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Presidential Documents

Title 3—

The President

Proclamation 7487 of October 19, 2001

National Forest Products Week, 2001

By the President of the United States of America

A Proclamation

Our Nation has been blessed with and sustained by its many natural resources. Among these resources, one that has provided us with both vital products and much enjoyment is America's forestland.

Throughout our Nation's history, our forests have provided paper products, construction materials for dwellings and furniture, and fuel for warmth and cooking. Timbers harvested from our lands have been fundamental to the growth and expansion of America. Although our reliance on our forests has changed during the last century, they continue to remain an invaluable resource.

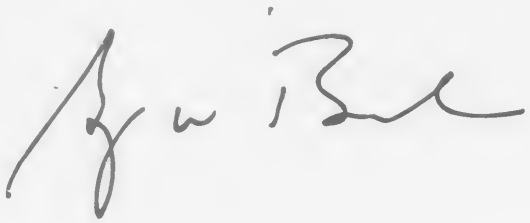
The beautiful cherry wood of Pennsylvania, the mighty oaks of the Midwest, the pines of the South, and the firs of the West are loved by millions of Americans, who find solace and relaxation in camping, hiking, and enjoying recreational activities among these trees. And for many Americans working in the construction, manufacturing, and recreation industries, our forests represent economic security for their families and communities. They serve as important ecosystems, sheltering and feeding wildlife, protecting soil, and purifying water and air. Our timberlands also serve as an important symbol of our Nation's beauty and economic strength. Now, more than ever, we have a responsibility to ensure that they remain healthy and productive.

By working together to develop and promote sensible policies, we can achieve success in protecting these natural resources and pristine areas. My Administration will work closely with Federal, State, and local officials, as well as private landowners to encourage sustainable land management techniques, utilize the latest in scientific research, foster local stewardship of resources, and support innovative methods of pollution control. If we remain vigilant, our forests will provide products, recreation, clean air, clean water, and wildlife habitat for generations to come.

In recognition of the economic, environmental, and recreational importance of our forests, the Congress, by Public Law 86–753 (36 U.S.C. 123), has designated the week beginning on the third Sunday in October of each year as "National Forest Products Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 21 through October 27, 2001, as National Forest Products Week. I call upon all Americans to observe that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of October, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–27060
Filed 10–24–01; 8:45 am]
Billing code 3195–01–P

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

Release of Burley Tobacco Farmer's Warehouse, Receiving Station and Dealer Designations to Warehouse Operators, Receiving Station Buying Companies and Dealers

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Intent to Release Designation Records and Opportunity to Opt Out of the Release.

SUMMARY: This document announces the intention of the Secretary of Agriculture to release the burley tobacco farm designation information, which includes, but is not limited to, the farm serial number, operator's name and address and pounds designated to a specific market location; and provides notice of the method in which interested parties can opt out of that release. The release will be to the designated warehouse operator, receiving station buying company or dealer in order to facilitate an orderly marketing of the 2001 crop of burley tobacco.

DATES: Submit Request to Opt Out of Release October 30, 2001.

ADDRESSES: Notices should be mailed to Misty Jones, Farm Service Agency (FSA), Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250–0514.

FOR FURTHER INFORMATION CONTACT: Misty L. Jones, telephone number (202) 720–0200 or via e-mail at TOB__Comments@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION: The marketing quota program is provided for in Section 319 of the Agricultural Adjustment Act of 1938, as amended, and is a program in which Federal marketing quotas are established for burley tobacco. Tobacco farmers who filed market designation information were asked to provide the Farm Service Agency (FSA) the exact market location and the poundage of burley tobacco that would be offered for sale at each respective location.

In order to facilitate an orderly marketing of such commodity FSA collected information to be used in scheduling Federal graders at auction warehouses and to provide like information to nonauction receiving stations and dealers and auction warehouse operators for marketing scheduling purposes. So that affected parties may efficiently and expeditiously make arrangements for the 2001 burley tobacco marketing season FSA will release information collected after October 30, 2001. The release will be made to any person asking for the information. This will help warehouse operators schedule sales in a manner that will assist farmers, the warehouse operators and inspectors. This can also avoid difficulties for the farmer with regard to private contracts for sale. Because this information can provide much needed help to market locations, the Secretary intends to provide the information to the warehouse operators, receiving station buying companies, dealers and others as may request the information that is not confidential, except in the case of those parties who wish to opt out of the release. Those who wish to opt out of the release should send notice in writing of their election to Misty Jones, Farm Service Agency, Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250–0514. Such notice must be received by October 30, 2001.

The Agency does not expect many exemption requests.

Signed at Washington, DC on October 16, 2001.

James R. Little,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 01–26947 Filed 10–22–01; 4:41 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV01–989–3 FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2000–01 Crop Natural (Sun-dried) Seedless and Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim final rule that established final volume regulation percentages for 2000–01 crop Natural (sun-dried) Seedless raisins (Naturals) and Zante Currant raisins (Zantes) covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 53 percent free and 47 percent reserve for Naturals, and 83 percent free and 17 percent reserve for Zantes. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

EFFECTIVE DATE: November 26, 2001.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202)

720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule continues in effect final free and reserve percentages for Naturals and Zantes for the 2000–01 crop year, which began August 1, 2000, and ended July 31, 2001. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect final volume regulation percentages for 2000–01 crop Naturals and Zantes which were established through an interim final rule published on August 1, 2001, in the **Federal Register** (66 FR 39623). The volume regulation percentages are 53 percent free and 47 percent reserve for Naturals and 83 percent free and 17 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. Final percentages were unanimously recommended by the Committee on January 12, 2001.

Computation of Trade Demands

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 15, 2000, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for each varietal type is equal to a 5-year rolling average, dropping the high and low figures, of free tonnage shipments during the months of August, September, and October. In accordance with these provisions, the Committee computed and announced 2000–01 trade demands for Naturals and Zantes at 233,344 tons and 4,290 tons, respectively, as shown below.

COMPUTED TRADE DEMANDS

[Natural condition tons]

	Naturals	Zantes
Prior year's shipments	264,619	4,635
Multiplied by 90 percent ..	0.90	0.90
Equals adjusted base	238,157	4,172
Minus carry-in inventory ..	97,109	1,109
Plus desirable carryout	92,296	1,227
Equals computed trade demand	233,344	4,290

Computation of Preliminary Volume Regulation Percentages

As required under § 989.54(b) of the order, the Committee met on October 4, 2000, and announced a preliminary crop estimate of 427,394 tons for Naturals. Naturals are the major varietal type of California raisin. This estimate was about 27 percent higher than the 10-year average of 336,766 tons. Combining the carryin inventory of 97,109 tons with the 427,394-ton crop estimate resulted in a total available supply of 524,503 tons, which was significantly higher (about 125 percent) than the 233,344-ton trade demand. Thus, the Committee determined that volume regulation for Naturals was warranted. The Committee announced preliminary free and reserve percentages for Naturals which released 65 percent of the computed trade demand since the field price (price paid by handlers to producers for their free tonnage raisins) had not yet been established. The preliminary percentages were 35 percent free and 65 percent reserve.

Also at its October 4, 2000, meeting, the Committee announced a preliminary crop estimate for Zantes at 4,828 tons, which was comparable to the 10-year average of 4,447 tons. Combining the carry-in inventory of 1,109 tons with the 4,828-ton crop estimate resulted in a total available supply of 5,937 tons. With the estimated supply about 38 percent greater than the 4,290-ton trade demand, the Committee determined that volume regulation for Zantes was warranted. The Committee announced preliminary percentages for Zantes which released 65 percent of the computed trade demand since field price had not yet been established. The preliminary percentages were 58 percent free and 42 percent reserve.

In addition, preliminary percentages were also announced for Dipped Seedless and Other Seedless raisins. The Committee ultimately determined that volume regulation was only warranted for Naturals and Zantes. As in past seasons, the Committee submitted its marketing policy to the Department for review.

Computation of Final Volume Regulation Percentages

Pursuant to § 989.54(c) and (d) of the order, the Committee met on January 12, 2001, and recommended interim percentages for Naturals and Zantes to release slightly less than their full trade demands. Specifically, interim percentages were recommended for Naturals at 52.75 percent free and 47.25 percent reserve, and for Zantes at 82.75 percent free and 17.25 percent reserve.

The Department reviewed the Committee's recommendation for interim percentages in light of unusual circumstances facing the industry. Field prices for Naturals and Zantes are negotiated between the Raisin Bargaining Association (RBA) and handlers, and are usually set in October. For the first time ever, price negotiations proceeded to arbitration, a process that occurred between April 30—May 2, 2001. The Committee's rationale for recommending interim percentages in January, prior to the establishment of field prices, was that the industry was proceeding to binding arbitration, and that field prices would be set through this process.

In reviewing the Committee's recommendation regarding interim percentages, the Department considered the fact that volume regulation under the order is linked to the establishment of field prices. Preliminary percentages release 85 percent of the trade demand if field prices have been set, but only 65 percent if they have not. The order also permits preliminary and interim percentages to be implemented through announcements by the Committee, but final percentages must be established by the Department through informal rulemaking.

While preliminary percentages were designed to release 65 percent of the trade demand until field price is set, the order does not contemplate and provides no contingency for the failure to set prices by mid-February. The rulemaking record indicates that the quantity of tonnage released at the 65-percent level would be sufficient to supply market needs through February, but does not address restrictions after February 15. The Department does not support marketing order regulations that restrict supplies to the point where market needs are not met. This would negatively impact the industry as a whole. Thus, on March 15, 2001, the Department approved the establishment of interim percentages for Naturals and Zantes.

At its January 2001 meeting, the Committee also recommended final percentages to release the full trade demands for Naturals and Zantes, once field prices were set through arbitration. Field prices were established on May 2, 2001. Final percentages compute to 53 percent free and 47 percent reserve for Naturals, and 83 percent free and 17 percent reserve for Zantes.

Both the interim and final percentage computations were based on revised crop estimates of 440,000 tons for Naturals and 5,160 tons for Zantes. The Committee's calculations to arrive at final percentages for Naturals and Zantes are shown in the table below:

FINAL VOLUME REGULATION PERCENTAGES

[Natural condition tons]

	Naturals	Zantes
Trade demand	233,344	4,290
Divided by crop estimate	440,000	5,160
Equals free percentage	53	83
100 minus free percentage equals reserve percentage	47	17

In addition, the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal was met for Naturals and Zantes by the establishment of final percentages which released 100 percent of the trade demand and the offer of additional reserve raisins for sale to handlers under the "10 plus 10 offers." As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. Handlers may sell their 10 plus 10 raisins to any market.

The "10 plus 10 offers" were held for both Naturals and Zantes in May 2001. For Naturals, a total of 52,924 tons was made available to raisin handlers, and 22,091 tons were purchased. Adding the 22,091 tons of 10 plus 10 raisins purchased to the 233,344-ton trade demand figure, plus 97,109 tons of 1999–2000 carryin inventory, equates to about 352,544 tons of natural condition raisins, or about 330,300 tons of packed raisins, that were made available for free use, or to the primary market. This is 133 percent of the quantity of Naturals shipped during the 1999–2000 crop year (264,619 natural condition tons or 247,925 packed tons).

For Zantes, 824 tons were made available to handlers through 10 plus 10 offers. This quantity is less than the amount specified in the order (927 tons). Although 927 tons were not available, all of the reserve raisins available were offered to and purchased by handlers for free use through the 10 plus 10 offers. Adding the 824 tons of 10 plus 10 raisins to the 4,290-ton trade demand figure, plus 1,109 tons of 1999–2000 carryin inventory equates to 6,223 tons natural condition raisins, or about 5,543 tons of packed raisins, that were made available for free use, or to primary markets. This is 134 percent of the quantity of Zantes shipped during the 1999–2000 crop year (4,635 tons natural condition tons or 4,129 tons packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, the additional offers of reserve raisins make even more raisins available to primary markets which is consistent with the Department's Guidelines.

Final Regulatory Flexibility Analysis

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

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

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from non-agricultural sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities, excluding receipts from non-agricultural sources.

Since 1949, the California raisin industry has operated under a Federal marketing order. The order contains authority to, among other things, limit the portion of a given year's crop that

can be marketed freely in any outlet by raisin handlers. This volume control mechanism is used to stabilize supplies and prices and strengthen market conditions.

Pursuant to § 989.54(d) of the order, this rule continues in effect final volume regulation percentages for 2000–01 crop Natural and Zante raisins. The volume regulation percentages are 53 percent free and 47 percent reserve for Naturals and 83 percent free and 17 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation was warranted for 2000–01 crop Naturals because the final crop estimate of 440,000 tons combined with the 1999–2000 carryin inventory of 97,109 tons, plus 41,395 tons of 1999–2000 reserve raisins released for free use through an export program, resulted in a total available supply of 578,504 tons, which was almost 150 percent higher than the 233,344-ton trade demand. Volume regulation was warranted for 2000–01 Zantes because the final crop estimate of 5,160 tons combined with the carryin inventory of 1,109 tons resulted in a total available supply of 6,269 tons, which was about 46 percent higher than the 4,290-ton trade demand.

Many years of marketing experience led to the development of the current volume regulation procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help prevent oversupplies in the domestic market.

Raisin grapes are a perennial crop, so production in any year is dependent upon plantings made in earlier years. The sun-drying method of producing raisins involves considerable risk because of variable weather patterns.

Even though the product and the industry are viewed as mature, the industry has experienced considerable change over the last several decades. Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, over 60 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in another product such as cereal and baked goods. In addition, for a few years in the early 1970's. over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market. Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for Naturals have remained fairly steady between the 1992–93 through the 1997–98 seasons, although production has varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94, or about 42 percent. According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $901 in 1992–93 to a high of $1,049 in 1996–97, or 16 percent. Total producer prices for the 1998–99 and 1999–2000 seasons increased significantly due to back-to-back short crops during those years.

NATURAL SEEDLESS PRODUCER PRICES

Crop year	Production [1]	Producer prices
1999–2000	299,910	[2] $1,211.25
1998–99	240,469	[3] 1,290.00
1997–98	382,448	946.52
1996–97	272,063	1,049.20
1995–96	325,911	1,007.19
1994–95	378,427	928.27
1993–94	387,007	904.60
1992–93	371,516	901.41

[1] Natural condition tons.
[2] Return to-date, reserve pool still open.
[3] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. In recent years, both export and domestic shipments have been decreasing. Domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in 1999–2000. In addition, exports decreased from 114,576 packed tons in 1991–92 to 91,599 packed tons in the 1999–2000 crop year.

In addition, the per capita consumption of raisins has declined from 2.07 pounds in 1988 to 1.62 pounds in 1999. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit through out the year.

While the overall demand for raisins has been decreasing (as reflected in the decline in commercial shipments), production has been increasing. The production of dried raisins reached an all-time high of an estimated 440,000 tons in the 2000–01 crop year. This large crop was preceded by two short crop years; production was 240,469 tons in 1998–99 and 299,910 tons in 1999–2000. Production for the 2000–01 crop year soared to a record level because of increased bearing acreage and yields.

The order permits the industry to exercise supply control provisions, which allow for the establishment of free and reserve percentages, and establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to equilibrate supply and demand. If raisin markets are over-supplied with product, grower prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more inelastic domestic market. This results in a larger volume of raisins being marketed and enhances grower returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been constructed. The model developed is for the purpose of estimating nominal prices under a number of scenarios using the volume control authority under the Federal marketing order. The price growers receive for the harvest and delivery of their crop is largely determined by the level of production and the volume of carry-in inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of reserve and free percentages for primary markets, and a reserve pool. The establishment of reserve percentages impacts the

production that is marketed in the primary markets.

The reserve percentage limits what handlers can market as free tonnage. Assuming the 47 percent reserve limits the total free tonnage to 233,200 natural condition tons (.53 × 440,000 tons) and carryin is 97,109 natural condition tons, and purchases from reserve total 55,000 natural condition tons (which includes reserve raisins released through the export program and other purchases), then the total free supply would total 385,309 natural condition tons. The econometric model estimates prices to be $240 per ton higher than under an unregulated scenario. This price increase is beneficial to all growers regardless of size and enhances growers' total revenues in comparison to no volume control. Establishing a reserve allows the industry to help stabilize supplies in both domestic and export markets, while improving returns to producers.

Regarding Zantes, Zante production is much smaller than that of Naturals. Volume regulation has been implemented for Zantes during the 1994–95, 1995–96, 1997–98, 1998–99, 1999–2000, and 2000–01 seasons. Various programs to utilize reserve pool Zantes were implemented during those years. As shown in the table below, although production varied during those years, volume regulation helped to reduce inventories, and helped to strengthen total producer prices (free tonnage plus reserve Zantes) from $412.56 per ton in 1994–95 to a high of $1,034.03 per ton in 1998–99. The Committee is implementing an export program for Zantes, in addition to Naturals. Through this program, the Committee plans to continue to manage its Zante supply, build and maintain export markets, and ultimately improve producer returns. Volume regulation helps the industry not only to manage oversupplies of raisins, but also maintain market stability.

ZANTE CURRANT INVENTORIES AND PRODUCER PRICES DURING YEARS OF VOLUME REGULATION

[Natural condition tons]

Crop year	Production	Inventory		Total [1]
		Desirable	Physical	
1999–2000	3,683	573	1,906	$771.14
1998–99	3,880	694	1,188	1,034.03
1997–98	4,826	788	1,679	710.08
1996–97	4,491	987	549	[2] 1,150.00
1995–96	3,294	782	2,890	711.32
1994–95	5,377	837	4,364	412.56

[1] Total season average produces price (per ton).
[2] No volume regulation.

Free and reserve percentages are established by varietal type, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, the Committee recommended only two of the nine raisin varietal types defined under the order for volume regulation this season.

The free and reserve percentages release the full trade demands and apply uniformly to all handlers in the industry, regardless of size. For Naturals, with the exception of the 1998–99 crop year, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action will not impose any additional reporting or recordkeeping burdens on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

An interim final rule concerning this action was published in the **Federal Register** on August 1, 2001 (66 FR 39623). Copies of the rule were mailed by Committee staff to all Committee members and alternates, the RBA, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and the Department. That rule provided for a 30-day comment period that ended on August 31, 2001. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found

that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 66 FR 39623 on August 1, 2001, is adopted as a final rule without change.

Dated: October 19, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–26899 Filed 10–24–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–9]

Establishment of Class E2 Airspace; Greenwood, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors in the geographic position coordinates and the description of airspace lateral distance of a final rule that was published in the **Federal Register** on July 31, 2001, (66 FR 39435), Airspace Docket No. 01–ASO–9. The final rule established Class E2 airspace at Greenwood, MS.

EFFECTIVE DATE: October 25, 2001.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 01–19044, Airspace Docket No. 01–ASO–9, published on July 31, 2001, (66 FR 39435), established Class E2 airspace at Greenwood, MS. The airspace description inadvertently contained an incorrect lateral distance and geographic position coordinates for the Greenwood-Leflore Airport. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace description for the Class E2 airspace area Greenwood, MS, incorporated by reference at Sec. 71–1 and published in the **Federal Register** on July 31, 2001, (66 FR 39435), is corrected as follows:

§ 71.71 [Corrected]

* * * * *

ASO MS E2 Greenwood, MS [Corrected]

On page 39435, column 3, line 2, of the Greenwood-Leflore Airport, MS, geographic position description, correct the geographic position coordinates by substituting "(lat. 33°29′40″N, long. 90°05′05″W)" for "(lat. 33°29′44″N, long. 90°05′03″W)". On line 3, correct the lateral distance from the Greenwood-Leflore Airport, MS, by substituting "4.4-mile radius" for 4-mile radius".

* * * * *

Issued in College Park, Georgia, on October 15, 2001.

Richard Biscomb,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–26923 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–3]

Establishment of Class E5 Airspace; Reform, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action established Class E5 airspace at Reform, AL. A Area Navigation (RNAV) Global Positioning System (GOP) Runway (RWY) 19 Standard Instrument Approach Procedure (SIAP) has been developed for North Pickens Airport, Reform, AL. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and other Instrument Flight Rules (IFR) operations at North Pickens Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On September 5, 2001, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E5 airspace at Reform, AL, (66 FR 46406) to provide adequate controlled airspace to contain the RNAV (GPS) RWY 19 SIAP and other IFR operations at North Pickens Airport. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Reform, AL.

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 "significant regulatory action" under Executive Order 12866; (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 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

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Reform, AL [New]

North Pickens Airport
(Lat. 33&°23′20″ N, long. 88°00′20″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of North Pickens Airport.

* * * * *

Issued in College Park, Georgia, on October 11, 2001.

Richard Biscomb,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–26924 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA 2001–10527, Airspace Docket No. 01–ASW–10]

RIN 2120–AA66

Amendment to Time of Designation for Restricted Area R–4403; Gainesville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the time of designation for Restricted Area 4403 (R–4403), Gainesville, MS, from "Continuous," to "Intermittent, 0600–2300 local time daily; other times by NOTAM 24 hours in advance." The FAA is taking this action in response to a request from the National Aeronautics and Space Administration (NASA) which is the designated using agency for R–4403.

EFFECTIVE DATE: 0901 UTC, December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of a review of restricted area activity, NASA has requested the FAA to reduce the time of operation for R–4403 to more accurately reflect actual requirements for the airspace. This change reduces the burden on the flying public. This action does not alter the boundaries, designated altitudes, or type of activities conducted within the restricted area.

The Rule

This amendment to 14 CFR part 73 changes the time of designation for R–4403, Gainesville, MS, from "continuous" to "Intermittent, 0600–2300 local time daily; other times by NOTAM 24 hours in advance." The FAA is taking this action in response to written notification from the using agency that a reduction in the time of designation for the restricted area is appropriate.

Since this change reduces the burden on the flying public by reducing the amount of time that R–4403 is activated, and because this action does not affect the boundaries, designated altitudes, or activities conducted therein; I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Environmental Review

In accordance with FAA Order 1050.1D, "Policies and Procedures for Handling Environmental Impacts," and the National Environmental Policy Act of 1969, this action is not subject to environmental assessments and procedures.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.44 [Amended]

2. § 73.44 is amended as follows:

* * * * *

R–4403 Gainesville, MS [Amended]

By removing "Time of Designation. Continuous." and inserting "Time of Designation. Intermittent, 0600–2300 local time daily; other times by NOTAM 24 hours in advance."

* * * * *

Issued in Washington, DC, on October 18, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–26919 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR 1700

Household Products Containing Hydrocarbons; Final Rules

AGENCY: Consumer Product Safety Commission.

ACTION: Final Rules.

SUMMARY: These rules, promulgated under authority of the Poison Prevention Packaging Act (PPPA), require child-resistant (CR) packaging for certain products that contain low-viscosity hydrocarbons. (The Commission voted 3–0 to issue this final rule. The statements of Chairman Brown and Commissioners Gall and Moore concerning the vote are available from the CPSC Office of the Secretary.) This requirement is intended to protect children under five years of age from serious injury associated with aspiration of hydrocarbon products. The requirement applies to certain prepackaged nonemulsion-type liquid household chemical products, including drugs and cosmetics, that contain ten (10) percent or more hydrocarbons by weight and have a viscosity of less than one hundred (100) Saybolt Universal Seconds (SUS) at 100 °F (covered products). For purposes of these rules, hydrocarbons are defined as compounds that consist solely of carbon and hydrogen. For a product that contains multiple hydrocarbons, the total percentage of hydrocarbons in the product is the sum of the percentages by weight of the individual hydrocarbon components.

DATES: These rules become effective October 25, 2002, and apply to covered products packaged on or after that date.

ADDRESSES: Copies of documents relevant to this rulemaking can be

requested from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, (301) 504–0800, e-mail *cpsc-os@cpsc.gov*, or in person at Room 502, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Geri Smith, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0608, ext. 1160.

SUPPLEMENTARY INFORMATION:

A. Background

The Poison Prevention Packaging Act (PPPA), 15 U.S.C. 1471–1476, authorizes the U.S. Consumer Product Safety Commission (CPSC or Commission) to require child-resistant (CR) packaging of hazardous household substances in appropriate cases. These rules require CR packaging for certain low-viscosity hydrocarbon products.

Direct aspiration into the lung, or aspiration during vomiting, of small amounts of petroleum distillates and other similar hydrocarbon solvents can result in chemical pneumonia, pulmonary damage, and death. These chemicals are the primary ingredients in a multitude of consumer products to which children have access.

The viscosity of a hydrocarbon-containing product contributes to its potential toxicity. Viscosity is the measurement of the ability of a liquid to flow. Liquids with high viscosities are thick or "syrupy." Liquids with low viscosities are more "watery." Products with low viscosity pose a greater risk of aspiration into the lungs.

Under regulations issued pursuant to the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261–1278, the CPSC regulates the labeling of hazardous household substances containing 10 percent or more by weight of petroleum distillate hydrocarbons because these products may cause injury or illness if ingested. 16 CFR 1500.14. The PPPA regulations in effect as of this date also require child-resistant packaging for certain household products containing petroleum distillates. 16 CFR 1700.14. Under these regulations, the specified consumer products containing 10 percent or more by weight of petroleum distillates, and having viscosities less than 100 Saybolt Universal Seconds (SUS) at 100 °F, are subject to child-resistant packaging standards. These PPPA-regulated products include prepackaged liquid kindling and illuminating preparations (*e.g.*, lighter fluid) (16 CFR 1700.14(a)(7)), prepackaged solvents for paint or other similar surface-coating materials (*e.g.*, paint thinners)(16 CFR 1700.14(a)(15)), and nonemulsion liquid furniture polish (16 CFR 1700.14(a)(2)).

Because hydrocarbons are not now regulated as a chemical class under the PPPA, many other hydrocarbon-based consumer products are not required to be in child-resistant packaging. Cleaning solvents, automotive chemicals, shoe-care products, and cosmetics may contain large amounts of various hydrocarbons and are not required to be in child-resistant packaging. For example, an existing child-resistant packaging standard requires child-resistant packaging of prepackaged kerosene for use as lamp fuel.

However, a gun cleaning solvent that contains over 90 percent kerosene does not have to meet this requirement. Mineral spirits used as a paint solvent require child-resistant packaging, but spot removers containing 75 percent mineral spirits, and water repellents containing 95 percent mineral spirits, do not.

On January 3, 2000, the CPSC issued a Notice of Proposed Rulemaking (NPR) proposing CR packaging requirements for consumer products that contain hydrocarbons of low viscosity. 65 FR 93.

The Commission proposed two discrete rules, one for products regulated under the FHSA and the other for products regulated under the Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 301–397. The proposed rules would require CR packaging of prepackaged nonemulsion-type liquid household chemical products or drugs and cosmetics that contain 10 percent or more hydrocarbons [1] by weight and have a viscosity of less than 100 SUS at 100 °F. For products that contain multiple hydrocarbons, the total percentage of hydrocarbons in the product is calculated by adding the percentage by weight of the individual hydrocarbon components.

The NPR outlined several packaging types that would be exempted from the rules. These included products packaged in aerosol cans, and mechanical pumps or trigger sprayers, provided the aerosol, mechanical pump, or trigger sprayer expelled the product as a mist. For mechanical pumps and trigger sprayers, the spray mechanism would be required to be permanently attached to the bottle or have a CR attachment. However, if the mechanical pump or trigger sprayer expelled product as a stream (either solely or as an option), the entire package including the pump mechanism would have been required to be CR. Aerosol products that formed a stream by the addition of an extension tube inserted into the nozzle would have been excluded from the packaging requirements if, without the extension tube, the product would be expelled as a mist.

Writing markers and ballpoint pens are exempted from full cautionary labeling requirements under the FHSA relating to ingestion toxicity if they meet certain specifications prescribed by regulation. 16 CFR 1500.83. The Commission proposed that these products also be exempted from CR packaging requirements. In addition, the NPR proposed that cosmetics and other household substances, such as battery terminal cleaners, paint markers, and make-up removal pads, that do not have product free flowing from the packaging, be excluded from the CR packaging requirements, even if they contained 10 percent or more hydrocarbons by weight and have a viscosity under 100 SUS.

The NPR was sent to 375 trade associations and businesses believed to be involved with hydrocarbon-containing products. Seven individuals and groups submitted comments. Most of the comments focused on which products should be subject to the rules. Many of them reiterated comments that were previously submitted in response to the advance notice of proposed rulemaking (ANPR) and addressed in the NPR.

Several commenters requested a test method to define "stream" for aerosol and pump and trigger spray products. Aerosols and the discharge from pump and trigger spray mechanisms are not subject to the final rules being issued today. The CPSC expects to address the "stream" vs. "mist" issue in a subsequent proceeding.

At the Commission meeting on December 3, 1999, Commissioner Gall requested that the CPSC staff develop a plan for the collection of additional data related to ingestion incidents involving mineral oil-based cosmetics. To this end, the Commission approved the purchase from the American Association of Poison Control Centers (AAPCC) of additional information on exposures to mineral oil-based cosmetics. These data were evaluated by the CPSC staff. In an April 11, 2001 supplemental **Federal Register** notice of data availability, the Commission provided an opportunity for the public to comment on this information. 66 FR 18738. The comment period, which was extended at the request of the Cosmetic, Toiletry, and Fragrance Association (CTFA), ended on June 11, 2001. Four

[1] Hydrocarbons are defined for purposes of these rules as compounds that consist solely of carbon and hydrogen.

comments were received in response to the notice.

The comments on the NPR and the additional data, the CPSC's responses, the scope of these final rules, and the Commission findings required under the PPPA for issuance of the rules, are discussed below.

B. Response to Comments on the NPR

1. Mechanical Pumps and Trigger Sprayers

Comment: One commenter (CP00–1–6) requested that the language of the proposed provision that would exempt pump-or trigger-actuated sprays that form a mist be modified to state clearly that the exemption is only available for pump/trigger sprays that have the pumping unit permanently affixed to the product container.

Response: The exemption provision proposed in the NPR read, "Products in packages in which the only non-CR access to the contents is by a spray device (*e.g.* aerosols or pump-or trigger-actuated sprays) that expels the product solely as a mist." The phrase "the only non-child-resistant access to the contents is by a spray device" implicitly requires that the trigger or pump have either a permanent or a CR attachment to the package.

The final rules being issued today do not cover aerosols or pump or trigger spray mechanisms. However, irrespective of the absence from the final rules of a requirement for the aerosol or pump/trigger spray mechanism itself to be child-resistant, products in trigger or pump sprayers that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100° F must still have either a CR or permanent attachment to the product container. The language of the final rules clarifies this requirement.

Comment: One commenter (CP00–1–4) suggested that senior testing should not be required for assessing the removability of a trigger sprayer from the product container because a senior does not need to remove the trigger mechanism to use the product.

Response: Mechanical pumps and trigger sprayers have two routes of access to the package contents—via the spray mechanism and via the attachment of the spray mechanism to the product container. Companies have two options concerning the attachment of the sprayer to the container. The sprayer can be either permanently attached or have a CR attachment. A CR attachment is required if the container is refillable.

The senior test protocol at 16 CFR 1700.20 directs that the senior adults on the test panel open and close the packaging properly according to the instructions found on the package. If the instructions for use are to operate the trigger, this feature should be tested (for a product where the trigger mechanism is required to be child-resistant). If no instructions are found, activation of the trigger would still be considered the "normal usage" of the package. This approach is consistent with the commenter's view. However, if the trigger mechanism itself is removable, manufacturers would need to test to see if senior adults could remove and properly replace the trigger sprayer mechanism onto the product container.

2. Single-Use Products

Comment: A comment (CP00–1–1) was received requesting that products intended for "total package use" not require CR packaging. The commenter supported the addition of a labeling statement, and provided as an example, "Add entire contents to gasoline tank."

Response: This comment was addressed previously in the preamble of the NPR. CPSC reiterates that any regulated product that is intended to be fully used in a single application must meet the child-resistance and adult-use-effectiveness specifications for the first opening, since regulations require that the CR packaging be effective for the life of the product. However, for example, an automotive additive would not necessarily be a "single-use-product" if only a portion of the contents were to be added to certain engine sizes.

Comment: Two commenters (CP00–1–4, 5) requested that language be added to the rules to address single-use products. They suggested, "Any regulated product that is intended and likely to be fully used in a single application must meet the child-resistance and adult-use-effectiveness specifications for only the first opening."

Response: Additional language is not necessary in the rules to address CR packaging of single-use-products. The regulation clearly states that special packaging must continue to function for the number of openings and closings customary for its size and contents. 16 CFR 1700.15(a). One opening would be customary for a single-use product.

3. Turpentine

Comment: One commenter (CP00–1–7) requested that the CR packaging requirement of the proposed rules be applied to turpentine with a viscosity level of less than 100 SUS at 100° F in addition to hydrocarbons.

Response: While turpentine presents an aspiration hazard, turpentine is also readily absorbed following ingestion and systemic toxicity can result. The systemic toxicity associated with turpentine is different from the hazards of many hydrocarbons which have low systemic toxicity but a significant risk of chemical pneumonitis following aspiration. Turpentine, if ingested, is hazardous regardless of the viscosity. Liquid household products that contain 10 percent or more turpentine by weight now require CR packaging. 16 CFR 1700.14(a)(6). These final rules do not amend or supersede the turpentine CR packaging regulation, which remains applicable without regard to the viscosity of the turpentine product.

4. Writing Instruments

Comment: One commenter (CP00–1–7) stated a concern that if a marker contained a substance newly covered by these final rules that was not exempted from FHSA labeling, the marker would require CR packaging.

Response: In the NPR, the Commission proposed an exemption from CR packaging for hydrocarbon-containing writing implements exempted from the FHSA labeling requirements. 16 CFR 1500.83. In addition, the Commission proposed to exempt products from which the liquid could not flow freely. This would include paint markers or other such products not exempted from the FHSA labeling regulations. Therefore, under the rules as proposed, if a marker contained a "hydrocarbon" not specifically exempted from the FHSA labeling requirements, it would still not require CR packaging if the hydrocarbon did not freely flow from the implement. However, the proposed exemption would not extend to substances beyond "hydrocarbons" as defined in the proposed rule. The final rules issued today adopt these exemption provisions.

5. Effective Date

Comment: Two commenters (CP–00–1–4, 5) stated that an effective date of at least one year was appropriate. The commenters requested that the Commission incorporate a procedure for companies to apply for a temporary stay of enforcement as was done previously in the CPSC rulemaking to revise the CR packaging protocol test methods. 60 FR 37710.

Response: The Commission believes that one year is sufficient for manufacturers to adopt CR packaging for hydrocarbon-containing products. The commenter provided no specific information that would demonstrate the need for additional time. The

Commission is not including a special procedure for the submission of requests for stays of enforcement as was done in the previous CPSC rulemaking to revise the CR packaging protocol test methods. The large volume of products affected by that rule, the technical difficulties involved with changing many different closure types, and the availability of a large supply of CR closures justified the incorporation of a special procedure. This rulemaking does not involve those considerations. However, a company can request a stay of enforcement from the Commission or enforcement discretion from the CPSC Office of Compliance at any time on a case by case basis.

Comment: One commenter (CP00–1–2) requested that the effective date take into account the schedule for the development and marketing of suntan products, which have a long lead-time. In addition, the commenter stated that products not sold in one season may be held until the next year's season.

Response: The PPPA requires that no standard take effect later than one year from the date a rule is issued. 15 U.S.C. 1471n. However, the standard applies only to products packaged on or after the effective date. Therefore, suntan products packaged before the effective date but sold thereafter are not subject to the rules. According to the commenter, the timing of bringing products to market is over a year. However, the schedule from product development to packaging described in the commenter's submission is less than one year. (Product lines are decided by December and production of those lines begins in August of the following year.) The one-year effective date thus allows ample time for suntan products subject to these final rules to comply with the CR packaging requirement.

6. Additional Data on Mineral Oil-Based Cosmetics

The following comments were received in response to the **Federal Register** notice providing a public comment period on the CPSC staff analysis of the additional brand name data purchased from the AAPCC on exposures to mineral oil-based cosmetics. 66 FR 18738–40 (April 11, 2001). Also, two commenters submitted comments about aerosol products. Since, as was stated previously, the final rules issued today do not apply to aerosols, these comments are not addressed here.

Comment: One commenter (CP–01–3–1) stated that it was important that the CPSC identify all cosmetic products that would meet the criteria for requiring CR packaging.

Response: Applicability of the proposed rules is based on the physical and chemical characteristics of the product, not its product category. That is, any product that contains 10 percent hydrocarbons or more by weight with a viscosity less than 100 SUS at 100 °F is required to be in CR packaging, unless otherwise exempted. The purpose of the rules promulgated today is to protect children from exposure to any product that contains low viscosity hydrocarbons that have the potential for serious injury. The CPSC staff solicited information about products and categories of products that might be subject to the rules to assess their scope and to determine if CR packaging is available or can be developed for those types of products. Under these final rules, it is the responsibility of the packager of a product exhibiting the specified physical and chemical characteristics to comply. What category the product type happens to fall within is irrelevant.

Comment: One commenter (CP–01–3–4) stated that the TESS data and staff analyses are not valid for making the conclusion that mineral oil-containing cosmetics require CR packaging.

Response: The TESS database is a specialized data collection system that contains information about calls to Poison Control Centers. The staff agrees that there are limitations to the TESS data. However, these data support the fact that children do access cosmetic products that contain hydrocarbons. See, 66 FR 18739 (April 11, 2001) (*The CPSC staff analysis of the additional data on mineral oil-based cosmetics shows at least 1,460 cases of access*). CTFA in its comment concurs that the data demonstrate that children access mineral oil-based cosmetics. If these products, or any others, have 10 percent or more hydrocarbons by weight with a viscosity less than 100 SUS at 100 °F, serious injury could result from ingestion with accompanying aspiration. The TESS data simply further confirm this.

Comment: One commenter (CP–01–3–4) stated that the data show a low incidence of serious injuries and that several of the deaths would not have been prevented by CR packaging.

Response: The PPPA does not require a minimum number of deaths and serious injuries before the Commission can proceed with a child-resistant packaging rule. Rather, the PPPA requires that the Commission find that a substance is capable of causing serious injury or illness to young children that are exposed to it. The purpose of the human experience data is to demonstrate that children access products that may contain hydrocarbons and to further validate the fact that aspiration of hydrocarbon-containing products with viscosities under 100 SUS at 100 °F can result in serious injury. The data presented demonstrate these points. 66 FR 18739. However, the commenter states that the descriptions of the incidents do not support the conclusion that child-resistant packaging would have protected these children from death. The commenter attributes this either to the closure apparently being left off in one instance or to information being inconclusive in the other scenarios. While it is unknown if child-resistant packaging would have saved the lives of these children, the effectiveness of child-resistant packaging in reducing deaths is well documented. For prescription medicines and aspirin alone, CPSC estimates that the lives of over 900 children have been saved since child-resistant packaging was first required for these products. The commenter does not attempt to refute that aspiration of mineral oil-based cosmetics may be associated with serious injury. Requiring child-resistant packaging would limit access to these products by children in the future.

Comment: One commenter (CP–01–3–4) provided a calculation of relative risk and compared the risk of a baby oil fatality to the risk of death by other products and the risk levels apparently used by the Department of Defense and the Federal Aviation Administration.

Response: The PPPA requires that the Commission find: 1) that a substance is capable of causing serious injury or illness to young children that are exposed to it and 2) that CR packaging is technically feasible, practicable, and appropriate. 15 U.S.C. 1472(a). The PPPA does not require a relative risk evaluation as a prerequisite to requiring CR packaging.

C. Additional Death

CPSC staff has become aware of an additional death resulting from aspiration of baby oil (010628HAA3357). The victim's twin brother opened the closed bottle of baby oil and gave it to the victim. According to the mother, the child, a 15–16 month-old who had a history of respiratory problems, then ingested baby oil. The child was admitted to the hospital on the following day with breathing problems and died 29 days after the exposure. The death certificate lists respiratory failure due to acute respiratory distress syndrome (ARDS) and oil aspiration.

D. The Scope of the Regulations

After reviewing the comments submitted in response to the NPR and the supplemental notice of data availability, the Commission has decided to issue final PPPA rules for household products that contain hydrocarbon chemicals capable of causing chemical pneumonia and death following aspiration. The remainder of this section describes the scope and form of the final rules.

The rules apply to prepackaged nonemulsion-type liquid household chemical products, including drugs and cosmetics, that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100 °F. Hydrocarbons are defined as compounds that consist solely of carbon and hydrogen. For products that contain multiple hydrocarbons, the total percentage of hydrocarbons in the product is the sum of the percentages by weight of the individual hydrocarbon components.

The final rules exclude aerosol products (*i.e.*, pressurized spray containers). The rules also exclude products packaged in mechanical pumps and trigger sprayers, provided that the spray mechanism is either permanently attached to the product container or has a child-resistant attachment. Potential coverage of aerosols, pump and trigger sprayers will be addressed separately in a future proceeding.

The definition of what is a "household substance" that can be regulated under the PPPA includes, inter alia, both a "hazardous substance" as defined in the FHSA and a "food, drug, or cosmetic" as those terms are defined in the Federal Food, Drug, and Cosmetic Act (FDCA). Enforcement of the PPPA with respect to hazardous substances is accomplished using the misbranding and prohibited acts sections of the FHSA. Enforcement of child-resistant packaging requirements applicable to foods, drugs, or cosmetics relies on comparable provisions of the FDCA. Therefore, the Commission is issuing two discrete rules, one for hazardous substances and one for drugs and cosmetics, to closely associate a particular rule with the applicable enforcement mechanism. Foods are not covered under the rules, because there currently are no data indicating a need for CR packaging of food products.

Current FHSA regulations partially exempt small packages, minor hazards, and certain special circumstances from the FHSA's labeling requirements. 16 CFR 1500.83(a). Writing markers and ballpoint pens are exempt from full cautionary labeling requirements relating to toxicity if they meet specifications listed in the regulations. These products are also excluded from the child-resistant packaging requirements in this final rule due to the difficulty a child would have in obtaining a toxic amount of fluid from these types of products. For the same reason, products that are packaged so their contents are not free-flowing, such as some battery terminal cleaners, paint markers, and make-up removal pads, are also excluded from the child-resistant packaging requirements of the final rules.

E. Statutory Considerations

1. Hazard to Children

Before issuing rules requiring CR packaging, the Commission must find that the degree or nature of the hazard to children in the availability of the products in question by reason of their packaging is such that special packaging is required to protect children from serious injury or illness from handling, using, or ingesting the products. 15 U.S.C. 1472(a)(1). The Commission made these findings preliminarily with regard to household chemicals and cosmetics in the preambles to the ANPR and NPR for the rules that are being issued in final form today.[2] Subsequent CPSC staff review of additional data on mineral oil-based cosmetics, as discussed above, validate that children access these products and that those that contain 10 percent or more hydrocarbons with viscosities under 100 SUS at 100 °F can result in serious injury. In fact, it is worth noting that several brands of baby oil, a product obviously intended for use on small children, are labeled with a warning as follows:

> For external use only. Keep out of children's reach to avoid drinking and accidental inhalation, which can cause serious injury. Should breathing problems occur, consult a doctor immediately.

That warning is in effect the required PPPA statutory finding.

With respect to the general category of hydrocarbon-containing products, Congress, in enacting the original PPPA in 1970, specifically addressed the hazard of ingesting and aspirating hydrocarbon-containing products as one of the fundamental bases of the need for the PPPA:

> In the household specialties area, some chemicals cause serious illness requiring lengthy hospitalization from which the child may never recover. * * * On ingestion, these petroleum distillates [hydrocarbons] are readily aspirated into the lungs and may lead to severe chemical pneumonitis in a matter of minutes.

H.R. Rep. No. 91–1642 at 5 (1970)

For the foregoing reasons, the Commission finds that the degree or nature of the hazard to children in the availability of products that contain 10 percent or more hydrocarbons with viscosities under 100 SUS at 100 °F, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting the products.

2. Technical Feasibility, Practicability, and Appropriateness

As a prerequisite to CR packaging rules, the Commission must also find that the special packaging is "technically feasible, practicable, and appropriate." 15 U.S.C. 1472(a)(2). Technical feasibility may be found when technology exists or can be readily developed and implemented by the effective date to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use. See S. Rep. No. 91–845, at 10 (1970).

The Commission made these findings preliminarily and issued the proposed rules. Those findings, which appear at 65 FR 99–100, are hereby incorporated by reference. No comments were received in response to the NPR regarding the technical aspects of child-resistant packaging. Therefore, the Commission concludes that CR packaging is technically feasible, practicable, and appropriate for products that contain 10 percent hydrocarbons or more by weight with a viscosity less than 100 SUS at 100 °F.

3. Other Considerations

Section 3(b) of the PPPA requires that the Commission consider the following in establishing special packaging standards:

[2] See 62 FR 8661–2 (February 26, 1997) and 65 FR 98–9 (January 3, 2000), which are hereby incorporated by reference.

