessor microcircuits" that are excluded from export control by paragraph (d)(2)(D)(i); *and*

(2) Any of the following functions:

(A) Parallel input/output controller (PIO);

(B) Serial input/output controller (SIO);

(C) Dual asynchronous receiver/transmitter (DART);

(D) Counter/timer circuit (CTC);

(p) Sample and hold "monolithic integrated circuits", "multichip integrated circuits", "film type integrated circuits" or "hybrid integrated circuits", having both of the following characteristics:

(1) An acquisition time of no less than 10 microsecond; *and*

(2) A non-linearity (*i.e.*, a deviation from an ideal straight line) of equal to or worse than ±0.01% of full scale for a hold time of 1 microsecond;

(q) Timing "monolithic integrated circuits", "multichip integrated circuits", "film type integrated circuits" or "hybrid integrated circuits", having both of the following characteristics:

(1) A typical timing error of no less than ±0.5%; *and*

(2) A typical rise time of no less than 100 ns;

(r) Voltage "monolithic integrated circuits", "multichip integrated circuits", "film type integrated circuits" or "hybrid integrated circuits", as follows:

(1) Voltage comparators having both of the following characteristics:

(A) A maximum input offset voltage of no less than 2mV; *and*

(B) A "typical switching speed", *i.e.*, typical response time of no less than 30 ns;

(2) Voltage references having both of the following characteristics:

(A) A rated accuracy of no better than +0.1%; *and*

(B) A temperature coefficient of the voltage of no less than 15×10^{-6}/K; *or*

(3) Linear type voltage regulators having both of the following characteristics:

(A) A rated nominal output voltage of 50 V or less; *and*

(B) A maximum output current of 2 A or less;

(4) Switching type voltage regulators having both of the following characteristics:

(A) A rated nominal output voltage of 40 V or less; *and*

(B) A maximum output current of 150 mA or less;

Notes.—1. For voltage regulators, the 358 K (85 °C) upper temperature limit specified in subparagraph (d)(B)(2) is not applicable. The lower limit of 233 K (−40 °C) is applicable.

2. See subparagraph (d)(2)(D)(m)(4) for rms-to-DC voltage converters and subparagraph (d)(2)(D)(m)(5) for voltage-to-frequency converters.

(s) Non-coherent light-emitting alphanumeric displays that do not incorporate other "monolithic integrated circuits";

(t) Non-coherent light-emitting alphanumeric displays that incorporate "monolithic integrated circuits" having both of the following characteristics:

(1) Used for decoding, controlling or driving the display; *and*

(2) Not integral with the actual display device;

(u) Simple encapsulated photocoupler (transopter) "optical integrated circuits" having both of the following characteristics:

(1) Electrical input and output; *and*

(2) An incorporated light-emitting diode that can only emit non-coherent light;

(3) Unencapsulated integrated circuits having all of the following characteristics:

(A) Based exclusively upon silicon;

(B) Not designed or rated as radiation hardened; *and*

(C) Being any of the following types:

(a) Bipolar "monolithic integrated circuits" having all of the following characteristics:

(1) Designed to perform a single digital logic function or a combination of digital logic functions;

(2) A "basic gate propagation delay time" of no less than 5 ns;

(3) A product of the "basic gate propagation delay time" and the "basic gate power dissipation" per gate of no less than 70 picoJoules; *and*

(4) No more than 24 input/output pads;

Note.—Subparagraph (d)(3)(C)(a) does no permit shipment of complex custom-built bipolar digital "monolithic integrated circuits".

(b) Bipolar "monolithic integrated circuits" having all of the following characteristics:

(1) Designed for operation in civil applications;

(2) Being either:

(A) Electronic switches, externally controlled by inductive, magnetic or optical means; *or*

(B) Threshold value switches;

(3) With switching times of 0.5 microsecond or more; *and*

(4) No more than 24 input/output pads;

Note.—Subparagraph (d)(3)(C)(b) does not permit shipment of complex custom-built bipolar digital "monolithic integrated circuits".