It is also worth noting that the PPPA "hazard to children" finding with respect to these hydrocarbons has also been made as a prerequisite to issuing the three current child-resistant packaging regulations that address specific household products containing hydrocarbons: prepackaged liquid kindling and illuminating preparations (*e.g.*, lighter fluid), 16 CFR 1700.14(a)(7); prepackaged solvents for paint or other similar surface coating materials (*e.g.*, paint thinners), 16 CFR 1700.14(a)(15); and nonemulsion liquid furniture polish (16 CFR 1700.14(a)(2).

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these factors with respect to the various determinations made in this rulemaking, and finds no reason to conclude that the rules are unreasonable or otherwise inappropriate.

F. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year after the date such final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n. The NPR proposed an effective date of one (1) year after publication of the final rules.

Two comments received on the NPR requested additional time for companies that may need it. However, no information was submitted to demonstrate that more than one year would be necessary to adopt child-resistant packaging for any product.

The CPSC staff estimated that any necessary packaging changes could be achieved during a one-year time frame. Therefore, the Commission is issuing these final rules with an effective date of one year after the date of their publication in the **Federal Register**. The Commission is not establishing a general procedure for stays of enforcement of the requirements of these final rules. However, there is nothing to preclude an individual company from requesting relief from the CPSC Office of Compliance if specific difficulties arise in complying by the effective date.

G. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared an assessment of the impact of rules to require CR packaging for products that contain 10 percent hydrocarbons or more by weight with a viscosity less than 100 SUS at 100 °F. A copy of the assessment is available for inspection in the docket for this rulemaking. The assessment reports that the incremental cost of providing basic CR packaging is usually small ($0.005-$0.02/per package), and confirms the staff's previous experience with child-resistant packaging and current packaging. Child-resistant packaging is widely available and the incremental costs are small relative to the cost of most household chemicals and cosmetic products. In addition, the one (1) year effective date should include enough lead-time for companies to use up existing package inventory.

Based on that assessment, the Commission certified in the NPR that the rules, if promulgated as proposed, would not have a significant economic effect on a substantial number of small entities.

The NPR was sent to 375 trade associations and companies believed to make products that contain hydrocarbons. The Commission did not receive any comments in response that questioned the certification. Therefore, there is no evidence available that the rules would have a significant economic impact on a substantial number of small entities.

Based on the foregoing analysis, the Commission certifies that these final rules do not have a significant impact on a substantial number of small businesses or other small entities.

H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has analyzed the possible environmental effects associated with the proposed PPPA requirements on products that contain 10 percent hydrocarbons or more by weight and have a viscosity less than 100 SUS at 100 °F.

The Commission's regulations state that rules requiring special packaging normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). Nothing in these rules alters that expectation. Therefore, because the rules would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

I. Executive Order No. 12988

As provided in Executive Order No. 12988 the CPSC states the preemptive effect of these final rules as follows.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, "no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard." 15 U.S.C. 1476(a). A State or local standard may be excepted from this preemptive effect if (1) the State or local standard provides a higher degree of protection from the risk of injury or illness than the PPPA standard; and (2) the State or political subdivision applies to the Commission for an exemption from the PPPA's preemption clause and the Commission grants the exemption through procedures specified at 16 CFR part 1061. 15 U.S.C. 1476(c)(1). In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, State or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, these rules preempt non-identical state or local special packaging standards for such drug products.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Reporting and record keeping requirements.

For the reasons stated in the preamble, the Commission amends 16 CFR 1700.14(a) as follows.

PART 1700—POISON PREVENTION PACKAGING ACT OF 1970 REGULATIONS

1. The authority citation for part 1700 continues to read as follows:

Authority: 15 U.S.C. 1471–1476. Secs. 1700.1 and 1700.14 also issued under 15 U.S.C. 2079(a).

2. In § 1700.14 add new paragraphs (a)(31) and (32) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(31) *Hazardous substances containing low-viscosity hydrocarbons.* All prepackaged nonemulsion-type liquid household chemical products that are hazardous substances as defined in the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261(f)), and that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100 °F, shall be packaged in accordance with the provisions of § 1700.15(a), (b), and (c), except for the following:

(i) Products in packages in which the only non-child-resistant access to the contents is by a spray device (*e.g.*, aerosols, or pump-or trigger-actuated sprays where the pump or trigger mechanism has either a child-resistant or permanent attachment to the package).

(ii) Writing markers and ballpoint pens exempted from labeling requirements under the FHSA by 16 CFR 1500.83.

(iii) Products from which the liquid cannot flow freely, including but not limited to paint markers and battery terminal cleaners. For purposes of this requirement, hydrocarbons are defined as substances that consist solely of carbon and hydrogen. For products that contain multiple hydrocarbons, the total percentage of hydrocarbons in the product is the sum of the percentages by weight of the individual hydrocarbon components.

(32) *Drugs and cosmetics containing low-viscosity hydrocarbons.* All prepackaged nonemulsion-type liquid household chemical products that are drugs or cosmetics as defined in the Federal Food, Drug, and Cosmetics Act (FDCA) (21 U.S.C. 321(a)), and that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100 °F, shall be packaged in accordance with the provisions of § 1700.15(a), (b), and (c), except for the following:

(i) Products in packages in which the only non-child-resistant access to the contents is by a spray device (*e.g.*, aerosols, or pump-or trigger-actuated sprays where the pump or trigger mechanism has either a child-resistant or permanent attachment to the package).

(ii) Products from which the liquid cannot flow freely, including but not limited to makeup removal pads. For the purposes of this requirement, hydrocarbons are defined as substances that consist solely of carbon and hydrogen. For products that contain multiple hydrocarbons, the total percentage of hydrocarbons in the product is the sum of the percentages by weight of the individual hydrocarbon components.

* * * * *

Dated: October 19, 2001.

Todd A. Stevenson,

Acting Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Suzanne Barone, Ph.D., EH, to the Commission, "Final Rule to Require Special Packaging for Hydrocarbons of Low Viscosity," September 12, 2001.

2. Memorandum from Robert L. Franklin, EC to Suzanne Barone, Ph.D., EH, "Economic Considerations Regarding the Final Rule to Require CR Packaging for Products Containing Low Viscosity Hydrocarbons," August 24, 2001.

3. "Pediatric Potential Aspirations of Cosmetic Products: 1998 Data," C. Craig Morris, Ph.D., U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis, March 2001.

4. "Pediatric Hydrocarbon Exposures and Potential Aspirations," C. Craig Morris, Ph.D., U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis, February 2001.

[FR Doc. 01–26837 Filed 10–24–01; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 40, 42, 46, 51, 55, 62, 63, 65, 72, 76, 79, 89, 98, 102, 103, 111, 114, 115, 132, 157, 159, 159a, 171, 186, 188, and 194

Removal of Regulatory Parts

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is removing various parts from chapter I, Office of the Secretary of Defense. This administrative action removes obsolete information from the Code of Federal Regulations and notifies readers of the availability of the current DoD documents that contain the information being removed.

DATES: This rule is effective October 25, 2001.

FOR FURTHER INFORMATION CONTACT: L. Bynum or P. Toppings, 703–601–4722.

SUPPLEMENTARY INFORMATION: The chart below identifies the status of the parts being removed. All documents with a current date status may be found as a DoD Directive (D), DoD Instruction (I), or DoD Publication on the Washington Headquarters Services Web site at *http://www.dtic.mil/whs/directives.*

Part No.	Document No.	Status
40	Standard of Conduct Cross-Reference	No replacement.
42	D5200.24	Canceled by D5505.9, 4/20/95.
46	D1000.4	Current date 9/4/96.
51	D1350.2	Current date 8/18/95.
55	D1205.9	Completely canceled 9/19/97.
62	D1010.4	Current date 9/3/97.
63	D1340.16	Current date 9/20/97.
65	D1304.19	Current date 9/18/93.
72	I1322.9	Current date 10/5/95.
76	D1235.10	Current date 7/1/95.
79	D1412.2	Completely canceled 4/3/97.
89	D1418.4	Completely canceled 4/3/97.
98	D7050.1	Current date 12/4/98.
102	D1215.6	Current date 3/14/97.
103	D1205.14	Current date 5/24/74.
111	I1205.13	Current date 12/26/95.
114	I7730.54	Current date 3/15/99.
115	I1200.15	Current date 9/18/97.
132	D1215.9	Completely canceled 2/7/97.
157	I5200.21	Canceled by I3200.14, 5/13/97.
159	D5200.1	Current date 12/13/96.
159a	5200.1–R	Current date 1/14/97.

Part No.	Document No.	Status
171	None	Rule expired 9/30/2000.
186	D6055.9	Current date 7/29/96.
188	D6050.1	Completely canceled 9/10/98.
194	D2000.9	Current date 1/23/74.

List of Subjects

32 CFR Part 40

Conflict of Interests.

32 CFR Part 42

Law enforcement, National defense, Wiretapping and electronic surveillance.

32 CFR Part 46

Elections, Government employees, Military personnel, Seamen.

32 CFR Part 51

Aged, Civil rights, Education, Equal employment opportunity, Individuals with disabilities, Military personnel, Religious discrimination, Sex discrimination.

32 CFR Part 55

Armed forces reserves, Health care.

32 CFR Part 62

Alcohol abuse, Drug abuse, Government employees, Military personnel.

32 CFR Part 63

Alimony, Child support, Military personnel, Pensions, Reporting and recordkeeping requirements.

32 CFR Part 65

Armed forces, Chaplains.

32 CFR Part 72

Armed forces, Colleges and universities.

32 CFR Part 76

Armed forces reserves.

32 CFR Part 79

Armed forces reserves, Disability benefits, Government employees, Intergovernmental relations, Pensions.

32 CFR Part 89

Government employees, Wages.

32 CFR Part 98

Armed forces, Fraud, Investigations.

32 CFR Part 102

Armed forces reserves.

32 CFR Part 103

Armed forces reserves.

32 CFR Part 111

Armed forces, Elementary and secondary education.

32 CFR Part 114

Archives and records, Armed forces reserves.

32 CFR Part 115

Armed forces reserves.

32 CFR Part 132

Armed forces reserves.

32 CFR Part 157

Classified information.

32 CFR Part 159

Classified information.

32 CFR Part 159a

Classified information.

32 CFR Part 171

Aircraft, Fire prevention.

32 CFR Part 186

Arms and munitions, Civil defense, Hazardous substances, Organization and functions (Government agencies).

32 CFR Part 188

Environmental impact statements.

32 CFR Part 194

Armed forces, Arms and munitions, Defense communications, Foreign relations, International organizations.

PARTS 40, 42, 46, 51, 55, 62, 63, 65, 72, 76, 79, 89, 98, 102, 103, 111, 114, 115, 132, 157, 159, 159a, 171, 186, 188, and 194—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR parts 40, 42, 46, 51, 55, 62, 63, 65, 72, 76, 79, 89, 98, 102, 103, 111, 114, 115, 132, 157, 159, 159a, 171, 186, 188, and 194 are removed.

Dated: October 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–26845 Filed 10–24–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–142]

RIN 2115–AA97

Safety Zone; Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Navy Pier fireworks in Chicago, IL. This safety zone is necessary to protect vessels and spectators from potential airborne hazards during a planned fireworks display over Lake Michigan. The safety zone is intended to restrict vessels from a portion of Lake Michigan off Chicago, Illinois.

DATES: This rule is effective from 8 p.m. (local) October 13, 2001 to 11 p.m. (local) October 27, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD10–01–142] and are available for inspection or copying at Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois 60521, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Mike Hogan, U.S. Coast Guard Marine Safety Office, 215 W. 83rd Street, Suite D, Burr Ridge, IL 60521. The telephone number is (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying

this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. The safety zone consists of the waters of Lake Michigan within the arc of a circle with a 750-foot radius from the fireworks launch site with its center in the approximate position of 41° 53′18″ N, 087° 36′08″ W. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Chicago or the designated Patrol Commander. The designated Patrol Commander on scene may be contacted on VHF Channel 16. All geographic coordinates are North American Datum of 1983 (NAD3).

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). For the same reasons stated below, in the last paragraph of the discussion of Small Entities, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in a portion of Lake Michigan from 8 p.m. to 11 p.m., October 13, October 20, and October 27, 2001. This regulation would not have a significant economic impact for the following reasons. The regulation is only in effect for only three hours on three days. The designated area is being established to allow for maximum use of the waterway for commercial vessels to enjoy the fireworks display in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

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

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T09–113 is added to read as follows:

§ 165.T09–113 Safety Zone; Lake Michigan, Chicago, IL.

(a) *Location.* The following area is designated a safety zone: the waters of Lake Michigan within the arc of a circle with a 750-foot radius from the fireworks launch site with its center in the approximate position of 41(53′18″ N, 087° 36′08″ W. (NAD 1983).

(b) *Enforcement times and dates.* This section will be enforced from 8 p.m. until 11 p.m. (local), on October 13, October 20, and October 27, 2001.

(c) *Regulations.* This safety zone is being established to protect the boating public during a planned fireworks display. In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated Patrol Commander.

Dated: October 12, 2001.

R. E. Seebald,

Captain, U. S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 01–27051 Filed 10–23–01; 3:04 pm]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 00–258; FCC 01–256]

New Advanced Wireless Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adds a mobile allocation to the 2500–2690 MHz band to provide additional near-term and long-term flexibility for use of this spectrum, thereby making this band potentially available for advanced mobile and fixed terrestrial wireless services, including third generation and future generations of wireless systems. This action promotes the continued introduction of fixed wireless broadband services; provides for the introduction of new advanced wireless services to the public, consistent with its obligations under section 706 of the Telecommunications Act; and promotes increased competition among terrestrial services.

DATES: Effective November 26, 2001.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Report and Order*, ET Docket No. 00–258, FCC 01–256, adopted September 6, 2001, and released September 24, 2001. The full text of this Commission decision is available on the Commission's Internet site at *www.fcc.gov*. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, Qualex International, (202) 863–2893, Room CY–B402, 445 12th Street, SW., Washington, DC 20554.

Summary of the First Report and Order

1. In the *Notice of Proposed Rule Making* (*"Advanced Wireless Services NPRM"*), 66 FR 7483, January 23, 2001 in this proceeding, the Commission explored the possibility of introducing advanced wireless services in frequency bands currently used for cellular, broadband Personal Communications Service ("PCS"), and Specialized Mobile Radio services; in certain frequency bands already allocated for Fixed and Mobile services that could be used to deploy new advanced wireless services; and in five other frequency bands: 1710–1755 MHz, 1755–1850 MHz, 2110–2150 MHz, 2160–2165 MHz, and 2500–2690 MHz. Pursuant to its independent spectrum management responsibilities, the Commission undertook a study of the 2500–2690 MHz band. An *Interim Report* regarding this band was issued in November 2000, and a *Final Report* was issued in March 2001.

2. As commenters note, the 2500–2690 MHz band has been used for a number of years to provide one-way analog fixed services and is now being increasingly used to provide two-way digital, including broadband, fixed services. Nationwide deployment of two-way, digital Instructional Television Fixed Service ("ITFS") and Multichannel Multipoint Distribution Services ("MMDS") systems will provide Americans with another option for high-speed broadband access, furthering competition with other service providers such as digital subscriber line ("DSL"), cable modem, or satellite-based services provided by incumbent telephone companies, cable operators, or satellite operators. We will add a mobile allocation to this band in order to provide additional flexibility for use of this spectrum and promote more efficient use, thereby serving the public interest. However, we also conclude that we will not relocate, displace, or otherwise modify incumbent ITFS/MMDS operations. We will rely instead on a market-based approach to introduce additional flexibility in this band. We note that such additional flexibility will not necessarily result in any change in service offerings in the 2500–2690 MHz band because fixed uses could prove to be more highly-valued by the market than mobile uses.

3. We find that adding a mobile allocation to the 2500–2690 MHz band will further promote the public interest by providing an additional option to service providers in that band. As was stated in our November 1999 *Policy Statement* on principles for reallocation of spectrum: "Flexible allocations may result in more efficient spectrum markets." We recognize that with flexible allocations, spectrum efficiencies can be accomplished in a number of ways. For example, licensees can negotiate among themselves arrangements for avoiding interference rather than relying on mandatory technical rules to control interference; relaxed service rules would allow licensees greater freedom in determining the specific services to be offered; and rules for similar services can be harmonized to provide regulatory neutrality to help establish a level playing field across technologies and foster more effective competition. We have already provided such flexibility in many services, including PCS, Wireless Communications Service, and new services operating on television channels 60–69; and have proposed flexibility in other services, including new services operating on television channels 52–59. In permitting new services to operate on television channels 60–69, we added Fixed and Mobile services to the Broadcasting allocation in the 746–806 MHz band. In our related proceeding that developed service rules for the 746–764 MHz and 776–794 MHz bands, we stated that our goal was "enabling the broadest possible use of this spectrum, consistent with sound spectrum management * * *." We adopted service rules primarily oriented toward fulfilling the need for a variety of fixed and mobile wireless services in those bands, but did not structure the rules to establish a particular service configuration. Rather, the service rules would allow licensees to make determinations respecting the services provided and the technologies to be used, including new broadcast-type services so long as they complied with the technical rules adopted for the bands. In proposing to permit new services to operate on television channels 52–59, we also proposed a co-primary Fixed, Mobile, and Broadcasting allocation to "enable service providers to select the

technology they wish to use to provide new broadband services in order to make the best use of this spectrum." Thus, we have provided flexible spectrum use for many services and are proposing to provide flexible spectrum use for other services.

4. Specifically with regard to ITFS/MMDS, we already have provided licensees with additional operational flexibility. First, in 1995 we expanded the protected service area contour for site-based MMDS licensees from a 15 mile radius to a 35 mile radius. Second, in 1996 we implemented rules for the use of digital modulation schemes, thereby allowing ITFS/MMDS licensees to provide multiple channels of video programming and high-speed data applications such as Internet access. Third, in 1998 we authorized the use of two-way transmissions on ITFS/MMDS frequencies, effectively enabling the provision of voice, video and data services and granted a 35-mile protected service area to every ITFS licensee. With the advent of two-way technology, ITFS/MMDS has become a vehicle for offering high-speed Internet access and broadband service to educational, residential and small office/home office customers. Finally, we note that, although many MMDS licenses were granted subject to area-wide (Basic Trading Areas or "BTAs") auctions in 1996, the secondary market for both MMDS licenses and ITFS spectrum on a leased basis has been very vibrant. Since 1998 WorldCom and Sprint have invested over $2 billion dollars in the acquisition, by purchase or lease, of MMDS and ITFS channel rights covering 60 million households.

5. The Communications Act of 1934, as amended, specifically authorizes the Commission to allocate spectrum to provide flexibility of use, if—

(1) such use is consistent with international agreements to which the United States is a party; and

(2) the Commission finds, after notice and an opportunity for public comment, that—

(A) such an allocation would be in the public interest;

(B) such use would not deter investment in communications services and systems, or technology development; and

(C) such use would not result in harmful interference among users.

6. With regard to the 2500–2690 MHz band, we find that the above conditions are met and that adding a mobile allocation to the band is in the public interest. First, as noted above and in *the Advanced Wireless Services NPRM*, the 2500–2690 MHz band is allocated in Region 2 on a primary basis to the Fixed, Fixed Satellite, Mobile except aeronautical mobile, and Broadcasting-Satellite Services. The 2000 World Radiocommunication Conference identified the 2500–2690 MHz band for possible terrestrial third generation mobile, or IMT–2000, use. While it is unclear whether other countries will use this band for advanced mobile systems, the band is potentially available in many countries, and it is possible that advanced wireless use will evolve there on a regional or worldwide basis. Therefore, adding a mobile allocation to the 2500–2690 MHz band in the United States is consistent with international agreements to which the United States is a party and will permit the possibility of long-term harmonized use of the band.

7. Second, we find that adding a mobile allocation to the band would not deter investment in current fixed wireless operations, and would not result in harmful interference if appropriate protective measures are taken. As discussed above, the public interest is served because a flexible allocation allows licensees to make efficient use of spectrum, especially if licensees are given greater freedom in determining the specific services to be offered. We also conclude that investment in communications services and systems and technology development would not be deterred by a flexible allocation in this band. While some ITFS/MMDS incumbents indicate that investment in the band, particularly for fixed broadband deployment, could be deterred and interference to incumbents could be caused if we were to add a mobile allocation to the band, we believe that a flexible allocation will actually encourage investment in and the development of new and innovative technology and services. For example, investment in ITFS/MMDS increased as the result of the Commission's decision to allow for two-way digital services in this band, thereby allowing for the deployment of fixed broadband services. A flexible allocation that permits mobile service will spur new technology developments and investment.

8. Third, we note that there is support for potentially using this spectrum for mobile services. Further, IPWireless, Inc. has developed and is testing technology for portable data services that it claims can operate under existing ITFS/MMDS service rules (*i.e.*, not cause harmful interference to incumbent one-way and two-way fixed services) without disrupting the provision of fixed services in the 2500–2690 MHz band. The addition of a mobile allocation will facilitate the introduction of these types of services and will provide flexibility for introducing other mobile applications in the future, thereby encouraging technology development and investment. We emphasize that this addition merely increases options for incumbents to employ spectrum in its highest-valued use, consistent with prior Commission policy, and does not change existing ITFS/MMDS service or technical rules.

9. Finally, we conclude that the introduction of additional mobile uses in the 2500–2690 MHz band can be accomplished without causing harmful interference to incumbent ITFS/MMDS operators. We emphasize that existing technical rules, including interference rules, will be maintained until a rulemaking proceeding has been completed that will address any changes to those rules that may be necessary. More importantly, we emphasize that until that occurs, any mobile use introduced in this band would be subject to existing technical rules or interference agreements between incumbent users and new mobile users. We note that changes in geographic or service applications by incumbent ITFS/MMDS operators may permit other types of mobile uses to be introduced in this band, licensees may partition their service areas, and parties may develop non-interference agreements. Under those circumstances, additional technical service rules would have to be established to protect incumbent operations.

10. We disagree with AT&T that our action here will necessarily result in a "windfall" to incumbent ITFS/MMDS licensees. Permitting mobile use of the 2500–2690 MHz band simply allows incumbent licensees an additional option, but it is entirely possible that fixed use of the band will continue to predominate. Additionally, we note that certain types of mobile applications could be deployed in the near-term under existing service rules; thus, as noted, our action is consistent with the type of flexibility already afforded other types of licensees, such as cellular and broadband PCS. Finally, it is reasonable for us to conclude that, on balance, although incumbents may enjoy some benefits by adding a mobile allocation to the band, permitting mobile use of the band by new service providers would pose a very high risk of disrupting important incumbent fixed operations that our decision does not pose. Accordingly, we find it in the public interest to permit ITFS/MMDS licensees the flexibility to offer mobile services, and we are adding a "Mobile except aeronautical mobile" allocation for the

United States to the 2500–2690 MHz band.

11. While we find that adding a mobile allocation in the 2500–2690 MHz band would be in the public interest, we find that relocating incumbent ITFS/MMDS operations would jeopardize the provision of important fixed wireless broadband services. The FCC staff's *Final Report* studied whether the band could be shared with or reallocated, in whole or in part, for new advanced mobile service providers. The FCC staff's *Final Report* concludes that in many cases lack of uniform geographic use in the band precludes co-frequency sharing between ITFS/MMDS and advanced mobile service providers. The FCC staff's *Final Report* recognized that although voluntary partitioning between incumbent users and new advanced mobile service operators offered some promise of sharing as an interim measure in some geographic areas, sufficient spectrum does not appear to be available in populated areas to support viable advanced mobile services operations. That conclusion is unchallenged by any party to this proceeding. The FCC staff's *Final Report* also studied permitting mobile use by new service providers by reallocating all or a portion of the 2500–2690 MHz band from fixed to mobile services. However, even the 60 MHz reallocation proposed by Verizon would cause severe disruptions to ITFS/MMDS incumbents if they were forced to vacate a segment of the band. Further, the option of relocating ITFS/MMDS incumbents to another band would likely impose even greater overall costs because existing licensees in all candidate relocation bands examined by the FCC staff's *Final Report* would also need to be relocated to accommodate displaced ITFS/MMDS incumbents. Based on this record, we find that relocating ITFS/MMDS incumbents would not be cost-effective or desirable.

12. Our assessment is shared by the majority of parties to this proceeding. Some parties contend that there will likely be insufficient spectrum for advanced mobile services if a portion of the 2500–2690 MHz band is not reallocated for exclusive mobile use. However, in our recent *Further NPRM* in this proceeding, we solicited comment on allocating additional bands for advanced mobile services. Further, as discussed above, we are adding a mobile allocation to the 2500–2690 MHz band to permit flexibility for incumbent licensees. We will be addressing the issue of how much additional spectrum from other bands is required for advanced mobile services in a forthcoming decision in this proceeding. Moreover, we have encouraged the provision of both advanced mobile and fixed services and note that the services currently being provided and planned in the 2500–2690 MHz band—while fixed in nature—have significant value. Accordingly, we find that displacing ITFS/MMDS incumbents to permit advanced mobile use of the 2500–2690 MHz band by new service providers would be detrimental to the public interest.

13. We recognize that, under current technology and service rules, fixed and mobile (other than portable) sharing of the 2500–2690 MHz band does not appear feasible, but we anticipate advances in technology that may permit such sharing. We further recognize that we will have to explore in a separate future proceeding the service rules that will apply to permit mobile operations in the band. The FCC staff's *Final Report* cites the possibility of interference to incumbent ITFS/MMDS operations from new advanced mobile service providers, and we would want to provide service and technical rules that would allow both incumbent ITFS/MMDS and mobile operations to co-exist in the band. As noted, in developing service rules for the 746–764 MHz and 776–794 MHz bands, we struck a balance in developing rules that would facilitate licensees' flexibility to provide either fixed or mobile services as well as certain broadcast-type services on a non-interference basis. We would want to strike the same balance for the 2500–2690 MHz band so that mobile use of the band will not impair fixed use of the band. We emphasize that if fixed and mobile sharing of the band continues to be infeasible in the long run, our service rules would ensure the protection of fixed operations.

Final Regulatory Flexibility Certification

14. The Regulatory Flexibility Act of 1980, as amended ("RFA")[1] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[2] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

15. In this *First Report and Order*, "the Commission adds a mobile allocation to the 2500–2690 MHz band and thus provides ITFS/MMDS incumbent users of that band additional flexibility to offer mobile, as well as current fixed, services. This change may provide new opportunities for ITFS/MMDS incumbents, but will not adversely affect any incumbents because mobile use of the band will be at their discretion. As noted in paragraph 26 of the *First Report and Order*, the introduction of additional mobile uses in the 2500–2690 MHz band can be accomplished without causing harmful interference to incumbent ITFS/MMDS operators because * * * the incumbent licensees will have the flexibility to determine the specific services to be offered." Therefore, we certify that the requirements of this *First Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *First Report and Order*, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the First Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 605(b).

16. Authority for issuance of the First Report and Order is contained in sections 1, 4(i), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j).

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[1] The RFA, *see* 5 U.S.C. S 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. S 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[5] Small Business Act, 15 U.S.C. S 632.

List of Subjects in 47 CFR Part 2

Communications equipment, Radio, Table of frequency allocation.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR, part 2 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by revising pages 52 and 53. The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712-01-P

2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.351A Radiolocation S5.150 S5.371 S5.397 S5.398 S5.399 S5.400 S5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.351A RADIOLOCATION RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 S5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) S5.398 S5.150 S5.400 S5.402	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 S5.402 US41	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 S5.402 US41 NG147	ISM Equipment (18) Satellite Communications (25) Private Land Mobile (90) Fixed Microwave (101)
2500-2520 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (space-to-Earth) S5.403 S5.351A S5.405 S5.407 S5.412 S5.414	2500-2520 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (space-to-Earth) S5.403 S5.351A S5.404 S5.407 S5.414 S5.415A		2500-2655	2500-2655 FIXED S5.409 S5.411 US205 FIXED-SATELLITE (space-to-Earth) NG102 MOBILE except aeronautical mobile BROADCASTING-SATELLITE NG101	Domestic Public Fixed (21) Auxiliary Broadcasting (74)
2520-2655 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.403 S5.405 S5.412 S5.418	2520-2655 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.403	2520-2535 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.403 S5.415A 2535-2655 FIXED S5.409 S5.411 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.418	S5.339 US205 US269	S5.339 US269	

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2655-3700 MHz (UHF/SHF) Page 53

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2655-2670 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.412 S5.420	2655-2670 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.420	2655-2670 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) S5.415 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.420	2655-2690 Earth exploration-satellite (passive) Radio astronomy Space research (passive)	2655-2690 FIXED US205 FIXED-SATELLITE (Earth-to-space) NG102 MOBILE except aeronautical mobile BROADCASTING-SATELLITE NG101 Earth exploration-satellite (passive) Radio astronomy Space research (passive)	Domestic Public Fixed (21) Auxiliary Broadcasting (74)
2670-2690 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (Earth-to-space) S5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.419 S5.420	2670-2690 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (Earth-to-space) S5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.419 S5.420	2670-2690 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) S5.415 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (Earth-to-space) S5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.419 S5.420 S5.420A	US205 US269	US269 NG47	
2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340 S5.421 S5.422			2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
2700-2900 AERONAUTICAL RADIONAVIGATION S5.337 Radiolocation S5.423 S5.424			2700-2900 AERONAUTICAL RADIO-NAVIGATION S5.337 METEOROLOGICAL AIDS Radiolocation G2 S5.423 US18 G15	2700-2900 S5.423 US18	

[FR Doc. 01-26841 Filed 10-24-01; 8:45 am]
BILLING CODE 6712-01-P

Proposed Rules

Federal Register
Vol. 66, No. 207
Thursday, October 25, 2001

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NY002; FRL–7090–4]

Clean Air Act Proposed Full Approval of Operating Permits Program: State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: The EPA proposes full approval of the operating permits program submitted by the State of New York for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources and to certain other sources.

DATES: Comments on this proposed action must be received in writing by November 26, 2001.

ADDRESSES: Written comments should be addressed to Steven C. Riva, Chief, Permitting Section, Air Programs Branch, at the New York Region 2 Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed full approval are available for inspection during normal business hours at the following location: EPA Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, Attention: Steven C. Riva.

FOR FURTHER INFORMATION CONTACT: Steven C. Riva, Chief, Permitting Section, Air Programs Branch, at the above EPA office in New York or at telephone number (212) 637–4074.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under Title V of the Clean Air Act ("the Act"), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at Title 40 of the Code of Federal Regulations (40 CFR) part 70. Title V of the Act directs States to develop, and submit to EPA for approval, programs for issuing operating permits to all major stationary sources and to certain other sources. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval.

On November 7, 1996, EPA granted New York interim approval of its part 70 program. 61 FR 57589. At that time, EPA stated that there were eight interim approval issues that needed to be fixed in order for the EPA to grant New York full approval. However, with regard to five of the eight issues identified, EPA stated that if revisions to part 70 were finalized (proposed revisions were published in the **Federal Register** on August 29, 1994 and August 31, 1995) prior to expiration of New York's interim approval, New York might not need to address those five issues.

On June 8, 1998, New York submitted to EPA Region 2 revisions to 6 NYCRR part 201 which address three of the interim approval issues. EPA has reviewed the changes and finds that they provide approvable corrections for the three issues cited in the final interim approval notice.

On October 5, 2001, New York submitted additional revisions to 6 NYCRR Parts 200 and 201 which addressed three of the remaining five interim approval issues. These changes were accomplished through New York State's emergency rulemaking procedures and were filed with the New York State Department of State with an effective date of September 19, 2001. A separate rulemaking proposal with identical changes was also filed with the Department of State and will replace the "emergency" package once the rulemaking proposal is finalized.

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

Several citizens commented on what they believe to be deficiencies with respect to the New York State Title V program. EPA takes no action on those comments in today's action and will respond to them separately by December 1, 2001. As stated in the **Federal Register** notice published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) if we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that EPA has identified through its program oversight.

Therefore, citizens should limit any comments on today's Notice to the specific issues delineated herein; that is, those eight specific issues that were addressed pursuant to EPA's November 7, 1996 interim approval of the New York State operating permits program.

II. Proposed Action and Implications

A. Analysis of State Submission

EPA is proposing full approval of New York's Title V program as submitted on November 12, 1993, June 17, 1996, and June 27, 1996, revised and resubmitted on June 8, 1998, and resubmitted under emergency rulemaking procedures on October 5, 2001. The following addresses the June 8, 1998, resubmission which fixes three of the program deficiencies EPA found on November 7, 1996, and the October 5, 2001, emergency rulemaking which addresses three additional program deficiencies that were also identified by EPA on November 7, 1996. EPA seeks comment on its proposal to fully approve New York's program.

1. Issues Raised in the Interim Approval Notice That Have Been Corrected

a. On June 8, 1998, New York submitted revisions to 6 NYCRR Part 201 which satisfy three deficiencies noted in the November 7, 1996, **Federal Register** notice granting New York interim approval.

i. Under the reporting requirements of 6 NYCRR 201–6.5(c)(3)(ii), New York provides that a permittee can seek to have a violation excused as provided in 201–1.4 if such violations are reported as required in 201–1.4(b). The DEC Commissioner is provided discretion under 201–1.4 to excuse violations of any applicable emission standard for necessary scheduled equipment maintenance, start-up/shutdown conditions, malfunctions, and upsets if such violations are unavoidable and the permittee meets certain conditions and reporting requirements. EPA found that New York's rule was deficient since it was not clear that the DEC Commissioner's discretion could only apply to state implementation plan (SIP) requirements or State-only requirements. Such discretion could not extend to other Federal requirements such as NSPS, NESHAPs or PSD/NSR. In its notice proposing interim approval, EPA stated that in order to receive full approval, New York must add a sentence to 6 NYCRR 201–6.5(c)(3)(ii) which clarifies that the discretion to excuse a violation under 201–1.4 will not extend to Federal requirements unless the specific Federal requirement provides for the affirmative defense during start-ups, shutdowns, malfunctions, or upsets. New York amended 201–6.5(c)(3)(ii) to state that a federal regulation can only be excused if the specific federal regulation provides an affirmative defense during start-up, shutdowns, malfunctions or upsets. Therefore, the affirmative defense provisions at 201–1.4 cannot be used for federally promulgated regulations. EPA considers this issue resolved for purposes of granting the State of New York full program approval.

ii. 40 CFR 70.6 provides that permits can include alternative emission limits, equivalent to those contained in the SIP, as long as the SIP allows for alternative emission limits to be made through the permit issuance, renewal or significant modification process. EPA in its interim approval notice found that New York's language was overly broad in that it allowed New York to provide for alternative emission limits even if that was not provided in a particular regulation approved into the SIP or even if the limit was not determined to be "equivalent" to that in the SIP. New York amended 201–6.5(a)(1)(ii) to state that permits can only include alternative emission limits if provided for in a SIP and if the alternative emission limit is determined by NYSDEC to be equivalent to the limit in the SIP. Therefore, EPA considers this issue resolved for purposes of granting the State of New York full program approval.

iii. EPA in its interim approval notice had found that 6 NYCRR 201–6.5(f)(3) concerning operational flexibility related to emissions trading under the SIP did not include one of the "gatekeepers" of 40 CFR 70.4(b)(12)(i) which states that changes do not need to undergo a permit revision as long as the changes are not modifications under any provision of Title I of the Act. 6 NYCRR 201–6.5(f)(4) concerning operational flexibility related to emissions trading under a cap did not include the two gatekeepers of 40 CFR § 70.4(b)(12) which state that (1) changes do not need to undergo a permit revision as long as the changes are not modifications under any provision of Title I of the Act and (2) the changes do not exceed the emissions allowable under the permit. New York revised paragraphs 201–6.5(f)(3) and 201–6.5(f)(4) to include the needed gatekeepers from § 70.4(b)(12)(i). Therefore, EPA considers this issue resolved for purposes of granting the State of New York full program approval.

b. On October 5, 2001, New York submitted revisions to 6 NYCRR Parts 200 and 201 which satisfy three additional deficiencies noted in the November 7, 1996 **Federal Register** notice granting New York interim approval.

i. 40 CFR 70.7(e)(2)(i)(B) states that minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches "to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA." EPA in its interim approval notice found that 6 NYCRR 201–6.7(c)(2) provided for use of minor modification procedures for permit modifications involving the use of economic incentives and marketable permits, but did not include the language quoted above. New York has revised 201–6.7(c)(2) to include the language quoted above. Therefore, EPA considers this issue resolved for purposes of granting the State of New York full program approval.

ii. EPA had originally found as a deficiency New York's definition of "Regulated Air Pollutant" in 6 NYCRR 200.1(bq) because it failed to include pollutants regulated under section 112(r) of the Act. The definition of Regulated Air Pollutant at § 70.2 includes "any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act, including sections 112(g), (j), and (r) of the Act. * * *" New York's definition of regulated air pollutant includes "any hazardous air pollutant," which New York defines by providing a list of the 112(b) pollutants. New York added a new requirement at 6 NYCRR 201.1(bm) to include in its definition of regulated air pollutants, pollutants regulated under section 112(r) of the Act. Therefore, EPA considers this issue resolved for purposes of granting the State of New York full program approval.

iii. 40 CFR 70.4(b)(12)(i) provides that states can allow sources to make 502(b)(10) changes without requiring a permit revision. 40 CFR § 70.2 defines "section 502(b)(10) changes" as changes that contravene an express permit term as long as such changes would not violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements. New York's regulation did not provide for one of the three elements defined to provide operational flexibility under section 502(b)(10) of the Act. New York has revised its regulations at 6 NYCRR 201–6.5(f)(6) to provide the operational flexibility provisions as set forth in section 502(b)(10) of the Act. Therefore, EPA considers this issue resolved for purposes of granting the State of New York full program approval.

2. Other Issues Raised in Interim Approval Notice

i. Judicial Review: 40 CFR 70.4(b)(3)(xii) requires that petitions for judicial review be filed no later than 90 days after the final permit action, or such shorter time as the State shall designate. Article 78 of the New York Civil Practice Law and Rules (CPLR) provides a four month statute of limitations for persons to seek judicial review of all New York State agencies' actions. When granting the interim approval, EPA stated that New York must adopt a 90 day statute of limitations through rulemaking in order to be consistent with part 70. However, in granting New York interim approval

EPA also mentioned that it had proposed on August 29, 1994 to extend the filing date of requesting judicial review from 90 days to 125 days, and that if part 70 were promulgated as proposed, New York would not need to change the statute of limitations.

EPA has revisited this issue and now proposes that New York need not change its filing date for seeking judicial review as its filing date is more stringent than the federal requirement. One goal of Title V is to provide more public participation in the air permitting process. The four month statute of limitations provided under the CPLR gives citizens an additional month to seek judicial review. EPA believes that imposing a unique, and shorter, statute of limitations than otherwise applies in New York State for Title V purposes would result in less public involvement in permitting actions. EPA also believes that the one additional month provided by New York's rule, beyond the 90 day period provided in part 70, is not so long as to deny facilities repose as to when their permits would no longer be subject to suit. Because EPA encourages involvement by citizens as well as permittees in the permitting process, it is prudent that EPA allow a state to continue to use the statute of limitations the public is familiar with when seeking judicial review. The statute of limitations has no impact on the implementation or enforcement of the Title V program. EPA also considers New York's statute of limitations to be more stringent than the one required under part 70 such that this should not have been raised as a program deficiency. Therefore, EPA proposes to remove the statute of limitations interim approval issue.

ii. Definition of Major Source: In its interim approval, EPA found New York's definition of "major source" at 6 NYCRR 201–2(b)(21) to be inconsistent with the definition in 40 CFR 70.2. In 40 CFR 70.2, the last category in the list of 27 categories of stationary sources in which fugitive emissions must be included to determine if a source is subject to Title V includes "* * * all other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category." EPA determined this to be a deficiency based on a March 8, 1994 memorandum from Lydia Wegman entitled "Consideration of Fugitive Emissions in Major Source Determinations." EPA stated it would grant interim approval for programs that do not require fugitives to be counted in determining the status of post 1980 NSPS source categories. That same memo also stated that EPA did not follow the procedural steps necessary for a proper rulemaking under Section 302(j) of the Act and would revise the definition in part 70.

EPA has proposed a revision to the major source definition that will incorporate the 1980 cutoff date which will resolve this issue in the New York State program. We are therefore proposing to approve New York's definition of major source.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed full approval. Copies of the State's submittal and other information relied upon for the proposed approval are contained in a docket maintained at the EPA Regional Office located in New York. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by November 26, 2001.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

C. Paperwork Reduction Act

This action will not impose any collection information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, *see* 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this proposed rule may have federal implications. For example, under the authority of section 505 of the Act, 42 U.S.C. 7661(d), EPA may object to a permit issued under the New York's Title V Operating Permit Program. Should New York fail to revise the permit based upon EPA's objection, EPA has the authority under this section of the Act to issue a federal permit for the facility under 40 CFR Part 71. However, it will not impose direct compliance costs on State or local governments, nor will it preempt State law. Thus, the requirements of sections 6(b) and Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) require EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds. Therefore, section 6(c) of the Executive Order does not apply to this rule.

Consistent with EPA policy, EPA nonetheless consulted closely with the Governor of New York and his staff early and throughout the process of developing New York's regulations to allow them to have meaningful and timely input in the development of its Title V Operating Permit Program. EPA worked closely with the Governor's legal staff in drafting the legislation and regulations for this program.

F. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because Part 70 approvals under Section 502 of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permit, Reporting and recordkeeping requirements.

Dated: October 19, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2

[FR Doc. 01–26927 Filed 10–24–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NJ001; FRL–7090–5]

Clean Air Act Proposed Full Approval of Operating Permit Program; New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking proposed action to fully approve the operating permit program of the State of New Jersey. New Jersey's operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that States develop and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. EPA granted interim approval to New Jersey's operating permit program on May 16, 1996. New Jersey revised its program to satisfy the conditions of the interim approval and submitted the corrected program on May 31, 2001. This action approves those revisions. In addition, EPA is also taking proposed action to approve the following changes to New Jersey's Operating Permit Rule: (1) N.J.A.C.7:27–22.29(a) and 22.29(e) were changed to incorporate the final nitrogen oxide regulations under 40 CFR Part 76 as required by EPA; and N.J.A.C. 7:27–22.1 was changed to add the definition of a fuel cell system and to add fuel cell systems with a power output of less than 500 kilowatts to the list of exempt activity.

DATES: Comments on this proposed action must be received in writing by November 26, 2001.

ADDRESSES: Written comments on this action should be addressed to Steven C. Riva, Chief, Permitting Section, Air Programs Branch, EPA–Region 2, 290 Broadway, New York, New York 10007–1866. Copies of the State's submittal and other supporting information used in developing the proposed full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Steven C. Riva, Chief, Permitting Section, Air Programs Branch, at the above EPA office in New York or at telephone number (212) 637–4074.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
What are the program changes that EPA is approving?
What is involved in this proposed action?

What Is the Operating Permit Program?

Title V of the Clean Air Act Amendments (CAA) of 1990 and its implementing regulations at 40 CFR Part 70 require all States to develop and implement operating permit programs that meet certain criteria. Operating permit programs are intended to consolidate into a single federally enforceable document all CAA requirements that apply to a particular source. This consolidation of all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined. Sources required to obtain an operating permit under this program include: "major" sources of air pollution and certain other sources specified in Section 501 of the CAA or in EPA's implementing regulations (see 40 CFR 70.3).

The EPA reviews state programs pursuant to Section 502 of the CAA and the Part 70 regulations, which together outline the criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval which would be effective for 2 years. If a state does not have in place a fully approved program by the time the interim program approval expires, the federal operating permit program promulgated under 40 CFR Part 71 will be implemented. Due to unexpected circumstances that affected States' timeliness in developing a fully approvable program, EPA took final action to extend the effective date of all interim approvals until December 1, 2001. EPA's action required all States with interim approvals to submit a full program on or before June 1, 2001 which would allow EPA a period of six months to render a decision on the approvability of the State submittal. Any State that fails to have a fully approved program in place by December 1, 2001 will be required to cease all permitting activities under the interim program. At such point, the federal operating permit program promulgated under 40 CFR Part 71 will take effect immediately. All sources subject to the federal program that do not have final Part 70 permits already issued to them by the state are required to submit a Part 71 application and the appropriate fees within one year to their respective EPA Regional offices pursuant to 40 CFR Part 71.

What Is Being Addressed in This Document?

New Jersey's operating permit program substantially, but not fully, met the requirements of Part 70; therefore, EPA granted the New Jersey operating permit program interim approval on May 16, 1996, which became effective on June 17, 1996 (*See* 61 FR 24715). EPA identified four issues that needed correction before NJ would be eligible for full program approval. NJ submitted a corrected program to the EPA on May 31, 2001 which addressed each of the four deficiencies. This document describes the changes made in New Jersey's operating permit program that corrected those deficiencies.

What Are the Program Changes Made by New Jersey?

1. Nonmajor Sources

The first condition for full program approval of NJ's operating permit program was a rule revision to require nonmajor sources subject to Section 111 standards promulgated after July 21, 1992 to apply for an operating permit unless EPA exempts such sources in future rulemaking. In accordance with the above directive, in its proposed changes to N.J.A.C. 7:27–22, NJ included changes to N.J.A.C. 7:27–22.2(b) to require all nonmajor sources subject to Section 111 standards to apply for an operating permit unless the EPA completed a rulemaking exempting such sources. However, based on a clarification of EPA's interpretation of 40 CFR 70.3(b)(1) and (b)(2), NJ did not adopt the above-noted change. As a result, N.J.A.C. 7:27–22.2(b) currently reads as follows: "A nonmajor facility not included in (a) above shall become subject to this subchapter if EPA completes a rulemaking requiring an operating permit for that category of nonmajor facilities pursuant to 40 CFR 70.3(b)(1) or (2)."

It is EPA's position that 40 CFR 70.3(b)(1) allows states to defer nonmajor section 111 sources from title V permitting requirements until EPA affirmatively addresses whether these sources are to be permitted. Therefore, if a section 111 standard is promulgated after July 21, 1992 and the standard does not address whether nonmajor sources subject to it must obtain title V permits consistent with 40 CFR 70.3(b)(2), then States can defer the permitting of these sources until EPA completes the rulemaking described in 40 CFR 70.3(b)(1). Based on its reference to 40 CFR 70.3(b)(1) and (2), N.J.A.C. 7:27–22.2 essentially requires all sources, major and nonmajor, that are subject to Section 111 of the CAA to apply for an operating permit unless they are specifically exempted by the EPA in its final rulemaking. Nonetheless, NJ may still exercise its discretion provided under 40 CFR 70.3(b)(1) to defer permitting of these nonmajor sources.

It is important to note the difference between a deferral and an exemption. Under a deferral, while sources are allowed to defer the process of obtaining a Part 70 permit until a later date, they are still required to comply with all applicable provisions of the standard to which they are subject. An exemption, on the other hand, is granted by EPA in its rule promulgation. An exemption not only relieves the subject sources from the permitting requirement; it also relieves them from the substantive requirements. In the case of NJ, while NJ chooses to defer the permitting requirement for all nonmajor sources, except nonmajor sources under section 129 of the CAA, through its reference to 40 CFR 70.3(b)(1), NJ still enforces all applicable requirements to which a nonmajor source is subject.

The above discussion relative to nonmajor sources subject to section 111 of the Act does not apply to solid waste incineration units subject to section 129 of the Act. Specifically, section 129(e) of the Act requires solid waste incineration units to operate pursuant to a title V permit and the introductory phrase in 40 CFR 70.3(b)(1) excludes such units from being exempted from title V permitting for any period of time. As a result, although solid waste incineration units are subject to standards promulgated under sections 111 and 129, the exemption in 40 CFR 70.3(b)(1) does not apply to section 129 sources. Based on this clarification, EPA has determined that NJ's existing rule provisions at N.J.A.C. 7:27–22.2(b) are acceptable for full program approval.

However, EPA believes that it would be helpful to revise N.J.A.C. 7:27–22.2(b) to specifically include the introductory phrase in 40 CFR 70.3(b)(1), which excludes major sources, affected sources, or solid waste incineration units from being exempted from title V permitting for any period of time, in order to eliminate any confusion for sources. In an October 3, 2001 letter, William O'Sullivan, Administrator, Air Quality Permitting Program, Department of Environmental Protection, State of New Jersey, stated that NJ interprets 7:27–22.2(b) to incorporate 40 CFR 70.3(b)(1) in its entirety. Mr. O'Sullivan further stated in this letter that NJ does require the permitting of sources subject to section 129 of the Act. Such sources (both major and nonmajor) have been applying for title V permits in NJ. However, NJ agrees with EPA that for purposes of clarity to the subject sources that they would incorporate 40 CFR 70.3(b)(1), including the introductory phrase, into N.J.A.C.7:27–22.2(b) in a future rulemaking so as to eliminate any confusion for subject sources. This change will also help ensure that solid waste incineration units apply for and obtain title V permits consistent with the deadlines established in sections 129(e) and 503(c) and (d) of the Act, and in the regulations developed pursuant to these Act provisions.

Although EPA views this rule change to be beneficial to sources for clarification purposes, EPA does not believe it to be crucial for granting full program approval because it is shown in NJ's October 3, 2001, commitment letter that they are complying in substance. Since EPA's original determination that NJ's rule was deficient relative to the permitting of nonmajor sources subject to section 111 of the Act was incorrect and given that NJ is requiring nonmajor sources subject to a section 129 standard to apply for title V permits, EPA considers this issue resolved for purposes of granting the State of New Jersey full program approval.

2. Affirmative Defense

The second condition for full approval of NJ's operating permit program was a rule and/or legislation revision to ensure conformance with 40 CFR 70.6(g). Specifically, NJ has general air legislation (N.J.S.A.26:2C–19.1 through 19.5) which allows an affirmative defense for startups, shutdowns, equipment maintenance and

malfunctions and its operating permit rule (N.J.A.C.7:27–22.3(nn) and 22.16(l)) discusses when it can be used. This legislation is separate and apart from the title V enabling legislation and applies generally to New Jersey's rules. The Part 70 regulations allow an affirmative defense in emergency situations only and does not extend this defense to startups, shutdown, equipment maintenance or malfunctions per se. EPA found NJ's general affirmative defense provisions to be inconsistent with the Part 70 regulations. 40 CFR 70.6(g) provides that the emergency affirmative defense is only applicable to technology-based emission limits and not health-based emission limits. The definition of "emergency" also limits excursions resulting from sudden and unforeseeable events. As a condition of full approval, EPA required NJ to revise its legislation as cited above to limit its affirmative defense for title V purposes only to emergency situations resulting from violations of technology-based emission standards. Alternatively, NJ could submit an opinion from the State Attorney General clarifying that the NJ Law prohibits the use of an affirmative defense for violations of health based emission limitations. In addition, EPA required NJ to revise both the legislation and N.J.A.C.7:27–22 to limit the use of its affirmative defense, for title V purposes, to sudden and unforeseeable events that are beyond the control of the source. This addition would ensure that the affirmative defense is only applicable during emergency situations.

Since the time this issue arose in NJ's interim approval, EPA has differentiated the issue before it. The startup, shutdown and malfunction affirmative defense cited in New Jersey's legislation (N.J.S.A. 26:2C–19.1–19.5) is separate and apart from the emergency affirmative defense under 40 CFR 70.6(g)(1). In terms of conforming with 40 CFR 70.6(g)(1), NJ defines "emergency" in N.J.A.C. 7:27–22.1 of its rule as follows:

"Any situation arising from sudden and reasonably unforeseeable events beyond the control of a facility such as an act of God, * * * to exceed a technology-based emission limit set forth in its operating permit. This term shall not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation or operator error."

As a result, NJ's rule already meets the requirements EPA placed upon it through EPA's interim approval of NJ's title V program to conform with 40 CFR 70.6(g)(1). In addition, NJ has inserted a sentence in the general provisions of its permits to state that any emergency affirmative defense asserted under 40 CFR Part 70 must follow the procedures set out in 40 CFR Part 70. As a result, this portion of the affirmative defense issue under NJ's interim approval has been resolved.

The actual issue before EPA during the interim approval of NJ's title V operating permit program was the existence of NJ's general legislation, providing an affirmative defense for startups, shutdowns, maintenance and malfunctions, under N.J.S.A. 26:2C–19.1–19.5. As already stated, this affirmative defense went beyond the emergency affirmative defense permitted under 40 CFR 70.6(g)(1). More importantly, it created a possible conflict between the state affirmative defense and affirmative defenses established under federal requirements such as the New Source Performance Standards (NSPS) and New Emission Standards for Hazardous Air Pollutants (NESHAP).

As a result of the sharper delineation of the issue before us, EPA has since re-evaluated alternatives that may resolve this issue. EPA recognizes States' discretion to grant an affirmative defense for violations of State requirements without jeopardizing their operating permit programs. EPA believes limiting the affirmative defense to violations of non-federally promulgated standards would in turn limit its application to technology-based standards, rather than health-based standards. It should however, be noted that under N.J.S.A. 26:2C–19.3, New Jersey's general startup, shutdown, maintenance and malfunction affirmative defense cannot be used for public health or welfare violations. As a result, this protection already exists in the legislation itself. Regardless, in promulgating federal emissions standards such as the NSPS and NESHAP, EPA evaluated the appropriateness of allowing sources to exceed certain emission limits under particular circumstances. Where EPA allowed for such excursions within the standard, EPA had already taken into consideration the limitations of add-on controls that may cause unexpected excess emissions as well as health concerns associated with the excursion. The situation under which an excursion may be allowed had also been evaluated. Consequently, depending on the standard in question, some may excuse excursions and some may not. Therefore, EPA finds it more suitable to defer to the provisions of the federal emissions standard for appropriate actions regarding violations of a particular standard.

On January 30, 2001, EPA informed NJ that as an alternative to the legislation and rule changes described in the May 16, 1996 **Federal Register** notice for correcting this deficiency, NJ should (1) submit an opinion from the Attorney General stating that the affirmative defense provisions of N.J.S.A.26:2C–19.1 through 19.5 are applicable to non-federally promulgated standards only and (2) include a statement in the General Provisions of each permit that reflects the Attorney General's opinion. On May 31, 2001, NJ submitted an Attorney General's opinion clarifying the inapplicability of the State's affirmative defense, N.J.S.A.26:2C–19.1 through 19.5, to federally delegated standards. NJ also submitted language to be added to Section F (the general provisions of NJ operating permits) stating that its affirmative defense for startups, shutdowns, maintenance and malfunctions under N.J.S.A.26:2C–19.1 through 19.5 does not apply to federally delegated regulations, including but not limited to NSPS, NESHAP or MACT.

3. Administrative Amendments

The third condition for full program approval of New Jersey's operating permit program was a rule revision to ensure that the administrative amendment procedure is properly used to incorporate preconstruction permits into operating permits. NJ's rule had allowed a preconstruction permit to be incorporated into the operating permit via the administrative amendment process if it was issued through public participation requirements substantially equivalent to those for operating permits. EPA identified this as a deficiency in the interim approval because a public participation process that is "substantially equivalent" to, may not actually meet, the requirements of the NJ operating permit rule. The public comment and EPA comment sections of NJ's operating permit rule are stipulated in N.J.A.C.7:27–22.11 and 22.12, respectively. As a condition of the interim approval, EPA required NJ to correct this deficiency by revising N.J.A.C. 7:27–22.20(b)(7) to require the preconstruction permit to undergo a process that meets 22.11 and 22.12 as opposed to a process that is substantially equivalent to 22.11 and 22.12. NJ revised its operating rule accordingly on August 2, 1999. A copy of the New Jersey Register (31 N.J.R. 2202) notice was submitted with the full program package on May 31, 2001.

4. Permit Fees

The fourth, and final, condition for full program approval of New Jersey's operating permit program was the submittal of a revised fee demonstration showing that the legislative limit of $9.51 million on program appropriation will not render the NJ program inadequately funded. The New Jersey Air Pollution Control Act (NJAPCA) delineates the fee collection schedule for the operating permit program during the initial years of program implementation. While EPA found NJ's adoption of the presumptive minimum of $25 per ton (in 1989 dollars adjusted by the CPI) to be acceptable for purposes of determining adequate funding for the NJ program, EPA found the appropriation cap of $9.51 million stipulated in the legislation to be problematic. This provision allows NJ to collect the presumptive minimum fees from all affected sources but prevents any appropriation in excess of $9.51 million for purposes of administering the operating permit program. It was difficult to determine whether $9.51 million was or was not adequate to fund the NJ program. Therefore, as a condition of the interim approval, EPA required NJ to submit a revised fee demonstration to show that $9.51 million would adequately fund the operating permit program. If the fee demonstration showed otherwise, NJ would be required to take actions to correct this deficiency prior to full program submittal. In the May 31, 2001, full program submittal, NJ informed EPA that this program deficiency is no longer an issue because the legislative cap on appropriation does not apply to State fiscal year 1998 and thereafter. A copy of the pertinent section of the legislation (N.J.A.P.C.A. 26:2C–9.5d) was submitted to show that there no longer is a limit on operating permit program appropriations.

What Is Involved in This Proposed Action?

The State of New Jersey has fulfilled the conditions of the interim approval granted on

May 16, 1996. EPA is therefore taking proposed action to fully approve the State's operating permit program. EPA is also taking proposed action to approve other program changes made by the State since the interim approval was granted.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action will not impose any collection information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, *see* 40 CFR Part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this proposed rule may have federal implications. For example, under the authority of section 505 of the Act, 42 U.S.C. 7661(d), EPA may object to a permit issued under the NJ's Title V Operating Permit Program. Should NJ fail to revise the permit based upon EPA's objection, EPA has the authority under this section of the Act to issue a federal permit for the facility under 40 CFR Part 71. However, it will not impose direct compliance costs on State or local governments, nor will it preempt State law. Thus, the requirements of sections 6(b) and Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) require EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds. Therefore, section 6(c) of the Executive Order does not apply to this rule.

Consistent with EPA policy, EPA nonetheless consulted closely with the Governor of NJ and her staff early and throughout the process of developing NJ's regulations to allow them to have meaningful and timely input in the development of its Title V Operating Permit Program. EPA worked closely with the Governor's legal staff in drafting the legislation and regulations for this program.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because Part 70 approvals under Section 502 of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no

new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permit, Reporting and recordkeeping requirements.

Dated: October 19, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 01–26928 Filed 10–24–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 00–258; RM–9911; FCC 01–256]

New Advanced Wireless Services

AGENCY: Federal Communications Commission.

ACTION: Denial of Petition for Reconsideration of Notice of Proposed Rule Making.

SUMMARY: This document responds to the Petition for Reconsideration filed by Satellite Industry Association. The petition requested that we reconsider our decision not to allocate the 2500–2520 MHz and 2670–2690 MHz bands for Mobile Satellite Service use for 3G services. We affirm our finding that the Mobile Satellite Service has sufficient spectrum without those band segments.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418-2452.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket No. 00–258, FCC 01–256, adopted September 6, 2001, and released September 24, 2001. The full text of this Commission decision is available on the Commission's Internet site at www.fcc.gov. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, Qualex International, (202) 863–2893, Room CY–B402, 445 12th Street, SW., Washington, DC 20554.

Summary of the Memorandum Opinion and Order

1. In this *Memorandum Opinion and Order* ("MO&O"), we deny a petition for reconsideration filed by the Satellite Industry Association ("SIA") of the *Notice of Proposed Rule Making and Order*, 66 FR 7483, January 23, 2001, in this proceeding. SIA requested that we reconsider our decision not to allocate the 2500–2520 MHz and 2670–2690 MHz bands for Mobile Satellite Service ("MSS") use for 3G services, but we affirm our prior determination that reallocation of the 2.5 GHz band to the MSS is unwarranted because sharing between terrestrial and satellite systems would present substantial technical challenges in that band and MSS already has access to a significant amount of spectrum below 3 GHz to meet its needs in the foreseeable future.

2. In its petition for reconsideration, SIA maintains that there is no evidence that spectrum sharing between fixed services and MSS will result in interference and that existing MSS spectrum allocations are insufficient. SIA cites Telecommunications Industry Association ("TIA") joint working group TR14.11/TR34.2 as finding in its Telecommunications System Bulletin ("TSB") 86 that sharing between fixed services and MSS is feasible. SIA also argues that the geographic separation of MSS and Instructional Television Fixed Service/Multichannel Multipoint Distribution Services ("ITFS/MMDS") users should significantly alleviate any potential interference between the services. Finally, SIA argues that interference from MSS spacecraft was addressed by the International Telecommunication Union ("ITU") over the 1994–1996 period and power flux density limits were developed to protect fixed services operating in the 2500–2520 MHz and 2670–2690 MHz bands. SIA contends that these limits have been incorporated into the ITU's Radio Regulations, and ITFS/MMDS interests have presented no technical evidence to support their claim that those limits are insufficient to protect ITFS/MMDS licensees from MSS interference. Therefore, SIA contends that we must reconsider our decision to dismiss its petition for reconsideration and request comment on the merits of allocating the 2500–2520 MHz and 2670–2690 MHz bands to MSS on a shared basis with fixed services.

3. Commenters opposed SIA's petition for reconsideration on both procedural and substantive grounds. We agree with these commenters that SIA's petition for reconsideration relies on facts that have not been presented to the Commission previously. Section 1.429(b) of our rules states:

A petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only under the following circumstances:

(1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission;

(2) The facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or

(3) The Commission determines that consideration of the facts relied on is required in the public interest.

4. SIA submitted its petition for rulemaking in April 2000, significantly after the October 1999 TSB 86 document was published and even more significantly after the 1994–1996 ITU work that SIA cites in its petition for reconsideration. Thus, SIA properly should have cited the TSB 86 document and the ITU work in its petition for rulemaking. Even in its petition for reconsideration, SIA does not explain the relevance of this material to its petition. TSB 86 is titled "Criteria and Methodology to Assess Interference Between Systems in the Fixed Service and the Mobile-Satellite Service in the Band 2165–2200 MHz" and thus was prepared for analyzing interference in another frequency band for space-to-Earth satellite links. Further, the working group that prepared TSB 86 "was formed under the auspices of TIA following a number of informal discussions among representatives of the mobile satellite and terrestrial fixed microwave point-to-point service industry sectors." Thus, contrary to SIA and Globalstar, TSB 86 does not appear relevant either to the 2500–2690 MHz band or to the ITFS/MMDS point-to-multipoint licensees that use that band.

Additionally, neither SIA nor Globalstar explains how power flux density limits that they contend the ITU developed for that band would permit sharing of the 2500–2520 MHz and 2670–2690 MHz band segments by the MSS and ITFS/MMDS. Globalstar cites Recommendation ITU–R M.1142–1; however, the Recommendation "applies only for sharing in the space-Earth direction. No specific criteria have been developed for sharing in the Earth-to-space direction."

5. We also agree with opponents of SIA's petition for reconsideration that ITFS/MMDS licensees are deploying services in rural, as well as urban, areas; thus, in a best case scenario, the areas in which geographical sharing with MSS could occur would be quite limited. Moreover, given the fact that we are herein permitting mobile, as well as fixed, use of the 2500–2690 MHz band by ITFS/MMDS licensees, the possibility of such sharing is further sharply diminished. Therefore, we find that authorizing MSS use of the 2500–2520 MHz and 2670–2690 MHz band segments would result in little, if any, actual MSS use of those segments while greatly complicating their use for ITFS/MMDS.

6. Finally, we affirm our finding that MSS has sufficient spectrum without those band segments, and note that our International Bureau recently authorized eight new MSS systems in the 1990–2025 MHz and 2165–2200 MHz bands. While we recognize that our Further NPRM solicits comment on reallocating portions of those bands for advanced mobile terrestrial services and that a companion *Notice of Proposed Rule Making*, IB Docket No. 01–185 and ET Docket No. 95–18, 66 FR 47621, September 13, 2001, solicits comment on bringing flexibility to the delivery of communications by MSS providers, final decisions on these proposals will take into account the needs of the MSS. We note that the ITU has adopted a resolution inviting studies of the sharing and coordination issues in several bands, including the 2500–2520 MHz and 2670–2690 MHz bands, "related to use of the mobile-satellite service allocations for the satellite component of IMT–2000 and the use of this spectrum by the other allocated services . . ." Our action here is without prejudice to renewal of SIA's request, in the event ITU studies develop new methods for sharing or coordination that would result in enhanced service to the public, without creating significant complications for provision of existing service. Accordingly, we deny SIA's petition for reconsideration. The petition for reconsideration filed by the Satellite Industry Association *Is Denied*.

List of Subjects in 47 CFR Part 2

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26840 Filed 10–24–01; 8:45 am]

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Notices

Federal Register
Vol. 66, No. 207
Thursday, October 25, 2001

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

Agricultural Marketing Service

[Docket No. LS–01–11]

Notice of Request for Extension of Currently Approved Information Collection and Recordkeeping Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension of approval of an information collection in support of the Livestock Mandatory Reporting Act of 1999 and regulations which was temporarily approved until January 31, 2002.

DATES: Comments on this notice must be received by December 24, 2001, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Comments may be sent to John E. Van Dyke, Chief, Livestock and Grain Market News Branch, Livestock and Seed Program, Agricultural Marketing Service, USDA, 1400 Independence Avenue, SW., Room 2619-South Building, Stop 0252, Washington, DC 20250–0242; telephone (202) 720–6231, facsimile (202) 690–3732, e-mail *john.vandyke@usda.gov*. For further information, contact John E. Van Dyke at the above address. Comments received may be inspected at 1400 Independence Avenue, SW, Room 2619-South Building, Washington, DC between 7:30 a.m. and 4 p.m. The comments will also be posted on the Livestock and Grain Market News Branch Web site, located at *www.ams.usda.gov/lsg/mncs/index.htm*.

SUPPLEMENTARY INFORMATION:

Title: Livestock Mandatory Reporting Act of 1999.

OMB Number: 0581–0186.

Expiration Date of Approval: January 31, 2002.

Type of Request: Extension of an emergency approved information collection and recordkeeping requirements.

Abstract: In accordance with the Livestock Mandatory Reporting Act of 1999 (Act)(7 U.S.C. 1635h–1636h), a mandatory program of reporting information related to the marketing of cattle, swine, lambs, and products of such livestock, was established and made effective on April 02, 2001 (65 FR 75464; 66 FR 41194). This mandatory reporting program requires the submission of market information by packers who have annually slaughtered an average of 125,000 cattle or 100,000 swine over the most recent 5 calendar year period, or have annually slaughtered or processed an average of 75,000 lambs over the most recent 5 calendar year period. Importers who have annually imported an average of 5,000 metric tons of lamb meat products over the most recent 5 calendar year period are also subject to mandatory reporting requirements. This program is intended to provide information on pricing, contracting for purchase, and supply and demand conditions for livestock, livestock production, and livestock products, that can be readily understood by producers, packers, and other market participants.

Packers subject to mandatory reporting requirements are required to report the details of all transactions involving purchases and sales of livestock, domestic and export sales of boxed beef and lamb cuts (including applicable branded product) and sales of lamb carcasses. Qualifying importers are required to report sales of all imported boxed lamb cuts. To verify the accuracy of submitted information, each packer and importer required to report must maintain, and make available for 2 years, such records as are necessary to document the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics associated with reported livestock, boxed beef and/or boxed lamb transactions.

The information collection and recordkeeping requirements in the regulations under the Act (7 CFR part 59) are essential to establishing and implementing a mandatory program of livestock and livestock products reporting. Based on the information available, AMS estimates that there are 49 beef packer plants, 50 pork packer plants, and 17 lamb packer plants and lamb importers that are required to report market information. These companies have similar recordkeeping systems and business operation practices and conduct their operations in a similar manner. AMS believes that all of the information required can be collected from existing materials and systems and that these materials and systems can be adapted to satisfy the forms. The Paperwork Reduction Act also requires AMS to measure the recordkeeping burden. Each packer and importer required to report must maintain and make available upon request for 2 years, such records as are necessary to verify the accuracy of the information required to be reported. These records include original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock.

The electronic data files which the packers are required to utilize when submitting information to AMS will have to be maintained as these files provide the best record of compliance. The recordkeeping burden includes the amount of time needed to store and maintain records. AMS estimates that, since records of original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock are stored and maintained as a matter of normal business practice by these companies for a period in excess of 2 years, additional annual costs are nominal. AMS estimates the annual cost per respondent for the storage of the electronic data files which were submitted to AMS in compliance with the reporting provisions to be $1,830.00. This estimate includes the cost of electronic data storage media, backup electronic data storage media, and backup software required to maintain an estimated annual electronic recordkeeping and backup burden of 42

megabytes, on average, per respondent. In addition, this estimate includes the cost per employee to maintain such records which is estimated to average 70 hours per year at $20.00 per hour for a total salary component cost of $1,400.00 per year.

Information collection requirements include the submission of the required information on a daily and weekly basis in the standard format provided in the following forms: (1) Live Cattle Daily Report (Current Established Prices), (2) Live Cattle Daily Report (Committed and Delivered Cattle), (3) Live Cattle Weekly Report (Forward Contract and Packer-Owned), (4) Live Cattle Weekly Report (Formula Purchases), (5) Cattle Premiums and Discounts Weekly Report, (6) Boxed Beef Daily Report, (7) Swine Prior Day Report, (8) Swine Daily Report, (9) Swine Noncarcass Merit Premium Weekly Report, (10) Live Lamb Daily Report (Current Established Prices), (11) Live Lamb Daily Report (Committed and Delivered Lambs), (12) Live Lamb Weekly Report (Forward Contract and Packer-Owned), (13) Live Lamb Weekly Report (Formula Purchases), (14) Lamb Premiums and Discounts Weekly Report, (15) Boxed Lamb Report, and (16) Lamb Carcass Report. Cattle packers utilize six of these forms when reporting information to AMS including two for daily cattle reporting, three for weekly cattle reporting, and one for daily boxed beef cuts reporting. Swine packers utilize three forms, two for daily reporting of swine purchases and one for weekly reporting of non-carcass merit premium information. Lamb packers utilize seven of these forms when reporting information to AMS including two for daily lamb reporting, three for weekly lamb reporting, one for daily and weekly boxed lamb cuts reporting and one for daily and weekly lamb carcass reporting. Lamb importers utilize one of these forms when reporting information to AMS for reporting weekly imported boxed lamb cut sales.

These information collection requirements have been designed to minimize disruption to the normal business practices of the affected entities. Each of these forms requires the minimal amount of information necessary to properly describe each reportable transaction. The number of forms reflect an attempt to reduce the complexity of each form.

Because there was insufficient time for a normal clearance procedure, AMS requested emergency processing and received temporary approval from OMB for the use of the information collection and recordkeeping requirements that was used to implement the mandatory livestock reporting program on an expedited basis. OMB granted temporary approval on January 18, 2001, to expire on January 31, 2002.

AMS provided two methods for respondents to use when submitting information electronically under LMR. The first method, electronic data transfer, allows respondents to submit livestock mandatory information in comma-delimited ASCII (text) data files directly to AMS. This method is used by a majority of those entities required to submit information to AMS. Respondents create these text files by extracting the required information from their existing electronic recordkeeping systems, thereby avoiding manual data entry. The second method, the industry web interface, allows respondents to input and submit livestock mandatory information to AMS through the Internet. Respondents access the AMS livestock mandatory reporting website through a personal computer (PC). The AMS website provides an interface that emulates the official OMB approved collection forms.

Information submitted by respondents through either electronic data collection method is scanned for viruses before being decrypted and loaded into a input directory on the AMS database system (SQL Server). Once accepted, the reports are sent to the AMS Market News Communication System (MNCS) and released to the public.

Both electronic data collection methods are taken into account in the following overall burden estimate and individual burden estimates for each of the 16 reporting forms.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .18 hours per response.

Respondents: Certain packers, livestock product processors and importers.

Estimated Number of Respondents: 116.

Estimated Number of Responses per Respondent: 1,171.

Estimated Total Annual Burden on Respondents: 24,426.08 hours.

Estimated Total Annual Responses: 135,824 responses.

(1) Live Cattle Daily Report (Current Established Prices): Form LS–113

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Department of Agriculture (USDA).

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 4,332 hours.

Total Cost: $86,640.

(2) Live Cattle Daily Report (Committed and Delivered Cattle): Form LS–114

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the USDA.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 4,332 hours.

Total Cost: $86,640.

(3) Live Cattle Weekly Report (Forward Contract and Packer-Owned): Form LS–115

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the USDA.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 637 hours.

Total Cost: $12,740.

(4) Live Cattle Weekly Report (Formula Purchases): Form LS–116

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the USDA.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 637 hours.

Total Cost: $12,740.

(5) Cattle Premiums and Discounts Weekly Report: Form LS–117

Estimate of Burden: Public reporting burden for collection of information is estimated to be .08 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the USDA.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 204 hours.

Total Cost: $4,080.

(6) Boxed Beef Daily Report: Form LS–126

Estimate of Burden: Public reporting burden for collection of information is estimated to be .125 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on domestic and export boxed beef cut sales to the USDA.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 3,185 hours.

Total Cost: $63,700.

(7) Swine Prior Day Report: Form LS–118

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the USDA.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 3,250 hours.

Total Cost: $65,000.

(8) Swine Daily Report: Form LS–119

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the USDA.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 4,420 hours.

Total Cost: $88,400.

(9) Swine Noncarcass Merit Premium Weekly Report: Form LS–120

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the USDA.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 650 hours.

Total Cost: $13,000.

(10) Live Lamb Daily Report (Current Established Prices): Form LS–121

Estimate of Burden: Public reporting burden for collection of information is estimated to be .34 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the USDA.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 707 hours.

Total Cost: $14,140.

(11) Live Lamb Daily Report (Committed and Delivered Lambs): Form LS–122.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .34 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the USDA.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 707 hours.

Total Cost: $14,140.

(12) Live Lamb Weekly Report (Forward Contract and Packer-Owned): Form LS–123

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the USDA.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 104 hours.

Total Cost: $2,080.

(13) Live Lamb Weekly Report (Formula Purchases): Form LS–124

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the USDA.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 104 hours.

Total Cost: $2,080.

(14) Lamb Premiums and Discounts Weekly Report: Form LS–125

Estimate of Burden: Public reporting burden for collection of information is estimated to be .08 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the USDA.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 33 hours.

Total Cost: $660.

(15) Boxed Lamb Report: Form LS–128

Estimate of Burden: Public reporting burden for collection of information is estimated to be .167 hours per electronically submitted response for domestic packing plants and .084 hours per electronically submitted response for importers.

Respondents: Packer processing plants and importers required to report information on boxed lamb cut sales to the USDA.

Estimated Number of Respondents: 14 entities (including 1 entity that both processes and imports).

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days) for domestic packing plants; 52 (1 per week for 52 weeks) for importers.

Estimated Total Annual Burden on Respondents: 391 hours for domestic packing plants and 26 hours for importers.

Total Cost. $7,810 for domestic packing plants and $520 for importers for a total of $8,330.00.

(16) Lamb Carcass Report: Form LS–129

Estimate of Burden: Public reporting burden for collection of information is estimated to be .167 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on lamb carcass sales to the USDA.

Estimated Number of Respondents: 8 entities.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 347 hours.

Total Cost: $6,940.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All comments received will be available for public inspection during regular business hours at the address above.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 19, 2001.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–26900 Filed 10–24–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–057–1]

International Standards Under the International Plant Protection Convention

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a public meeting on a draft international standard for the environmental impact of quarantine pests, including quarantine pests that are invasive.

Place, Date, and Time of Meeting: The meeting will be held at the Yates Auditorium at the Department of the Interior, 1849 C Street NW., Washington, DC. The meeting will be held on November 15, 2001, from 1 p.m. to 3 p.m. Please use the entrance at C Street.

FOR FURTHER INFORMATION CONTACT: Dr. Ron A. Sequeira, Biological Scientist, CPHST, PPQ, APHIS, 1017 Main Campus Drive, Suite 2500, Raleigh, NC 27606–5202; (919) 513–2662.

SUPPLEMENTARY INFORMATION: The International Plant Protection Convention (IPPC) is a multilateral convention adopted in 1952 for the purpose of securing international cooperation in the control and prevention of the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control. Under the IPPC, the understanding of plant protection has been, and continues to be, broad, encompassing the protection of both cultivated and noncultivated plants from direct or indirect injury by plant pests. Activities addressed by the IPPC include the development and establishment of international plant health standards, the harmonization of phytosanitary activities through emerging standards, the facilitation of the exchange of official and scientific information among countries, and the furnishing of technical assistance to developing countries that are signatories to the IPPC. The IPPC is recognized by the World Trade Organization as the standard-setting body for international plant quarantine issues.

The IPPC is placed under the authority of the United Nations' Food and Agriculture Organization (FAO), and the members of the Secretariat of the IPPC are appointed by the FAO. The IPPC is implemented by national plant protection organizations in cooperation with regional plant protection organizations, the Interim Commission on Phytosanitary Measures (ICPM), and the Secretariat of the IPPC. The United States has played a major role in all standard-setting activities under the IPPC and has representation on FAO's highest governing body, the FAO Conference.

The United States became a contracting party to the IPPC in 1972 and has been actively involved in furthering the work of the IPPC ever since. The IPPC was amended in 1979, and the amended version entered into force in 1991 after two-thirds of the contracting countries accepted the amendment. More recently, in 1997, contracting parties completed negotiations on further amendments that were approved by the FAO Conference and submitted to the parties for acceptance. This 1997 amendment updated phytosanitary concepts and formalized the standard-setting structure within the IPPC. The 1997 amended version of the IPPC will enter into force once two-thirds of the current contracting parties notify the Director General of FAO of their acceptance of the amendment.

The IPPC has been, and continues to be, administered at the national level by plant quarantine officials whose primary objective is to safeguard plant resources from injurious pests. In the United States, the national plant protection organization is the Plant Protection and Quarantine unit of the Animal and Plant Health Inspection Service.

In June 2000, an IPPC working group identified the need to supplement the current pest risk analysis guidelines with additional guidance regarding the consideration of potential environmental risks of plant pests and recommended that a draft standard be developed. The entire report from the June 2000 working group meeting is available on the Internet at *http://www.fao.org/waicent/faoinfo/agricult/agp/agpp/pq/en/archive/wg_gmos/recom.htm.*

In April 2001, the IPPC's ICPM agreed to establish a technical expert working group to develop an IPPC standard for considering the environmental impact of quarantine pests, including quarantine pests that are invasive. The technical expert working group charged with developing the draft standard met in August 2001.

The first draft of the standard includes consideration of the following five elements relating to potential environmental risks of plant pests, which were identified in the June 2000 working group meeting:

1. Reduction or elimination of endangered (or threatened) native plant species;
2. Reduction or elimination of a keystone plant species (a species that plays a major role in the maintenance of an ecosystem);
3. Reduction or elimination of a plant species that is a major component of a native ecosystem;
4. Ecosystem destabilization caused by a change to plant biological diversity;
5. Control, eradication, or management programs that would be needed if a quarantine pest were introduced, and impacts of such programs (e.g., pesticides or release of nonindigenous predators and parasites) on biological diversity.

The draft standard is available on the Internet at *http://www.fao.org/ag/agp/agpp/pq/ and http://www.aphis.usda.gov/ppq/pim/standards/#01.*

The draft standard is a supplement to the existing "International Standard for Phytosanitary Measures Number 11 (Pest Risk Analysis for Quarantine Pests)," which is available on the Internet at *http://www.fao.org/ag/agp/agpp/pq*.

The purpose of the meeting is to solicit public comment on the draft standard as part of the country consultation process. The meeting will be open to the public and the public is invited to participate. Also, you may file written statements on meeting topics with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**, or you may file written statements at the meeting. Please refer to Docket No. 01–057–1 when submitting your statements.

Preregistration is not required. However, upon arrival, all participants will be asked to sign in. Also, members of the public will be required to present valid photo identification, and Federal employees will be required to present valid government identification.

Done in Washington, DC, this 19th day of October 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–26895 Filed 10–24–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Modoc Resource Advisory Committee, Alturas, California, USDA Forest Service.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Modoc National Forest's Modoc Resource Advisory Committee will meet Saturday, November 17, 2001 and Saturday, December 1, 2001 in Alturas, California for business meetings. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting Nov. 17 begins at 9:30 am, at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include FACA overview, Charter overview, Process for project identification/recommendation, election of Chairperson, operating guidelines, and establish future meetings. Time will be set aside for public comments. The business meeting December 1, 2001 begins at 9:30 am, at the Modoc National Forest Office, Conference Room, 800 West 12th Street, Alturas. Agenda topics will include operating guidelines and review and discussion of potential projects on the Modoc National Forest that meet the intent of Pub. L. 106–393. Time will be set aside for public comments.

FOR FURTHER INFORMATION CONTACT: Dan Chisholm, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Dan Chisholm,

Forest Supervisor.

[FR Doc. 01–26872 Filed 10–24–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Awards under the RUS Distance Learning and Telemedicine Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of applications selected to receive grant awards.

SUMMARY: The Rural Utilities Service (RUS) hereby announces the recipients that were selected to receive grant awards during fiscal year (FY) 2001 under the Distance Learning and Telemedicine Grant Program.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Morgan, Branch Chief, Distance Learning and Telemedicine Branch, U.S. Department of Agriculture, Rural Utilities Service, STOP 1550, Room 2845, South Building, 1400 Independence Avenue, S.W., Washington, DC 20250–1701. Telephone: (202) 720–0413. FAX: (202) 720–1051.

SUPPLEMENTARY INFORMATION: Pursuant to 7 CFR 1703.101, RUS is hereby publishing the names of the 87 organizations that have been awarded $26,750,535 in grants under 7 CFR part 1703, Subpart D, Distance Learning and Telemedicine Grant Program. The recipients are as follows:

USDA, RURAL UTILITIES SERVICE, TELECOMMUNICATIONS PROGRAM, FY 2001 DISTANCE LEARNING AND TELEMEDICINE GRANT AWARDS

State	Grantee	Award amount
AK	Matanuska-Susitna Borough School District	$361,272
AL	Lowndes County Board of Education	228,000
AL	Northwest-Shoal Community College	273,887
AR	Crowley's Ridge Education Service Cooperative	81,872
AR	DeQueen/Foreman/Ashdown Distance Learning Consortium	500,000
AR	Helena-West Helena School District	500,000
AS	Amencan Samoa Community College	411,989
AZ	Central Arizona College	130,100
CA	Monterey County Office of Education	500,000
CA	West Hills Community College District	500,000
CA	Visible Light, Inc.	500,000
CA	Visiting Nurse Association of the Inland Counties	339,524
CA	Clovis Unified School District	438,011
CO	High Plains Rural Health Network	292,900
CO	Montrose Memorial Hospital	418,000
FL	Florida State University	246,206
HI	Hawaii Health Systems Foundation	372,650
IA	Indian Hills Community College	94,028

USDA, RURAL UTILITIES SERVICE, TELECOMMUNICATIONS PROGRAM, FY 2001 DISTANCE LEARNING AND TELEMEDICINE GRANT AWARDS—Continued

State	Grantee	Award amount
IA	Lamoni Community School District	249,380
IA	Corning Community School District	494,289
IN	Central Indiana Health System	133,428
IN	Scott County School District 1	500,000
IN	Wilson Education Center	500,000
KS	Smith County Memorial Hospital	59,500
KY	Johnson Mathers Health Care, Inc.	352,787
KY	Morgan County ARH Hospital	52,500
LA	Union General Hospital, Inc	69,600
LA	East Carroll Parish Hospital	100,100
MA	Hampshire Educational Collaborative	208,288
MA	Nantucket Cottage Hospital	113,400
ME	Penquis Community Action Program, Inc.	497,426
ME	St. Andrews Hospital	115,000
ME	St. Joseph Healthcare, Inc.	499,800
ME	Visiting Nurse Service of Southern Maine and Seacoast New Hampshire	188,702
MI	Gratiot-Isabella Regional Educational Service District	296,500
MI	Iosco Regional Educational Service Agency	106,362
MI	Owendale-Gagetown Area Schools	54,000
MN	Cuyuna Range Hospital District	500,000
MN	Paynesville Area Health Hospital District	264,071
MN	Tri-County Hospital, Inc.	500,000
MO	Pathways Community Behavioral Healthcare	410,275
MO	The University of Health Sciences	165,840
MO	Texas County Technical Institute	71,863
MS	Cleveland School District	500,000
MS	Harrison County School District	500,000
MS	Neshoba County School District	500,000
MT	Deaconess Billings Clinic Foundation	500,000
MT	Poplar Public Schools	350,000
MT	Saint Vincent Foundation	368,142
ND	Landon School District Foundation	110,000
ND	Medcenter One Health Systems, Inc	447,710
ND	West River Health Services	68,229
NE	Crossroads Distance Learning Education Consortium	433,830
NE	Madonna Rehabilitation Hospital	306,110
NE	Rural Health Partners, Inc.	196,012
NM	Clayton Municipal School District No. 1	163,100
NM	University of New Mexico-Gallup	482,420
NY	Copenhagen Central School—Lead Educational Agency	473,900
NY	Hoosick Falls Health Center, Inc.	205,393
NY	Research Foundation of SUNY for SUNY College of Technology at Canton	122,565
NY	Westchester Medical Center	455,303
OH	Ohio University Southern Campus	468,000
OK	Hillcrest-Riverside, Inc.	142,000
OK	Sequoyah County-City of Sallisaw Hospital Authority	63,431
OR	North Central Education Service District	215,300
OR	North Lincoln Hospital Foundation	103,519
OR	Rogue Valley Medical Center Foundation	499,750
OR	St. Charles Medical Center Foundation	321,447
PA	The Pennsylvania State University	364,087
SD	Horizon Health Care, Inc.	208,739
TN	Polk County School System	500,000
TN	The University of Tennessee Health Science Center, College of Pharmacy	459,295
TN	The University of Tennessee Health Science Center	498,747
TN	The University of Tennessee Health Science Center, College of Pharmacy	493,675
TN	The University of Tennessee Health Science Center	477,057
TX	Hill College	176,266
TX	Info-Net Consortium	463,040
TX	Odessa Emergency Providers AF, Inc.	71,838
TX	Scott & White Memorial Hospital & Scott, Sherwood, Brindley Foundation	335,402
TX	Taft Independent School District	190,038
TX	Texana Mental Health and Mental Retardation Center	66,800
TX	Texas Family Health Network, Inc.	494,927
TX	Texas A&M University-Kingsville	195,500
VA	Medical College of Hampton Roads (Eastern Virginia Medical School)	51,226
VA	Paul D. Camp Community College	445,930
WI	Spring Valley Health Care Center	70,257
WI	Cooperative Educational Service Agency	500,000

Dated: October 19, 2001.

Kenneth M. Ackerman,

Acting Administrator, Rural Utilities Service.

[FR Doc. 01–26836 Filed 10–24–01; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Ohio 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 Ohio Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 5:00 p.m. on Wednesday, November 14, 2001, at the Hyatt Regency Hotel, 350 North High Street, Columbus, Ohio 43215. The purpose of the meeting is to discuss current events and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) 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, October 17, 2001.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 01–26835 Filed 10–24–01; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Strategic Industries and Economic Security, Bureau of Export Administration, Department of Commerce.

ACTION: Notice of request for public comment on the potential market impact of proposed revisions to disposals of excess commodities currently held in the National Defense Stockpile under the Fiscal Year 2002 Annual Material Plan (AMP), and proposed commodity disposals under the Fiscal Year 2003 AMP.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comment on the potential market impact of proposed disposals of excess materials from the National Defense Stockpile as set forth in Attachment 1 to this notice. The Fiscal Year 1993 National Defense Authorization Act requires this Committee to consult with representatives of producers, processors and consumers of the types of materials stored in the stockpile.

DATES: Comments must be received by November 26, 2001.

ADDRESSES: Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; fax (202) 482–5650. Comments submitted via e-mail will not be accepted.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S. Department of Commerce, (202) 482–3634; or Terri L. Robl, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (DOD), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (hereinafter "NDAA") (50 U.S.C. 98h-l) formally established a Market Impact Committee (the Committee) to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * * ." The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and the Federal Emergency Management Agency, and is co-chaired by the Departments of Commerce and State. The NDAA directs the Committee to "consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile."

Attachment 1 lists the current FY 2002 AMP quantities (previously approved by the Committee), proposed revisions to the FY 2002 AMP quantities for seven materials, and the proposed FY 2003 AMP. The Committee is seeking public comment on the potential market impact of the sale of these materials as proposed in the revised FY 2002 AMP and FY 2003 AMP.

The quantities listed in Attachment 1 are not sales target disposal quantities. They are only a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time as well as on the quantity of each material approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Although comments in response to this Notice must be received by November 26, 2001 to ensure full consideration by the Committee, interested parties are encouraged to submit additional comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comment is an important element of the Committee's market impact review process.

Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. The Committee will seek to protect such information to the extent permitted by law.

The records related to this Notice will be made accessible in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*). Specifically, the Bureau of Export Administration's FOIA reading room is located on its Web page, which can be found at http://www.bxa.doc.gov, and copies of the public comments received will be maintained at that location (see Freedom of Information Act (FOIA) heading). If requesters cannot access the web site, they may call (202) 482–2165 for assistance.

Dated: October 22, 2001.

James J. Jochum,

Assistant Secretary for Export Administration.