(c) "Monolithic integrated circuits" having all of the following characteristics:

(1) No "user-accessible microprogramability";

(2) Designed for and by virtue of circuit design limited to use in civil radio or television receivers;

(3) Rated for operation at 11 MHz or less;

(4) Not designed for station scanning applications;

(5) Not utilizing charge-coupled device (CCD) technology;

(6) Not intended for beam lead bonding; *and*

(7) If intended for video or luminance amplifiers, having both of the following characteristics:

(A) A maximum rated supply voltage not exceeding 30 V; *and*

(B) A typical bandwidth not exceeding 7.5 MHz;

(d) "Monolithic integrated circuits" having all of the following characteristics:

(1) No "user-accessible microprogramability";

(2) Not utilizing charge-coupled device (CCD) technology;

(3) Not intended for beam lead bonding; *and*

(4) Designed or programed by the "manufacturer" for any of the following applications only:

(A) Timekeeping applications (e.g., watches or clocks); *or*

(B) Cardiac pacemakers or hearing aids;

(e) Amplifier "monolithic integrated circuits" as follows:

(1) Audio amplifiers having a maximum rated power output of 25 W or less at an ambient temperature of 298 K (25 °C); *or*

(2) Operational amplifiers having all of the following characteristics:

(A) A typical unity-gain open-loop bandwidth of no more than 5 MHz;

(B) A typical open-loop voltage gain of no more than 562,000, *i.e.*, 115 dB;

(C) A maximum intrinsic rated input offset voltage of no less than 2.5 mV; *and*

(D) A typical slew rate at unity-gain not exceeding 2.5 V/microsecond;

(f) Voltage "monolithic integrated circuits" as follows:

(1) Voltage comparators having both of the following characteristics:

(A) A maximum input offset voltage of no less than 5 mV; *and*

(B) A "typical switching speed", *i.e.*, typical response time of no less than 50 ns;

(2) Linear type voltage regulators having both of the following characteristics:

(A) A rated nominal output voltage of 40 V or less; *and*

(B) A maximum output current of 1 A or less;

(3) Switching type voltage regulators having both of the following characteristics:

(A) A rated nominal output voltage of 40 V or less; *and*

(B) A maximum output current of 150 mA or less;

(4) Encapsulated integrated circuits having all of the following characteristics:

(A) Not designed or rated as radiation hardened;

(B) Not rated for operation at an ambient temperature below 233 K (−40 °C) or above 358 K (85 °C);

(C) Packaged in hermetically sealed ceramic packages excluded from export control under paragraph (b) of this List; *and*

(D) Containing unencapsulated integrated circuits excluded from export control under sub-paragraph (d)(3) of this List.

Note 1.—Nothing in the "List of Equipment Controlled by ECCN 1564A" shall be construed as permitting the export of wafer or chip design or processing information inherent in the manufacture of any controlled class of "assembly", "module", integrated circuit or "circuit element", irrespective of any release of devices in any of these classes. This restriction also applies to technical data embodied both in the equipment controlled for export by ECCN 1355A and in its use.

Note 2.—Integrated circuits having no "user-accessible microprogramability" (e.g., mask programed) are only eligible for release from export control if:

(a) The design or "program" are originated either by the "manufacturer" alone or in concert with the user of the integrated circuit;

(b) The "program" is unalterably fixed at the time of manufacture; *and*

(c) The "manufacturer" has established that the design, basic functions and performance of the integrated circuit are only for the intended end-use.

Note.—Integrated circuits, including gate arrays and programable logic arrays, based only or primarily on customer-supplied circuit design or "programs" do not meet the criteria of this Note and are therefore not released from export control under this ECCN.

(Advisory) Note 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of integrated circuits controlled for export by paragraph (d), provided:

(a) They are encased in hermetically sealed dual-in-line packages and this is the only characteristic that does not permit release from export control under sub-paragraph (d)(2); *and*

(b) The stated legitimate civil end-use requires hermetically sealed dual-in-line packages.

(Advisory) Note 4: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of devices controlled for export by paragraph (c) and not released from control by virtue of subparagraph (d) (1) or (2), provided:

(a) They consist of, or are incorporated in, plug-in printed circuit boards with mounted components or plug-in "modules" for use in identifiable equipment previously exported by a COCOM member country;

(b) They do not upgrade the initial performance of the previously exported equipment; *and*

(c) The plug-in printed circuit boards with mounted components or the plug-in "modules" are not operable independently from the equipment in which they are to be inserted.