ATTACHMENT 1.—PROPOSED REVISIONS TO FY 2002 ANNUAL MATERIALS PLAN (AMP) AND PROPOSED FY 2003 AMP

Material	Unit	Current FY 2002 quantity	Revised FY 2002 quantity	Revised FY02 notes	Proposed FY 2003 quantity	FY03 notes
Aluminum Oxide, Abrasive	ST	6,000			6,000	
Antimony	ST	5,000			5,000	1
Bauxite, Metallurgical Jamaican	LDT	2,000,000			1,540,000	1
Bauxite, Refractory	LCT	5,000	43,000	1/3	43,000	1/3
Beryl Ore	ST	4,000			3,000	1
Beryllium Metal	ST	40			40	
Beryllium Copper Master Alloy	ST	2,200			1,000	1
Cadmium	LB	1,200,000			1,200,000	
Celestite	SDT	3,600			3,600	
Chromite, Chemical	SDT	100,000		1	100,000	1
Chromite, Metallurgical	SDT	100,000		1	100,000	1
Chromite, Refractory	SDT	100,000			100,000	
Chromium, Ferro	ST	150,000			150,000	
Chromium, Metal	ST	500			500	
Cobalt	LB Co	6,000,000			6,000,000	
Columbium Carbide Powder	LB Cb	21,500		1	21,500	1
Columbium Concentrates	LB Cb	560,000			560,000	
Columbium Metal Ingots	LB Cb	20,000			20,000	
Diamond Stone	ct	510,000	1,300,000	1	600,000	1
Fluorspar, Acid Grade	SDT	12,000		1	12,000	1
Fluorspar, Metallurgical Grade	SDT	60,000			60,000	1
Germanium	Kg	8,000			8,000	
Graphite	ST	3,760			3,760	1
Iodine	LB	1,000,000			1,000,000	
Jewel Bearings	PC	52,000,000	82,051,558	1/3	82,051,558	1/3
Kyanite	SDT	150		1	150	1
Lead	ST	60,000			60,000	
Manganese, Battery Grade, Natural	SDT	30,000			30,000	
Manganese, Battery Grade, Synthetic	SDT	3,011		1	3,011	1
Manganese, Chemical Grade	SDT	40,000			40,000	
Manganese, Ferro	ST	75,000			75,000	
Manganese, Metal, Electrolytic	ST	2,000			2,000	
Manganese, Metallurgical Grade	SDT	250,000			250,000	
Mica, All	LB	4,000,000	8,500,000	1/4	8,500,000	1
Palladium	Tr Oz	600,000			250,000	1
Platinum	Tr Oz	95,000	140,000		30,000	1
Platinum—Iridium	Tr Oz	0	6,000	3	6,000	3
Quartz crystals	Lb	0	216,648	1/3	216,648	1/3
Quinidine	OZ	750,000			750,000	
Rubber	LT	75,000		1	70,000	1
Sebacic Acid	LB	1,000,000			600,000	
Silver (Coins)	Tr Oz	5,000,000	8,000,000	1	5,000,000	1
Talc	ST	2,000		1	2,000	1
Tantalum Carbide Powder	LB Ta	4,000			4,000	
Tantalum Metal Ingots	LB Ta	40,000			40,000	
Tantalum Metal Powder	LB Ta	50,000		1	50,000	1
Tantalum Minerals	LB Ta	500,000			500,000	
Tantalum Oxide	LB Ta	20,000			20,000	
Thorium	LB	7,093,464		1/2	7,095,065	1/2
Tin	MT	12,000			12,000	
Titanium Sponge	ST	5,000	7,000	4	7,000	
Tungsten Ferro	LB W	300,000			300,000	
Tungsten Metal Powder	LB W	300,000			300,000	
Tungsten Ores & Concentrates	LB W	4,000,000			4,000,000	
VTE, Chestnut	LT	250		1	250	1
VTE, Quebracho	LT	50,000			50,000	
VTE, Wattle	LT	6,500		1	6,500	1
Zinc	ST	50,000			50,000	

Notes:

1. Actual quantity will be limited to remaining sales authority or inventory.
2. The radioactive nature of this material may restrict sales or disposal options. Efforts are underway to determine the environmentally and economically feasible disposition of the material.
3. Pending Congressional authority.
4. Previously approved by the Market Impact Committee. Revision in process for current FY 2002.

[FR Doc. 01–26910 Filed 10–24–01; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.101701C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a research permit (1352).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received an application for a scientific research permit from Dr. Colin A. Simpfendorfer, of Mote Marine Laboratory (MML).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on November 26, 2001.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

Endangered Species Division, F/PR3, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–1401, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: *Lillian.Becker@noaa.gov).*

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10 (a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Fish

Proposed Endangered Smalltooth Sawfish (*Pristis pectinata*)

New Applications Received

Application 1352

The applicant requests a 5–year permit that would authorize the take of endangered smalltooth sawfish in the state of Florida. The purpose of the research is to develop conduct surveys of habitats where sawfish have historically occurred. All sawfish caught during the surveys will be handled, measured, tagged, genetically sampled, and released. Capture methods include: longline, rod and reel, set lines, gill nets, and beach seines. Tagging methods will include: rototags, plastic-headed dart tags, PIT tags, acoustic tags, PAT tags, and SPOT tags.

Dated: October 19, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–26931 Filed 10–24–01; 8:45 a.m..]
BILLING CODE: 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Exemption of Certain Textile and Apparel Products From Visa and Quota Requirements

October 22, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs exempting certain textile and apparel products imported in connection with international athletic events from certain quota and visa requirements.

EFFECTIVE DATE: October 25, 2001.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Heading 9817.60.0000 permits the duty-free entry of the certain articles associated with international athletic events held in the United States, such as the Olympics and Paralympics, the Goodwill Games, the Special Olympics World Games, the World Cup Soccer Games, or any similar event as the Secretary of the Treasury may determine. Effective on October 25, 2001, textiles and apparel products not intended for sale or distribution to the public entered into the United States under Harmonized Tariff Schedule of the United States heading 9817.60.0000 shall not be subject to visa and quota requirements.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 22, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: Heading 9817.60.0000 permits the duty-free entry of the certain articles associated with international athletic events held in the United States, such as the Olympics and Paralympics, the Goodwill Games, the Special Olympics World Games, the World Cup Soccer Games, or any similar event as the Secretary of the Treasury may determine. Effective on October 25, 2001, textiles and apparel products not intended for sale or distribution to the public entered into the United States under Harmonized Tariff Schedule of the United States heading

9817.60.0000 shall not be subject to visa and quota requirements.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–26912 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–02]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–02 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

4 October 2001

In reply refer to:
I-01/010734

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-02, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the United Kingdom for defense articles and services estimated to cost $235 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: United Kingdom**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 70 million
Other	$165 million
TOTAL	$235 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Five hundred fifty JAVELIN anti-tank missile command launch units, simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.**

(iv) **Military Department: Army (UML)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 04 OCT 2001

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Kingdom - JAVELIN Command Launch Units

The Government of United Kingdom has requested a possible sale of 550 JAVELIN anti-tank missile command launch units, simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is $235 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of the United Kingdom while enhancing weapon system standardization and interoperability with U.S. forces.

This notification is transmitted in conjunction with Section 36(c) AECA notification of a commercial sale for JAVELIN anti-tank missile systems. The United Kingdom will use these JAVELIN anti-tank missile systems to enhance their medium anti-tank capability for the infantry, scouts, and combat engineers. This system will provide the United Kingdom a strong anti-landing capability and will increase interoperability with U.S. forces. The United Kingdom will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be JAVELIN Joint Venture (Raytheon and Lockheed Martin) of Orlando, Florida. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two U.S. Government and one contractor representatives to the United Kingdom for one week to assist in the delivery and deployment of the missiles.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The JAVELIN anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major tactical components; a reusable Command Launch Unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in the stand-alone mode for battlefield surveillance and target detection. JAVELIN's key technical feature is the use of fire-and-forget technology which allows the gunner to fire and immediately take cover. Additional special features are the top attack and/or direct fire modes (for targets under cover), integrated day/night sight, advanced tandem warhead, imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. Reverse engineering of the software would require a substantial effort. The JAVELIN weapon system is unclassified. Specific data related to operation, performance, and system vulnerabilities are classified up to the Secret level.

2. A determination has been made that the Government of United Kingdom can provide substantially the same degree of protection for the technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification portion of the notification. Further, the sale strengthens collective security and contributes to the standardization and interoperability in the case of coalition warfare. The benefits to be derived from the sale outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 01–26846 Filed 10–24–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–03]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–03 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

4 October 2001

In reply refer to:
I-01/011028

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-03, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Canada for defense articles and services estimated to cost $43 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Canada**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$31 million
Other	$12 million
TOTAL	$43 million

(iii) **Description of Articles or Services Offered: Components of the TOW Improved Target Acquisition System (ITAS): 75 TOW Target Acquisition System, 75 Fire Control Systems, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.**

(iv) **Military Department: Army (ZTK)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(vii) **Date Report Delivered to Congress:** 04 OCT 2001

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Canada - TOW-2B Target Acquisition System

The Government of Canada has requested a possible sale for the components of the TOW Improved Target Acquisition System (ITAS): 75 TOW Target Acquisition System, 75 Fire Control Systems, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is $43 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Canada and further weapon system standardization and interoperability with U.S. forces.

Canada will use these ITAS components on their Light Armored Vehicles. The system will greatly enhance the coalition efforts within the region. Canada, which already has ITAS in its inventory, will have no difficulty absorbing these additional components.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be of Raytheon Corporation of McKinney, Texas. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team to Canada for a week to assist in the delivery and deployment of the missiles. Four contractor representatives will be required for two years to perform maintenance services.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-03

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The TOW Improved Target Acquisition System (ITAS) increases target acquisition, detection , recognition, and engagement ranges, while retaining the ability to fire all configurations of the TOW missiles when used in the stand-alone mode or when mounted on the light armored vehicle. ITAS uses a second-generation, forward-looking, infrared night vision sight, digital components, and an eye-safe laser range finder to address the weather and day/night capabilities. Key features that achieve the ITAS objectives include auto-boresight, aided tracking, embedded training, and traversing unit modifications. The TOW ITAS is unclassified; however, the documentation is Classified.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Canada can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 01–26847 Filed 10–24–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–08]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703)604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–08 with attached transmittal and policy justification.

Dated: October 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

4 October 2001

In reply refer to:
I-01/010199

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-08 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Oman for defense articles and services estimated to cost $1,120 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-08

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: Oman

(ii) Total Estimated Value:

Major Defense Equipment*	$ 763 million
Other	$ 357 million
TOTAL	$1,120 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Twelve F-16C/D Block 50+ aircraft with either the F100-PW-229 or F110-GE-129 engine and APG-68(V)XM FMS radars; two spare F100-PW-229 or two spare F110-GE-129 engines; 14 LANTIRN Targeting Pods (FMS variant); 14 LANTIRN Navigation Pods with Terrain Following Radar (TFR); 50 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM) and 10 AMRAAM training missiles; 100 AIM-9M-8/9 SIDEWINDER missiles and 10 SIDEWINDER training missiles; 80 AGM-65D/G MAVERICK missiles and 10 MAVERICK training missiles; 20 AGM-84D HARPOON Air-Launched Anti-ship missiles; 100 Enhanced-GBU-10 and 100 Enhanced-GBU-12 PAVEWAY II laser guided bomb kits; 80 GBU-31/32 Joint Direct Attack Munitions; LANTIRN Night Vision Goggle compatible cockpits; and the capability to employ a wide variety of munitions. Associated support equipment, software development/integration, modification kits, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability will also be provided.

(iv) Military Department: Air Force (SDC)

(v) Prior Related Cases, if any: FMS case YEH - $4 million - 30Dec98

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover

(viii) Date Report Delivered to Congress: 04 OCT 2001

* as defined in Section 47(6) of the Arms Export Control Act.

(v) **Prior Related Cases, if any: FMS case YEH - $4 million - 30Dec98**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover**

(viii) **Date Report Delivered to Congress:**

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

4 October 2001

In reply refer to:
I-01/010199

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-08 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Oman for defense articles and services estimated to cost $1,120 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

[FR Doc. 01–26848 Filed 10–24–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 24, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process

would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance

Type of Review: Extension.

Title: Lender's Application for Payment of Insurance Claim.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 1,804; Burden Hours: 4,870.

Abstract: The ED Form 1207—Lender's Application for Payment of Insurance Claim is completed for each borrower for whom the lender is filing a Federal claim. Lenders must file for payment within 90 days of the default, depending on the type of claim filed.

Requests for copies of the proposed information collection request may be accessed from http://edicsweb.ed.gov, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–26868 Filed 10–24–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 24, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 23, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision of a currently approved collection.

Title: Applications for Assistance (Sections 8002 and 8003) Impact Aid Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary) Federal Government.

Reporting and Recordkeeping Hour Burden: Responses: 1061320. Burden Hours: 531211.

Abstract: A local educational agency must submit an application to the Department to receive Impact Aid payments under sections 8002 or 8003 of the Elementary and Secondary Education Act (ESEA), and a State requesting certification under section 8009 of the ESEA must submit data for the Secretary to determine whether the State has a qualified equalization plan and may take Impact Aid payments into consideration in allocating State aid.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO.RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–27015 Filed 10–24–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the Federal Register.

DATES: Wednesday, November 14, 2001—6:00 p.m.–9:00 p.m.

ADDRESSES: Great Basin Room, National Nuclear Security Administration Nevada Operations Office, 232 Energy Way, North Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197, fax: 702–295–5300.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Training on browsing for and locating information on the Internet sites of NNSA/NV, EM, Nevada Division of EPA, NTS CAB and related sites.

2. Presentation explaining computer modeling, used in the Underground Test Area Project at the Nevada Test Site.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on October 19, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–26881 Filed 10–24–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the Federal Register.

DATES: Wednesday, November 14, 2001—6:00 p.m.—9:30 p.m.

ADDRESSES: Garden Plaza Hotel, 215 South Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: 1. An overview of the Oak Ridge Reservation's Environmental Management Waste Management Facility will be provided by Mr. William Cahill, DOE/Oak Ridge Operations.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on October 19, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–26882 Filed 10–24–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–328–001]

Algonquin LNG, Inc.; Notice of Compliance Filing

October 19, 2001.

Take notice that on October 15, 2001, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet:

First Revised Volume No. 1
First Revised Sheet No. 42A

ALNG states that the purpose of this filing is to comply with the Commission's September 14, 2001 Order on ALNG's Order No. 637 Compliance Filing. Specifically, ALNG is establishing a mechanism that credits to its existing customers the value of gas retained by ALNG in accordance with Section 6.2 of the General Terms and Conditions of the FERC Gas Tariff.

ALNG states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26857 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–889–000]

California Independent System Operator Corporation; Notice of Filing

October 19, 2001.

Take notice that on October 12, 2001, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission, a Status Report of the ISO Regarding Creditworthy Counter-Parties for Third-Party Suppliers.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 29, 2001. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26852 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–8–000]

Mirant Americas Energy Marketing, LP, Mirant Bowline, LLC, Mirant Lovett, LLC, and Mirant NY-Gen, LLC, Complainants, v. New York Independent System Operator, Inc., Respondent; Notice of Complaint

October 19, 2001.

Take notice that on October 18, 2001, Mirant Americas Energy Marketing, LP, Mirant Bowline, LLC, Mirant Lovett, LLC and Mirant NY-Gen, LLC (collectively, the Mirant Companies) tendered for filing a complaint pursuant to Sections 206 and 306 of the Federal Power Act against the New York Independent System Operator, Inc. (NYISO) in connection with the NYISO's violation of its Open Access Transmission Tariff (OATT) and the requirements of Order 888 in failing to offer long-term physically firm transmission service.

The Mirant Companies have served a copy of the complaint on the NYISO.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before November 7, 2001. 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. Answers to the complaint shall also be due on or before November 7, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26851 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–7–000]

Reliant Energy Power Generation, Inc., Reliant Energy Services, Inc., Mirant Americas Energy Marketing, LP, and Mirant California, Complainants v. California Independent System Operator Corporation, Respondent; Notice of Complaint

October 19, 2001.

Take notice that on October 18, 2001, Reliant Energy Power Generation, Inc., Reliant Energy Services, Inc., Mirant Americas Energy Marketing, LP and Mirant California, LLC (Complainants) submitted a complaint against the California Independent System Operator Corporation (CAISO) alleging that the CAISO is acting in a discriminatory and unduly preferential manner by granting advantages to its fellow state agency, the California Department of Water Resources (CDWR) (along with its marketing arm, the California Energy Resources Scheduler (CERS) that are not available to other participants in the CAISO market.

Complainants allege that the CAISO's discriminatory and unduly preferential actions violate the CAISO's Tariff, the Federal Power Act, and the Commission's own policies and orders. Complainants further allege that the CAISO's actions are causing injury to Complainants, to other market participants in California, and are threatening the viability of the CAISO market.

Copies of this filing were served upon the CAISO and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 29, 2001. 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. Answers to the complaint shall also be due on or before October 29, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26850 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–5–000]

Westward Energy, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

October 19, 2001.

Take notice that on October 11, 2001, Westward Energy, LLC, 2727 NW Westover, Portland, Oregon 97210, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant proposed to develop and own a natural gas-fired electric generation plant. The facility will have a maximum capacity of 520 megawatts. The facility will be located in Columbia County, Oregon. The facility is scheduled to be completed in May 2004.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before October 29, 2001, and must be served on the applicant. 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26849 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–298–001]

Williams Gas Pipelines Central, Inc.; Notice of Compliance Filing

October 19, 2001.

Take notice that on October 15, 2001 Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective October 1, 2001:

Second Revised Sheet No. 281
Second Revised Sheet No. 405
Second Revised Sheet No. 406
Second Revised Sheet No. 413
Second Revised Sheet No. 414
Second Revised Sheet No. 421
Second Revised Sheet No. 422
Second Revised Sheet No. 428
Second Revised Sheet No. 429
Second Revised Sheet No. 480
Second Revised Sheet No. 481
Second Revised Sheet No. 482
Second Revised Sheet No. 483

Williams states that this filing is being made to comply with the Commission's October 1, 2001 order in the above referenced docket in order to allow Williams to contract for minimum delivery pressure obligations with customers where mutually agreeable on a non-discriminatory basis. The filing revises tariff sheets to incorporate an agreed upon pressure commitment, if any, into the service agreements for Williams' TSS, STS, SFT and FTS services, as well as a change to Section 20 of Williams' General Terms and Conditions to allow for the exception of mutually agreed pressure commitments in transport agreements, as agreed to by the parties and conditioned by the orders in this proceeding.

Williams states that copies of the revised tariff sheet are being mailed to Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26858 Filed 10–24–01; 8.45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–106–000, *et al.*]

Midwest Independent Transmission System Operator, Inc., *et al.* Electric Rate and Corporate Regulation Filings

October 19, 2001.

Take notice that the following filings have been made with the Commission:

1. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–106–000]

Take notice that on October 15, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Summary of its Operating and Emergency Procedures, Midwest Independent Transmission System Operators, Inc., which was previously accepted for filing in Docket No. ER98–1438–000, and which has been reformatted to conform to the requirements of Order No. 614.

The Midwest ISO seeks an effective date of December 15, 2001. The

Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2000) with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading "FERC Filings" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. San Diego Gas & Electric Company

[Docket No. ER01–3093–001]

Take notice that on October 2, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing with the Federal Energy Regulatory Commission (FERC or Commission), errata Page Nos. 7 and 8, which should be substituted for Page Nos. 7 and 8 to the unexecuted Service Agreement No. 9, the Expedited Interconnection Facilities Agreement (EIFA) by and between SDG&E and CalPeak Power-Enterprise, LLC tendered for filing on September 24, 2001. Additionally, SDG&E submits errata Page Nos. 3, 7, and 11 to Service Agreement No. 10, the Interconnection Agreement (IA) by and between CalPeak Power Enterprise, LLC and SDG&E.

Comment date: October 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Ameren Services Company

[Docket No. ER00–2366–001]

Take notice that on October 16, 2001, Central Illinois Public Service Company, dba AmerenCIPS (CIPS), tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to the Commission's September 13, 2001 Order, hereby submits its refund report.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Hermiston Generating Company, L.P.

[Docket No. ER01–2159–002]

Take notice that on October 17, 2001, Hermiston Generating Company, L.P. (Hermiston) submitted for filing with the Federal Energy Regulatory Commission (Commission), in compliance with an order issued on October 9, 2001 by the Commission's Division of Tariffs and Rates—West, a revised Code of Conduct as part of its Rate Schedule FERC No. 3.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Calpine Construction Finance Company, L.P.

[Docket No. ER01–2784–001]

Take notice that on October 17, 2001, Calpine Construction Finance Company, L.P. (CCFC) filed with the Federal Energy Regulatory Commission (Commission) an amended Direct Power Transaction Confirmation under its market-based rate schedule.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. South Point Energy Center, LLC

[Docket No. ER01–2887–001]

Take notice that on October 16, 2001, South Point Energy Center, LLC (the Applicant), submitted for filing with the Federal Energy Regulatory Commission (Commission), first Substitute Sheet Nos. 2 and 3 to its FERC Electric Tariff No. 1, in compliance with the Commission Staff Letter issued in this Docket on October 12, 2001.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Southwest Power Pool, Inc.

[Docket No. ER02–13–001]

Take notice that on October 9, 2001, Southwest Power Pool, Inc. (SPP) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed service agreement for Firm Point-to-Point Transmission Service with OG+E Energy Resources, Inc. (Transmission Customer) as a replacement for the service agreement filed October 1, 2001.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Attala Generating Company, LLC

[Docket No. ER02–90–000]

Take notice that on October 12, 2001, Attala Generating Company, LLC (Attala) rendered for filing with the Federal Energy Regulatory Commission (Commission) a service agreement (Service Agreement) with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) pursuant to which Attala will sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff No. 1.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–107–000]

Take notice that on October 15, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for with the Federal Energy Regulatory Commission (Commission) a Supplement to its Alternative Dispute Resolution Plan, Midwest Independent Transmission System Operators, Inc., which was previously accepted for filing in Docket No. ER98–1438–000, and which has been reformatted to conform to the requirements of Order No. 614.

The Midwest ISO seeks an effective date of December 15, 2001. The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2000) with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading "FERC Filings" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–108–000]

Take notice that on October 15, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Proposed Market Monitoring Plan, Midwest Independent Transmission System Operators, Inc., which was previously accepted for filing in Docket No. ER98–1438–000, and which has been reformatted to conform to the requirements of Order No. 614.

The Midwest ISO seeks an effective date of December 15, 2001. The

Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2000) with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading "FERC Filings" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. PSEG Nuclear LLC

[Docket No. EG02–8–000]

Take notice that on October 17, 2001, PSEG Nuclear LLC (PSEG Nuclear or Applicant), having its principal place of business at 80 Park Plaza, T–16, Newark, New Jersey, filed with the Federal Energy Regulatory Commission (Commission), an application for redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG Nuclear is a limited liability company organized under the laws of the State of Delaware. PSEG Nuclear will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating eligible generating facilities, and engaging in sales of electric energy at wholesale. .

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

12. Maine Electric Power Company

[Docket No. OA02–2–000]

Take notice that on October 9, 2001, Maine Electric Power Company (MEPCO) tendered for filing pursuant to Section 37.4(c) of the Code of Federal Regulations, 18 CFR 37.4(c), the revised Standards of Conduct to be followed by MEPCO personnel.

MEPCO requests that the Standards of Conduct become effective on October 10, 2001.

MEPCO served copies of the filing upon the persons listed in the Commission's official service list and the Maine Public Utilities Commission.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Michigan Electric Transmission Company

[Docket No. OA02–3–000]

Take notice that on October 17, 2001 Michigan Electric Transmission Company (Michigan Transco) tendered for filing standards of conduct procedures pursuant to 18 CFR 37.4(c).

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Central Maine Power Company

[Docket No. OA02–1–000]

Take notice that on October 9, 2001, Central Maine Power Company (CMP) tendered for filing, pursuant to Section 37.4(c) of the Code of Federal Regulations, 18 CFR 37.4(c), the revised Standards of Conduct to be followed by CMP personnel.

CMP requests that the Standards of Conduct become effective on October 10, 2001.

CMP served copies of the filing upon the Maine Public Utilities Commission.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Alliance Companies, Ameren Services Company on behalf of: Union Electric Company, Central Illinois Public Service Company; American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company; Consumers Energy Company and Michigan Electric Transmission Company; Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.; FirstEnergy Corporation on behalf of: American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company; Virginia Electric and Power Company; Illinois Power Company; Northern Indiana Public Service Company; The Dayton Power and Light Company

[Docket Nos. RT01–88–010]

Take notice that on October 16, 2001, Ameren Services Company (on behalf of Union Electric Company and Central Illinois Public Service Company), American Electric Power Service Corporation (on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company), Consumers Energy Company and Michigan Electric Transmission Company, The Dayton Power and Light Company, Exelon Corporation (on behalf of Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.), FirstEnergy Corp. (on behalf of American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company), Illinois Power Company, Northern Indiana Public Service Company, and Virginia Electric and Power Company (collectively, the "Alliance Companies"), tendered for filing (1) proposed alternate tariff sheets reflecting the proposed withdrawal of International Transmission Company ("ITC") from the Alliance, (2) proposed substitute tariff sheets reflecting corrections to certain tariff sheets filed by the Alliance Companies on August 31, 2001 and September 10, 2001, (3) supplemental testimony and revised exhibits supporting the proposed alternate tariff sheets and the proposed substitute tariff sheets, (4) Attachment O, Market Monitoring Plan, (5) revised Attachment J, Reservation and Scheduling Procedures, and (6) additional contracts under Attachment X to the OATT. The Alliance Companies request that the proposed substitute tariff sheets, proposed alternate tariff sheets, and original tariff sheets become effective on December 15, 2001, Day 1 of operations of the Alliance RTO.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Alliance Companies, Ameren Services Company on behalf of: Union Electric Company, Central Illinois Public Service Company; American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company; Consumers Energy Company and Michigan Electric Transmission Company; Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.; FirstEnergy Corporation on behalf of: American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company; Virginia Electric and Power Company; Illinois Power Company; Northern Indiana Public Service Company; The Dayton Power and Light Company

[Docket Nos. RT01–88–011]

Take notice that on October 16, 2001, Alliance Companies, *et al.* tendered for filing with the Federal Energy Regulatory Commission (Commission), additional information concerning he Alliance Companies' request for authorization under Section 203 of the Federal Power Act to transfer control of their jurisdictional facilities to the Alliance Regional Transmission Organization (Alliance RTO).

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26884 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–6–000, *et al.*]

TXU Electric Company, *et al.*; Electric Rate and Corporate Regulation Filings

October 18, 2001.

Take notice that the following filings have been made with the Commission:

1. TXU Electric Company, TXU SESCO Company, and TXU Energy Trading Company

[Docket No. EC02–6–000]

Take notice that on October 15, 2001, TXU Electric Company, TXU SESCO Company, and TXU Energy Trading Company (the Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby the Applicants propose to internally reorganize in order to comply with the unbundling mandates of the Texas Utilities Code. As a result of the internal corporate reorganization, the Applicants' jurisdictional assets will be transferred to other wholly-owned subsidiaries of the TXU Corp. holding company.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. ISO New England Inc.

[Docket No. OA97–237–000]

Take notice that on October 11, 2001, ISO New England Inc. filed its "Quarterly Report for Regulators," as required by New England Power Pool Market Rules and Procedures 17, for the fourth quarter. A privileged version, and a redacted public version were filed, together with a request for privileged treatment under 18 CFR 388.112.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company.

[Docket Nos. OA96–39–006, ER93–465–030, ER93–922–016, EL94–12–011 and ER96–2381–004]

Take notice that on October 15, 2001, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission (Commission) revised sheets to Schedules 3 through 6 of its Open Access Transmission Tariff to provide a one-day minimum term for the purchase of these ancillary services. FPL states that it made the revisions in compliance with the Commission's letter order issued September 13, 2001, in the above-captioned docket (96 FERC ¶ 61,289).

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER01–833–000]

Take notice that on October 15, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Further Request for Deferral of Consideration of the unexecuted Wholesale Distribution Tariff (WDT) Service Agreement and Interconnection Agreement between Pacific Gas and Electric Company and Modesto Irrigation District (MID) filed in FERC Docket No. ER01–833–000 on December 29, 2000. PG&E and Modesto are finalizing the WDT Service Agreement and a letter agreement for review and signature, and PG&E therefore is notifying the Commission that executed agreements will not be filed by October 14, 2001, the requested deferral date. PG&E requests that the Commission defer consideration of the proceedings filed in ER01–833–000 to October 29, 2001 or 15 days beyond the last request for Deferral in order that the parties may finalize and execute the Agreements.

Copies of this filing have been served upon MID, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power Company, a Division of Duke Energy Corporation

[Docket No. ER00–3454–000]

Take notice that on October 15, 2001, Duke Power Company (Duke), a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) its quarterly transaction summaries of power marketing activity for transactions conducted pursuant to its

market-based rate tariffs, FERC Electric Tariff Original Volume No. 3 and FERC Electric Tariff Original Volume No. 5, for the quarter ending September 30, 2001.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER01–3142–002]

Take notice that on October 15, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (FERC or Commission) revisions to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Original Volume No. 1, which was previously accepted for filing in Docket No. ER98–1438–000, and which has been reformatted to conform to the requirements of Order No. 614.

The Midwest ISO seeks an effective date of December 15, 2001. The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2000) with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading FERC Filings for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER02–97–000]

Take notice that on October 15, 2001, Southern California Edison Company (SEC) tendered for filing with the Federal Energy Regulatory Commission (Commission), that effective the fourteenth day of December 2001, Rate Schedule FERC No. 163 and all supplements thereto, filed with the Federal Energy Regulatory Commission by Southern California Edison Company, are to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and the Department of Water and Power of the City of Los Angeles.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Pinnacle West Capital Corporation

[Docket No. ER02–98–000]

Take notice that on October 15, 2001, Pinnacle West Capital Corporation tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement under the Western Systems Power Pool Agreement for service to Utah Associated Municipal Power Systems.

A copy of this filing has been served on Utah Associated Municipal Power Systems.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Company

[Docket No. ER02–99–000]

Take notice that on October 15, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Generator Special Facilities Agreement (GSFA) and two Supplemental Letter Agreements between PG&E and Three Mountain Power, LLC (TMP) (collectively Parties).

The GSFA permits PG&E to recover the ongoing costs associated with owning, operating and maintaining the Special Facilities. As detailed in the Special Facilities Agreement, PG&E proposes to charge TMP a monthly Cost of Ownership Charge equal to the rates for transmission-level, customer-financed facilities in PG&E's currently effective Electric Rule 2, as filed with the California Public Utilities Commission (CPUC). PG&E's currently effective rate of 0.31% for transmission-level, customer-financed Special Facilities is contained in the CPUC's Advice Letter 1960–G/1587–E, effective August 5, 1996, a copy of which is included as Attachment 2 of this filing.

PG&E has requested certain waivers. Copies of this filing have been served upon TMP, the California Independent System Operator Corporation and the CPUC.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Mexico

[Docket No. ER02–100–000]

Take notice that on October 15, 2001, Public Service Company of New Mexico (PNM) submitted for filing with the Federal Energy Regulatory Commission (Commission) an Agreement for Wheeling Services between the Navajo Tribal Utility Authority (NTUA) and PNM (Agreement). The Agreement incorporates an agreed to formula for assessment of State Gross Receipts Taxes and consolidates three interdependent Amendments that comprise the existing wheeling service arrangement between PNM and NTUA into one document that conforms with FERC Order 614 regarding rate schedule designation, formatting and pagination. PNM requests an effective date of January 1, 2002 for the Agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to NTUA and to the New Mexico Public Regulation Commission.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. PJM Interconnection, L.L.C.

[Docket No. ER02–101–000]

Take notice that on October 15, 2001, PJM Interconnection, L.L.C. (PJM), submitted for filing with the Federal Energy Regulatory Commission (Commission) amendments to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to provide State Consumer Advocates with voting rights in the PJM Members Committee while remaining only ex officio members of PJM.

Copies of this filing were served upon all PJM members, each state electric utility regulatory commission and each Office of State Consumer Advocate in the PJM control area.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Mid-Continent Area Power Pool

[Docket No. ER02–102–000]

Take notice that on October 15, 2001, the Mid-Continent Area Power Pool, on behalf of its public utility members, filed with the Federal Energy Regulatory Commission (Commission) amendments to Schedule F that will allow for MAPP members to transition to membership in regional transmission organizations.

A copy of this filing has been served on all MAPP members and the state commissions in the MAPP region.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–103–000]

Take notice that on October 15, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to Section 17.5 of the Midwest ISO's Open Access Transmission Tariff to charge a fee for non-confirmed transmission service requests for transmission service greater than one week.

The Midwest ISO requests that the amendment become effective December 15, 2001. Copies of this filing were electronically served upon Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the Midwest ISO region.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Lakefield Junction, L.P.

[Docket No. ER02–104–000]

Take notice that on October 15, 2001, Lakefield Junction, L.P. (Lakefield) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of its FERC Electric Tariff Original Volume No. 1.

Lakefield requests that the cancellation be accepted and made effective as of December 14, 2001.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. South Carolina Electric & Gas Company

[Docket No. ER02–105–000]

Take notice that on October 16, 2001, South Carolina Electric & Gas Company (SCE&G) submitted to the Federal Energy Regulatory Commission (Commission) four service agreements: a transmission service agreement for firm point-to-point service and a transmission service agreement for non-firm point-to-point service between SCE&G and Calpine Energy Services, L.P. (Calpine) and a transmission service agreement for firm point-to-point service and a transmission service agreement for non-firm point-to-point service between SCE&G and Entergy-Koch Trading , Inc. (Entergy-Koch) under SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of October 16, 2001 for all four agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon Calpine, Entergy-Koch and the South Carolina Public Service Commission.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26859 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2416–009 South Carolina]

Aquenergy Systems, Inc.; Notice of Availability of Draft Environmental Assessment

October 19, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Ware Shoals Hydroelectric Project and has prepared a Draft Environmental Assessment (DEA) for the project. The project is located on the Saluda River, in the Town of Ware Shoals, within the counties of Laurens, Greenwood, and Abbeville, South Carolina. No federal lands or facilities are occupied or used by the project

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the web at http://www.ferc.gov using the "RIMS" link—select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Please affix Project No. 2416–009 to all comments. Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

For further information, contact Timothy Looney at (202) 219–2852.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26854 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2724–023 Ohio]

City of Hamilton, Ohio; Notice of Availability of Environmental Assessment

October 19, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the City of Hamilton Hydroelectric Project, located on the Great Miami River in Butler County, and partially within the city limits of Hamilton, Ohio, and has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

For further information, contact Nick Jayjack at (202) 219–2825.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26856 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2576–022 and 2597–019–Connecticut]

Northeast Generation Company; Notice of Intent To Prepare an Environmental Impact Statement

October 19, 2001.

On August 31, 1999, the Federal Energy Regulatory Commission (Commission) received an application for a New Major License for the Housatonic River Project located on the Housatonic River in Fairfield, New Haven, and Litchfield counties, Connecticut. The application for a New Major License for the Falls Village Project (P–2576) and the Housatonic Project (P–2597) proposes to combine the two projects into a single licensed project, the Housatonic River Project. Approximately 74 acres of land are within project boundaries. The project would include five developments with a total installed capacity of 114.9 megawatts.

Public scoping meetings were held on December 4, 6, and 7, 2000, in Falls Village, New Milford, and Hartford, Connecticut, respectively. Following scoping and based on preliminary environmental analysis of the Housatonic River Project, the Commission staff has determined that licensing of the Housatonic River Project could constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an Environmental Impact Statement (EIS) for the Housatonic River Project in accordance with the National Environmental Policy Act (NEPA). The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff prepared the Scoping Document 2 (SD2) to provide the public with information on: (1) the proposed action and alternatives; (2) the environmental analysis process staff will follow to prepare the EIS; and (3) a revised list of issues to be addressed in the EIS. Copies of the SD2 were distributed to the Commission's service and mailing lists for this project. The SD2 may also be viewed on the Internet at http://www.ferc.gov, and then using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the Commission staff and considered in the final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

This application is not ready for environmental analysis at this time, therefore we are not soliciting terms and conditions at this time.

This notice informs all interested individuals, organizations, and agencies with environmental expertise and concerns, that: (1) the Commission staff has decided to prepare an EIS; and (2) that the scoping conducted on the Housatonic River Project for the Environmental Assessment (EA) and comments filed with the Commission still apply.

If you have any questions regarding this notice, please contact Jarrad Kosa, FERC Team Leader, at (202) 219–2831.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26855 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Amend License To Change Effective Date and Soliciting Comments, Motions To Intervene, and Protests

October 19, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 2107–011.

c. *Date Filed:* October 12, 2001.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Poe Hydroelectric Project.

f. *Location:* On the North Fork Feather River in Butte County, near Pulga, California. The project includes 144 acres of lands of the Plumas National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Tom Jereb, Project Manager, Pacific Gas and Electric Company, P.O. Box 770000, N11D, San Francisco, CA 94177, (415) 973–9320.

i. *FERC Contact:* Questions about this notice can be answered by John Mudre at (202) 219–1208 or e-mail address: *john.mudre@ferc.fed.us.*

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, terms and conditions, motions to intervene, and protests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (http://www.ferc.gov) under the "e-Filing" link.

k. Pacific Gas and Electric Company (PG&E) has filed a request for a change in the effective date of the license for the Poe Hydroelectric Project from October 1, 1953 to October 26, 1953. The requested change would result in a change of the license expiration date from September 30, 2003 to October 25, 2003.

PG&E is requesting this change to ensure that its application for a new license for the project, filed October 2, 2001, will be timely filed pursuant to § 15(c)(1) of the Federal Power Act (18 U.S.C. § 808). Under the existing license

effective date, the license application was due to be filed on October 1, 2001.

l. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26853 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 17, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 26, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0430.

Title: 47 CFR 1.1206, Permit-but-Disclose Proceedings.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, businesses or other for-profit, not-for-profit institutions, federal government, and state, local or tribal governments.

Number of Respondents: 10,000.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement, and recordkeeping requirement.

Total Annual Burden: 5,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission's rules require that a public record be made of ex parte presentations in "permit-but-disclose" proceedings, such as notice-and-comment rulemakings. Persons making such presentations are required to file copies of written presentations and memoranda of new data or arguments in oral presentations. The availability of the ex parte materials helps ensure that interested parties/persons have fair notice of presentations made to the Commission and the development of a complete record.

OMB Control No.: 3060–0215.

Title: Section 73.3527, Local Public Inspection File of Noncommercial Educational Stations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 2,515.

Estimated Time Per Response: 2 hours per week (104 hours per year) + 1 hour for 15 NCE TV Stations.

Frequency of Response: Recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 261,575 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 73.3527 requires each noncommercial educational broadcast station licensee/permittee to maintain a file for public inspection. The contents of the file vary according to type of service and status. The public and the FCC staff in use the data in field investigations to evaluate information about the station's performance. This submission is being sent to the Office of Management and Budget (OMB) to obtain the full three-year approval.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26842 Filed 10–24–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Response

Note: On Thursday, September 25, 2001, this information collection FR 01–23972 appeared at 66 FR 49021–49022. Due to miscalculations in various sections of that document the corrected version is being reprinted in its entirety.

AGENCY: Federal Communications Commission (FCC).

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission.

SUMMARY: Due to miscalculations in the reporting of the number of respondents and of the associated response time that they would need in order to meet the requirements in this information collection, the FCC is withdrawing the Notice which published on September 25, 2001 (66 FR 49021). The FCC has corrected the miscalculations, and is hereby instituting a second comment period.

DATES: Written comments should be submitted on or before December 24, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0291.

Title: Interconnected Systems.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 12,509.

Estimated Time Per Response: .25 hours for 12,405 responses and 2 hrs. for 104 responses.

Frequency of Response: On occasion and annual reporting requirements, and recordkeeping requirement.

Total Annual Burden: 3,309 hours.

Needs and Uses: This rule section allows commercial and private land mobile radio licensees to use common point telephone interconnection with telephone service costs distributed on a non-profit cost sharing basis. Records of such arrangements must be placed in the licensee's station file and made available to participants in the sharing arrangement and the Commission upon request.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26843 Filed 10–24–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2508]

Petition for Reconsideration of Action in Rulemaking Proceeding

October 19, 2001.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by November 9, 2001. See Section 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: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96–98).

Number of Petitions Filed: 1.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26844 Filed 10–24–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: *Tuesday, October 30, 2001 at 10:00 A.M.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE & TIME: *Thursday, November 1, 2001 at 10:00 A.M.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Draft Advisory Opinion 2001–16: Democratic National Committee by counsel, Joseph E. Sandler and Neil P. Reiff.

Statement of Policy Regarding Party Committee Transfers of Nonfederal Funds for Payment of Allocable Expenses.

Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–26989 Filed 10–23–01; 11:05 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final

approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before December 24, 2001.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Capria Mitchell (202) 872-4984, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposals to Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports:

1. Report title: Annual Salary Survey, ad hoc surveys, and Compensation Trend Survey.
Agency form number: FR 29a, b, c.
OMB control number: 7100-0290.
Frequency: FR 29a, once each year; FR 29b, on occasion; FR 29c, once each year.
Reporters: Employers considered competitors for Federal Reserve employees.
Annual reporting hours: FR 29a, 270 hours; FR 29b, 30 hours; FR 29c, 1,300 hours.
Estimated average hours per response: FR 29a, 6 hours; FR 29b, 1 hour; FR 29c, 2 hours.
Number of respondents: FR 29a, 45; FR 29b, 10; FR 29c, 650.
Small businesses are affected.

General description of report: This information collection is voluntary (sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. 244 and 248(1)) and is given confidential treatment (5 U.S.C 552 (b)(4) and (b)(6)).

Abstract: The surveys collect information on salaries, employee compensation policies, and other employee programs from employers that are considered competitors for Federal Reserve employees. The data from the surveys primarily are used to determine the appropriate salary structure and salary adjustments for Federal Reserve employees.

2. Report title: Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H.
Agency form number: Reg H-3.
OMB control number: 7100-0196.
Frequency: Development of policy statement, one-time; Trust company report, quarterly; Transactions recordkeeping, on occasion; and Disclosure, on occasion
Reporters: State member banks and trust companies.
Annual reporting hours: 158,423 hours.
Estimated average hours per response: Development of policy statement, 0.50 hours; Trust company report, 0.25 hours; Transaction recordkeeping, 0.05 Hours; and Disclosure, 0.05 hours.
Number of respondents: 1,509.
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 325). If the records maintained by state member banks come into the possession of the Federal Reserve, they are given confidential treatment (5 U.S.C. §§ 552(b)(4), (b)(6), and (b)(8)).

Abstract: State-chartered member banks and trust companies effecting securities transactions for customers must establish and maintain a system of records, furnish confirmations to customers, and establish written policies and procedures relating to securities trading. They are required to maintain records for three years following the transaction. These requirements are necessary for customer protection, to avoid or settle customer disputes, and to protect the bank against potential liability arising under the anti-fraud and insider trading provisions of the Securities Exchange Act of 1934.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, with Revision, of the Following Report:

1. Report title: Application for Employment with the Board of Governors of the Federal Reserve System.
Agency form number: FR 28.
OMB control number: 7100-0181.
Frequency: On occasion.
Reporters: Employment applicants.
Annual reporting hours: 8,625 hours.
Estimated average hours per response: 1 hour.
Number of respondents: 8,500.
Small businesses are not affected.

General description of report: This information collection is required to obtain a benefit (sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. § 244 and 248(1)). The Board is required to treat the information collected on the Application as confidential pursuant to the requirements of the Privacy Act (5 U.S.C. § 552a). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. §§ 552(b)(2) and (b)(6)).

Abstract: The Application collects information to determine the qualifications, suitability, and availability of applicants for employment with the Board. The Application asks about education, training, employment, and other information covering the period since the applicant left high school.

Current Actions: The Federal Reserve will add two short supplemental forms to the Application. One form will be given to all applicants and collects information about the gender and race of the applicant. The information from this form will be used to assist the Board with federal equal opportunity record keeping, reporting, and other

legal requirements. The second form will be filled out by applicants for Research Assistant positions in the divisions of Monetary Affairs, International Finance, and Research and Statistics. The survey will serve to streamline the recruiting process by attempting to determine an applicant=s interest in the policy and research topics that are germane to individual research sections.

Proposal to Implement Under OMB Delegated Authority the Following Report:

1. Report title: Surveys of Board Publications.
Agency form number: FR 1373 a and b.
OMB control number: to be assigned.
Frequency: FR 1373a, 1.5; FR 1373b small-panel, 8; and FR 1373b large-panel,
2. Reporters: FR 1373a, educators who have previously requested materials from the Board; FR 1373b, current subscribers of Board publications.
Annual reporting hours: 762 hours.
Estimated average hours per response: FR 1373a, 30 minutes; FR 1373b, 15 minutes.
Number of respondents: FR 1373a, 400; FR 1373b small-panel, 131; FR 1373b large-panel, 400.
Small businesses are affected.

General description of report: This information collection is voluntary. The FR 1373a survey is authorized pursuant to the Federal Trade Commission Improvement Act (15 U.S.C. §57(a)); the FR 1373b survey is authorized pursuant to 12 U.S.C. §248(i). The specific information collected is not considered confidential.

Abstract: Data from the FR 1373a survey would help the Board staff to 1) conduct periodic reviews and evaluations of the consumer education resources available to consumers and consumer educators, and to 2) evaluate consumer education resources under consideration for distribution. Data from the FR 1373b survey would help the Board staff to evaluate Board publications that are available to the public. The staff would use the FR 1373b data to help determine if the Board should continue to issue certain publications and, if so, whether the public would like to see changes in the method of information delivery, issuance frequency, content, or format/ appearance.

Board of Governors of the Federal Reserve System, October 19, 2001

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 01–26862 Filed 10–24–01; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 19, 2001.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; and thereby indirectly acquire voting shares of Marquette Bank Monmouth, Monmouth, Illinois; The Bank of Santa Fe, Santa Fe, New Mexico; Delaware Financial, Inc., Wilmington, Delaware; First National Bank of Texas, Decatur, Texas; First State Bank of Texas, Denton, Texas; Marquette Bank, N.A., Rogers, Minnesota; Marquette Capital Bank, N.A., Wayzata, Minnesota; The First National Bank and Trust Company of Baraboo, Baraboo, Wisconsin; Meridian Capital Bank, N.A., Milwaukee, Wisconsin; and Marquette Bank Morrison, Morrison, Illinois.

In connection with this application, Applicant also has applied to acquire Marquette Financial Group, Inc., Minneapolis, Minnesota, and thereby engage in securities brokerage and investment advisory activities, pursuant to § 225.28(b)(6) and (7) of Regulation Y.

Board of Governors of the Federal Reserve System, October 19, 2001.

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 01–26863 Filed 10–24–01; 8:45 am]
BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0118]

Submission for OMB Review; Comment Request Entitled Standard Form 94, Statement of Witness

AGENCY: Federal Vehicle Policy Division, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Standard Form 94, Statement of Witness. A request for public comments was published at 66 FR 37233, July 17, 2001. No comments were received.

DATES: Comments may be submitted on or before November 26, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Moses, Federal Vehicle Policy Division, (202) 501–2507.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–

0118, concerning Standard Form 94, Statement of Witness. This form is used by all Federal agencies to report accident information involving U.S. Government motor vehicles.

B. Annual Reporting Burden

Respondents: 874.
Annual Responses: 874.
Burden Hours: 291.

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0118, Standard Form 94, Statement of Witness, in all correspondence.

Dated: October 17, 2001.

Michael Carleton,

Chief Information Officer.

[FR Doc. 01–26894 Filed 10–24–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FRM B–1]

Personal Property

This notice contains GSA Bulletin FMR B–1 which announces a new provider for official U.S. Government license plates and clarifies changes in the way official identification is displayed on motor vehicles. The text of the bulletin follows:

To: Heads of Federal agencies.
Subject: Acquisition and display of official U.S. Government licence plates and other motor vehicle identification.

1. *What is the purpose of this bulletin?* This bulletin announces a new provider for official U.S. Government license plates and clarifies changes in the way official identification is displayed on motor vehicles.

2. *What is the effective date of this bulletin?* This bulletin is effective October 25, 2001.

3. *What is the expiration date of this bulletin?* This bulletin expires October 25, 2002.

4. *What is the background to this announcement?*

a. The previous supplier of official U.S. Government license plates, the District of Columbia Department of Correction, Lorton Prison, stopped taking license plate orders on June 30, 2001. The new supplier, Federal Prison Industries, Inc. (UNICOR), started taking license plate orders on July 1, 2001. Actual production of license plates at the UNICOR facility will begin on or about September 15, 2001.

b. Subsection 211(k) of the Federal Property and Administrative Services Act of 1949, as amended, requires motor vehicles owned or leased by the Government to display official U.S. Government identification. Sections 102–34.110 and 102–34.120 of the Federal Management Regulation (FMR) implemented this section of the Property Act, providing for placement and size of this identification.

c. On June 21, 2001, the General Services Administration's (GSA) Office of Governmentwide Policy entered into a Memorandum of Understanding (MOU) with UNICOR for the production of license plates for Federal agencies. Prior to entering into the MOU, GSA's Office of Governmentwide Policy obtained a waiver from the provisions of sections 102–34.110 through 102–34.120 and 102–34.170 of the FMR. This Memorandum of Understanding and FMR waiver were coordinated through the Federal Fleet Policy Council, obtaining the approval of all agencies operating motor vehicle fleets.

d. The MOU between GSA and UNICOR and the FMR waiver allow changes to the way license plates are produced in order to increase the security of Federal license plates and eliminate the need for identification decals in the rear windows of motor vehicles owned or leased by the Government.

5. *What does the new license plate look like?* The new license plates will have the following characteristics:

a. The plate will be flat and digitally produced with an embossed flange rim.

b. The plate will have a reflective sheeting similar to most regular State-issued license plates.

c. The plate will have a security reflective watermark consistent on all plates (repeating the phrase "U.S. Government") and a hologram positioned vertically down the center (an American eagle).

d. The plate will contain Federal agency or bureau identification that readily identifies the vehicle's owner.

6. *What must agencies do to order license plates?* All Federal agencies must execute an addendum to the MOU between GSA and UNICOR. Agencies will prepare only one addendum listing all bureaus, departments, districts, etc. authorized to order license plates. This addendum will provide UNICOR with specific ordering and payment information, and include, at a minimum, the following information:

a. Agency name.
b. Agency code.
c. Point of contact.
d. Mailing address.
e. Telephone number.
f. Email address.
g. Anticipated annual need.
h. Personnel authorized to order license plates.
i. Invoicing and billing information.
j. Shipping instructions.
k. Graphic description of agency information on license plates.

7. *Can a Federal agency or activity order license plates without completing an addendum to the Memorandum of Understanding?* No.

8. *What activities may order and receive shipments of license plates?* Only Federal agencies or activities may order or receive shipments of official U.S. Government license plates.

9. *What procedures should agency field activities follow when ordering license plates?* Agency field activities should contact their agency (national level) Fleet Manager for guidance.

10. *What is the point of contact at UNICOR?*

Mr. Abraham Burgos, Program Manager, U.S. Department of Justice, UNICOR Federal Prison Industries, Inc., 400 First Street, NW., Room 6010, Washington, DC 20534, (202) 305–3752, *aburgor@central.unicor.gov*

11. *Who do I contact if I still have questions?*

Mr. Michael Moses, Team Leader, General Services Administration, Office of Governmentwide Policy, Federal Vehicle Policy Division (MTV), 1800 F Street, NW., Room G241, Washington, DC 20405, (202) 501–2507, *mike.moses@gsa.gov*

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 01–26929 Filed 10–24–01; 8:45 am]

BILLING CODE 6820–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

David A. Padgett, Ph.D., The Ohio State University: Based on the report of an investigation conducted by The Ohio State University (OSU), the

Respondent's admissions, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Dr. Padgett, an Assistant Professor at the OSU College of Dentistry engaged in scientific misconduct in grant application 1 R01 AG20102–01 submitted to the National Institute of Aging, National Institutes of Health (NIH).

Specifically, PHS finds that Dr. Padgett plagiarized and misrepresented as his own research data for Figures 1 and 2 of this NIH grant application, data which represented unpublished experiments originally conducted by a researcher at another institution for a private company. The plagiarism was a significant misrepresentation because the data appeared in the preliminary results section of the NIH grant application. The respondent used these experiments, which were relevant to the proposed research, to support the request for funding.

Dr. Padgett has entered into a Voluntary Exclusion Agreement (Agreement) in which he has voluntarily agreed for a period of three (3) years, beginning on October 4, 2001:

(1) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That Dr. Padgett and any institution employing him are required to certify, in every PHS application or report in which he is involved, that all persons who contribute original sources of ideas, data, or research results to the applications or reports are properly cited or otherwise acknowledged. This requires Dr. Padgett and the institution, with respect to Dr. Padgett's contributions to the application or report, to certify that all individuals (both within and outside the institution) who contributed to the application or report are acknowledged. The institution must also send a copy of the certification to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 01–26886 Filed 10–24–01; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: 2001–2003 Medical Expenditure Panel Survey—Insurance Component (MEPS–IC). In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on August 28, 2001 and allowed 60 Days for public comment. No pubic comments were received. The purpose of this notice is to allow an additional 30 Days for public comment.

DATES: Comments on this notice must be received by November 26, 2001.

ADDRESSES: Written comments should be submitted to: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building, Room 10235; Washington, D.C. 20503.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

2001–2003 Medical Expenditure Panel Survey—Insurance Component (MEPS–IC)

The MEPS–IC, an annual survey of the characteristics of employer-sponsored health insurance, was first conducted by AHRQ in 1997 for the calendar year 1996. The survey has since been conducted annually for calendar years 1997 through 2000. AHRQ proposes to continue this annual survey of establishments for calendar years 2001 through 2003. The survey data for calendar year 2001 will be collected in 2002.

Likewise, calendar year 2002 data will be collected in 2003 and calendar year 2003 data in 2004. The survey will collect information from both public and private employers. This survey will be conducted for AHRQ by the Bureau of Census using a sample comprised of:

1. Employers selected from Census Bureau lists of private sector employers and governments (known as the List Sample), and

2. Employers identified by respondents to the MEPS-Household Component (MEPS–HC) for the same calendar year (known as the Household Sample). The MEPS–HC is an annual household survey designed to collect information concerning health care expenditures and related data for individuals. The size of the Household sample varies from year to year with the size of the MEPS–HC.

Data to be collected from each employer will include a description of the business (e.g., size, industry) and descriptions of health insurance plans available, plan enrollments, total plan costs and costs to employees.

Data Confidentiality Provisions

MEPS—IC List Sample data confidentiality is protected under the U.S. Census Bureau confidentiality statute, Section 9 of Title 13, United States Code. MEPS—IC Household Sample data confidentiality is protected under Sections 308(d) and 924(c) of the Public Health Service (PHS) Act (42 U.S.C. 242m(d) and 42 U.S.C.299c–3(c)).

Section 308(d), of the PHS Act, the confidentiality statute of the National Center for Health Statistics, is applicable because the MEPS–HC sample is derived from respondents in an earlier NCHS survey. Section 924(c), the confidentiality statute of AHRQ, applies to all data collected for research that is supported by AHRQ. All data products listed below must fully comply with the data confidentiality statute under which the raw data was collected as well as any additional confidentiality provisions that apply.

Data Products

Data will be produced in three forms: (1) files derived from the Household Sample, which can be linked back to other information from household respondents in the MEPS–HC, will be available to researchers at the AHRQ Research Data Center; (2) files containing employer information from the List Sample will be available for use by researchers at the Census Bureau's Research Data Centers; and (3) a large compendium of tables of estimates, also based on List Sample data, will be produced and made available on the

AHRQ website. These tables will contain descriptive statistics, such as, numbers of establishments offering health insurance, average premiums, average contributions, total enrollments, numbers of self insured establishments and other related statistics for a large number of population subsets defined by firm size, state, industry and establishment characteristics, such as, age, profit/nonprofit status and union/nonunion.

The data are intended to be used for purposes such as:

- Generating national and State estimates of employer health care offerings;
- Producing estimates to support the Bureau of Economic Analysis and the Center for Medicare and Medicaid Services in their production of health care expenditure estimates for the National Health Accounts and the Gross Domestic Product;
- Producing national and State estimates of spending on employer-sponsored health insurance to study the results of national and State health care policies;
- Supplying data for modeling the demand for health insurance; and
- Providing data on health plan choices, costs, and benefits that can be linked back to households' use of health care resources in the MEPS–HC for studies of the consumer health care selection process.

These data provide the basis for researchers to address important questions for employers and policymakers alike.

Method of Collection

The data will be collected using a combination of modes. The Census Bureau's first contact with employers will be made by telephone. This contact will provide information on the availability of health insurance from the employer and essential persons to contact. Based upon this information, the Census Bureau will mail a questionnaire to the employer. In order to assure high response rates, the Census Bureau will follow-up with a second mailing after an interval of approximately 30 working days, followed by a telephone call to collect data from those who have not responded by mail.

As part of this process, for larger respondents with high burdens, such as State employers and very large firms, the Census Bureau will, if needed, perform personal visits and do customized collection, such as, acceptance of data in computerized formats and use of special forms.

ESTIMATED ANNUAL RESPONDENT BURDEN

Survey years	Annual number of respondents	Estimated time per respondent in hours	Estimated total annual burden hours	Estimated annual cost to the government
2001	33,855	.6	20,307	$8,250,000
2002	35,769	.6	21,663	8,840,000
2003	33,855	.6	20,307	8,810,000

Request for Comments

In accordance with the above cited Paperwork Reduction Act legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 18, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–26838 Filed 10–24–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–176]

Notice of the Revised Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), requires that ATSDR and the Environmental Protection Agency (EPA) revise the Priority List of Hazardous Substances. This list includes substances most commonly found at facilities on the CERCLA National Priorities List (NPL) which have been determined to be of greatest concern to public health at or around these NPL hazardous waste sites. This announcement provides notice that the agencies have developed and are making available a revised CERCLA Priority List of 275 Hazardous Substances, based on the most recent information available. Each substance on the priority list is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequently a candidate for the identification of priority data needs.

In addition to the Priority List of Hazardous Substances, ATSDR has developed a Completed Exposure Pathway Site Count Report. This report lists the number of sites or events with ATSDR activities where a substance has been found in a completed exposure pathway (CEP). This report is included in the Support Document of the Priority List.

ADDRESSES: Requests for a copy of the report, the 2001 CERCLA Priority List of Hazardous Substances That Will Be The Subject of Toxicological Profiles and Support Document, including the CEP report, should bear the docket control number ATSDR–176, and should be submitted to: ATSDR Information Center, Division of Toxicology, Mail Stop E–29, 1600 Clifton Rd., NE., Atlanta, GA 30333. Requests must be in writing.

Electronic Availability: The 2001 Priority List of Hazardous Substances will be posted on ATSDR's World-Wide Web server on the Internet located at http://www.atsdr.cdc.gov.clist.html.

The CEP Report will also be posted at http://www.atsdr.cdc.gov.cep.html.

This is an informational notice only, and comments are not being solicited at this time. However, any comments received will be considered for inclusion in the next revision of the list and placed in a publicly accessible docket; therefore, please do not submit confidential business or other confidential information.

FOR FURTHER INFORMATION CONTACT: ATSDR, Division of Toxicology, Emergency Response and Scientific Assessment Branch, 1600 Clifton Road N.E., Mail Stop E–29, Atlanta, GA 30333, telephone 888–422–8737.

SUPPLEMENTARY INFORMATION: CERCLA establishes certain requirements for ATSDR and EPA with regard to hazardous substances that are most commonly found at facilities on the CERCLA NPL. Section 104(i)(2) of CERCLA, as amended [42 U.S.C. 9604(i)(2)], required that the two agencies prepare a list, in order of priority, of at least 100 hazardous substances that are most commonly found at facilities on the NPL and which, in their sole discretion, have been determined to pose the most significant potential threat to human health (see 52 FR 12866, April 17, 1987). CERCLA also required the agencies to revise the priority list to include 100 or more additional hazardous substances (see 53 FR 41280, October 20, 1988), and to include at least 25 additional hazardous substances in each of the three successive years following the 1988 revision (see 54 FR 43619, October 26, 1989; 55 FR 42067, October 17, 1990; 56 FR 52166, October 17, 1991). CERCLA also requires that ATSDR and EPA shall, at least annually thereafter, revise the list to include additional hazardous substances that have been determined to pose the most significant potential threat to human health. In 1995, the agencies altered the publication schedule of the priority list by moving to a 2-year publication schedule, reflecting the stability of this listing activity (60 FR 16478, March 30, 1995). As a result, the priority list is now on a 2-year publication schedule with a yearly informal review and revision. Each substance on the CERCLA Priority List of Hazardous Substances is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequently a candidate for the identification of priority data needs.

The initial priority lists of hazardous substances (1987–1990) were based on the most comprehensive and relevant information available when the lists were developed. More comprehensive sources of information on the frequency of occurrence and the potential for human exposure to substances at NPL sites became available for use in the 1991 priority list with the development of ATSDR's HazDat database. Utilizing this database, a revised approach and algorithm for ranking substances was developed in 1991, and a notice announcing the intention of ATSDR and EPA to revise and rerank the Priority List of Hazardous Substances was published on June 27, 1991 (56 FR 29485). The subsequent 1991 Priority List and revised approach used for its compilation was summarized in the "Revised Priority List of Hazardous Substances" **Federal Register** notice published October 17, 1991 (56 FR 52166). The same approach and the same basic algorithm have been used in all subsequent activities, including the 2001 listing activity. The algorithm used in ranking hazardous substances on the priority list consists of three criteria, which are combined to result in the total score. The three criteria are: frequency of occurrence at NPL sites; toxicity; and potential for human exposure.

Since HazDat is a dynamic database with ongoing data collection, additional information from the HazDat database became available for the 2001 listing activity. This additional information has been entered into HazDat since the development of the 1999 Priority List of Hazardous Substances. The site-specific information from HazDat that is used in the listing activity has been collected from ATSDR public health assessments, health consultations, and from site file data packages that are used to develop these public health assessments. The new information may include more recent NPL frequency of occurrence data, additional concentration data, and more information on exposure to substances at NPL sites. With these additional data and with a refinement made in assigning toxicity scores to radionuclides for this listing purpose, 18 substances have been replaced on the list of 275 substances since the 1999 publication. Of the 18 replacement substances, 5 are new candidate substances, and 13 are substances that were previously under consideration. These replacement substances and changes in the order of substances appearing on the CERCLA Priority List of Hazardous Substances will be reflected in the program activities that rely on the list for future direction.

The 2001 Priority List of Hazardous Substances includes 275 substances that have been determined to be of greatest concern to public health based on the criteria of CERCLA section 104(i)(2) [42 U.S.C. 9604(i)(2)]. A total of 840 candidate substances have been analyzed and ranked with the current algorithm. Of these candidates, the 275 substances on the priority list may become the subject of toxicological profiles in the future. The top 25 substances on the 2001 Priority List of Hazardous Substances are listed below.

Rank	Substance name
1	Arsenic
2	Lead
3	Mercury
4	Vinyl Chloride
5	Polychlorinated Biphenyls
6	Benzene
7	Cadmium
8	Benzo (A) Pyrene
9	Polycyclic Aromatic HYDROCARBONS
10	Benzo (B) Fluoranthene
11	Chloroform
12	DDT, P,P'-
13	Aroclor 1254
14	Aroclor 1260
15	Trichloroethylene
16	Dibenzo (A,H) Anthracene
17	Dieldrin
18	Chromium, Hexavalent
19	Chlordane
20	Hexachlorobutadiene
21	DDE, P,P'-
22	Coal Tar Creosote
23	Aldrin
24	Phosphorus, White
25	Benzidine

ATSDR and EPA intend to publish the next revised list of hazardous substances in two years, with an informal review and revision performed in one year. These revisions will reflect changes and improvements in data collection and availability. Additional information on the existing methodology used in the development of the CERCLA Priority List of Hazardous Substances can be found in the Support Document to the List and in the **Federal Register** notices mentioned above.

In addition to the revised priority list, ATSDR is also releasing a Completed Exposure Pathway Site Count Report. A completed exposure pathway (CEP) is an exposure pathway that links a contaminant source to a receptor population. The CEP ranking is very similar to a sub-component of the potential-for-human-exposure component of the listing algorithm. The CEP ranking is based on a site frequency count, and thus lists the number of sites at which a substance has been found in a CEP. ATSDR's HazDat database contains this information which is derived from ATSDR public health assessments and health consultations.

Because exposure to hazardous substances is of significant concern, ATSDR has been tabulating the substances to which people have been exposed at hazardous waste sites. Much interest has been focused on this tabulation. Therefore, ATSDR is announcing the publishing of this CEP report along with the CERCLA Priority List of Hazardous Substances. Since this CEP report focuses on documented exposure, it provides an important prioritization based on substances to which people are exposed.

The substances on the CEP report are similar to the substances on the CERCLA Priority List of Hazardous Substances. However, there are some substances that are on the CEP report, because they are frequently found in completed exposure pathways, but are not on the CERCLA Priority List because they have a very low toxicity (e.g., sodium). Since the CERCLA Priority List incorporates three different components (toxicity, frequency of occurrence, and potential for human exposure) to determine its priority substances, substances with very low toxicity are not on the CERCLA Priority List and consequently are not the subject of toxicological profiles. In addition, since the Priority List is mandated by CERCLA, it only uses data from sites on the CERCLA National Priorities List, whereas the CEP report uses data from all sites with ATSDR activities that have a CEP. Of the 100 substances on the CEP report, the 25 substances found at the most number of sites in a CEP are presented below.

NUMBER OF SITES WITH SUBSTANCE IN A CEP

Substance name	All sites	NPL sites
Lead	359	238
Trichloroethylene	319	271
Arsenic	267	176
Tetrachloroethylene	236	190
Cadmium	176	123
Benzene	174	128
Chromium	169	113
Volatile Organic Compounds, Unspecified	162	118
Polychlorinated Biphenyls	152	104
Mercury	136	82
Zinc	134	83
Manganese	134	80
1,1,1–Trichloroethane	125	106
Copper	118	67
Chloroform	113	88
1,1–Dichloroethene	105	91
Methylene Chloride	103	72
Toluene	102	68
Vinyl Chloride	99	84
Nickel	98	63
Benzo (A) Pyrene	98	54
Polycyclic Aromatic Hydrocarbons	97	68
Barium	96	54
Antimony	88	57
1,2–Dichloroethane	86	71

Note: Sorted by the All Sites column. All Sites = all sites with ATSDR activities that have a CEP; NPL Sites = current and former sites on the National Priorities List, as mandated.

Dated: October 18, 2001.

Donna Garland,

Deputy Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–26875 Filed 10–24–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health; Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Applying Genetics and Public Health Strategies to Primary Immunodeficiency Diseases.

Times and Dates:

8 a.m.—6 p.m., November 8, 2001
8 a.m.—1 p.m., November 9, 2001

Place: Hyatt Regency, 285 Peachtree Street, Atlanta, Georgia 30309, Phone: 404–577–1234.

Status: Open to the public for observation and comment, limited only by the space available. The meeting room accommodates approximately 60 people.

Purpose: The purpose of the meeting is to identify a public health strategy for Primary Immunodeficiency (PI) Disease, including a public health assessment, examine laboratory issues including uses of genetic tests, to identify public health interventions to increase early recognition, to review efforts to increase awareness about these diseases among providers and the public, and to identify future public health strategies for assessment, intervention, and education.

Matters to be Discussed: The meeting objectives, although focused specifically on PI, also establish a framework useful for developing public health strategies for other common complex diseases. The objectives are: (1) To make a public health assessment of primary immunodeficiency diseases; (2) To examine uses of genetic tests and role in clinical practice; (3) To identify public health interventions to enhance early identification and intervention; (4) To review efforts to educate providers, patients and the public about primary immunodeficiency; and (5) To identify next steps for public health, including research priorities and workshop recommendations.

Agenda items are tentative and subject to change.

CONTACT PERSON FOR MORE INFORMATION: Mary Lou Lindegren, M.D., Designated Federal Official, CDC, 4770 Buford Highway, NE, MS K–28, Atlanta, Georgia 30341–3724; telephone 770–488-3235, fax 770–488–3236; e-mail: mll3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 20, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–26873 Filed 10–24–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0459]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling; Notification Procedures for Statements on Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the regulation requiring manufacturers, packers, and distributors of dietary supplements to notify FDA that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Submit written or electronic comments on the collection of information by dECEMBER 24, 2001.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Labeling; Notification Procedures for Statements on Dietary Supplements—21 CFR Part 101.93 (OMB Control Number 0910–0331)—Extension

Description: Section 403(r)(6) of the act (21 U.S.C. 343(r)(6)) requires that the agency be notified by manufacturers, packers, and distributors of dietary supplements that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in section 403(r)(6) of the act. Section 403(r)(6) of the act requires that the agency be notified, with a submission about such statements, no later than 30 days after the first marketing of the dietary supplement. Information that is required in the submission includes: (1) The name and address of the manufacturer, packer, or distributor of the dietary supplement product; (2) the text of the statement that is being made; (3) the name of the dietary ingredient or supplement that is the subject of the statement; (4) the name of the dietary supplement (including the brand name); and (5) a signature of a responsible individual who can certify the accuracy of the information presented.

The agency established § 101.93 (21 CFR 101.93) as the procedural regulation for this program. Section 101.93 provides details of the procedures associated with the submission and identifies the information that must be included in order to meet the requirements of section 403 of the act.

Description of Respondents: Businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
101.93	2,500	1	2,500	.75	1,875

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate information to meet the requirements of section 403 of the act in submitting information regarding section 403(r)(6) of the act statements on labels or labeling of dietary supplements. The agency is requesting only information that is immediately

available to the manufacturer, packer, or distributor of the dietary supplement that bears such a statement on its labeling or in its labeling. This estimate is based on the average number of notification submissions received by the agency in the preceding 18 months.

Dated: October 19, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–26885 Filed 10–24–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Participants at the Process Analytical Technologies Subcommittee of the Advisory Committee for Pharmaceutical Science

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting names of qualified persons to participate on the Process Analytical Technologies Subcommittee (the Subcommittee) of the Advisory Committee for Pharmaceutical Science. The Subcommittee will identify and report to the Advisory Committee for Pharmaceutical Science on scientific issues related to application and validation of online process technologies such as near infrared and Raman spectroscopy and imaging methods for application in the manufacture of drug substances and drug products. The Subcommittee will also report on the potential benefits and risks associated with the application of these new technologies to public health and, as part of this analysis, evaluate the feasibility of the parametric release concept.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented and, therefore encourages recommendations of qualified candidates from these groups. Final selections from among qualified candidates will be based on the expertise demonstrated and previous experience with online process technologies.

DATES: All applications should be received by November 30, 2001.

ADDRESSES: Submit applications to David Morley (address below).

FOR FURTHER INFORMATION CONTACT: David Morley, Office of Testing and Research (HFD–900), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5186, FAX 301–827–3787, e-mail: morleyd@cder.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is seeking qualified persons to participate on the Process Analytical Technologies Subcommittee being formed under the Advisory Committee for Pharmaceutical Science. The Subcommittee will identify and report on the current state of technology, validation procedures, and the mechanistic basis of online process controls in both drug development and scaleup. These participants are not members of the Subcommittee and will not be voting on any issues, but they are encouraged to participate in the discussion of the issues. The Subcommittee will evaluate the potential for enhancing product quality and providing public health benefit.

II. Selection Criteria

Persons from government, industry, academia, and other organizations (such as research institutes) applying to participate on the Subcommittee should have exceptional accomplishments and be leading technical experts in the appropriate fields. In particular, expertise in application of the following scientific disciplines to pharmaceutical development and pharmaceutical manufacturing processes is desired: Process analytical chemistry, pharmaceutics, industrial pharmacy, chemical engineering, pharmaceutical analysis, chemometrics, pattern recognition, computer expert systems, information technology, and statistics.

III. Application Procedures

Any interested person should submit appropriate biographical material and a list of scientific publications relevant to the Subcommittee to the contact person listed above.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 17, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–26834 Filed 10–24–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Organ Procurement and Transplantation Network

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of meeting of the Advisory Committee on Organ Transplantation.

SUMMARY: Pursuant to Public Law 92–463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the first meeting of the Advisory Committee on Organ Transplantation (ACOT), Department of Health and Human Services (HHS). The meeting will be held from approximately 8:15 a.m. to 6 p.m. on December 3, 2001, and from 8 a.m. to 5:15 p.m. on December 4, 2001, at the Hyatt Dulles, at Dulles International Airport, 2300 Dulles Corner Boulevard, Herndon, Virginia 20171. The meeting will be open to the public; however, seating is limited and pre-registration is encouraged (see below).

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. section 217a, section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), the ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, and, thereby, increasing public confidence in the integrity and effectiveness of the transplantation system. The ACOT is composed of 41 members, including the Chair. Members are non-governmental individuals with diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

The ACOT will consider a number of subjects relating to the means of expanding the donor pool and increasing organ donation; and it will also review the organ allocation policies submitted by the Organ Procurement

and Transplantation Network (OPTN) to HHS for approval. The draft meeting agenda and a registration form are available on the Division of Transplantation's Web site: *http://www.hrsa.gov/osp/dot/whatsnew.htm* or the Department's donation Web site at: *http://www.organdonor.gov/news.htm*. The completed registration form should be submitted by facsimile to McFarland and Associates, Inc., the logistic support contractor for the meeting, at FAX number (301) 589–2567. Individuals without access to the Internet who wish to register may call McFarland and Associates, Inc., at 301–562–5362. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACOT Executive Director, Jack Kress, in advance of the meeting. Mr. Kress may be reached by telephone at 301–443–8653, by e-mail at: *jkress2@hrsa.gov*, or in writing at the address of the Division of Transplantation provided below. Management and support services for ACOT functions are provided by the Division of Transplantation, Office of Special Programs, HRSA, Room 7C–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone 301–443–7577.

There will be a limited period of time for presentation of selected public comments before the Committee considers each allocation policy and donation issue. The public may review the current and proposed modified OPTN policies on the Division of Transplantation's Web site at: *http://www.hrsa.gov/osp/dot/whatsnew.htm* and may also obtain this material, as well as reports of committee discussions of these policies by contacting the Division of Transplantation at 301–443–7577. While public comments are welcome for possible presentation, please note that the Committee will be working with a full agenda and a limited amount of time. Therefore, to facilitate this process, we recommend that individuals interested in providing public comments submit those comments in writing by November 16, 2001, to the Executive Director of the Committee (address above). The Department reserves the right to select comments from among those submitted for oral presentation within the time available, although it will include all comments in the record of the ACOT meeting.

Dated: October 19, 2001.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 01–26932 Filed 10–24–01; 8:45 am]

BILLING CODE 4165–15–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meeting

TIME AND DATE: October 29, 2001, 9:00 a.m.–3:30 p.m.

PLACE: Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203.

STATUS: Open session.

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the April 23, 2001, Meeting of the Board of Directors
- President's Report
- Country Priorities Presentation
- Overview of IAF
- IAF Strategic Plan for Fiscal Years 2002–2007
- IAF 2000 Results Report
- IAF Web Site
- Review of a Sample of Successful Closed-out Grants
- IAF Experience with Corporate Partners
- Improving the Role, Mission, and Operations of the IAF

CONTACT PERSON FOR MORE INFORMATION: Carolyn Karr, General Counsel, (703) 306–4350.

Dated: October 22, 2001.

Carolyn Karr,

General Counsel.

[FR Doc. 01–27061 Filed 10–23–01; 3:02 pm]

BILLING CODE 7025–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: Karl W. Widl, Los Altos, OH, PRT–048967.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Thomas Heideman, Lockport, NY, PRT–049027.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Scott Starbard, Edmonds, WA, PRT–049031.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Daniel Dienstbier, Omaha, NE, PRT–049032.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: October 12, 2001.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–26876 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Habitat Conservation Plan and Notice of Receipt of Applications for Incidental Take Permits by Gulf Highlands LLC and Fort Morgan Paradise Joint Venture on Privately Owned Lands in Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Gulf Highlands LLC and Fort Morgan Paradise Joint Venture (Applicants) seek incidental take permits (ITP) from the Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed take would be incidental to otherwise lawful activities, including construction of residential condominiums, commercial facilities, and recreational amenities on adjoining tracts of land owned by the Applicants. The proposed action would involve approval of the Habitat Conservation Plan (HCP) jointly developed by the Applicants, as required by Section 10(a)(2)(B) of the Act, to minimize and mitigate for incidental take of the Federally-listed, endangered Alabama beach mouse (*Peromyscus polionotus ammobates*)(ABM), the endangered Kemp's ridley sea turtle (Lepidochelys kempii), the threatened green sea turtle (*Chelonia mydas*), and the threatened loggerhead sea turtle (*Caretta caretta*). The subject permits would authorize take of ABM and the three sea turtles along 2,844 linear feet of coastal dune habitat fronting the Gulf of Mexico in Baldwin County, Alabama. The Applicants' properties total 180.5 acres, but only 62 acres would be developed. Additionally, about 16 acres of platted road rights-of-way are encompassed by the project and bring the total area to 196.4 acres. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the ABM and sea turtles is provided in the Applicants' HCP, the Service's Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service announces the availability of an Environmental Assessment (EA) and Habitat Conservation Plan/Applications for Incidental Take. The permit applications incorporate the Applicants' HCP as the proposed action for evaluation in the Service's EA. Copies of the EA on compact disk and the HCP may be obtained by making a request to the Regional Office (*see* **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has not made a preliminary determination of whether issuance of the ITPs would be a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The Service must decide whether issuance of the proposed ITPs constitutes a major Federal action and whether to prepare a Finding of No Significant Impact based on the EA and public comment, or if preparation of an Environmental Impact Statement (EIS) is appropriate. The final determination will be made no sooner than 45 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the Service's EA. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit numbers TE007985–0 and TE031307–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to *"david_dell@fws.gov"*. Please submit comments over the Internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (*see* **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (*see* **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the ITP application, EA, and HCP should be sent to the Service's Regional Office (*see* **ADDRESSES**) and should be received on or before December 10, 2001.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain an electronic copy on compact disk by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), Ecological Services Field Office, 1208-B Main Street, Daphne, Alabama 36526, or Bon Secour National Wildlife Refuge, 12295 State Highway 180, Gulf Shores, Alabama 35603. Written data or comments concerning the application or HCP should be submitted to the Regional Office. Please reference permit numbers TE007985–0 and TE031307–0 in requests for the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (*see* **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Ms. Celeste South, Fish and Wildlife Biologist, Daphne Field Office, Alabama (*see* **ADDRESSES** above), telephone: 251/441–5181.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles).

ABM habitat on the Applicants' properties consists of approximately 38 acres of primary/secondary dunes, 21.7 acres of escarpment, 21.8 acres of adjacent scrub and 90 acres of interior scrub. The total area of designated critical habitat among these habitats is 32.4 acres, consisting of open beach dunes and swales within the southern portions of the properties, extending from the mean high water line of the Gulf of Mexico northward for 500 feet.

The green turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests, four of which were found on shoreline beaches along the Applicants' properties.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the period 1994–2001 report no nests of the Kemp's ridley sea turtle on beaches along the Applicants' properties. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The two projects, Gulf Highlands Condominiums (GHC) and Beach Club West (BCW), are separate developments but are being considered together at the request of Gulf Highlands LLC and Fort Morgan Paradise Joint Venture, the respective Applicants. The two Applicants have joined together to produce a single Habitat Conservation Plan (HCP), as required by the Endangered Species Act, for their projects. The Applicants hope to obtain their permits and jointly implement the provisions of the HCP.

The EA considers the effects of six project alternatives, including a no-action alternative that would result in no new construction on the Project site, and a single family home alternative that would result in build out of the properties as originally platted. Neither of these alternatives would be economically feasible for the applicants. The remaining four alternatives involve various arrangements of high-rise condominiums. The important differences among these four alternatives relate to the amount of beach front developed, the width and placement of an undeveloped ABM "corridor" to allow ABM movements to and from the dune and escarpment habitats, and the placement of the condominium towers. One of these alternatives was suggested by the Service as a "less-take" alternative and would move the development approximately 300 feet north of the escarpment. The applicants have cited legal and economical reasons for why the less-take alternative could not be implemented.

In the Applicant's preferred alternative, the two projects involve construction of large condominium developments near the Gulf of Mexico on approximately 62 of the total 180.5 acres of wet beach, coastal dune, escarpment, wetlands, and scrub habitats owned by the applicants. An additional 16 acres of platted road rights-of-way, owned by Baldwin County, exist within the project boundary. The project area therefore encompasses about 196.4 acres. Applicant land holdings extend from the Gulf to Alabama Highway 180. Only part of this acreage would actually be developed, totaling about 62.7 acres of ABM habitat. The remaining area, some of which is ABM habitat, would be conserved in perpetuity. Six 20-story condominium towers (two for BCW and four for GHC), thirteen single family units, and a commercial development including about 20 housing units on the upper level would be constructed. Collectively this development would contain 973 living units. Other facilities would include parking lots, access roads, swimming pools, tennis courts, patios, a club house, shops, a proposed medical facility, sidewalks, landscaped areas, small freshwater lakes-detention ponds, trails, and dune walkovers for access to the Gulf of Mexico. The condominium structures would be oriented on an east-west alignment starting approximately 660 to 730 feet north of the Gulf of Mexico. The applicants own approximately 2,844 feet of Gulf frontage. As proposed in the Applicants' preferred alternative, 1,835 feet of that frontage would be developed and 909 feet conserved in perpetuity. The area south of the structures would be sloped by the applicants and native vegetation planted.

All proposed alternatives include measures designed to avoid or minimize take. In addition to these measures, in the applicant's preferred alternative, a planned development adjoining the western boundary of the project, the French Caribbean, would not be constructed and would remain undeveloped as an ABM conservation area. Fort Morgan Paradise Joint Venture owns the French Carribean development, and has offered to forego its construction. As this development has received a Corps of Engineers wetland permit, and was subject to review under section 7 of the Endangered Species Act, there is no ITP required for it.

Based on trapping data and other research, the ABM uses portions (some on a permanent basis, others episodically) of the entire tract of land, except for wetlands, heavily vegetated areas, and northern sections that lack suitable soil for burrowing. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators, permanent human disturbances and fragmentation of habitat and ABM populations. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and misorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicants have prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has not made a preliminary determination whether the issuance of the ITPs is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This determination will be made incorporating public comment received in response to this notice and will be based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of section 10(a)(1)(B) ITPs complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: October 15, 2001.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 01–26874 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Comanche Indian Tribe Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Comanche Indian Tribe Liquor Control Ordinance. The Ordinance regulates the control, possession, and sale of liquor on Comanche trust lands, in conformity with the laws of the State of Oklahoma, where applicable and necessary. Although the Ordinance was adopted on April 7, 2001, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on October 25, 2001.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street NW, MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Under the Act of August 15, 1953, Public Law 277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in Rice v. Rehner, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Comanche Indian Tribe Liquor Control Ordinance, Resolution No. 32–01, was duly adopted by the Comanche Business Committee on April 7, 2001. The Comanche Indian Tribe, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Comanche Indian Tribe.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Department Manual 8.1.

I certify that by resolution No. 32–01, the Comanche Indian Tribe Liquor Control Ordinance was duly adopted by the Comanche Business Committee on April 7, 2001.

Dated: October 10, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

The Comanche Indian Tribe Liquor Control Ordinance, Resolution No. 32–01, reads as follows:

Comanche Indian Tribe Liquor Control Ordinance

Article I. Declaration of Public Policy and Purpose

(1) The Comanche Business Committee finds that exclusive tribal control and regulation of liquor is necessary to protect the health and welfare of tribal members, to address specific concerns relating to alcohol use in Comanche Indian Country, and to achieve maximum economic benefit to the Tribe.

(2) The introduction, possession and sale of liquor in Comanche Indian Country is a matter of special concern to the Comanche Business Committee.

(3) The Comanche Business Committee finds that a complete ban on liquor within Comanche Indian Country is ineffective and unrealistic. However, it recognizes the need for strict regulation and control over liquor transactions within Comanche Indian Country because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution and consumption of liquor.

(4) Federal law forbids the introduction, possession, and sale of liquor in Indian country except when the same is in conformity both with the laws of the State and the Tribe, 18 U.S.C. 1161. As such, compliance with this ordinance shall be in addition to, and not substitute for, compliance with the laws of the State of Oklahoma.

(5) It is in the best interests of the Tribe to enact a tribal ordinance governing liquor sales in Comanche Indian Country and which provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of Comanche Indian Country. Further, the Tribe has determined that said purchase, distribution and sale shall take place on designated Comanche tribal land only.

Article II. Definitions

As used in this title, the following words shall have the following meanings unless the context clearly require otherwise:

(a) *Alcohol.* That substance known as ethyl alcohol, hydrated oxide of ethyl, alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.

(b) *Alcoholic Beverage.* This term is synonymous with the term liquor as defined in paragraph (1)(g) of this Article.

(c) *Bar.* Any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

(d) *Beer.* Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

(e) *Business Committee.* The governing body of the Comanche Indian Tribe, as defined in Article VI of the Comanche Constitution approved by the Commissioner of Indian Affairs on January 9, 1967, as ratified by the tribal membership on November 19, 1966.

(f) *Comanche Indian Country.* For the purposes of this ordinance, Comanche Indian Country means all lands within the exterior boundaries of the former Kiowa, Comanche and Apache reservation over which the Comanche Indian Tribe exercises jurisdiction; provided, that it shall not include lands

held jointly in trust for the Kiowa, Comanche and Apache tribes.

(g) *Liquor.* All fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, run, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain more than one half of one percent of alcohol.

(h) *Liquor Control Board.* The Comanche Indian Tribe Liquor Control Board as established by Article III of this Ordinance.

(i) *Liquor Store.* Any store at which liquor is sold and, for the purpose of this Ordinance, includes stores where only a portion of which are devoted to sale of liquor or beer.

(j) *Malt Liquor.* Beer, strong beer, ale, stout or porter.

(k) *Package.* Any container or receptacle used for holding liquor.

(l) *Public Place.* Federal, state, county, or tribal highways and roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining room of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filing stations which are open to and/or generally used by the public and to which the public is permitted to have generally unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(m) *Sale and Sell.* The exchange, barter and traffic, including the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(n) *Spirits.* Any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(o) *Tribal Court.* Refers to the Comanche Tribal Court or a court of competent jurisdiction.

(p) *Wine.* Any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelia, not exceeding seventeen percent of alcohol by weight.

Article III. Comanche Indian Tribe Liquor Control Board

(1) There is hereby established a Comanche Indian Tribe Liquor Control Board, composed of a Chairperson, Vice-Chairperson, Secretary-Treasurer, and four (4) members.

(2) The Comanche Indian Tribe Liquor Control Board shall consist of the officers and members of the Comanche Business Committee.

(3) Officers and members of the Comanche Business Committee shall hold the same positions on the Comanche Indian Tribe Liquor Control Board as such officers and members hold on the Business Committee.

(4) The Comanche Indian Tribe Liquor Control Board shall meet on call, but not less than once each calendar quarter, provided ten (10) days public notice of its meetings is given.

(5) The Comanche Indian Tribe Liquor Control Board shall receive a stipend in lieu of expenses in an amount set by resolution of the Comanche Business Committee.

(6) A quorum of the Board shall consist of five (5) members and no fewer members are required to transact business.

Article IV. Powers and Duties of the Comanche Indian Tribe Liquor Control Board

(1) *Powers and Duties.* In furtherance of this ordinance, the Liquor Control Board shall have the following powers and duties:

(a) Publish and enforce rules and regulations adopted by the Comanche Business Committee governing the sale, manufacture, distribution, and possession of alcoholic beverages within Comanche Indian Country.

(b) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Liquor Control Board to perform its function.

(c) Issue licenses permitting the sale or manufacture or distribution of liquor within Comanche Indian Country.

(d) Hold hearings on violations of this Ordinance or for the issuance of revocation of licenses hereunder.

(e) Bring suit in the Tribal Court or other appropriate court to enforce this Ordinance as necessary.

(f) Determine and seek damages for violation of this Ordinance.

(g) Make such reports as may be required by the Comanche Business Committee.

(h) Collect taxes and fees levied or set by the Comanche Business Committee and keep accurate records, books and accounts.

(i) Adopt procedures which supplement these regulations and facilitate their enforcement. Such procedures shall include limitations on sales to minors, places where liquor may be consumed, identity of persons not permitted to purchase alcoholic beverages, hours and days when outlets may be open for business, and other appropriate matters and controls.

(2) *Limitation on Powers.* In the exercise of its powers and duties under this Ordinance, the Liquor Control Board and its individual members shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor or from any licensee.

(b) Waive the immunity of the Comanche Indian Tribe from suit without the express written consent and resolution of the Business Committee.

(3) *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the Liquor Control Board and/or its staff at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Business Committee and this ordinance are being complied with.

Article V. Sales of Liquor

(1) *License Required.* A person or entity who is licensed by the Comanche Indian Tribe may make retail sales of liquor in their facility and the patrons of the facility may consume said liquor within the facility. The introduction and possession of liquor consistent with this Article shall also be allowed. All other purchases and sales of liquor within Comanche Indian Country shall be prohibited. Sales of liquor and alcoholic beverages within Comanche Indian Country may only be made at businesses that hold a Comanche Indian Tribe Liquor License.

(2) *Sales for Cash.* All liquor sales within Comanche Indian Country shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the payment for purchases with use of credit cards such as Visa, Master Card, American Express, etc.

(3) *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverages with

Comanche Indian Country is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within Comanche Indian Country and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Comanche Indian Tribe as set forth herein.

Article VI. Licensing and Application

(1) *Procedure.* In order to control the proliferation of establishments within Comanche Indian Country that sell or serve liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within Comanche Indian Country must apply to the Comanche Indian Tribe Liquor Control Board for a license to sell or serve liquor.