(Advisory) Note 5: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "assemblies", "modules" or printed circuit boards with mounted components, controlled for export by subparagraph (c)(2), that by nature of their design or performance:

(a) Are substantially restricted to the particular civil application for which they have been designed; *and*

(b) Contain only components that are either free from export control or likely to be approved for export under an Advisory Note to this ECCN.

(Advisory) Note 6: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of devices (encapsulated or unencapsulated) not released from export control by paragraph (c) or (d), provided:

(a) They have been designed for identifiable civil applications; *and*

(b) They are, by nature of design or performance, substantially restricted to the particular application for which they have been designed;

(c) [Reserved]

Technical Note

Definitions of Terms Used in this ECCN 1564A

"Assembly"—A number of electronic components (*i.e.*, "circuit elements", "discrete components", integrated circuits, etc.) connected together to perform a specific function(s), replaceable as an entity and normally capable of being disassembled.

"Basic gate power dissipation"—The power dissipation value corresponding to the basic gate utilized within a family of "monolithic integrated circuits". This may be specified, for a given family, either as the power dissipation per typical gate or as the typical power dissipation per gate.

"Basic gate propagation delay time"—The propagation delay time value corresponding to the basic gate utilized within a family of "monolithic integrated circuits". This may be specified, for a given family, either as the propagation delay time per typical gate or as the typical propagation delay time per gate.

Note.—"Basic gate propagation delay time" is not to be confused with input/output delay time of a complex "monolithic integrated circuit".

"Circuit element"—A single active or passive functional part of an electronic circuit, such as one diode, one transistor, one resistor, one capacitor, etc.

"Discrete component"—A separately packaged "circuit element" with its own external connections.

"Film type integrated circuit"—An array of "circuit elements" and metallic interconnections formed by deposition

of a thick or thin film on an insulating "substrate".

"Hybrid integrated circuit"—Any combination of integrated circuits, "circuit elements" or "discrete components" connected together to perform a specific function(s).

"Manufacturer"—For the purposes of this ECCN, the individual or organization designing an integrated circuit or a "program" for an intended application, in contrast to an individual or organization merely programing an integrated circuit at, or in accordance with, a user's request.

"Microcomputer microcircuit"—A "monolithic integrated circuit" or "multichip integrated circuit" containing an arithmetic logic unit (ALU) capable of executing general purpose instructions from an internal storage, on data contained in the internal storage.

Note.—The internal storage may be augmented by an external storage.

"Microprocessor microcircuit"—A "monolithic integrated circuit" or "multichip integrated circuit" containing an arithmetic logic unit (ALU) capable of executing a series of general purpose instructions from an external storage.

Note.—The "microprocessor microcircuit" normally does not contain integral user-accessible storage, although storage present on-the-chip may be used in performing its logic function.

"Microprogram"—A sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register.

"Module"—A number of electronic components (*i.e.*, "circuit elements", "discrete components", integrated circuits) connected together to perform a specific function(s), replaceable as an entity and not normally capable of being disassembled.

"Monolithic integrated circuit"—A combination of passive or active "circuit elements" or both that:

(a) Are formed by means of diffusion processes, implantation processes or deposition processes in or on a single semiconducting piece of material, a so-called 'chip';

(b) Can be considered as indivisibly associated; *and*

(c) Perform the function(s) of a circuit.

"Multichip integrated circuit"—Two or more "monolithic integrated circuits" bonded to a common "substrate".

"Optical integrated circuit"—A "monolithic integrated circuit" or a "hybrid integrated circuit" containing one or more parts designed to function as a photosensor or photoemitter or to perform an optical or an electro-optical function(s).

"Program"—A sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer.

"Software"—A collection of one or more "programs" or "microprograms" fixed in any tangible medium of expression.

"Speed"—The time to fetch an operand C and another operand D, both from an external storage outside any work register, add these operands and put the result back in storage. The addressing mode that yields the shortest execution time shall be used. The result of the add operation shall be stored in either the same location as one of the addends or in some other location. This choice shall be made to give the shortest execution time at the highest specified clock frequency.