(2) *Application.* Any enrolled member of the Comanche Tribe twenty-one (21) years of age and older, or an enrolled member of a federally-recognized tribe twenty-one (21) years of age and older, or other person twenty-one years of age and older, may apply to the Liquor Control Board for a license to sell or serve liquor. Any person or entity applying for a license to sell or serve liquor within Comanche Indian Country must fill in the application provided for this purpose by the Comanche Indian Tribe and pay such application fee as may be set from time to time by the Business Committee. Said application must be filled out completely in order to be considered. A separate application and license will be required for each location where the applicant intends to serve liquor.

(3) *Licensing Requirements.* The person applying for such license must make a showing once a year, and must satisfy the Liquor Control Board that he/she is a person of good moral character, that he/she has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or of any of the gambling laws of the State, or any other state of the United States, or has a felony conviction preceding the date of his/her application for a license, or any of the laws commonly called "prohibition laws," or had any permit or license to sell any intoxicating liquors revoked in any county of this State and that at the time of his/her application for a license, he/she is not the holder of a retail liquor dealer's permit or license from the United States Government to engage in the sale of intoxicating liquor.

(4) *Processing of Application.* The Liquor Control Board shall receive and process applications and related matters. All actions by the Liquor Control Board shall be by majority vote. A quorum of the Liquor Control Board is that number of members set forth in Article III, paragraph (6) of this Ordinance. The Liquor Control Board may, by resolution, authorize a staff representative to issue licenses for the sale of liquor and beer products.

(5) *Issuance of License.* The Liquor Control Board may issue a license if it believes that such issuance is in the best interests of the Comanche Indian Tribe. The purpose of this Ordinance is to permit liquor sales and consumption at facilities located on designated Comanche Country lands. Issuance of a license for any other purposes will not be considered to be in the best interests of the Comanche Indian Tribe.

(6) *Period of License.* Each license shall be issued for a period not to exceed one (1) year from the date of issuance.

(7) *Renewal of License.* A licensee may renew its license if the licensee has complied in full with this Ordinance; provided however, that the Liquor Control Board may refuse to renew a license if it finds that doing so would not be in the best interests of health and safety of the Comanche Indian Tribe.

(8) *Revocation of License.* The Liquor Control Board may suspend or revoke a license due to one or more violations of this Ordinance upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

(9) *Hearings.* Within fifteen (15) days after a licensee is mailed written notice of a proposed suspension or revocation of the license, of the imposition of fines or of other adverse action proposed by the Liquor Control Board under this Ordinance, the licensee may deliver to the Liquor Control Board a written request for a hearing on whether the proposed action should be taken. A hearing on the issues shall be held before a person or persons appointed by the Liquor Control Board and a written decision will be issued. Such decisions will be considered final unless an appeal is filed with the Tribal Court within fifteen (15) calendar days of the date of mailing the decision to the licensee. The Tribal Court will then conduct a hearing and will issue an order, which is final with no further right of appeal. All proceedings conducted under all sections of this Ordinance shall be in accord with due process of law.

(10) *Non-transferability of Licenses.* Licenses issued by the Liquor Control Board shall not be transferable and may only be utilized by the person or entity in whose name it is issued.

Article VII. Taxes

(1) *Sales Tax.* The Liquor Control Board shall have the authority, as may subsequently be specified under tribal law, to collect tax on each retail sale of alcoholic beverages within Comanche Indian Country based upon a percent of the retail sale price. All taxes from the sale of alcoholic beverages within Comanche Indian Country shall be deposited in the General Treasury of the Comanche Indian Tribe.

(2) *Taxes Due.* All taxes for the sale of liquor and alcoholic beverages within Comanche Indian Country are due on or before the 15th day of the month following the end of the calendar quarter for which the taxes are due.

(3) *Delinquent Taxes.* Past due taxes shall accrue interest at 2% per month.

(4) *Reports.* Along with payment of the taxes imposed herein, the taxpayers shall submit, in the form specified by the Liquor Control Board, a quarterly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

(5) *Audit.* As a condition of obtaining a license, an applicant must agree to the review or audit of its books and records relating to the sale of liquor and alcoholic beverages within Comanche Indian Country. Said review or audit may be done periodically, or when deemed necessary by the Tribe, to verify the accuracy of reports.

Article VIII. Rules, Regulations and Enforcement

(1) In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.

(2) Any person who shall in any manner sell or offer for sale or distribution or transport liquor in violation of this Ordinance shall be subject to civil damages assessed by the Liquor Control Board.

(3) Any person within the boundaries of Comanche Indian Country who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this ordinance.

(4) Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this Article, shall be guilty of a violation of this Ordinance.

(5) Any person who knowingly sells liquor to a person under the influence of liquor shall be guilty of a violation of this Ordinance.

(6) Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this Ordinance.

(7) No person under the age of twenty-one (21) years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of twenty-one (21) years to consume liquor on his premises or any premises under his control. Any person violating this prohibition shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

(8) Any person who shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each sale or drink provided.

(9) Any person who transfers in any manner an identification of age to a person under the age of twenty-one (21) years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this Ordinance.

(10) Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification that falsely purports to show the individual to be over the age of twenty-one (21) years shall be guilty of violating this Ordinance.

(11) Any person guilty of violation of this Ordinance shall be liable to pay the Comanche Indian Tribe the amount of $1,000 per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance.

(12) When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

(a) Driver's license or identification card issued by any state department of motor vehicles;

(b) United States Active Duty Military identification card; or

(c) Passport.

(13) The consumption or possession of liquor on premises where such consumption or possession is contrary to the terms of this Ordinance will result in a declaration that such liquor is contraband. Any tribal agent, employee or officer who is authorized by the Liquor Control Board to enforce this Ordinance shall seize all contraband and preserve it in accordance with provisions established for the preservation of impounded property.

Upon being found in violation of the ordinance, the party owning or in control of the premises where contraband is found shall forfeit all right, title and interest in the items seized which shall become the property of the Comanche Indian Tribe.

Article IX. Abatement

(1) Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared a nuisance.

(2) The Chairman of the Liquor Control Board or, if the Chairman fails or refuses to do so, by a majority vote, the Liquor Control Board shall institute and maintain an action in the Tribal Court in the name of the Comanche Indian Tribe to abate and perpetually enjoin any nuisance declared under this Article. In addition to the other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond or sufficient sum from $1,000 to $15,000, depending upon the severity of past offenses, the risk of offenses in the future, and any other appropriate criteria, payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other applicable tribal laws. If any conditions of the bond be violated, the bond may be applied to satisfy any amounts due to the Tribe under this Ordinance.

(3) In all cases where any person has been found in violation of this Ordinance relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the Ordinance and violation of this Ordinance shall be prima facie evidence that the room, house, vehicle, building, structure, or place against which such action is brought is a public nuisance.

Article X. Revenue

Revenue provided for under this Ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this Ordinance. Excess funds shall be subject to appropriation by the Business Committee for essential and social services.

Article XI. Severability and Effective Date

(1) If any provision under this Ordinance is determined by court review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

(2) This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

(3) Any and all previous liquor control enactments of the Business Committee which are inconsistent with this Ordinance are hereby rescinded.

Article XII. Amendment and Construction

(1) This Ordinance may only be amended by vote of the Comanche Business Committee.

(2) Nothing in this Ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Comanche Indian Tribe or its tribal government.

[FR Doc. 01–26839 Filed 10–24–01; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendments to a Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the

Amendments between the Standing Rock Sioux Tribe and the State of South Dakota, which was executed on August 30, 2001.

DATES: This action is effective October 25, 2001.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 319–4066.

Dated: October 12, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–26877 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places, Notice on NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specified boundary was identified at the time of designation and therefore are without a clear delineation of the property involved.

In accordance with the National Historic Landmark program regulations 36 CFR 65, the National Park Service notifies owners, public officials and other interested parties and gives them an opportunity to comment on the proposed boundary documentation.

Comments on the proposed documentation for the National Historic Landmark listed below and the boundaries it defines will be received for 60 days from the date of this notice. Please address comments to Carol D. Shull, Chief of the National Historic Landmarks Survey and Keeper of the National Register of Historic Places, National Register, History and Education, National Park Service, 1849 C Street, NW, Suite NC 400, Washington, DC 20240, Attention: Sarah Pope (e-mail: sarah__pope@nps.gov). Copies of the documentation, including maps, may be obtained from that same office.

Grant-Kohrs Ranch National Historic Landmark, Deer Lodge, Powell County, Montana. Designated a Landmark on December 19, 1960.

Carol D. Shull,

Chief of the National Historic Landmarks Survey and Keeper of the National Register of Historic Places, National Register, History and Education.

[FR Doc. 01–26887 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

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 September 29, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by November 9, 2001.

Beth L. Savage,

Acting Keeper of the National Register Of Historic Places.

CALIFORNIA

San Francisco County

New Mission Theater, 2550 Mission St., San Francisco, 01001206

COLORADO

Montezuma County

Mitchell Springs Archeological Site, (Great Pueblo Period of the McElmo Drainage Unit MPS) 7755 Road 25, Cortez, 01001207

FLORIDA

Polk County

Baynard, Ephriam M., House, 208 W. Lake Ave., Auburndale, 01001208

LOUISIANA

East Feliciana Parish

Heyman—Stewart House, 10943 Bank St., Clinton, 01001211

Ouachita Parish

Key—Mize House, 118 Copley St., West Monroe, 01001212

St. Mary Parish

Lancon, Hilaire, House, 3934 Irish Bend Rd., Franklin, 01001210

Vernon Parish

Ferguson, G.R., Sr. House, 406 N. 6th St., Leesville, 01001209

MARYLAND

Baltimore Independent City

Franklintown Historic District, 5100–5201 N. Franklintown Rd.;1707–1809 N. Forest Park Ave., 5100 Hamilton Ave., 5100 Fredwall Ave., Baltimore (Independent City), 01001214

South Central Avenue Historic District, Approx. 8 blks. centering Central Ave. Bet. Pratt and Fleet Sts., Baltimore, 01001213

MASSACHUSETTS

Middlesex County

West Main Street Historic District, West Main, Pleasant, Winthrop and Witherbee Sts., Marlborough, 01001215

MICHIGAN

Allegan County

Navigation Structures at Saugatuck Harbor, West End of Riverside Dr., Saugatuck, 01001216

SOUTH DAKOTA

Brookings County

Sexauer Seed Company Historic District, Roughly bounded by Main Ave., DM & E RR tracks, 2nd St., and 6th Ave., Brookings, 01001225

Clay County

Prentis Park, (Federal Relief Construction in South Dakota MPS) Plum and Main Sts., Vermillion, 01001218

South Dakota Department of Trans. Br. No. 14–130–176, (Historic Bridges in South Dakota MPS) Local Rd. over Vermillion R., Vermillion, 01001220

South Dakota Department of Trans. Br. No. 14–133–170, (Historic Bridges in South Dakota MPS) Local Rd. over Vermillion R., Vermillion, 01001222

Codington County

Jones, Mabel and David, House, 425 N Park, Watertown, 01001221

Dewey County

Forest City Bridge, (Historic Bridges in South Dakota MPS) US trunk 212, La Plant, 01001217

Minnehaha County

Berg and Estensen Store, 110 Zeliff Ave., Sherman, 01001224

Moody County

Ward Hall, Main St., Ward, 01001223

Spink County

Spink County Courthouse, (County Courthouses of South Dakota MPS) 210 E. Seventh Ave., Redfield, 01001219

VERMONT

Chittenden County

Butler, Rosell, House, 6 Carmichael St., Essex, 01001226

Washington County

Waitsfield Common Historic District, Joslin Hill Rd, North Rd., East Rd., and Common Rd., Waitsfield, 01001227

Windsor County

Jericho Rural Historic District, Jericho St., Jericho Rd., Wallace Rd., Sugartop Rd., Joshua Rd., Hartford, 01001228

A request for Removal has made for the following resource:

SOUTH DAKOTA

Lawrence County

Selbie Building, 1101 Meade St., Whitewood

86003013

[FR Doc. 01–26888 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

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 September 1, 2001.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by November 9, 2001.

Beth M. Boland,

Acting Keeper of the National Register.

ARKANSAS

Woodruff County

Jess Norman Post 166 American Legion Hut, 222 S. First St., Augusta, 01001100

CALIFORNIA

San Bernardino County

Goff Schoolhouse, 37198 Lanfair Rd., Goffs, 01001102

San Francisco County

Fuller Company Glass Warehouse, 50 Green St., San Francisco, 01001101

Long Syrup Refinery, 2701 Sixteenth St., San Francisco, 01001103

COLORADO

El Paso County

Cottonwood Creek Bridge, On Vincent Dr. over Cottonwood Creek., Colorado Springs, 01001104

Jefferson County

Barnes—Peery House, 622 Water St., Golden, 01001105

Montrose County

Shavano Valley Rock Art Site, Address Restricted, Montrose, 01001106

FLORIDA

Jefferson County

Bethel School, Cty Rd. 149, Monticello, 01001084

Nassau County

Hippard House, 5406 Ervin St., American Beach, 01001087

Polk County

North Avenue Historic District, 100 Blk. of North Ave., Lake Wales, 01001086

St. Johns County

Sanchez Farmstead, 7270 Old State Rd. 207, Elkton, 01001083

St. Lucie County

Arcade Building, 101 US 1, N, Fort Pierce, 01001085

Wakulla County

Sopchoppy School, 164 Yellow Jacket Ave., Sopchoppy, 01001088

GEORGIA

Chatham County

Gordonston Historic District, Roughly bounded by Skidaway Rd., Goebel Ave., Gwinnett St. and Pennsylvania Ave., Savannah, 01001107

IOWA

Woodbury County

Alhambra Apartments, 801 8th St., Sioux City, 01001089

KANSAS

Atchison County

Atchinson Santa Fe Freight Depot, (Railroad Resources of Kansas MPS) 200 S. Tenth St., Atchison, 01001090

Clay County

Auld Stone Barn, 255 Utah Rd., Wakefield, 01001108

Harvey County

Halstead Santa Fe Depot, (Railroad Resources of Kansas MPS) 116 E. First St., Halstead, 01001094

Kingman County

Kingman Santa Fe Depot, (Railroad Resources of Kansas MPS) 201 East Sherman, Kingman, 01001091

Morris County

Council Grove Missouri, Kansas and Texas Depot, (Railroad Resources of Kansas MPS) 512 E. Main St., Council Grove, 01001092

Osborne County

Downs Missouri Pacific Depot, (Railroad Resources of Kansas MPS) 710 Railroad St., Downs, 01001093

MISSOURI

Greene County

Benton Avenue AME Church, 830 N. Benton Ave., Springfield, 01001109

NORTH CAROLINA

Martin County

Williamston Historic District, Roughly bounded by Franklin, Harrell, Williams, South Haughton, North Railroad, Roberson, and White Sts., Williamston, 01001095

Northampton County

Holoman—Outland House, Address Restricted, Rich Square, 01001114

Pender County

Ashe, Gov. Samuel, Grave, Farm Ln., from S side of NC 1411, 0.7 mi. E of crossing of Pike Creek, Rocky Point, 01001096

Pitt County

Oakmont, 2909 S. Memorial Dr., Greenville, 01001115

Rutherford County

Watson, T. Max, House, 297 E. Main St., Forest City, 01001110

Transylvania County

Brombacher, Max and Claire, House, 571 E. Main St., Brevard, 01001111

Wake County

North Carolina Agricultural Experiment Station Cottage, 2714 Vanderbilt Ave., Raleigh, 01001112

Sunnyside, (Wake County MPS) 210 S. Selma Rd., Wendell, 01001113

OKLAHOMA

Carter County

Lake Murray State Park, 1.9 mi. SE of jct. of US 77 and US 70, Ardmore, 01001097

PENNSYLVANIA

Washington County

Monongahela Cemetery, Cemetery Hill Rd. at Gregg St., Monongahela City, 01001116

SOUTH CAROLINA

Calhoun County

Haigler House, Winding Brook Dr., Cameron, 01001099

Florence County

Mt. Zion Rosenwald School, 5040 Liberty Chapel Rd., Florence, 01001098

[FR Doc. 01–26889 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

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 September 8, 2001. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St., NW., NC400 Washington, DC 20240. Written comments should be submitted by November 9, 2001.

Beth Savage,

Acting Keeper of the National Register.

ALASKA

Nome Borough—Census Area

Teller Mission Orphanage, Jct. of Shelman Creek Rd. and Mission St., Brevig Mission, 01001117

ARKANSAS

Cleveland County

New Edinburg Commercial Historic District, AR 8, New Edinburg, 01001118

COLORADO

La Plata County

Durango High School, 201 E. 12th St., Durango, 01001119

Las Animas County

Trinchera Cave Archeological District, Address Restricted, Trinchera, 01001120

Logan County

Sterling Public Library, 210 S. 4th St., Sterling, 01001121

KANSAS

Douglas County

Bailey Hall, Jct. of Jayhawk Dr. and Sunflower Rd., Lawrence, 01001122
Goodrich, Eugene F., House, (Lawrence, Kansas MPS), 1711 Massachusetts St., Lawrence, 01001123
McCurdy, Witter S., House, (Lawrence, Kansas MPS), 909 W. 6th St., Lawrence, 01001124

Morris County

Little John Creek Reserve, E. ½, Sec. 29, T 16 S, R 9 E, Council Grove, 01001125

Shawnee County

Curtis Junior High, 316 NW Grant St., Topeka, 01001126

MISSISSIPPI

Wilkinson County

Woodville Historic District (Boundary Increase III), Roughly bounded by Old Prentiss Hwy., US 61 and City Limits, Woodville, 01001127

MISSOURI

Green County

Walnut Street Historic District (Boundary Decrease), 1100 and 1000 blks. of E. Elm St., Springfield, 01001128

NORTH CAROLINA

Craven County

New Bern-Battlefield Site, US 70 E., approx. 4.5 mi. SE. of New Bern, New Bern, 01001129

Forsyth County

Winston-Salem City Hall, 101 S. Main St., Winston-Salem, 01001130

Gaston County

Loray Mill Historic District, Roughly bounded by W. Franklin Blvd., S. Vance and S. Trenton Sts., and W. 6th Ave. B, Gastonia, 01001131

Granville County

Taylor, Archibald, Plantation House, 5632 Tabbs Creek Rd., Oxford, 01001132

Johnston County

Clayton Graded School and Clayton Grammar School—Municipal Auditorium, 101 and 111 2nd St., Clayton, 01001133

Martin County

Griffin, W.W., Farm, 1871 Wendell Griffin Rd., Williamston, 01001134

Hanover County

Delgrado School, 1930 Colwell Ave., Wilmington, 01001135

OREGON

Josephine County

Allen Gulch Mill, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1 mi. SE of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001148
Allen Gulch Townsite (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1 mi. SE. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001136
Cameron Mine, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 2 mi. S. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001144
Deep Gravel Mine, (Upper Illinois Valley Oregon Mining Resources MPS) Approx. 1 mi. N. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001141
Esterly Pit. No. 2—Llano De Oro Mine, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1.5 mi. N. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001145
Fry Gulch Mine, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. .75 mi. S. from Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001143
High Gravel Mine, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1.3 mi. S. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001142
Logan Cut, (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Logan Cut, Cave Junction, 01001154
Logan Drain Ditches, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 2 mi. N. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction 01001155
Logan Wash Ditch, (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Logan Wash Ditch, Cave Junction, 01001153
Middle Ditch, (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Logan-Esterly Middle Ditch, Cave Junction, 01001150
Old Placer Mine, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 65 mi. W. of Jct. of Rockydale Rd. and BLM Rd. 40–8–15, Cave Junction, 01001140
Osgood Ditch, (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Osgood Ditch, Cave Junction, 01001151
Plataurica Mine, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 75 mi. SE. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001146
St. Patrick's Roman Catholic Cemetery, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1 mi. SE. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001137
Upper Ditch, (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Logan-Esterly Upper Ditch, Cave Junction, 01001149
Waldo Cemetery, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 5 mi. SW. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001138
Waldo Chinese Cemetery, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 5 mi. SW. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001139
Waldo Mine, (Upper Illinois Valley, Oregon Mining Resources MPS) SW. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001147
Wimer Ditch, (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Wimer Ditch, Cave Junction, 01001152

RHODE ISLAND

Kent County

Massie Wireless Station, 1300 Frenchtown Rd., East Greenwich, 01001157

Newport County

Fort Hamilton Historic District, (Lighthouses of Rhode Island TR) Rose Island, Newport, 01001158

Washington County

Hygeia House, (New Shoreham (Block Island), Rhode Island MPS) Beach Ave., New Shoreham, 01001156

SOUTH CAROLINA

Cherokee County

Magness-Humphries House, 101 Grassy Pond Rd., Gaffney, 01001159

Pickens County

Griffin-Christopher House, 208 Ann St., Pickens, 01001160
Stribling, J.C., Barn, 220 Issaqueena Tr., Clemson, 01001161

WASHINGTON

San Juan County

Tacoma Building, 1015–1021 A St., Tacoma, 01001162

A request for removal has been made for the following:

ARKANSAS

Crawford County

Mountainburg High School (Public Schools in the Ozarks MPS) AR 71, Mountainburg, 92001216

[FR Doc. 01–26890 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

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 September 15, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by November 9, 2001.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Covington County

Opp Commercial Historic District, Roughly bounded by Covington Ave., Hart, Main, Whaley and College Sts., Opp, 01001164

Jefferson County

Norwood Boulevard Historic District, 2800–3624 Norwood Blvd., Birmingham, 01001166

Madison County

Lowry House, 1205 Kildare Ave., Huntsville, 01001165

Montgomery County

Cleveland Court Apartments 620–638, 620–638 Cleveland Ct., Montgomery, 01001167

Shelby County

Chancellor House, 51 Chancellor Ferry Rd., Harpersville, 01001168

St. Clair County

Pell City Downtown Historic District, 1900–2111 Cogwell Ave., 2008 1st Ave. S., 8 N. 21st St., 10 S. 20th St., Pell City, 01001169

Tuscaloosa County

Druid City Historic District (Boundary Increase), 3,4,5,6,7,8,10,11 College Park, 711–721 Queen City Ave., Tuscaloosa, 01001170

Wilcox County

Prairie Mission, ¼ mi. SE. of Jct. of AL 28 and McCall Rd., Catherine, 01001171

ARIZONA

Maricopa County

Tubercular Cabin, 6140 Skyline Dr., Cave Creek, 01001172

Pima County

Indian House Community Residential Historic District, Roughly bounded by 5th St., E. Wash, Kane Estates, and Sahura St., Tucson, 01001173

ARKANSAS

Mississippi County

Burdette School Complex Historic District, 153 E. Park Ln., Burdette, 01001174

Three States Lumber Company Mill Powerhouse, Old Mill Rd., Burdette, 01001175

Tompkins, Chris, House, 144 South Oak Dr., Burdette, 01001176

United States Highway 61 Arch, (Arkansas Highway History and Architecture MPS) US 61, Blytheville, 01001177

CALIFORNIA

Riverside County

Estudillo Mansion, 150 S. Dillon, San Jacinto, 01001178

San Francisco County

Lee, Don, Building, 1000 Van Ness Ave., San Francisco, 01001179

FLORIDA

Sarasota County

Southwick—Harmon House, 1830 Lincoln Dr., Sarasota, 01001180

GEORGIA

Union County

Raburn—Casteel House, US 129, 4 mi. N. of Blairsville, Blairsville, 01001181

MARYLAND

Baltimore Independent City

Tuscany-Canterbury Historic District, Roughly bounded by Charles St., University Pkwy., Stony Run, and Warrenton Rd., Baltimore, 01001182

Washington County

Keedysville Historic District, Along Main St., Keedysville, 01001183

Williamsport Historic District, Roughly bounded by C and O Canal, Conococheague Cr., Springfield Ln.,and W. Frederick St., Williamsport, 01001184

MASSACHUSETTS

Worcester County

North Brookfield Town House, 185 N. Main St., North Brookfield, 01001185

Old Douglas Center Historic District, Roughly bounded by Church, Common, Main, NW Main, SW Main and Webster Sts., Douglas, 01001186

NORTH CAROLINA

Orange County

Montrose, 320 St. Mary's Rd., Hillsborough, 01001187

NORTH DAKOTA

Burleigh County

Downtown Bismarck Historic District, Roughly bounded by Broadway and Thayer Aves., 5th St., Burlington and Santa Fe RR corridor, Washington and 2nd Sts., Bismarck, 01001188

[FR Doc. 01–26891 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

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 September 22, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by November 9, 2001.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Maricopa County

Cavness, William Edward, House, 606 N. 4th Ave., Phoenix, 01001191

ARKANSAS

Bradley County

Blankinship Motor Company Building, (Arkansas Highway History and Architecture MPS) 120 E. Cypress St., Warren, 01001190

CALIFORNIA

Los Angeles County

Congregation Talmud Torah of Los Angeles, 247 N. Breed St., Los Angeles, 01001192

Sacramento County

McClatchy, C.K., Senior High School, 3066 Freeport Blvd., Sacramento, 01001193

COLORADO

Morgan County

Central Platoon School, 411 Clayton St., Brush, 01001194

FLORIDA

Palm Beach County

Boca Raton Fire Engine No. 1, 100 S. Ocean Blvd., Boca Raton, 01001195

LOUISIANA

Ascension Parish

Jacob House, LA 22, near I–10, Sorrento, 01001196

MARYLAND

Carroll County

Biggs, William and Catherine, Farm, 8212 Sixes Bridge Rd., Detour, 01001197

MASSACHUSETTS

Middlesex County

St. Paul's Parish Church, 26 Washington St., Malden, 01001199

Suffolk County

Dorchester Heights Historic District, Roughly a one block area surrounding Telegraph Hill, Dorchester, 01001198

MISSISSIPPI

Hinds County

Illinois Central Railroad Depot, 102 Railroad Ave., Terry, 01001200

NEW JERSEY

Bergen County

Bogert—Wilkens Factory Site and the Sandy Beach Swim Club, Address Restricted, Oakland, 01001201

SOUTH CAROLINA

York County

Sharon Downtown Historic District, York St. and Woodlawn Ave., Sharon, 01001202

SOUTH DAKOTA

Hanson County

Saint Peter's Grotto, 24245 Joe St., Farmer, 01001203

WASHINGTON

King County

SCHOONER MARTHA, 1010 Valley St., Suite 100, Seattle, 01001205

Spokane County

Fairmont Hotel, (Single Room Occupancy Hotels in Central Business District of Spokane MPS) 315 W. Riverside Ave., 314 W. Sprague Ave., Spokane, 01001204

WEST VIRGINIA

Jefferson County

St. George's Chapel, N. side VA 51, about 2 mi. W. of Charles Town, Charles Town, 01001189

[FR Doc. 01–26892 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Potomac Heritage National Scenic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 124(a) and 1246(c) and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail market insignia of the Potomac Heritage National Scenic Trail. The insignia for this trail was completed June 2001. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Donald E. Briggs, Superintendent, Potomac Heritage National Scenic Trail

The insignia depicted below is prescribed as the official trail market logo for the Potomac Heritage National Scenic Trail, administered by the National Park Service. Authorization for use of this trail marker is controlled by the administrator of the Trail.

In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Donald E. Briggs, Superintendent, Potomac Heritage National Scenic Trail, National Park Service, Post Office Box B, Harpers Ferry, WV 25425, 304–535–4014.

Dated: August 1, 2001.

Donald E. Briggs,

Superintendent, Potomac Heritage National Scenic Trail.

[FR Doc. 01–26893 Filed 10–24–01; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on August 6, 2001. The March 5, 2001, notice should be used as a reference point to identify changes. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Water Contracts and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in *52 FR 11954*, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in *47 FR 7763*, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 2001. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

BON—Basis of Negotiation
BCP—Boulder Canyon Project
Reclamation—Bureau of Reclamation
CAP—Central Arizona Project
CUP—Central Utah Project
CVP—Central Valley Project
CRSP—Colorado River Storage Project
D&MC—Drainage and Minor Construction
FR—Federal Register
IDD—Irrigation and Drainage District
ID—Irrigation District
M&I—Municipal and Industrial
NEPA—National Environmental Policy Act
O&M—Operation and Maintenance
P–SMBP—Pick-Sloan Missouri Basin Program
PPR—Present Perfected Right
RRA—Reclamation Reform Act
R&B—Rehabilitation and Betterment
SOD—Safety of Dams
SRPA—Small Reclamation Projects Act
WCUA—Water Conservation and Utilization Act
WD—Water District

Pacific Northwest Region

Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5223.

New contract action:

23. Roza ID, Yakima Project, Washington: Deferment contract for the deferment of the District's 2001 construction obligation under the Drought Act of 1959.

Modified contract action:

14. Farmer's and Buck and Jones Ditch Associations or the Applegate Irrigation Corporation, Rogue River Basin Project, Oregon: Long-term irrigation water service contract for provision of up to 4,475 acre-feet of stored water from Applegate Reservoir (a Corps of Engineers' project) in exchange for the assignment of Little Applegate River natural flow rights to Reclamation for instream flow use. Contract may be executed with Applegate Irrigation Corporation representing and comprising the

participating members of the Ditch Associations.

Mid-Pacific Region

Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

Modified contract action:

13. Santa Barbara County Water Agency, Cachuma Operations and Maintenance Board (as acknowledged by the Santa Barbara County Water Agency), Cachuma Project, California: Temporary interim contract (not to exceed 1 year) to transfer responsibility of certain Cachuma Project facilities to member units.

Completed contract actions:

15. East Bay Municipal Utility District, CVP, California: Amendment to long-term water service contract No. 14–06–200–5183A to change the points of diversion and adjust water quantities. The amended contract will conform to current Reclamation law. Amendatory contract No. 14–06–200–5183A–1 was executed July 20, 2001.

36. Monterey County Water Resources Agency, SRPA, California: Proposed contract amendment to provide for deferral of installments of construction charges under a SRPA loan repayment contract. Amendatory contract No. 5–07–20–W1283A was executed September 5, 2001.

37. Monterey Regional Water Pollution Control Agency, SRPA, California: Proposed contract amendment to provide for deferral of installments of construction charges under a SRPA loan repayment contract. Amendatory contract No. 5–07–W1284A was executed September 5, 2001.

39. Truckee-Carson ID, Newlands Project, Nevada: Amendment to O&M contract No. 7–07–20–X0348 to include mutually agreed upon Consumer Price Index for the current year and incorporation of a new Consumer Price Index as determined by the Contracting Officer applicable to Fallon, Nevada (or the nearest urban area in the event that such index is not determined for Fallon, Nevada). Amendatory contract No. 7–07–20–X0348A was executed September 10, 2001.

Lower Colorado Region

Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

Modified contract action:

3. Brooke Water Company, BCP, Arizona: Contract amendment for additional Colorado River water to entities located along the Colorado River in Arizona for up to 120 acre-feet per year for domestic uses as recommended by the Arizona Department of Water Resources.

Discontinued contract actions:

54. City of Chandler, CAP, Arizona: Proposed amendment of CAP water delivery subcontract to delete provision requiring offsetting reduction of Chandler's CAP water entitlement for quantities of water received in a direct effluent exchange with an Indian community. This action was combined with item No. 55 of the March 5, 2001, report and is now item No. 63 as published in the August 6, 2001, report.

55. City of Mesa, CAP, Arizona: Proposed amendment of CAP water delivery subcontract to delete provision requiring offsetting reduction of Mesa's CAP water entitlement for quantities of water received in a direct effluent exchange with an Indian community. This action was combined with item No. 54 of the March 5, 2001, report and is now item No. 63 as published in the August 6, 2001, report.

Completed contract actions:

3. Havasu Water Co., BCP, Arizona: Contracts for additional Colorado River water to entities located along the Colorado River in Arizona for up to 1,420 acre-feet per year for domestic uses as recommended by the Arizona Department of Water Resources.

23. Southern Nevada Water Authority, Robert B. Griffith Water Project, BCP, Nevada: Amend the repayment contract to provide for the incorporation of the Griffith Project into the expanded Southern Nevada Water System, funded and built by Southern Nevada Water Authority, to facilitate the diversion, treatment, and conveyance of additional water out of Lake Mead for which the Authority has an existing entitlement to use.

37. Southern Nevada Water Authority, Robert B. Griffith Water Project, Nevada: Title transfer of physical facilities with interest in acquired lands and grant or assignment of perpetual rights or easements over Federal lands.

41. BHP Copper, Inc., CAP, Arizona: Proposed agreement and amendments to CAP water delivery subcontracts to transfer BHP Copper's CAP water allocation to the City of Scottsdale, Town of Carefree, and Tonto Hills Utility Company.

59. Yuma County Water Users Association, Colorado River Front Work and Levee System, Arizona: Contract providing for operation, maintenance, and replacement of drainage facilities.

60. North Baja Pipeline, BCP, Arizona: Contract assignment of agricultural water from Jamar Produce Corporation to North Baja Pipeline.

Upper Colorado Region:

Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147, telephone 801–524–3691.

New contract actions:

24. Provo River Water Users Association, Provo River Project, Utah: Contract to provide for repayment of reimbursable portion of construction costs of SOD modifications to Deer Creek Dam.

25. Village of Taos Ski Valley, San Juan-Chama Project, New Mexico: Conversion of M&I water service contract for 15 acre-feet per year to a repayment contract.

26. City of Espanola, San Juan-Chama Project, New Mexico: Conversion of M&I water service contract for 1,000 acre-feet per year to a repayment contract.

Modified contract action:

11. Sanpete County Water Conservancy District, Narrows Project, Utah: Application for a SRPA loan and grant to construct a dam, reservoir, and pipeline to annually supply approximately 5,000 acre-feet of water through a transmountain diversion from upper Gooseberry Creek in the Price River drainage (Colorado River Basin) to the San Pitch—Sevier River (Great Basin).

Completed contract action:

16. Twining Water and Sanitation District, San Juan-Chama Project, New Mexico: Assignment of M&I water service contract for 15 acre-feet per year to the Village of Taos Ski Valley and conversion of contract from water service to repayment contract. Assignment executed September 6, 2001.

Great Plains Region:

Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

New contract actions:

48. Lower Marias Unit, P–SMBP, Montana: Initiating 25-year water service contract for up to 910 acre-feet of storage from Tiber Reservoir to irrigate 303.2 acres. A 1-year temporary contract has been issued to allow additional time to complete necessary actions required for the long-term contract. Another 1-year temporary has been issued to continue delivery of water until the long-term renewal process can be completed.

49. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: The District has requested deferment of its 2002 repayment obligation. A BON has been

prepared requesting approval to amend contract No. 14–06–500–369.

Modified contract actions:

42. Lower Marias Unit, P–SMBP, Montana: City of Chester water service contract expires January of 2002. Initiating negotiation for renewal of a water service contract for an annual supply of raw water for domestic use from the Milk River not to exceed 500 acre-feet. A 1-year interim contract may be issued to continue delivery of water from the Milk River below Fresno Reservoir until the necessary actions can be completed to renew the long-term contract.

47. City of Dickinson, P–SMBP, North Dakota: In accordance with Public Law 106–566, a BON has been prepared to amend Contract No. 9–07–60–W0384 which will allow the City to pay a lump-sum payment in lieu of its remaining repayment obligation for construction costs associated with the bascule gate. The BON has been approved by the Commissioner.

Dated: October 17, 2001.

Elizabeth Cordova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 01–26871 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 26, 2001, Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed Schedule II.

The firm plans to import phenylacetone for the production of amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 27, 2001.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: October 12, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–26880 Filed 10–24–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice date December 21, 2000, and published in the **Federal Register** on January 10, 2001, (66 FR 2005), Orpharm, Inc., 4815 Dacoma, Houston, Texas 77092, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
levo-alphacetylmethadol (9648)	II

The firm plans to bulk manufacture the listed controlled substances for formulation into finished pharmaceuticals.

No comments or objections have been received. DEA has considered the factors, in title 21, United States Code, Section 823(a) and determined that the registration of Orpharm, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Orpharm, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 12, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–26878 Filed 10–24–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 27, 2001, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The institute will manufacture small quantities of cocaine derivatives and marihuana derivatives for use by their customers primarily in analytical kits, reagents and standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 24, 2001.

Dated: October 12, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–26879 Filed 10–24–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 19, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or e-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Stuart Shapiro, OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Bloodborne Pathogen Standard (Needle Stick Safety and Prevention Act).

OMB Number: 1218–0246.

Affected Public: Business or other for-profit, Not-for-profit institutions; Federal Government; and State, local, or tribal government.

Type of Response: Recordkeeping; Reporting; and Third-party disclosure.

Number of Respondents: 502,724.

Requirement	Number of annual responses	Frequency	Average response time (hours)	Annual burden hours
Exposure Control Plan—29 CFR 1910.1030(c)(1)				
Employee Solicitation	502,724	Annual & On occasion	.25	125,681
Employee Response	3,744,887	Annual & On occasion	.25	936,222
Written Update of Plan	502,724	Annual & On occasion	.25	125,681
Recordkeeping—29 CFR 1910.1030(h)(5)				
Sharp Injury Log	590,164	On occasion	.08333	49,180
Total	5,340,499			1,236,764

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Needlestick Safety and Prevention Act (NSPA) directs OSHA to amend the Bloodborne Pathogens standard to require that employers update their exposure control plans to reflect how employers implement new developments in control technology; solicit input from employees responsible for direct patient care in the identification, evaluation, and the selection of engineering and work practice controls; and, for certain employers, to establish and maintain a log of percutaneous injuries from contaminated sharps.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–26925 Filed 10–24–01; 8:45 am]

BILLING CODE 4510–26–M

MERIT SYSTEMS PROTECTION BOARD

Return to Normal Procedures-Filings With New York Field Office

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that variations from the Boards normal case processing procedures at the New York Field Office as the result of the September 11, 2001 attacks on the World Trade Center are rescinded. The other variations in normal case processing procedures announced on September 26, 2001 remain in effect.

DATES: October 25, 2001.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, (202) 653–7200.

SUPPLEMENTARY INFORMATION: By Federal Register Notice of September 26, 2001 (66 FR 49213) the Board announced variations in its normal case processing procedures. Specifically, filings due to the New York Field Office were to be made with the MSPB Northeastern

Regional Office in Philadelphia, Pennsylvania. The New York Field Office is now open for business, however, admittance to the office, including for administrative hearings, must be approved in advance. The office is open to Federal employees with proper identification; non Federal employees must show identification and proof that they have an appointment. The address of the New York Field Office is: 26 Federal Plaza, Room 3137A, New York, New York 10278. The telephone number is (212) 264–9372 and the fax number is (212) 264–1417.

Dated: October 19, 2001.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 01–26797 Filed 10–24–01; 8:45 am]

BILLING CODE 7400–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 7, 2001, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, November 7, 2001—3:00 p.m. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

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. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, 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 contacting the cognizant ACRS staff person, Howard J. Larson (telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 17, 2001.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 01–26833 Filed 10–24–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27454]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 19, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 13, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 13, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Holyoke Water Power Company (70–9943)

Holyoke Water Power Company ("HWP"), an electric utility company subsidiary of Northeast Utilities ("NU"), a registered holding company, and Holyoke Power and Electric Company (lrdquo;HP&E"), a wholly owned subsidiary of HWP, both located at 1 Canal Street, Holyoke, Massachusetts 01040, have filed a declaration under section 12(d) and rules 44 and 54 under the Act.

HWP and HP&E seek authorization to sell to the City of Holyoke Gas and Electric Department ("HG&E") certain hydroelectric generating facilities, associated distribution assets, and other related assets. The sale is a result of both an agreement settling certain litigation between the applicants and HG&E and a Federal Energy Regulatory Commission hydroelectric plant relicensing proceeding. The assets consist of (i) the Holyoke Dam and related units; (ii) related inventory and units, including poles and wires; (iii) certain of HWP's properties in the city of Holyoke, along with certain properties in the cities of Chicopee and South Hadley, Massachusetts; (iv) contracts with all of HWP's retail customers; and (v) all millpowers, water exchange agreements, licenses, and other agreements related to the acquired assets (collectively, "HWP Assets"). The HWP Assets comprise between 78–80% of HWP's total assets and between 22–23% of HWP's total generating capacity. The sale will dispose of HWP's entire hydroelectric generating capacity. HG&E will also assume certain liabilities associated with the HWP Assets and reassume HWP's position as licensee for the hydroelectric facilities under a license issued by the Federal Regulatory Energy Commission ("FERC"). The license is subject to various FERC rehearing requests.

HG&E will pay HWP $17.55 million, subject to closing adjustments, for the HWP Assets. Various FERC-jurisdictional transmission assets will be included with the HWP Assets and are the subject of various filings made by HWP with FERC.[1] HG&E will

[1] These filings include a request for approval for the transfer of a hydro license under Part I of the Federal Power Act, for the sale of the hydroelectric

Continued

continue to use the HWP Assets to generate electricity.

The net proceeds of the sale will be invested by HWP in the NU System Money Pool ("NU Money Pool")[2] and/or other short-term investments until later in 2001 when the proceeds will be paid to NU as a dividend or used to retire some of HWP's debt.

NiSource Inc., et al. (70–9945)

NiSource Inc. ("NiSource"), a registered holding company, its utility subsidiaries: Northern Indiana Public Service Company ("Northern Indiana"), Kokomo Gas and Fuel Company ("Kokomo"), Northern Indiana Fuel and Light Company ("NIFL"), all located at 801 East 86th Avenue, Merrillville, Indiana 46410–6272; Bay State Gas Company ("Bay State"), Northern Utilities, Inc. ("Northern Utilities"), both located at 300 Friberg Parkway, Westborough, Massachusetts 01581–5039; Columbia Gas of Kentucky, Inc. ("Columbia Kentucky"), Columbia Gas of Ohio, Inc. ("Columbia Ohio"), Columbia Gas of Maryland, Inc. ("Columbia Maryland"), Columbia Gas of Pennsylvania, Inc. ("Columbia Pennsylvania"), and Columbia Gas of Virginia, Inc. ("Columbia Virginia"), all located at 200 Civic Center Drive, Columbia, Ohio 43215; Columbia Energy Group ("Columbia"), a subsidiary registered holding company of NiSource, 801 East 86th Avenue, Merrillville, Indiana 46410–6272; and NiSource's nonutility subsidiaries: NiSource Corporate Services Company, EnergyUSA, Inc., (an Indiana corporation), EnergyUSA–TPC Corp., Energy USA, Inc. (a Massachusetts corporation), Primary Energy, Inc., NiSource Capital Markets, Inc. ("NiSource Capital"), NiSource Finance Corp. ("NiSource Finance"), NiSource Development Company, Inc., NI Energy Services, Inc., NiSource Energy Technologies, Inc., Columbia Assurance Agency, Inc., Columbia Accounts Receivable Corporation, Columbia Atlantic Trading Corporation, Columbia Electric Remainder Corporation, Columbia Energy Services Corporation, Columbia Insurance Corporation, Ltd., Columbia LNG Corporation, Columbia Energy Retail Marketing Corporation, Columbia Service Partners, Inc., all located at 801 East 86th Avenue, Merrillville, Indiana 46410–6272; Columbia Energy Resources, Inc., Alamco-Delaware, Inc., Hawg Hauling & Disposal, Inc., Columbia Natural Resources, Inc., all located at 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Gas Transmission Corporation, Columbia Transmission Communications Corporation, NiSource Pipeline Group, Inc., Crossroads Pipeline Company, Columbia Pipeline Corporation, Columbia Energy Group Capital Corporation, Columbia Deep Water Services Company, all located at 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146; IWC Resources Corporation, 1220 Waterway Boulevard, Indianapolis, Indiana 46202; SM&P Utility Resources, Inc., 11455 North Meridian Street, Suite 200, Carmel, Indiana 46032; and Columbia Gulf Transmission Company, 2603 Augusta, Suite 125, Houston, Texas 77057 (collectively "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and rules 45, 53 and 54 under the Act.

Applicants request authority to establish a new NiSource system money pool ("Money Pool") that will replace the current Columbia system money pool and, to the extent not exempted by rule 52, Applicants request authorization for the period through December 31, 2003 (the "Authorization Period") to make unsecured short-term borrowings from the Money Pool, to contribute surplus funds to the Money Pool, and to lend and extend credit to (and acquire promissory notes from) one another through the Money Pool. To the extent not exempted by rule 45(b) or rule 52(d), as applicable, NiSource, directly or indirectly through NiSource Finance, requests authorization to invest surplus funds and/or to lend and extend credit to the participating subsidiaries through the Money Pool.

In addition, Columbia Maryland requests authorization to issue additional shares of its common stock and long-term debt securities to Columbia from time to time during the Authorization Period in an aggregate amount not to exceed $40 million.

NiSource Money Pool

NiSource, Columbia, NiSource Finance, and NiSource Capital will participate in the Money Pool as investors only and not as borrowers. Exempt wholesale generators ("EWGs"), foreign utility companies ("FUCOs"), and exempt telecommunications companies ("ETCs") will be specifically excluded from participating in the money Pool as borrowers.

Under the proposed terms of the Money Pool Agreement, short-term funds would be available from the following sources for short-term loans to the participating subsidiaries from time to time: (1) Surplus funds in the treasuries of Money Pool participants, and (2) proceeds received by NiSource Finance from the sale of commercial paper, borrowings from banks and other lenders, and other financing arrangements ("External Funds"), as authorized by order of the Commission dated November 1, 2000 (HCAR No. 27265). Funds would be made available from these sources in the order NiSource Corporation Services Company, as the Administrative Agent, may determine would result in a lower cost of borrowing, consistent with the individual borrowing needs and financial standing of Money Pool participants that invest finds in the Money Pool. The Commission is requested to reserve jurisdiction over the participation as a borrower of any other direct or indirect, current or future, non-utility subsidiary of NiSource.

Proceeds of any short-term borrowings from the Money Pool may be used by a participant (i) for the interim financing of its construction and capital expenditure programs; (ii) for its working capital needs; (iii) for the repayment, redemption or refinancing of its debt and preferred stock; (iv) to meet unexpected contingencies, payment and timing differences, and cash requirements; and (v) to otherwise finance its own business and for other lawful general corporate purposes.

The utility subsidiaries (other than Columbia Virginia)[3] request authority to make borrowings through the Money Pool in the following maximum amounts at any time outstanding:

Northern Indiana	$1,000,000,000
Kokomo	50,000,000
NIFL	50,000,000
Bay State	250,000,000
Northern Utilities[4]	50,000,000
Columbia Ohio	700,000,000
Columbia Kentucky	80,000,000
Columbia Pennsylvania	300,000,000
Columbia Maryland	50,000,000

Borrowing under the Money Pool by participating subsidiaries that are authorized to borrow, other than the utility subsidiaries, will be exempt pursuant to Rule 52(b).

facilities and assignment of related agreements under Section 203 of the Federal Power Act, and for the modification or termination of certain power contracts by HWP under Section 205 of the Federal Power Act.

[2] The NU Money Pool was originally approved in SEC File No. 70–9755, HCAR No. 27328 (December 28, 2000).

[3] Borrowings under the Money Pool by Columbia Virginia will be exempt under rule 52(a).

[4] Any borrowings by Northern Utilities under the Money Pool that are in excess of 10% of its net fixed plant must be approved by the New Hampshire Public Utilities Commission and, therefore, would be exempt under rule 52(a).

Long-Term Securities of Columbia Maryland

Columbia Maryland requests authorization to issue and sell from time to time during the Authorization Period, and Columbia requests authorization to acquire, additional shares of Columbia Maryland's common stock and long-term debt securities. The aggregate amount of common stock and/or long-term debt securities to be issued by Columbia Maryland during the Authorization Period will not to exceed $40 million. The funds required by Columbia in order to make loans to Columbia Maryland will be derived from borrowings from NiSource Finance.

The interest rate on long-term debt securities issued by Columbia Maryland to Columbia will be designed to match the interest rate on borrowings made by Columbia from NiSource Finance in order to fund the purchase of such long-term securities, which, in turn, will be equal to the effective rate (i.e., interest rate plus issuance costs) for the most recent long-term debt securities issued by NiSource finance during the previous calendar quarter. If no such long-term debt securities were issued by NiSource finance during the previous calendar quarter, then the interest rate on long-term debt securities issued by Columbia Maryland to Columbia will be either the estimated new long-term rate that would be in effect if NiSource Finance were to issue long-term debt securities, as projected by a major investment bank, or the prevailing market rate for a newly issued "BBB"-rated utility bond. Long-term notes issued by Columbia Maryland to Columbia may have maturities of up to 30 years and may be either secured or unsecured.

NiSource commits to maintain common equity of Columbia Maryland, as a percentage of Columbia Maryland's consolidated capitalization (including short-term debt), at or above 30%.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26898 Filed 10–24–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25216; 812–12608]

WNC Housing Tax Credit Fund VI, L.P., Series 9 and Series 10, and WNC & Associates, Inc.; Notice of Application

October 19, 2001.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (the "Act") granting relief from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections.

Applicants: WNC Housing Tax Credit Fund VI, L.P., Series 9 and WNC Housing Tax Credit Fund VI, L.P., Series 10 (each a "Series," and collectively, the "Fund"), and WNC & Associates, Inc. (the "General Partner").

Summary of the Application: Applicants request an order to permit each Series to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

Filing Date: The application was filed on August 17, 2001. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 9, 2001, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, 3158 Redhill Avenue, Suite 120, Costa Mesa, California 92626–3416.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, (202) 942–0634, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (Telephone (202) 942–8090).

Applicants' Representations

1. Each Series was formed in 2001 as a California limited partnership. Each Series will operate as a "two-tier" partnership, i.e., each Series will invest as a limited partner in other limited partnerships ("Local Limited Partnerships"). The Local Limited Partnerships in turn will engage in the ownership and operation of apartment complexes expected to be qualified for low income housing tax credit under the Internal Revenue Code of 1986, as amended.

2. The objectives of each Series are (a) to provide current tax benefits primarily in the form of low income housing credits which investors may use to offset their Federal income tax liabilities, (b) to preserve and protect capital, and (c) to provide cash distributions from sale or refinancing transactions.

3. On August 16, 2001, the Fund filed a registration statement under the Securities Act of 1933, pursuant to which the Fund intends to offer publicly, in two series of offerings, 25,000 units of limited partnership interest ("Units") at $1,000 per unit. The minimum investment will be five Units for most investors, although employees of the General Partner and its affiliates and/or investors in syndications previously sponsored by the General Partner may purchase a minimum of two Units. Purchasers of the Units will become limited partners ("Limited Partners") of the Series offering the Units.

4. A Series will not accept any subscriptions for Units until the requested exemptive order is granted or the Series receives an opinion of counsel that it is exempt from registration under the Act. Subscriptions for Units must be approved by the General Partner. Such approval will be conditioned upon representations as to suitability of the investment for each subscriber. The suitability standards provide, among other things, that investment in a Series is suitable only for an investor who either (a) has a net worth (exclusive of home, furnishings, and automobiles), of at least $35,000 and an annual gross income of at least $35,000, or (b) irrespective of annual income, has a net worth (exclusive of home, furnishings, and automobiles) of at least $75,000.

Units will be sold only to investors who meet these suitability standards, or such more restrictive suitability standards as may be established by certain states for purchasers of Units within their respective jurisdictions. In addition, transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed on the transferor Limited Partner.

5. Although a Series' direct control over the management of each apartment complex will be limited, the Series' ownership of interests in Local Limited Partnerships will, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. A Series normally will acquire at least a 90% interest in the profits, losses, and tax credits of the Local Limited Partnerships. However, in certain cases, the Series may acquire a lesser interest in such partnerships. Each Local Limited Partnership's partnership agreement will provide that distributions of proceeds from a sale or refinancing of an apartment complex will be paid to a Series in the range of from 10% to 50%.

6. Each Series will have certain voting rights with respect to each Local Limited Partnership. The voting rights will include the right to dismiss and replace the local general partner on the basis of performance, to approve or disapprove a sale or refinancing of the apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership, and to approve or disapprove amendments to the Local Limited Partnership agreement materially and adversely affecting the Series' investment.

7. Each Series will be controlled by the General Partner, pursuant to a partnership agreement (the "Partnership Agreement"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Series. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement, and to dissolve the Series. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Series.

8. Applicants state that the Partnership Agreement and prospectus of the Series contain provisions designed to ensure fair dealing by the General Partner with the Limited Partners. Applicants also state that all compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and prospectus. Applicants believe that the fees and other forms of compensation that will be paid to the General Partner and its affiliates are fair and on terms no less favorable to the Series than would be the case if such arrangements had been made with independent third parties.

9. During the offering and organizational phase, the General Partner and its affiliates will receive a dealer-manager fee and a nonaccountable expense reimbursement in amounts equal to 2% and 4%, respectively, of capital contributions. The General Partner has agreed to pay all organizational and offering expenses (excluding selling commissions, the dealer-manager fee, and the nonaccountable expense reimbursement).

10. During the acquisition phase, each Series will pay the General Partner or its affiliates a fee equal to 7% of capital contributions for analyzing and evaluating potential investments in Local Limited Partnerships and for various other services. The General Partner and its affiliates will receive a nonaccountable acquisition expense reimbursement equal to 2% of capital contributions in consideration of which the General Partner will pay all acquisition expenses of each Series. Aggregate fees and expenses paid in connection with the organization of each Series, the offering of Units, and the acquisition of Local Limited Partnership interests by each Series will be limited by the Partnership Agreement and will comply with guidelines published by the North American Securities Administrators Association. These guidelines require that a specified percentage (generally 80%, but subject to reduction) of the aggregate Limited Partners' capital contributions to the Fund be committed to Local Limited Partnership interests.

11. During the operating phase, the General Partner will receive 0.1% of any cash available for distribution, and each Series may pay certain fees and reimbursements to the General Partner or its affiliates. An asset management fee will be payable for services related to the administration of the affairs of each Series and ongoing management of each Series. Other fees may be paid in consideration of property management services provided by the General Partner or its affiliates as the management and leasing agents for some of the apartment complexes. In addition, the General Partner and its affiliates generally will be allocated 0.1% of profits and losses of each Series for tax purposes and tax credits.

12. During the liquidation phase, and subject to certain prior payments to the Limited Partners, each Series will pay the General Partner or its affiliates a fee equal to 1% of the sales price of the apartment complexes sold in which the General Partner or its affiliates have provided a substantial amount of services. The General Partner also will receive 10% of any additional sale or refinancing proceeds.

13. All proceeds from a Series' public offering of Units initially will be placed in an escrow account with USbank ("Escrow Agent"). Pending release of offering proceeds to the Series, the Escrow Agent will deposit escrowed funds in short-term United States Government securities, securities issued or guaranteed by the United States Government, and certificates of deposit or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum amount of capital contributions for a Series, funds in escro will be released to the Series and held by it pending investment in Local Limited Partnerships.

14. If more than one entity that the General Partner or its affiliates advises or manages may invest in a particular investment opportunity, the decision as to the entity that will be allocated the investment will be based upon such factors as the effect of the acquisition on diversification of each entity's portfolio, the estimated income tax effects of the purchase on each entity, the amount of funds of each entity available for investment, and the length of time such funds have been available for investment. Priority generally will be given to the entity having uninvested funds for the longest period of time. However, any entity that was formed to invest primarily in apartment complexes eligible for state low income housing tax credits ("state tax credits") as well as for Federal low income housing tax credits will be given priority with respect to any investment that is eligible for state tax credits over entities which are not seeking to provide state tax credits.

Applicants' Legal Analysis

1. Applicants believe that the Fund and its Series will not be "investment companies" under sections 3(a)(1)(A) or 3(a)(1)(C) of the Act. If the Fund and its Series are deemed to be investment companies, however, applicants request an exemption under section 6(c) and 6(e) of the Act from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections.

2. Section 3(a)(1)(A) of the Act provides that an issuer is an "investment company" if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants believe that the Fund will not be an investment company under section 3(a)(1)(A) because the Fund will be in the business of investing in and being beneficial owner of apartment complexes, not securities.

3. Section 3(a)(1)(C) of the Act provides that an issuer is an "investment company" if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire "investment securities" having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items). Applicants state that although the Local Limited Partnership interests may be deemed "investment securities," they are not readily marketable, cannot be sold without severe adverse tax consequences, and have no value apart from the value of the apartment complexes owned by the Local Limited Partnerships.

4. Applicants believe that the two-tier structure is consistent with the purposes and criteria set forth in the SEC's release concerning two-tier real estate partnership (the "Release").[1] The Release states that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for an exemption from the Act pursuant to section 6(c). Section 6(c) provides that the SEC may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(c) permits the SEC to require companies exempted from the registration requirements of the Act to comply with certain specified provisions of the Act as though the company were a registered investment company.

5. The Release lists two conditions, designed for the protection of investors, which must be satisfied by two-tier partnerships to qualify for the exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

6. Applicants assert, among other things, that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provide protection to investors in Units. In addition, applicants assert that the requested exemption is both necessary and appropriate in the public interest.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26897 Filed 10–24–01; 8:45 am]

BILLING CODE 8010–01–M

[1] Investment Company Act Release No. 8465 (Aug. 9, 1974).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [66 FR 53282, October 19, 2001]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, October 23, 2001 at 9:30 a.m.

CHANGE IN THE MEETING: Cancellation of meeting.

The closed meeting scheduled for Tuesday, October 23, 2001, has been cancelled.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 23, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–27016 Filed 10–23–01; 2:11 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44952; File No. SR–BSE–2001–01]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change Relating to the Trading of Nasdaq Securities on the Floor of the Exchange

October 18, 2001.

I. Introduction

On May 15, 2001, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change regarding the trading of Nasdaq securities on the floor of the Exchange, pursuant to unlisted trading privileges ("UTP"). On June 15, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended by Amendment by Amendment No. 1, was published in the **Federal Register** on July 3, 2001.[4] The Commission received two comment letters on the proposed rule change.[5] On October 4, 2001, the BSE submitted Amendment No. 2 to the proposed rule change.[6] This order approves the proposed rule change, as amended. In addition, the Commission solicits comment on Amendment No. 2 to the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated June 14, 2001 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 44476 (June 26, 2001), 66 FR 35293.

[5] *See* letters to Jonathan G. Katz, Secretary, SEC, from Kevin J.P. O'Hara, General Counsel, Archipelago, L.L.C., dated July 13, 2001 ("Archipelago Letter"); and Eugene A. Lopez, Senior Vice President, Nasdaq Stock Market, Inc., dated August 15, 2001 ("Nasdaq Letter").

[6] *See* letter from John Boese, Assistant Vice President, Legal and Regulatory, BSE, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated October 3, 2001 ("Amendment No. 2"). In Amendment No. 2, the Exchange clarified language in the rule text and deleted a sentence in proposed Section 3 that required that transactions that could not be submitted to ACT be reported to the NASD's Market Regulations Department. According to BSE, this sentence was deleted because it reflected a NASD requirement that does not apply to UTP exchanges.

II. Description of the Proposal

The Exchange proposes to trade certain over-the-counter ("OTC") securities. *i.e.*, Nasdaq securities, on the floor of the Exchange, pursuant to UTP under Section 12(f) of the Act.[7] Therefore, to accommodate these new securities on the Exchange floor, the Exchange proposes to add Chapter XXXV, Trading in Nasdaq Securities, to the Rules of Board of Governors of the Boston Stock Exchange ("BSE rules"). The rules set forth in Chapter XXXV specifically govern the trading of Nasdaq securities, with references to various sections of other BSE Rules relating to the trading of equity securities, as well as references to selected NASD rules, where appropriate. In addition, the BSE proposes a stock allocation program for Nasdaq securities, which phases out over a two year period.

III. Summary of Comments

The Commission received two comments on the proposed rule change.[8] One commenter supported the proposal.[9] One commenter requested that the comment period be extended and requested clarification of certain issues.[10] BSE submitted a letter responding to Nasdaq's question.[11]

In its letter, Nasdaq requested further clarification of BSE's proposed Section 4(c), which permits specialists to switch from automatic execution to manual execution in unusual trading situations and how this section relates to BSE's intention to participate in the Nasdaq National Market Execution System ("SuperSoes").[12] Moreover, Nasdaq believed that the reference to "price volatility" to be vague and did not clearly define when a BSE specialist could turn off the auto-execution functionality. Finally, Nasdaq questioned whether BSE specialists were planning on quoting away from the BBO because Nasdaq believed that such practices may result in BSE specialists' *de facto* withdrawal from the market.

The BSE responded that specialists will only be permitted to turn off the auto-execution functionality on their workstation in rare circumstances, such as following a regulatory halt. Further, the Exchange stated that its surveillance and front desk floor operations departments will protect against unwarranted and unfettered use of the ability to switch to manual execution. Specifically, the Exchange stated that a specialist will be required to get the approval of two floor officials to request that the auto-execution functionality be turned off and that the ability to switch to manual mode rests solely with the Exchange's surveillance and front desk floor operations departments. The Exchange, therefore, believed that the ability to switch to manual mode will not result in a *de facto* withdrawal from the market because it will be used only in extreme situations and will be controlled by the Exchange.

Nasdaq also requested information regarding BSE's audit trail requirements. BSE responded that as a part of the Intermarket Surveillance Group ("ISG"), all quotes and trades from the Exchange are captured by ISG's PATRINA system, which establishes an audit trail. The BSE also noted that the Exchange would be reporting its Nasdaq trades through ACT, which should further enhance the audit trail for BSE trades.

Nasdaq requested information regarding BSE's enforcement and surveillance capabilities regarding trading of Nasdaq securities. BSE noted that it had submitted its procedures to the Commission's Office of Compliance Inspections and Examinations for review.

Nasdaq also noted that BSE's examination and qualification requires are different than those applicable to Nasdaq market makers and requested information on how BSE intends to ensure that its members have a thorough understanding of the trading of Nasdaq securities. BSE responded that it had modified its floor examination to include sections relating to Nasdaq trading. Further, BSE noted that, although not required, every specialist who will be trading Nasdaq securities on the Exchange upon commencement of the process has voluntarily taken and passed the NASD Series 55 exam relating to the trading of Nasdaq securities, as well as the Series 63, NASAA Uniform State Law Examination.

Finally, Nasdaq questioned whether BSE would voluntarily comply with NASD Rule 4613 regarding locked/crossed markets before the open. BSE responded that it would not be trading before the opening.

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5) of the Act.[13] The Commission believes that BSE's proposal to trade Nasdaq securities should promote competition, consistent with Section 6 of the Act.[14] In addition, the Commission believes that BSE has proposed rules that should ensure that trading in Nasdaq securities on its floor occurs in an orderly fashion, consistent with the requirements of the Act. The Commission, therefore, believes that the proposal should remove impediments to and perfect the mechanism of a free and open market in a manner that is consistent with the protection of investors and the public interest.[15] The Commission also notes that BSE's responses to the comments raised in the Nasdaq letter were sufficient.[16]

Furthermore, the proposed rule change is consistent with Section 12(f)(2) of the Act,[17] which grants the Commission explicit authority to approve UTP in OTC securities. Section 12(f)(2) of the Act requires the Commission, prior to approving UTP, to determine that the granting of UTP is consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission believes that the proposed rule change is consistent with these goals and thus, the Commission is approving the proposed rule change, subject to the BSE complying with the requirements of the OTC/UTP Plan.[18]

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[7] 15 U.S.C. 781(f).

[8] *See* note 5 *supra*.

[9] *See* Archipelago Letter.

[10] *See* Nasdaq Letter.

[11] *See* letter to Adena Friedman, Senior Vice President, Data Products, Nasdaq, from George W. Mann, Senior Vice President and General Counsel, BSE, dated August 29, 2001.

[12] According to Nasdaq, participants in SuperSoes are required to provide automatic execution when they are at the BBO.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f.

[15] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

[16] The Commission notes that proposed Section 28 of the BSE's rules, Short Sales, does not require an exemption form the Commission's short sales rule, Rule 10a–1, since Nasdaq securities currently are excluded from the Rule. *See* 17 CFR 240.10a–1(a)(1)(ii). However, Nasdaq has applied to become a national securities exchange. *See* Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001). If Nasdaq becomes a registered exchange, Nasdaq securities will be exchange listed and subparagraph (ii) of Rule 10a–1 will no longer be available. Accordingly, BSE specialists trading Nasdaq securities would be subject to Rule 10a–1 unless BSE obtains an exemption from the Rule. Nasdaq has requested an exemption from Rule 10a–1.

[17] 15 U.S.C. 781(f)(2).

[18] The OTC/UTP Plan refers to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities and for Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privileges Basis. The Commission notes that on August 29, 2001, BSE became a full participant in the OTC/UTP Plan. The other participants of the OTC/UTP Plan are the American Stock Exchange LLC, the Chicago Stock Exchange, Inc, the Cincinnati Stock Exchange, Inc., the

Finally, the Commission finds good cause to accelerate approval of Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register.** The Commission notes that Amendment No. 2 merely clarifies the rule language and deletes inapplicable language. The amendment, therefore, does not substantively change the meaning or intent of the proposed rule change. For these reasons, the Commission believes that good cause exists, consistent with Sections 6(b)(5)[19] and 19(b)[20] of the Act, to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2001–01 and should be submitted by November 15, 2001.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–BSE–2001–01), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26864 Filed 10–24–01; 8:45 am]

BILLING CODE 8010–01–M

National Association of Securities Dealers, Inc., the Pacific Exchange, Inc, and the Philadelphia Stock Exchange, Inc.

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78s.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44950; File No. SR–NASD–00–02]

Self-Regulatory Organizations; Notice of Filing of Amendments to Proposed Rule Change by National Associatioan of Securities Dealers, Inc. Amending NASD Code of Arbitration Rules 10335 and 10205(h) Relating to Injunctive Relief

October 18, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2000, May 17, 2001 and August 10, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("Commission") Amendment No. 3, Amendment No. 4 and Amendment No. 5 to the proposed rule change respectively, as described in Items I, II, and III below, which items have been prepared by NASD Dispute Resolution.[3] On April 7, 2000, the proposed rule change, which incorporated Amendment No. 1 and Amendment No. 2,[4] was published for comment in the **Federal Register**.[5] The Commission is publishing this notice to solicit comments on Amendment Nos. 3, 4, and 5 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend Rules 10335 and 10205(h) of the Code of Arbitration Procedure of the NASD ("Code"), to simplify and clarify the procedures for obtaining injunctive relief in certain disputes subject to arbitration. Below is the text of the proposed rule change. Changes to the proposed rule text added since the proposed rule change was published in the **Federal Register** on April 7, 2000 are in italics; deletions from the previously published rule change are in brackets.[6]

Rules of the Association

* * * * *

10000. Code of Arbitration Procedure

* * * * *

10300. Uniform Code of Arbitration

Rule 10335. Temporary Injunctive Orders; Requests for Permanent Injunctive Relief

(a) Temporary Injunctive Orders.

(1) In industry or clearing disputes required to be submitted to arbitration pursuant to Rule 10201, parties may seek a temporary injunctive order, as defined in paragraph (a)(2) of this Rule, from a court of competent jurisdiction. Parties to a pending arbitration may seek a temporary injunctive order from a court of competent jurisdiction even if another party has already field a claim arising from the same dispute in arbitration pursuant to this paragraph, provided that an arbitration hearing on a request for permanent unjunctive relief *pursuant to paragraph (b) of this* Rule has not yet *begun* [commenced].

(2) For purposes of this Rule, temporary injunctive order means a temporary restraining order, preliminary injunction or other form of initial, temporary injunctive relief.

(3) A party seeking a temporary injunctive order from a court with respect to an industry or clearing dispute required to be submitted to arbitration pursuant to Rule 10201 shall simultaneously file with the Director a Statement of Claim requesting permanent *injunctive and all other* relief with respect to the same dispute in the manner specified under this Code[, and shall simultaneously]. *The party seeking temporary injunctive relief shall also* serve the Statement of Claim requesting permanent *injunctive and all other* relief on all *other* parties *in the same manner and at the same time as the Statement of Claim is filed with the Director.* Filings and service under this Rule *shall* [may] be made by facsimile, overnight delivery service or messager. *Service shall be made on all parties at the same time and in the same manner, unless*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 18, 2000 ("Amendment No. 3"); letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution to Florence Harmon, Senior Special Counsel, Division, Commission, dated May 17, 2001 ("Amendment No. 4"); and letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution to Florence Harmon, Senior Special Counsel, Division, Commission, dated August 10, 2001 ("Amendment No. 5").

[4] *See* letters from Patrice Gliniecki, Vice President and Deputy General Counsel, NASD Dispute Resolution, to Katherine A. England, Assistant Director, Division, Commission, dated March 7, 2000 ("Amendment No. 1") and March 24, 2000 (A"Amendment No. 2").

[5] *See* Securities Exchange Act Release No. 42606 (April 3, 2000), 65 FR 18405 (April 7, 2000) ("Original Proposal").

[6] NASD Disputes Resolution represents that the proposal, and all amendments thereto are available at its web site, *www.nasdadr.com.*

the parties agree otherwise. A party obtaining a court-issued temporary injunctive order shall notify the Director and the other parties of the issuance of the order within one business day.

(4) Unless otherwise stated, for purposes of computation of time under any paragraph of this Rule, any reference to days means calendar days, including Saturdays, Sundays or any NASD holiday. However, if a party must provide notice or a response to the Director and the day on which that notice or response to the Director must be given falls on a Saturday, Sunday or any NASD holiday, then the time period is extended until the next business day.

(b) Hearing on Request for Permanent Injunctive Relief.

(1) Scheduling of Hearing.

If a court issues a temporary injunctive order, an arbitration hearing on the request for permanent injunctive relief shall *begin* [commence] within 15 days of the date the court issues the temporary injunctive order. If the 15th day falls on a Saturday, Sunday, or NASD holiday, the 15-day period shall expire on the next business day. *Unless the parties agree otherwise, a hearing lasting more than one day shall be held on consecutive days when reasonably possible.* The Director shall provide to all parties notice of the date, time and place of the hearing at least three days prior to the *beginning* [commencement] of the hearing.

(2) Composition of Arbitration Panel.

The hearing on the request for permanent injunctive relief shall be heard by a panel of three arbitrators, who shall either be all non-public arbitrators as defined in Rule 10308(a)(4), or, if the underlying dispute would be heard by a public arbitrator or panel consisting of a majority of public arbitrators under Rule 10202, a majority of public arbitrators as defined in Rule 10308(a)(5).

(3) Selection of Arbitrators and Chairperson.

(A) (*i*) In cases in which all of the members of the arbitration panel are non-public under paragraph (b)(2) of this Rule, the Director shall generate and provide to the parties a list of seven arbitrators from a national roster of arbitrators. *The Director shall send to the parties the employment history for the past 10 years for each listed arbitrator and other background information.* At least [a majority] *three* of the arbitrators listed shall be lawyers [specializing in] *with experience litigating cases involving* injunctive relief.

(*ii*) Each party may exercise one strike to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrator, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. *The Direct shall consolidate the parties' rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.*

(B) (*i*) In cases in which the panel of arbitrators consists of a majority of public arbitrators under paragraph (b)(2) of this Rule, the Director shall generate and provide to the parties a list of nine arbitrators from a national roster of arbitrators. *The Director shall send to the parties employment history for the past 10 years for each listed arbitrator and other background information.* At least a majority of the arbitrators listed shall be [(1)] public arbitrators [and (2)], *and at least four of the arbitrators listed shall be* lawyers [specializing in] *with experience litigating cases involving* injunctive relief.

(ii) Each party may exercise two strikes to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrators, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. *The Director shall consolidate the parties' rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.*

(C) *(i)* Each party shall inform the Director of its preference of chairperson of the arbitration panel by the close of business on the next business day after receiving notice of the panel members.

(ii) If the parties do not agree on a chairperson within that time, the Director shall select the chairperson. In cases in which the panel consists of a majority of public arbitrators, the *Director shall select a public arbitrator as* chairperson. [shall be one of the public arbitrators who is a lawyer specializing in] *with experience litigating cases involving* injunctive relief. [In cases in which the panel consists of non-public arbitrators, the chairperson shall be a lawyer specializing in injunctive relief.] Whenever possible, the Director shall select as chairperson the lawyer [specializing in] *with experience litigating cases involving* injunctive relief whom the parties have ranked the highest.

(D) The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this Rule and Rule 10308 to facilitate the appointment of arbitration panels and the selection of chairperson.

(4) Applicable Legal Standard.

The legal standard for granting or denying a request for permanent injunctive relief is that of the state where the events upon which the request is based occurred, or as specified in an enforceable choice of law agreement between the parties.

(5) Effect of Pending Temporary Injunctive Order.

Upon a full and fair presentation of the evidence from all relevant parties on the request for permanent injunctive relief, the panel may prohibit the parties from seeking an extension of any court-issued temporary injunctive order remaining in effect, or, if appropriate, order the parties jointly to move to modify or dissolve any such order. In the event that a panel's order conflicts with a pending court order, the panel's order will become effective upon expiration of the pending court order.

(2) Fees, Costs and Expenses, and Arbitrator Honorarium.

(A) The parties shall jointly bear [the] *reasonable* travel-related costs and expenses *incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in* [of the arbitrators appointed to hear] *the hearing on* the request for permanent injunctive relief. [The arbitrators shall not reallocate such costs and expenses among the parties.] *The arbitrators may reallocate such costs and expenses among the parties in the award.*

(B) The party seeking injunctive relief shall pay the expedited hearing fees pursuant to Rule 10205(h), or, where both sides seek such relief, both parties shall pay such fees. In either event, however, the arbitrator(s) [shall have the authority to] *may* reallocate such fees among the parties *in the award.*

(C) Notwithstanding any other provision in the Code, the chairperson of the panel hearing a request for permanent injunctive relief pursuant to this Rule shall receive an honorarium of $375 for each single session, and $700 for each double session, of the hearing. Each other member of the panel shall receive an honorarium of $300 for each single session, and $600 for each double session, of the hearing. The parties shall equally pay the difference between these amounts and the amounts panel members and the chairperson receive under the Code pursuant to IM–10104. The arbitrators [shall not] *may* reallocate such amount among the parties *in the award.*

(c) Hearing on Damages or other Relief.

(1) Upon completion of the hearing on the request for permanent relief, the

panel, may, if necessary, set a date for any subsequent hearing on damages or other relief, which shall be held before the same panel or arbitrators and which shall include, but not be limited to, the same record.

(2) The parties shall jointly bear [the] *reasonable* travel-related costs and expenses [of the arbitrators resulting from] *incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in* any subsequent hearings on damages or other relief. The arbitrators [shall not] *may* reallocate such costs and expenses among the parties *in the award.*

(d) Unchanged.

* * * * *

10200. INDUSTRY AND CLEARING CONTROVERSIES

10205. Schedule of Fees for Industry and Clearing Controversies

(a)–(k) Unchanged.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NASD Dispute Resolution has filed three amendments to the proposed rule change since it was published for comment by the Commission on April 7, 2000.[7] In the amendments filed with the Commission, NASD Dispute Resolution included statements concerning the purpose of and basis for the amendments to the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Dispute Resolution 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

1. Purpose

Rule 10335 of the Code is a pilot rule providing procedures for obtaining interim and permanent injunctive relief in arbitration. The pilot rule is currently due to expire on January 4, 2002. The purpose of the proposed rule change is to streamline the process for obtaining injunctive relief, and to expedite the disposition of the merits of cases in which injunctive relief is ordered.

The Commission published the proposed rule change for comment on April 7, 2000.[8] On December 19, 2000, NASD Dispute Resolution filed Amendment No. 3 and a Response to Comments responding to a majority of the comment letters.[9] On December 21, 2000, NASD Dispute Resolution filed a second Response to Comments responding to the remaining comment letters subsequently received by NASD Dispute Resolution.[10] Since then, NASD Dispute Resolution has amended the proposed rule change twice more in response to comments from the Commission staff.[11] The amendments to the proposed rule change made since the proposed rule change was published for comment are summarized below.

Panel Composition

The proposed rule change originally required that a majority of arbitrators hearing requests for permanent injunctive relief be lawyers specializing in injunctive relief. A number of commenters expressed the view that this requirement was overly vague, would result in more arbitrators with a bias in favor of member firms and would give the staff too much discretion in determining who met the criteria. In response, NASD Dispute Resolution amended the proposed rule change to provide that a majority of arbitrators hearing a request for permanent injunctive relief be lawyers "with experience litigating cases involving" injunctive relief, rather than lawyers "specializing in" injunctive relief. In response to additional comments from the Commission staff based on commenters' concerns about panel composition, the proposed rule change was further amended to provide that less than a majority of the arbitrators listed would be required to be lawyers with experience litigating cases involving injunctive relief. Therefore, the proposed rule now provides that at least three of seven, or four of nine, rather than a majority, of the listed arbitrators in non-public and public cases, respectively, shall be lawyers with experience litigating cases involving injunctive relief.[12]

Allocation of Fees and Costs

In order to fill a panel to hear requests for permanent relief within the shortened time frame provided by the proposed rule, arbitrators will occasionally be required to travel to hearing locations other than their primary hearing location. The proposed rule change originally provided that the parties would jointly bear the travel-related costs and expenses of the arbitrators hearing the request for permanent relief or any subsequent hearing on other relief, as well as the additional honoraria required by the rule, and prohibited arbitrators from reallocating costs and expenses among the parties.

In response to comments, NASD Dispute Resolution amended the text of the proposed rule change to delete all prohibitions on reallocation of the costs, expenses, fees, and honoraria. In addition, the proposed rule change was amended to expressly provide that the arbitrators may reallocate these costs, expenses, and honoraria in the award. NASD Dispute Resolution also amended the provisions relating to travel costs and expenses to clarify that the parties are only responsible for reasonable travel-related costs and expenses incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in the hearing on the request for permanent injunctive relief or subsequent hearings on other forms of relief.

Appointment of Arbitrators

At the suggestion of the Commission staff, NASD Dispute Resolution amended the proposed rule change to make clear that certain procedures in Rule 10308 under the Code for providing parties with background information regarding the listed arbitrators, and for appointing arbitrators based on the consolidated list of the parties' rankings, apply in the context of the proposed rule. Specifically, the proposed rule change now provides that the Director shall send to the parties the employment history for each listed arbitrator for the past 10 years and other background information. This language mirrors language in Rule 10308(b)(6) under the Code. The proposed rule change also now provides that once the lists are ranked and returned by the parties, the Director shall consolidate the parties' rankings and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to availability and disqualification. This language

[7] *See* Amendment No. 3, Amendment No. 4 and Amendment No. 5, *supra* note 3.

[8] *See* note 5.

[9] *See* Amendment No. 3 for a detailed summary of the comments and NASD Dispute Resolutions' response, *supra* note 3.

[10] *See supra* note 5.

[11] *See* Amendment No. 4 and Amendment No. 5, *supra* note 3.

[12] *See* letter from John W. Shaw and Jeffrey A. Ziesman, Berkowitz, Feldmiller, Stanton, Brandt, Williams & Stueve, LLP, counsel to Sutro & Co. Incorporated, to Secretary, Commission, dated April 28, 2000 ("Sutro Comment Letter"), and letter from Dan Jamieson, Public Investor, to Jonathan Katz, Secretary, Commission, dated May 1, 2000.

mirrors language in Rule 10308(c)(3) and (c)(4) under the Code.

Filing and Service of Statement of Claim

NASD Dispute Resolution amended the proposed rule change to clarify that when parties file a Statement of Claim in arbitration pursuant to paragraph (a)(3) of the proposed rule, the Statement of Claim must include requests for all permanent relief, whether injunctive or otherwise. The same provision was also amended to clarify that service under the rule must be made on all parties at the same time and in the same manner, unless the parties agree otherwise, and that the Statement of Claim must be filed with the Director in the same manner as it is served on the other parties. The provision was also amended to clarify, because of the short time frames provided by the rule, that service and filings under the rule must be either by facsimile, overnight delivery service or messenger. These changes reflect the intent of the original rule filing and are merely intended to remove any ambiguity from the original filing.

Consecutive Hearing Days

To further ensure prompt presentation of evidence in such cases, the proposed rule was amended to provide that, to the extent possible, hearings on requests for permanent injunctive relief lasting more than one day would be held on consecutive days, unless the parties agree otherwise.

(b) *Timing of Requests for Temporary Injunctive Orders in Court:* The proposed rule provides that parties to a pending arbitration may seek temporary injunctive relief in court even if another party has already filed a claim arising from the same dispute in arbitration, provided that an arbitration hearing on the request for permanent injunctive relief has not yet begun. NASD Dispute Resolution amended this provision to clarify that this provision refers to the arbitration hearing on the merits of the request for permanent injunctive relief, and not to any pre-hearing conferences related to the hearing on the request for permanent injunctive relief.

(c) *Commence v. Begin:* At the request of the Commission staff, NASD Dispute Resolution replaced the word "commence" with the word "begin," or the appropriate form thereof, throughout the proposed rule to respond to a commenter's request to clarify that the relevant provisions refer to the arbitration hearing on the merits.[13]

[13] *See* Sutro Comment Letter, *supra* note 12.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change as amended is consistent with the provisions of Section 15A(b) of the Exchange Act,[14] in general, and furthers the objectives of Section 15A(b)(6),[15] in particular, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that it is in the best interest of investors and the parties involved in intra-industry disputes to provide for fast and efficient resolution of requests for temporary injunctive relief, and to provide clear and simple rules governing the integration of court-ordered relief with the arbitration of the underlying disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change as amended will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD submitted Amendment No. 3, Amendment No. 4 and Amendment No. 5 to the proposed rule change ("Current Amendments") in response to written comments it received on the Original Proposal. Written comments regarding the Current Amendments were neither solicited nor 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) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

[14] 15 U.S.C. 78o–3(b).

[15] 15 U.S.C. 78o–3(b)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3, 4, and 5, including whether Amendment Nos. 3, 4, and 5 are consistent with the Act. The Commission notes in particular that, under the proposal, the parties shall jointly bear the reasonable travel-related costs and expenses resulting from any subsequent hearings on damages or other relief. In addition, the parties shall equally pay the difference between the honorarium under proposed paragraph (b)(6)(C) of Rule 10335 and the amounts the arbitrators are otherwise entitled to receive under the Code. The arbitrators may reallocate these costs and expenses among the parties. The Commission seeks comments on this fee structure, including whether the proposal is consistent with the Act which, among other things, prohibits the imposition of inappropriate and unnecessary burdens on competition[16] and requires that fees and charges be reasonable and equitably allocated.[17]

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–02 and should be submitted by November 15, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26865 Filed 10–24–01; 8:45 am]

BILLING CODE 8010–01–M

[16] *See* 15 U.S.C. 78o–3(b)(9).

[17] *See* 15 U.S.C. 78o–3(b)(5).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 344–44960; File No. SR–NSCC–2001–14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Data Services Only Members

October 19, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT") [1], notice is hereby given that on September 24, 2001, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow NSCC to add a new membership category ("Data Services Only Member") to its rules. Data Services Only Members would be able to use certain non-clearing services available at NSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, for Proposed Rule Change

The proposed rule change creates a new category of member that its eligible to access certain limited data and information services of NSCC. Such entities will be known as "Data Services Only Members" and would only be permitted access to those services specifically enumerated under NSCC's rules. They would not be permitted to settle any transactions through NSCC's facilities.

Entities seeking access as a Data Services Only Member must only meet the requirements of any of clauses (i) through (vi) of Section 1 of Rule 2; that is, they must be either a registered broker-dealer, bank or trust company, registered clearing agency, insurance company or entity licensed to sell insurance products, an investment company registered under the Investment Company Act of 1940, as amended, or an entity that has demonstrated to NSCC's Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from access to such services in order to be accepted as a Data Services Only Member.[3]

Initially, the only NSCC service that Data Services Only Members would be permitted to access the networking service provided as part of NSCC's Mutual Fund Services.

This new membership category is being added at the request of NSCC's Fund Members and the Investment Company Institute, in order to permit broker-dealers who otherwise do not qualify to be NSCC members to obtain access to customers' account data in an automated format.

NSCC's Rule 52 (Mutual Fund Services) is being amended to permit Data Services Only Members to utilize networking only to request and transmit mutual fund, investment fund and UIT customer account data. (They would not, however, be permitted to settle dividend or other networking payments through NSCC.)[4]

The proposed rule change also makes technical conforming changes to other existing rules in order to include references to Data Services Only Members. In addition, certain technical corrections are being made to update certain cross-references as a result of other recent rule changes.[5]

A proposed fee schedule for Data Services Only Members' use of networking is being developed and will be the subject of a separate rule filing.[6]

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to NSCC because the rule change will increase the automation of data transmission between fund members, broker-dealers, and other entities and will permit greater access to such information, thus facilitating the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC has, however, worked closely with the Investment Company Institute and a representative group of mutual fund industry participants in developing the proposed Data Services Only Membership category. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b–4(f)(4) thereunder because the proposed rule change effects a change in an existing service that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and it does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest. for the protection of investors,

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Since Data Services Only Members will not be inputting transactions for settlement through NSCC's facilities and since NSCC will thus not be subject to settlement exposure by these members. Data Services Only Members will not be required to make a clearing fund deposit, and they will not be subject to NSCC's current membership standards.

[4] Subsequently, it is anticipated that such members would also be permitted to transmit data regarding mutual fund purchase and redemption transaction, which transactions would be settled outside the Corporation's facilities. Such extension would be the subject of a separate rule filing.

[5] Since recently Addendum M has been deleted (with the applicable provisions now being contained in Addendum K), the reference to Addendum M in Rule 18 has been corrected to refer to Addendum K. In addition, the reference to "TPA Member" in Rule 29 has been deleted as an incorrect reference.

[6] Until such time as a fee schedule has been agreed upon, this limited service will be provided free.

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file fix copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–2001–14 and should be submitted by November 15, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26896 Filed 10–24–01; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer and at the following addresses:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503

(SSA), Social Security Administration, DCFAM, Attn: SSA Reports Clearance Officer, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235–6401

I. The information collection listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–4145, or by writing to him at the address listed above.

Railroad Employment Questionnaire—0960–0078. The Social Security Administration (SSA) uses Form SSA–671 to secure sufficient information to effect the required coordination with the Railroad Retirement Board for Social Security claims processing. It is completed whenever claimants give indications of having been employed in the railroad industry. The respondents are applicants for Social Security benefits, who have had railroad employment, or dependents of railroad workers.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 2,500 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. Statement Regarding Students' School Attendance—0960–0113. Form SSA–2434 is used by the Social Security Administration to determine student entitlement status of the children of coal miners, children of their widows or the brothers of deceased miners eligible for Black Lung benefits. This form collects information from students about to attain age 18, for the express purpose of evaluating their continuing eligibility for program benefits under the Federal Mine Safety Act of 1977. The respondents are entitled black lung children of coal miner's or their widow, or the brother of deceased black lung coal miners.

Number of Respondents: 50.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 8 hours.

2. The Internet Social Security Benefits Application (ISBA)—0960–0618. One of the requirements for obtaining Social Security benefits is the filing of an application so that a determination may be made on the applicant's eligibility for monthly benefits. ISBA, which is available at the Social Security Administration's (SSA) Internet site, is one method that an individual can choose to file an application for benefits. In order to make a determination on eligibility for benefits, it is necessary to elicit from the applicant information about the date and place of birth, current and recent work, receipt of non-covered pensions etc. Currently, the ISBA can only be used to apply for retirement and spouse's benefits. SSA plans to expand ISBA to encompass Disability Insurance Benefits (DIB). SSA has used information collected by ISBA to entitle individuals to retirement insurance benefits and/or spouse's benefits. The information collected by the expanded ISBA will be used to entitle individuals to DIB as well. The respondents are applicants for retirement insurance benefits, spouse's benefits and disability benefits. Below is an estimate of the public reporting burden:

Type of benefit	Number of respondents	Frequency of response	Average burden per response	Estimated annual burden
RIB	130,000	1	20 minutes	43,333 hours.
DIB	39,000	1	25–30 minutes	16,542 hours.

[7] 17 CFR 200.30–3(a)(12).

Type of benefit	Number of respondents	Frequency of response	Average burden per response	Estimated annual burden
Total	169,000			59,875 hours.

Dated: October 18, 2001.
Frederick W. Brickenkamp,
Reports Clearance Officer.
[FR Doc. 01–26883 Filed 10–24–01; 8:45 am]
BILLING CODE 4191–02–U

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner

Cost-of-Living Increase and Other Determinations for 2002

AGENCY: Social Security Administration.
ACTION: Notice.