"Speed-power dissipation product"—The product of the "speed" and the typical power dissipation, which shall be taken at the clock frequency used in the "speed" computation. The typical power dissipation may be any of the following, but must be the lowest value specified:

(a) The specified typical internal power dissipation;

(b) One half the maximum internal power dissipation;

(c) The product of the nominal supply voltage and typical total supply current; *or*

(d) One half the product of the nominal supply voltage and maximum total supply current.

"Substrate"—A sheet of base material with or without an interconnection pattern and on which or within which "discrete components" or integrated circuits or both can be located.

"User-accessible microprogramability"—The facility allowing a user to insert, modify or replace "microprograms".

"User-accessible programability"—The facility allowing a user to insert, modify or replace "programs" by means other than:

(a) A physical change in wiring or interconnections, *or*

(b) The setting of function controls including entry of parameters.

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of electronic component assemblies, sub-assemblies, printed circuit boards and microcircuits not specially designed to military standards for radiation hardening and temperature, as follows:

(a) Substrates for printed circuits, *except* those exceeding the limits of subparagraph (a)(1)(E) or (a)(2) of this ECCN 1564A;

(b) Silicon-based devices exceeding the limits of:

(1) Subparagraphs (d)(2)(D) (a) or (c), *except* those with more than 28 terminals;

(2) Subparagraphs (d)(2)(D) (h), (k) (1) or (5);

(3) Subparagraphs (d)(2)(D) (b), (k) (2) and (3), (l), (m) (4) and (5), (n), (r) (1), (2) and (3), (s), (t), and (c)(2)(D); *or*

(4) Subparagraph (d)(2)(D) (f) or (q);

(c) Silicon-based 8-bit or less microcomputer microcircuits exceeding the limits of subparagraphs (d)(2)(D)(e) (1) to (6);

(d) Silicon-based microprocessor microcircuits with an operand length of 16 bit 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 Mbits per second;

(2) Bit-slice microprocessors;

(e) Silicon-based memory devices, as follows:

(1) MOS DRAMs with no more than 64 Kbits;

(2) MOS SRAMs with no more than 16 Kbits;

(3) Mask programmed ROMs with no more than 64 Kbits;

(4) UV–EPROMS with no more than 64 Kbits;

(5) EAROMs with no more than 32 Kbits;

(6) EEROMs with no more than 64 Kbits;

Note.—1 Kbit=1,024 bits.

(f) Operational amplifier microcircuits exceeding the limits of subparagraph (d)(2)(D)(k)(4) that do not have a slew rate greater than 100 volts per microsecond;

(g) Analog-to-digital and digital-to-analog converter microcircuits exceeding the limits of subparagraphs (d)(2)(D)(m) (1) and (3), *except:*

(1) Analog-to-digital converter microcircuits with less than a 500 ns conversion time to a maximum resolution of 12 bit;

(2) Digital-to-analog converter microcircuits with less than 500 ns settling time for voltage output and a maximum resolution of 12 bit;

(3) Digital-to-analog converter microcircuits with less than 25 ns settling time for current output and a maximum resolution of 12 bit;

(h) Silicon-based 8-bit or less user-programmable single chip

microcomputers controlled for export by subparagraph (d);

(i) Integrated optical microcircuits:

(1) Controlled for export by subparagraph (d);

(2) With no more than 2048 elements; *and*

(3) Not exceeding the limits of ECCN 1548A (a) and (b);

(j) Non-reprogrammable silicon-based microcircuits specially designed or programmed by the manufacturer for business or office use.

Dated: July 15, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary of Export Administration.

[FR Doc. 87-16377 Filed 7-20-87; 8:45 am]

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federal register

Tuesday
July 21, 1987

Part III

Department of Education

34 CFR Part 630

Fund for the Improvement of Postsecondary Education; Student Community Service Innovative Projects; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 630

Fund for the Improvement of Postsecondary Education; Student Community Service Innovative Projects

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Fund for the Improvement of Postsecondary Education (FIPSE). These amendments are needed to implement the changes in Title X of the Higher Education Act of 1965 as amended by the Higher Education Amendments of 1986. The regulations provide for the administration of a new Innovative Projects for Student Community Service Program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: John E. Donahue, Fund for the Improvement of Postsecondary Education, Office of Postsecondary Education, (Room 3100, ROB–3), Department of Education, 400 Maryland Avenue SW., Mail Stop 3331, Washington, DC 20202, Telephone (202) 245–8091.

SUPPLEMENTARY INFORMATION: The purpose of this program is to support innovative projects designed to encourage students to participate in community service programs in exchange for educational services or financial assistance, thereby reducing the participating students' postsecondary education debt burden.

On April 28, 1987 the Secretary issued a notice of proposed rulemaking for the Fund for the Improvement of Postsecondary Education in the **Federal Register** (50 FR 15472–15473). No public comments were received and therefore the Secretary is issuing these regulations as final rules without change.

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 that order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 630

Colleges and universities, Education, Grant programs—education.

Dated: July 1, 1987.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.116F—Fund for the Improvement of Postsecondary Education—Innovative Projects for Student Community Service)

The Secretary amends Part 630 of Title 34 of the Code of Federal Regulations as follows:

PART 630—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

1. The authority citation for Part 630 is revised to read as follows:

Authority: 20 U.S.C. 1135–1135a–2, 1135e–1135e–1, unless otherwise noted.

2. In § 630.(b), definitions of "community service" and "institution of higher education" are added, in alphabetical order, to read as follows:

§ 630.5 Definitions that apply to this program.

* * * * *

(b) * * *

"Community service" means planned, supervised service designed to improve the quality of life for community residents, particularly for low-income people, or to assist in the solution of particular problems related to their needs, including, but not limited to, health care, child care, literacy, education (including tutorial services), vocational rehabilitation and training, social services, legal services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, and rural development. This term does not include partisan or non-partisan political activity, lobbying, direct solicitation of donations, religious proselytizing, conduct of religious services or instruction, pro-union or anti-union activity, or activities that result in the displacement of employed workers or impair existing contracts for service.

* * * * *

"Institution of higher education" means an institution that meets the definition of that term found in Section 1210(a) of the Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1135, 1135e, 1135e–1, 1141)

3. Section 630.11 is amended by adding a new paragraph (c) and revising the citation of legal authority to read as follows:

§ 630.11 Types of competitions.

* * * * *

(c) *Innovative projects for student community service competition.* In this competition the Secretary supports innovative projects designed to encourage students to participate in community service programs in exchange for educational services or financial assistance in order to reduce the debt burden that has been or would otherwise be incurred by those students for attendance at institutions of higher education.

(Authority: 20 U.S.C. 1135, 1135e)

§ 630.33 [Amended]

4. Section 630.33 is amended by adding the phrase "under the competitions described in §§ 630.11 (a) and (b)" between the words "project" and "to".

§ 630.34 [Redesignated as § 630.35]

5. Section 630.34 is redesignated as § 630.35 and a new § 630.34 is added to read as follows:

§ 630.34 Board approval.

The Secretary does not make an award to an applicant under § 630.11(c) until the application is approved by the National Board of the Fund for the Improvement of Postsecondary Education.

(Authority: 20 U.S.C. 1135e–1)

[FR Doc. 87–16536 Filed 7–20–87; 8:45 am]

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H.R. 436/Pub. L. 100-74

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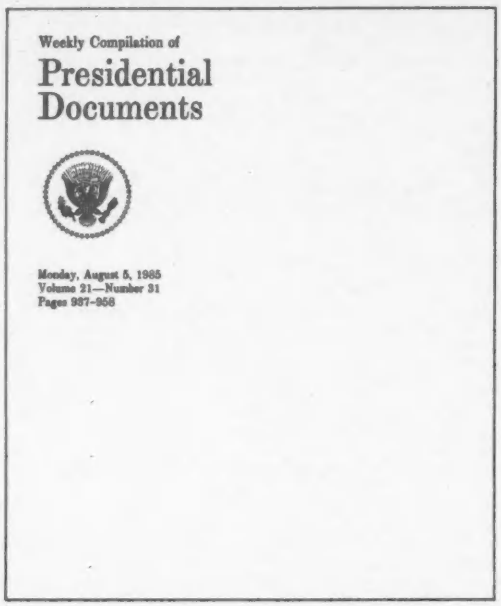

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