SUMMARY: The Commissioner has determined—

(1) A 2.6 percent cost-of-living increase in Social Security benefits under title II of the Social Security Act (the Act), effective for December 2001;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI of the Act for 2002 to $545 for an eligible individual, $817 for an eligible individual with an eligible spouse, and $273 for an essential person;

(3) The student earned income exclusion to be $1,320 per month in 2002 but not more than $5,340 in all of 2002;

(4) The dollar fee limit for services performed as a representative payee to be $30 per month ($57 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2002;

(5) The national average wage index for 2000 to be $32,154.82;

(6) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be $84,900 for remuneration paid in 2002 and self-employment income earned in taxable years beginning in 2002;

(7) For beneficiaries who will not have reached their normal retirement age by the end of 2002, the monthly exempt amount under the Social Security retirement earnings test for taxable years ending in calendar year 2002 to be $940;

(8) The dollar amounts ("bend points") used in the benefit formula for workers who become eligible for benefits in 2002 to be $592 and $3,567;

(9) The dollar amounts ("bend points") used in the formula for computing maximum family benefits for workers who become eligible for benefits in 2002 to be $756, $1,092, and $1,424;

(10) The amount of taxable earnings a person must have to be credited with a quarter of coverage in 2002 to be $870;

(11) The "old-law" contribution and benefit base to be $63,000 for 2002;

(12) The monthly amount deemed to constitute substantial gainful activity for statutorily blind individuals in 2002 to be $1,300, and the corresponding amount for non-blind disabled persons to be $780;

(13) The earnings threshold establishing a month as a part of a trial work period to be $560 for 2002; and

(14) Coverage thresholds for 2002 to be $1,300 for domestic workers and $1,200 for election workers.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3013. For information on eligibility or claiming benefits. call 1–800–772–1213. Information relating to this announcement is available on the Internet at *http://www.ssa.gov/OACT/COLA/index.html.*

SUPPLEMENTARY INFORMATION: In accordance with the Act, the Commissioner must publish within 45 days after the close of the third calendar quarter of 2001 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Commissioner must publish on or before November 1 the national average wage index for 2000 (section 215(a)(1)(D)), the OASDI fund ratio for 2001 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2002 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 2002 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2002 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 2002 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2002 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The next cost-of-living increase, or automatic benefit increase, is 2.6 percent for benefits under titles II and XVI of the Act. Under title II, OASDI benefits will increase by 2.6 percent for individuals eligible for December 2001 benefits, payable in January 2002. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)). Under title XVI, Federal SSI payment levels will also increase by 2.6 percent effective for payments made for the month of January 2002 but paid on December 31, 2001. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f).

Automatic Benefit Increase Computation

Under section 215(i) of the Act, the third calendar quarter of 2001 is a cost-of-living computation quarter for all the purposes of the Act. The Commissioner is, therefore, required to increase benefits, effective for December 2001, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 2001, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 2000 to the third quarter of 2001.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. We round the arithmetic mean, if necessary, to the nearest 0.1. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 2000, is: for July 2000, 169.4; for August 2000, 169.3; and for September 2000, 170.4. The arithmetic mean for this calendar quarter is 169.7. The corresponding Consumer Price Index for each month in the quarter ending September 30, 2001, is: for July 2001, 173.8; for August 2001, 173.8; and for September 2001, 174.8. The arithmetic mean for this calendar quarter is 174.1. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 2001, exceeds that for the

calendar quarter ending September 30, 2000 by 2.6 percent (rounded to the nearest 0.1), a cost-of-living benefit increase of 2.6 percent is effective for benefits under title II of the Act beginning December 2001.

Section 215(i) also specifies that an automatic benefit increase under Title II, effective for December of any year, will be limited to the increase in the national average wage index for the prior year if the "OASDI fund ratio" for that year is below 20.0 percent. The OASDI fund ratio for a year is the ratio of the combined assets of the Old-Age and Survivors Insurance and Disability Insurance Trust Funds at the beginning of that year to the combined expenditures of these funds during that year. (The expenditures in the ratio's denominator exclude transfer payments between the two trust funds, and reduce any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.) For 2001, the OASDI fund ratio is assets of $1,049,445 million divided by estimated expenditures of $439,464 million, or 238.8 percent. Because the 238.8-percent OASDI fund ratio exceeds 20.0 percent, the automatic benefit increase for December 2001 is not limited.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, in the case of workers and family members for whom eligibility for benefits (*i.e.*, the worker's attainment of age 62, or disability or death before age 62) occurred before 2002, benefits will increase by 2.6 percent beginning with benefits for December 2001 which are payable in January 2002. In the case of first eligibility after 2001, the 2.6 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, we determine benefits by means of a benefit table. You may obtain a copy of this table by writing to: Social Security Administration, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235. The table is also available on the Internet at address *http://www.ssa.gov/OACT/ProgData/tableForm.html.*

Section 215(i)(2)(D) of the Act requires that, when the Commissioner determines an automatic increase in Social Security benefits, the Commissioner will publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). We refer to these benefits as "special minimum" benefits. These benefits are payable to certain individuals with long periods of relatively low earnings. To qualify for such benefits, an individual must have at least 11 "years of coverage." To earn a year of coverage for purposes of the special minimum benefit, a person must earn at least a certain proportion (25 percent for years before 1991, and 15 percent for years after 1990) of the "old-law" contribution and benefit base. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 2.6 percent automatic benefit increase.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 2001

Number of years of coverage	Primary insurance amount	Maximum family benefit
11	$30.10	$45.80
12	61.00	92.20
13	92.10	138.50
14	122.70	184.60
15	153.50	230.70
16	184.40	277.40
17	215.40	323.90
18	246.30	370.10
19	277.10	416.40
20	307.90	462.60
21	339.00	509.30
22	369.60	555.40
23	400.90	602.40
24	431.80	648.40
25	462.60	694.20
26	493.80	741.50
27	524.40	787.50
28	555.30	833.70
29	586 10	880.30
30	617.00	926.20

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled will increase by 2.6 percent effective January 2002. For 2001, we derived the monthly benefit amounts for an eligible individual, an eligible individual with an eligible spouse, and for an essential person—$531, $796, and $266, respectively—from corresponding yearly unrounded Federal SSI benefit amounts of $6,375.88, $9,562.74, and $3,195.24. (*See* the **Federal Register** notice (66 FR 28589) published May 23, 2001, for information on how we determined these amounts.)

For 2002, these yearly unrounded amounts increase by 2.6 percent to $6,541.65, $9,811.37, and $3,278.32, respectively. Each of these resulting amounts must be rounded, when not a multiple of $12, to the next lower multiple of $12. Accordingly, the corresponding annual amounts, effective for 2002, are $6,540, $9,804, and $3,276. Dividing the yearly amounts by 12 gives the corresponding monthly amounts for 2002—$545, $817, and $273, respectively. We reduce the monthly amount by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, we equally divide the amount payable between the two spouses.

Title VIII of the Act provides for special benefits to certain World War II veterans residing outside the United

States. Section 805 provides that "[t]he benefit under this title payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate [for an eligible individual] under title XVI for the month, reduced by the amount of the qualified individual's benefit income for the month." Thus the monthly benefit for 2002 under this provision is 75 percent of $545, or $408.75.

Student Earned Income Exclusion

A blind or disabled child, who is a student regularly attending school, college, or university, or a course of vocational or technical training, can have limited earnings that are not counted against his or her SSI benefits. The maximum amount of such income that may be excluded in 2001 is $1,290 per month but not more than $5,200 in all of 2001. For years after 2001, these amounts will increase based on a formula set forth in our regulation (20 CFR 416.1112, as revised on December 29, 2000, at 65 FR 82905).

To compute each of the monthly and yearly maximum amounts for 2002, we increase the corresponding unrounded amount for 2001 by the latest cost-of-living increase. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10. The unrounded monthly amount for 2001 is $1,290.00 (the same as the rounded amount because the adjustment for 2002 is the first automatic adjustment). We increase this amount by 2.6 percent to $1,323.54, which we then round to $1,320. Similarly, the unrounded yearly amount for 2001 is $5,200.00. We increase this amount by 2.6 percent to $5,335.20, which we then round to $5,340. Thus the maximum amount of the income exclusion applicable to a student in 2002 is $1,320 per month but not more than $5,340 in all of 2002.

Fee for Services Performed as a Representative Payee

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect from an individual a monthly fee for expenses incurred in providing services performed as such individual's representative payee. Currently the fee is limited to the lesser of: (1) 10 percent of the monthly benefit involved; or (2) $29 per month ($56 per month in any case in which the individual is entitled to disability benefits and the Commissioner has determined that payment to the representative payee would serve the interest of the individual because the individual has an alcoholism or drug addiction condition and is incapable of managing such benefits). The dollar fee limits are subject to increase by the automatic cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. Thus we increase the current amounts by 2.6 percent to $30 and $57 for 2002.

National Average Wage Index for 2000

General

Under various provisions of the Act several amounts increase automatically with annual increases in the national average wage index. The amounts are: (1) The OASDI contribution and benefit base; (2) the retirement test exempt amounts; (3) the dollar amounts, or "bend points," in the primary insurance amount and maximum family benefit formulas; (4) the amount of earnings required for a worker to be credited with a quarter of coverage; (5) the "old-law" contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (6) the substantial gainful activity amount applicable to statutorily blind individuals; and (7) the coverage threshold for election officials and election workers. Also, section 3121(x) of the Internal Revenue Code requires that the domestic employee coverage threshold be based on changes in the national average wage index.

In addition to the amounts required by statute, two amounts increase automatically under regulatory requirements. The amounts are (1) the substantial gainful activity amount applicable to non-blind disabled persons, and (2) the monthly earnings threshold that establishes a month as part of a trial work period for disabled beneficiaries.

Computation

The determination of the national average wage index for calendar year 2000 is based on the 1999 national average wage index of $30,469.84 announced in the **Federal Register** on October 24, 2000 (65 FR 63663), along with the percentage increase in average wages from 1999 to 2000 measured by annual wage data tabulated by the Social Security Administration (SSA). The wage data tabulated by SSA include contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from these data were $29,229.69 and $30,846.09 for 1999 and 2000, respectively. To determine the national average wage index for 2000 at a level that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 1999 national average wage index of $30,469.84 by the percentage increase in average wages from 1999 to 2000 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent).

Amount

The national average wage index for 2000 is $30,469.84 times $30,846.09 divided by $29,229.69, which equals $32,154.82. Therefore, the national average wage index for calendar year 2000 is $32,154.82.

OASDI Contribution and Benefit Base

General

The OASDI contribution and benefit base is $84,900 for remuneration paid in 2002 and self-employment income earned in taxable years beginning in 2002.

The OASDI contribution and benefit base serves two purposes:

(a) It is the maximum annual amount of earnings on which OASDI taxes are paid. The OASDI tax rate for remuneration paid in 2002 is 6.2 percent for employees and employers, each. The OASDI tax rate for self-employment income earned in taxable years beginning in 2002 is 12.4 percent. (The Hospital Insurance tax is due on remuneration, without limitation, paid in 2002, at the rate of 1.45 percent for employees and employers, each, and on self-employment income earned in taxable years beginning in 2002, at the rate of 2.9 percent.)

(b) It is the maximum annual amount of earnings used in determining a person's OASDI benefits.

Computation

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2002 shall be the larger of: (1) the 1994 base of $60,600 multiplied by the ratio of the national average wage index for 2000 to that for 1992; or (2) the current base ($80,400). If the resulting amount is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 OASDI contribution and benefit base amount ($60,600) by the ratio of the national average wage index for 2000 ($32,154.82 as determined above) to that for 1992 ($22,935.42) produces the amount of $84,959.51. We round this amount to $84,900. Because $84,900 exceeds the current base amount of $80,400, the OASDI contribution and benefit base is $84,900 for 2002.

Retirement Earnings Test Exempt Amounts

General

We withhold Social Security benefits when a beneficiary under the normal retirement age (NRA) has earnings in excess of the applicable retirement earnings test exempt amount. (NRA is the age of initial benefit entitlement for which the benefit, before rounding, is equal to the worker's primary insurance amount. The NRA is age 65 for those born before 1938, and it will gradually increase to age 67.) A higher exempt amount applies in the year in which a person attains his/her NRA, but only with respect to earnings in months prior to such attainment, and a lower exempt amount applies at all other ages below NRA. Section 203(f)(8)(B) of the Act, as amended by section 102 of Pub. L. 104–121, provides formulas for determining the monthly exempt amounts. The amendment set the higher annual exempt amount to $30,000 for 2002. After 2002, the higher exempt amount will increase under the applicable formula. The corresponding monthly exempt amounts are exactly one-twelfth of the annual amounts.

For beneficiaries attaining NRA in the year, we withhold $1 in benefits for every $3 of earnings in excess of the annual exempt amount for months prior to such attainment. For all other beneficiaries under NRA, we withhold $1 in benefits for every $2 of earnings in excess of the annual exempt amount.

Computation

Under the formula applicable to beneficiaries who are under NRA and who will not attain NRA in 2002, the lower monthly exempt amount for 2002 shall be the larger of: (1) the 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 2000 to that for 1992; or (2) the 2001 monthly exempt amount ($890). If the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Lower Exempt Amount

Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1992 ($22,935.42) produces the amount of $939.32. We round this to $940. Because $940 is larger than the corresponding current exempt amount of $890, the lower retirement earnings test monthly exempt amount is $940 for 2002. The corresponding lower annual exempt amount is $11,280 under the retirement earnings test.

Computing Benefits After 1978

General

The Social Security Amendments of 1977 provided a method for computing benefits which generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's "average indexed monthly earnings" to compute the primary insurance amount. We adjust the computation formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or "index," a worker's earnings to reflect the change in general wage levels that occurred during the worker's years of employment. Such indexation ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during his or her working lifetime. To compute the average indexed monthly earnings, we first determine the required number of years of earnings. Then we select that number of years with the highest indexed earnings, add the indexed earnings, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the average indexed monthly earnings.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled before age 62, or dying before attaining age 62, in 2002, we divide the national average wage index for 2000, $32,154.82, by the national average wage index for each year prior to 2000 in which the worker had earnings. Then we multiply the actual wages and self-employment income, as defined in section 211(b) of the Act and credited for each year, by the corresponding ratio to obtain the worker's indexed earnings for each year before 2000. We consider any earnings in 2000 or later at face value, without indexing. We then compute the average indexed monthly earnings for determining the worker's primary insurance amount for 2002.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. We call the dollar amounts in the formula governing the portions of the average indexed monthly earnings the "bend points" of the formula. Thus, the bend points for 1979 were $180 and $1,085.

To obtain the bend points for 2002, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2000 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of $180 and $1,085 by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1977 ($9,779.44) produces the amounts of $591.84 and $3,567.48. We round these to $592 and $3,567. Accordingly, the portions of the average indexed monthly earnings to be used in 2002 are the first $592, the amount between $592 and $3,567, and the amount over $3,567.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2002, or who die in 2002 before becoming eligible for benefits, their primary insurance amount will be the sum of

(a) 90 percent of the first $592 of their average indexed monthly earnings, plus

(b) 32 percent of their average indexed monthly earnings over $592 and through $3,567, plus

(c) 15 percent of their average indexed monthly earnings over $3,567.

We round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the long established policy of limiting the total monthly benefits that a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, we compute the family maximum payable the same as

the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. We refer to such dollar amounts in the formula as the "bend points" of the family-maximum formula.

To obtain the bend points for 2002, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2000 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of $230, $332, and $433 by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1977 ($9,779.44) produces the amounts of $756.24, $1,091.62, and $1,423.70. We round these amounts to $756, $1,092, and $1,424. Accordingly, the portions of the primary insurance amounts to be used in 2002 are the first $756, the amount between $756 and $1,092, the amount between $1,092 and $1,424, and the amount over $1,424.

Consequently, for the family of a worker who becomes age 62 or dies in 2002 before age 62, we will compute the total amount of benefits payable to them so that it does not exceed

(a) 150 percent of the first $756 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $756 through $1,092, plus

(c) 134 percent of the worker's primary insurance amount over $1,092 through $1,424, plus

(d) 175 percent of the worker's primary insurance amount over $1,424.

We then round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

Quarter of Coverage Amount

General

The amount of earnings required for a quarter of coverage in 2002 is $870. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with a quarter of coverage for each quarter in which wages of $50 or more were paid, or with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, employers generally report wages on an annual basis instead of a quarterly basis. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978, up to a maximum of 4 quarters of coverage for the year.

Computation

Under the prescribed formula, the quarter of coverage amount for 2002 shall be the larger of: (1) the 1978 amount of $250 multiplied by the ratio of the national average wage index for 2000 to that for 1976; or (2) the current amount of $830. Section 213(d) further provides that if the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Quarter of Coverage Amount

Multiplying the 1978 quarter of coverage amount ($250) by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1976 ($9,226.48) produces the amount of $871.26. We then round this amount to $870. Because $870 exceeds the current amount of $830, the quarter of coverage amount is $870 for 2002.

"Old-Law" Contribution and Benefit Base

General

The "old-law" contribution and benefit base for 2002 is $63,000. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. We compute the base under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(a) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Social Security Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the "old-law" base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The "old-law" contribution and benefit base shall be the larger of: (1) the 1994 "old-law" base ($45,000) multiplied by the ratio of the national average wage index for 2000 to that for 1992; or (2) the current "old-law" base ($59,700). If the resulting amount is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 "old-law" contribution and benefit base amount ($45,000) by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1992 ($22,935.42) produces the amount of $63,088.75. We round this amount to $63,000. Because $63,000 exceeds the current amount of $59,700, the "old-law" contribution and benefit base is $63,000 for 2002.

Substantial Gainful Activity Amounts

General

A finding of disability under titles II and XVI of the Act requires that a person, except for a title XVI disabled child, be unable to engage in substantial gainful activity (SGA). (A finding of disability under title XVI for a child is based on a different standard, not related to SGA.) A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies a higher SGA amount for statutorily blind individuals while Federal regulations (20 CFR 404.1574 and 416.974, as revised on December 29, 2000, at 65 FR 82905) specify a lower SGA amount for non-blind individuals. Both SGA amounts increase in accordance with increases in the national average wage index.

Computation

The monthly SGA amount for statutorily blind individuals for 2002 shall be the larger of: (1) such amount for 1994 multiplied by the ratio of the national average wage index for 2000 to that for 1992; or (2) such amount for

2001. The monthly SGA amount for non-blind disabled individuals for 2002 shall be the larger of: (1) such amount for 2000 multiplied by the ratio of the national average wage index for 2000 to that for 1998; or (2) such amount for 2001. In either case, if a resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

SGA Amount for Statutorily Blind Individuals

Multiplying the 1994 monthly SGA amount for statutorily blind individuals ($930) by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1992 ($22,935.42) produces the amount of $1,303.83. We then round this amount to $1,300. Because $1,300 is larger than the current amount of $1,240, the monthly SGA amount for statutorily blind individuals is $1,300 for 2002.

SGA Amount for Non-Blind Disabled Individuals

Multiplying the 2000 monthly SGA amount for non-blind individuals ($700) by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1998 ($28,861.44) produces the amount of $779.88. We then round this amount to $780. Because $780 is larger than the current amount of $740, the monthly SGA amount for non-blind individuals is $780 for 2002.

Trial Work Period Earnings Threshold

General

During a trial work period, a beneficiary receiving Social Security disability benefits may test his or her ability to work and still be considered disabled. We do not consider services performed during the trial work period as showing that the disability has ended until services have been performed in at least 9 months (not necessarily consecutive) in a rolling 60-month period. In 2001, any month in which earnings exceed $530 is considered a month of services for an individual's trial work period. In 2002, this monthly amount increases to $560.

Computation

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b), as revised on December 29, 2000, at 65 FR 82905. Monthly earnings in 2002, used to determine whether a month is part of a trial work period, is such amount for 2001 multiplied by the ratio of the national average wage index for 2000 to that for 1999, or, if larger, such amount for 2001. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10.

Amount

Multiplying the 2001 monthly earnings threshold ($530) by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1999 ($30,469.84) produces the amount of $559.31. We then round this amount to $560. Because $560 is larger than the current amount of $530, the monthly earnings threshold is $560 for 2002.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2002, this threshold is $1,300. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold amount for 2002 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2000 to that for 1993. If the resulting amount is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold amount ($1,000) by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1993 ($23,132.67) produces the amount of $1,390.02. We then round this amount to $1,300. Accordingly, the domestic employee coverage threshold amount is $1,300 for 2002.

Election Worker Coverage Threshold

General

The minimum amount an election worker must earn so that such earnings are covered under Social Security or Medicare is the election employee coverage threshold. For 2002, this threshold is $1,200. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

Computation

Under the formula, the election worker coverage threshold amount for 2002 shall be equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 2000 to that for 1997. If the amount so determined is not a multiple of $100, it shall be rounded to the nearest multiple of $100.

Election Worker Coverage Threshold Amount

Multiplying the 1999 election worker coverage threshold amount ($1,000) by the ratio of the national average wage index for 2000 ($32,154.82) compared to that for 1997 ($27,426.00) produces the amount of $1,172.42. We then round this amount to $1,200. Accordingly, the election worker coverage threshold amount is $1,200 for 2002.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income)

Dated: October 19, 2001.

Larry G. Massanari,

Acting Commissioner of Social Security.

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DEPARTMENT OF STATE

[Public Notice 3823]

Bureau of Educational and Cultural Affairs, Office of Citizen Exchanges (ECA/PE/C); 60-Day Notice of Proposed Information Collection: Evaluation of DOS-Sponsored Citizen Exchange Programs

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: New collection.

Originating Office: Bureau of Educational and Cultural Affairs, Office of Citizen Exchanges (ECA/PE/C).

Title of Information Collection: Evaluation of DOS-Sponsored Citizen Exchange Programs.

Frequency: Information is collected on a per exchange program or exchange project basis.

Form Number: N/A [Multiple survey questionnaires may be used for exchange programs on an on-going and per-program basis.]

Respondents: Respondents of evaluation and/or program monitoring

information collections may include U.S. and foreign applicants, current grantee exchange visitor participants (J–1 visa) and alumni of the ECA/PE/C exchange programs, program administrators, domestic grantee organizations, foreign partner organizations, domestic and foreign hosts of exchange visitor participants, and other similar types of respondents associated with ECA/PE/C exchange programs.

Estimated Number of Respondents: 1,485.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 743 (1,485 total annual response x 30 minutes).

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Tamara L. Martin, U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, 301 4th Street, SW., (SA–44), Room 357, Washington, DC 20547, who may be reached on (202) 619–5307.

Dated: August 15, 2001.

David Whitten,

Executive Director, Bureau of Educational and Cultural Affairs (ECA), U.S. Department of State.

[FR Doc. 01–26904 Filed 10–24–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 3822]

Bureau of Educational and Cultural Affairs, Office of Citizen Exchanges (ECA/PE/C); 60-Day Notice of Proposed Information Collection: Evaluation of DOS-Sponsored Academic Exchange Programs

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: New collection.

Originating Office: Bureau of Educational and Cultural Affairs, Office of Academic Exchanges (ECA/A).

Title of Information Collection: Evaluation of DOS-Sponsored Academic Exchange Programs.

Frequency: Information is collected on a per exchange program or exchange project basis.

Form Number: N/A [Multiple survey questionnaires may be used for exchange programs on an on-going and per-program basis.]

Respondents: Respondents of evaluation and/or program monitoring information collections may include U.S. and foreign applicants, current grantee exchange visitor participants (J–1 visa) and alumni of the ECA/A exchange programs, program administrators, domestic grantee organizations, foreign partner organizations, domestic and foreign hosts of exchange visitor participants, and other similar types of respondents associated with ECA/A exchange programs.

Estimated Number of Respondents: 2,386.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 1,193 (2,386 total annual responses x 30 minutes).

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Tamara L. Martin, U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, 301 4th Street, SW (SA–44), Room 357, Washington, DC 20547, who may be reached on (202) 619–5307.

Dated: October 15, 2001.

David Whitten,

Executive Director, Bureau of Educational and Cultural Affairs (ECA), U.S. Department of State.

[FR Doc. 01–26905 Filed 10–24–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice #3796]

Overseas Buildings Operations; Industry Advisory Panel: Notice of Establishment

The Department of State is establishing an Industry Advisory Panel to serve the Director/Chief Operating Officer and staff of Overseas Buildings Operations in an advisory capacity with respect to industry and academia's latest concepts, methods, best practices, and ideas related to property management and oversight of the Department's real property assets at U.S. missions overseas. The objective is to ensure the most efficient processes and optimal solutions are utilized. The Panel will advise with respect to areas such as research and development, design, construction, the environment, seismic issues, emergency operations, security, planning and development, and banking and finance. The Under Secretary for Management has determined that the Committee is necessary and in the public interest.

The Director of Overseas Buildings Operations will appoint members that represent a cross-section of interested and qualified professionals with significant, relevant experience and diverse opinions. The Panel will follow the procedures prescribed by the Federal Advisory Committee Act (FACA).

Meetings will be open to the public, unless a determination is made in accordance with section 10(d) of FACA (Pub. L. 92–463) that a meeting or a portion of the meeting should be closed to the public. Notice of each Panel meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Sandra J. Piech, 703–516–1968.

Dated: October 3, 2001.

Charles E. Williams,

Director/Chief Operating Officer, Overseas Buildings Operations, Department of State.

[FR Doc. 01–26906 Filed 10–24–01; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During Week Ending October 12, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–10802.
Date Filed: October 9, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0413 dated 9 October 2001; Mail Vote 151— Resolution 010p; TC2 Within Europe Special Passenger Amending Resolution between Germany and Europe; Intended Effective Date: 1 November 2001.

Docket Number: OST–2001–10803.
Date Filed: October 9, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0411 dated 9 October 2001; Mail Vote 152— Resolution 010q; TC2 Within Europe Special Passenger Amending Resolution between Switzerland and Europe; Intended Effective Date: 15 October 2001.

Docket Number: OST–2001–10804.
Date Filed: October 9, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0414 dated 9 October 2001; Mail Vote 153— Resolution 010r; TC2 Within Europe Special Passenger Amending Resolution between Belgium and Europe; Intended Effective Date: 15 October 2001.

Docket Number: OST–2001–10805.
Date Filed: October 9, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0415 dated 9 October 2001; Mail Vote 155— Resolution 010t; TC2 Within Europe Special Passenger Amending Resolution between Spain and Europe; Intended Effective Date: 15 October 2001.

Docket Number: OST–2001–10806.
Date Filed: October 9, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0417 dated 9 October 2001; Mail Vote 156— Resolution 010u; TC2 Within Europe Special Passenger Amending Resolution from France to Europe; Intended Effective Date: 15 October 2001.

Docket Number: OST–2001–10807.
Date Filed: October 10, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0418 dated 12 October 2001; Mail Vote 158— . Resolution 010w; TC2 Within Europe Special Passenger Amending Resolution between Portugal and Europe; Intended Effective Date: 21 October 2001.

Docket Number: OST–2001–10821.
Date Filed: October 10, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0419 dated 12 October 2001; Mail Vote 159— Resolution 010x; TC2 Within Europe Special Passenger Amending Resolution between Netherlands and Europe; Intended Effective Date: 15 October 2001.

Docket Number: OST–2001–10822.
Date Filed: October 11, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0420 dated 12 October 2001; Mail Vote 160— Resolution 010y; TC2 Within Europe Special Passenger Amending Resolution from Luxembourg to Europe; Intended effective date: 22 October 2001.

Docket Number: OST–2001–10823.
Date Filed: October 11, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0421 dated 12 October 2001; Mail Vote 161— Resolution 010z; TC2 Within Europe Special Passenger Amending Resolution from Morocco to Europe; Intended effective date: 22 October 2001.

Docket Number: OST–2001–10824.
Date Filed: October 11, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0422 dated 12 October 2001; Mail Vote 162— Resolution 010a; TC2 Within Europe Special Passenger Amending Resolution between Malta and Europe; Intended effective date: 1 November 2001.

Docket Number: OST–2001–10825.
Date Filed: October 11, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0423 dated 12 October 2001; Mail Vote 163— Resolution 010b; TC2 Within Europe Special Passenger Amending Resolution between Estonia and Europe; Intended effective date: 22 October 2001.

Docket Number: OST–2001–10826.
Date Filed: October 11, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0416 dated 12 October 2001; Mail Vote 157— Resolution 010v; TC2 Within Europe Special Passenger Amending Resolution from Slovenia to Europe; Intended effective date: 1 November 2001.

Docket Number: OST–2001–10827.
Date Filed: October 11, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0425 dated 12 October 2001; Mail Vote 165— Resolution 010d; TC2 Within Europe Special Passenger Amending Resolution from Finland to Europe; Intended effective date: 1 November 2001.

Docket Number: OST–2001–10828.
Date Filed: October 11, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0424 dated 12 October 2001; Mail Vote 164— Resolution 010c; TC2 Within Europe Special Passenger Amending Resolution from Poland to Europe; Intended effective date: 1 November 2001.

Andrea M. Jenkins,

Federal Register Liaisan.

[FR Doc. 01–26917 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the week ending October 12, 2001.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1996–2016.
Date Filed: October 11, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 1, 2001.
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C.

Section 41102 and 41108 and Subpart B, requesting renewal of its certificate of public convenience and necessity for Route 740 to engage in scheduled foreign air transportation of persons, property and mail between Atlanta, Georgia, and the coterminal points Sao Paulo and Rio de Janeiro, Brazil.

Docket Number: OST–2001–10834.

Date Filed: October 12, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 2, 2001.

Description: Application of G5 Executive AG, pursuant to 49 U.S.C. Section 41302 and Subpart B, requesting charter foreign air transportation of persons, property and mail: (1) Between any point or points in Switzerland and any point or points in the United States; (2) between any point or points in the United States and any point or points in a third country or countries, provided that such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to Switzerland for the purpose of carrying local traffic between Switzerland and the United States; and, (3) between any point or points in the United States and any point or points in third countries in accordance with the provisions of part 212 of the DOT Economic Regulations.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 01–26918 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–84]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of the Title 14 Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 16, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dma.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on October 19, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–9874.

Petitioner: Civil Air Patrol.

Section of 14 CFR Affected: 14 CFR 61.113(e).

Description of Relief Sought: To (1) provide relief from § 61.113(a) rather than 61.113(e) so that the exemption applies to CAP missions other than search and locate missions, (2) revise condition No. 1 to delete the phrase "when the CAP is acting as an instrumentality of the United States", (3) revise condition No. 2 to add that CAP members who hold a private pilot certificate may log flight time when operating under this exemption, and (4) revise condition No. 3 to include that CAP members holding a private pilot certificate may use a CAP aircraft without charge and log flight time when operating under the exemption.

Docket No.: FAA–2001–10391.

Petitioner: Dr. Bert Hoare.

Section of 14 CFR Affected: 14 CFR 65.104.

Description of Relief Sought: To permit Dr. Hoare to be eligible to apply for a repairman certificate for his Seaward aircraft (Registration No. N20W) without being a citizen of the United States or a lawful permanent resident of the United States.

[FR Doc. 01–26914 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–85]

Petitions for Exemption; Summary of Disposition of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington DC on October 19, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10509.

Petitioner: Eagle Air Corp.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit Eagle Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/05/2001, Exemption No. 7639

Docket No.: FAA–2001–10280.

Petitioner: Sierra Transportation Group dba Sierra Charters.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Sierra to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/05/2001, Exemption No. 7640

Docket No.: FAA–2001–9164.

Petitioner: Skinner Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Skinner to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/05/2001, Exemption No. 7635

Docket No.: FAA–2001–10732.

Petitioner: Bishop Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit BAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/05/2001, Exemption No. 7638

Docket No.: FAA–2001–10592.

Petitioner: Seattle Jet Services. Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit SJS to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/05/2001, Exemption No. 7636

Docket No.: FAA–2001–10441.

Petitioner: Taylor Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit TAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/05/2001, Exemption No. 7637

Docket No.: FAA–2001–10542.

Petitioner: SkyLane Helicopters, LLC.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit SkyLane to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/05/2001, Exemption No. 7634

[FR Doc. 01–26915 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aircraft Repair and Maintenance Advisory Committee; Notice of Meeting

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice.

SUMMARY: The FAA is issuing this notice to advise the public of the date for the sixth meeting of the FAA Aircraft Repair and Maintenance Advisory Committee. The purpose of the meeting is for the Committee to continue working towards accomplishing the goals and objectives pursuant to its congressional mandate.

DATES: The meeting will be held Tuesday, November 20, 2001, 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Bessie Coleman Conference Center, Washington, DC 20591, (202) 267–9952; fax (202) 267–5115; e-mail Ellen *Bowie@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Ellen Bowie, Federal Aviation Administration (AFS–300), 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 267–9952; fax (202) 267–5115; e-mail Ellen *Bowie@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aircraft Repair and Maintenance Advisory Committee to be held on November 20, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

The agenda will include:

- Introduction of any new designated alternate members
- Committee administration
- Reading and approval of minutes
- Review of open/additional action items
- Review of final draft report
- Statements by members of the public
- Plan/discuss next steps/agenda and timeline
- Closing remarks and adjournment

Attendance is open to the public but will be limited to the availability of meeting room space. Persons desiring to present a verbal statement must provide a written summary of remarks. Please focus your remarks on the tasks, specific activities, projects or goals of the Advisory Committee, and benefits to the aviation public. Speakers will be limited to 5-minute presentations. Please contact Ms. Ellen Bowie at the number listed above if you plan to attend the meeting or to present a verbal statement.

Individuals making verbal presentations at the meeting should bring 25 copies to give to the Committee's Executive Director. These copies may be provided to the audience at the discretion of the submitter.

Issued in Washington, DC, on October 22, 2001.

James J. Ballough,

Acting Manager, Continuous Airworthiness Maintenance Division.

[FR Doc. 01–26922 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Aircraft Certification Procedures Issues Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss Aircraft Certification Procedures issues.

DATES: The meeting will be held on November 16, 2001, from 8:30 a.m. to 11:30 a.m. Arrange for oral presentations by November 2, 2001.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave. SW., room 827, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, FAA, Office of Rulemaking (ARM–205), 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7653, fax: (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on November 16, 2001, from 8:30 a.m. to 11:30 a.m. at the Federal Aviation Administration, 800 Independence Ave. SW., room 827, Washington, DC. The agenda will include:

1. Opening Remarks.
2. Committee Administration.
3. A discussion and vote on the Parts and Production Certification Working Group draft advisory documents, entitled "Working Group Guidance Material Recommendations Approval Holder Quality System Requirements"

and "Replacement And Modification Part Design Approval Procedures."

4. A status report on the Parts and Production Certification Working Group's remaining tasks.

5. Future Meetings.

Attendance is open to the interested public, but will be limited to the space available. The FAA will arrange teleconference capability for individuals wishing to participate by teleconference if we receive notification before November 2, 2001. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

The public must make arrangements by November 2, 2001, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director, or by bringing the copies to the meeting. Public statements will only be considered if time permits. In addition, sign and oral interpretation, as well as an assistive listening device, can be made available at the meeting, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 18, 2001.

Brian Yanez,

Assistant Executive Director for Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–26913 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine issues.

DATES: The meeting is scheduled for November 9, 2001, from 11 a.m. to 1 p.m. Arrange for oral presentations by November 2, 2001.

ADDRESSES: Federal Aviation Administration, 800 Independence Avenue, SW, Room 810, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Effie Upshaw, Office of Rulemaking, ARM–209, Federal Aviation Administration, 800 Independence Avenue, SW., Room 810, Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075, or e-mail at *effie.upshaw@faa.gov*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held on November 9, 2001, in Washington, DC. The purpose of the meeting is to review and recommend to the FAA two proposed advisory circulars developed by the Design for Security Harmonization Working Group: (1) flight deck intrusion, and (2) bulkhead penetration.

Attendance is open to the public, but it will be limited to the availability of meeting room space and telephone lines. Details for participation in the teleconference will be available after November 1, 2001, on the ARAC calendar at *http://www.faa.gov/avr/arm/aracal/htm,* or by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Callers outside the Washington metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by November 2, 2001, to present oral statements at the meeting. Written statements may be presented to the committee at anytime by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by providing copies at the meeting. Copies of the documents to be presented by ARAC for decision as recommendations to the FAA may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on October 19, 2001.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–26916 Filed 10–24–01 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 199: Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 199 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 199: Airport Security Access Control Systems.

DATES: The meeting will be held on November 8, 2001 starting at 9:00 am.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.ftca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 199 meeting. The agenda will include:

- November 8:
- Opening Session (Welcome, Introductory and Administrative Remarks, Agenda Overview, Review Minutes of Previous Meeting)
- Workgroups Reports and Discussions on Submitted Changes and Edits (Sections 1–4)
- Industry Presentations
- Other Action Items
- Closing Session (Establish Agenda for Next Meeting, Date and Place of Next Meeting)

Note: *SC–199 is seeking to review vendor presentations of their products at this meeting. Each vendor seeking to present a short (10 to 15 min.) presentation should provide a briefing package to Mr. Paul S. Ruwaldt (paul.s.ruwaldt@tc.faa.gov) by November 1, 2001, outlining the following:*

- *How their product(s) would be utilized in an automated access control systems suitable under Federal Aviation Regulation (FAR) Parts 107 & 108,*
- *How their product(s) would provide for (or enhance) the security objectives of the airport and airline, and*
- *How their product(s) would be integrated into the airline and airport comprehensive security system.*

It is strongly suggested that the vendors requesting presentation time be fully cognizant of the airline and airport operational requirements as they apply to automated access control systems, as well as the performance requirements such a system will impose on the discrete components of the automated access control systems. Further, it is suggested that the vendor be

fully aware of how these operational and performance conditions will affect their product(s) and the access control procedures.

The vendor presentation must strictly be pertinent to their product(s) and the FAR Part 107 & 108 requirements for automated access control systems. The vendor must demonstrate their product's suitability to airline and airport operational access control conditions and illustrate how their product(s) would be deployed in an automated access control systems and/or how their product(s) can be integrated into the automated access control systems.

The committee emphasizes that this RTCA standard pertains only to access control systems, although there may be opportunities for future integration with other airport information and/or communication technologies. Further, the committee is interested in proven and available Commercial-Off-The-Shelf (COTS) technologies, not untested developmental concepts or proprietary systems.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 16, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 01–26920 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 194 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation.

DATES: The meeting will be held November 5–8, 2001, starting at 1:00 pm on November 5, and at 9:00 am November 6–8.

ADDRESSES: The meeting will be held at RTCA, Inc. 1828 L Street, NW, Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 194 meeting. The agenda will include:

- November 5:
- Opening Plenary Session (Welcome and Introductory Remarks, Agenda Overview, Approve Minutes of Previous Meeting, Working Group Reports, Other Business)
- November 6:
- Working Group 1, Data Link Ops Concept and Implementation Plan
- Working Group 2, Flight Operations and Air Traffic Management (ATM) Integration
- Working Group 3, Human Factors
- Working Group 4, Service Provider Interface
- November 7:
- Working Group 1, Data Link Ops Concept & Implementation Plan
- Working Group 2, Flight Operations and ATM Integration
- Working Group 3, Human Factors
- November 8:
- Closing Plenary Session (Agenda Overview, Working Group Reports, Other Business, Data and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 16, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 01–26921 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–12–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34101]

Bethlehem Steel Corporation, Keystone Railroad Inc., and Lake Michigan & Indiana Railroad Company LLC-Corporate Family Transaction Exemption

Bethlehem Steel Corporation (BSC), Keystone Railroad Inc. (Keystone), and Lake Michigan & Indiana Railroad Company LLC (LMIC) have jointly filed a verified notice of exemption. BSC is forming a new Delaware limited liability company (LLC) named LMIC.[1] The exempt transaction involves a proposed corporate restructuring that will result in Keystone's division, known as Lake Michigan & Indiana Railroad Company (LM&IRC), being spun off into the new LLC and becoming an independent direct subsidiary of BSC. Keystone, a Class III rail carrier formerly known as Philadelphia, Bethlehem and New England Railroad Company, is a direct subsidiary of BSC, that was authorized to lease and operate a rail line in Burns Harbor, IN, under the name of LM&IRC.[2]

The transaction was scheduled to be consummated on or after October 2, 2001, the effective date of the exemption (7 days after the notice was filed).

The transaction is a part of the proposed current refinancing and restructuring by BSC. BSC and Keystone have determined that the Burns Harbor rail line should be operated by a stand alone direct subsidiary of BSC instead of a division of Keystone. After the corporate restructuring, the rail operations at Burns Harbor and at Bethlehem, PA, will be performed by separate corporate entities, each owned directly by BSC, similar to all other BSC operations. The corporate restructuring will facilitate replacement of BSC's current credit arrangements and is intended to provide increased financial liquidity and flexibility.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties stated that the transaction will not result in adverse changes in service levels, operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the board may not use its exemption authority to relieve a rail carrier of its statutory

[1] BSC is a noncarrier holding company that controls, directly, eight Class III subsidiary railroads, including Keystone. In support of the statement, counsel for BSC cites *Bethlehem Steel Corporation-Common Control Exemption-Brondywine Volley Roilrood Corporation, Upper Merion and Plymouth Railrood Compony*, STB Finance Docket No. 33602 (served June 16, 1998), which authorized BSC's indirect control of two Class III railroads (and noted BSC's direct control of six other Class III railroads); however, in a subsequent letter dated October 18, 2001, counsel states that "any control previously indicated to be indirect control has since been changed to direct control."

[2] *See Keystone Railrood, Inc. d/b/a Lake Michigan and Indiana Railroad Company—Lease and Operation Exemption—Bethlehem Steel Corporotion*, STB Finance Docket No. 33797 (STB served Sept. 23, 1999 and Dec. 13, 1999, respectively).

obligation to protect the interests of its employees. Section 11326(c) however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under that statue, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and ten copies of all pleadings, referring to STB Finance Docket No. 34101, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: October 19, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–26908 Filed 10–24–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33877]

Illinois Central Railroad Company—Construction and Operation Exemption—in East Baton Rouge Parish, LA

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation by Illinois Central Railroad Company of a line of railroad, approximately 3.2 miles in length, in East Baton Rouge Parish, LA.[1]

DATES: The exemption will not become effective until the environmental review process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental impacts, and if appropriate, make the exemption effective at that time, thereby allowing construction to begin. Petitions to reopen must be filed by November 14, 2001.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 33877, to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Myles L. Tobin, 455 North Cityfront Plaza Drive, Chicago, IL 60601–5317 and William C. Sippel and Thomas J. Litwiler, Two Prudential Plaza, Suite 3125, 180 North Stetson Ave., Chicago, IL 60601–6721.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600 [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da 2 Da Legal, 1925 K Street NW, Suite 405, Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339.]

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: October 18, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–26909 Filed 10–24–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 17, 2001.

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 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 26, 2001 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–1378.

Regulation Project Number: PS–4–89 Final.

Type of Review: Extension.

Title: Disposition of an Interest in a Nuclear Power Plant.

Description: The regulations require that certain information be submitted as part of a request for a schedule of ruling amounts. The regulations also require certain taxpayers to file a request for a revised schedule of ruling amounts.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 70.

Estimated Burden Hours Per Respondent: 8 hours, 13 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 575 hours.

OMB Number: 1545–1629.

Form Number: IRS Form 8867.

Type of Review: Extension.

Title: Paid Taxpayer's Earned Income Credit Checklist.

Description: Form 8867 helps preparers meet the due diligence requirements of Code section 6695(g), which was added by section 1085(a)(2) of the Taxpayer Relief Act of 1997. Paid preparers of Federal income tax returns or claims for refund involving the earned income credit (EIC) must meet the due diligence requirements in determining if the taxpayer is eligible for the EIC and the amount of the credit. Failure to do so could result in a $100 penalty for each failure. Completion of Form 8867 is one of the due diligence requirements.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 min.

Learning about the law or the form—8 min.

Preparing the form—24 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 9,707,399 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224

[1] On July 16, 2001, IC filed a petition under 49 U.S.C. 10901(d) to require KCS to allow IC's proposed construction to cross KCS's track. The proceeding is docketed as STB Finance Docket No. 33877 (Sub-No. 1), *Illinois Central Railroad Company—Petition for Crossing Authority—In East Baton Rouge Parish, LA*. By decision served in that proceeding today, KCS's motion to dismiss the crossing petition has been denied and a procedural schedule has been established to develop the record in that proceeding.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503

Mary A. Able,

Departmental Reparts, Management Officer.

[FR Doc. 01–26902 Filed 10–24–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 18, 2001.

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 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 26, 2001 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0083.

Form Number: ATF F 1582–B (5130.6).

Type of Review: Extension.

Title: Drawback on Beer Exported.

Description: When taxpaid beer is removed from a brewery and ultimately exported, the brewer exporting the beer is eligible for a drawback (refund) of Federal taxes paid. By completing this form and submitting documentation of exportation, the brewer may receive a refund of Federal taxes paid.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 5,000 hours.

OMB Number: 1512–0164.

Form Number: ATF F 3069 (5200.7).

Type of Review: Extension.

Title: Schedule of Tobacco Products, Cigarette Papers or Tubes Withdrawn from the Market.

Description: ATF F3069 (5200.7) is used by persons who intend to withdraw tobacco products from the market for which the taxes has already been paid or determined. The form describe the products that are to be withdrawn to determine the amount of tax to be claimed later as a tax credit or refund. The form notifies ATF when withdrawal or destruction is to tax place, and ATF may elect to supervise withdrawal or destruction.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 119.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,071 hours.

OMB Number: 1512–0543.

Form Number: ATF F 5300.11A.

Type of Review: Extension.

Title: Annual Firearms Manufacturing and Exportation Report of Semiautomatic Assault Weapons.

Description: The purpose for which the information is collected includes witness qualifications, congressional investigations, court decisions and disclosure, furnishing information to other Federal agencies and compliance inspections. The form will capture information on semiautomatic assault weapons that is not currently capture on ATF F 5300.11.

Respondents: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1,556.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 156 hours.

Clearance Officer: Frank Bowers (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503

Mary A. Able,

Departmental Reparts, Management Officer.

[FR Doc. 01–26903 Filed 10–24–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount and rebate evaluation.

SUMMARY: Pursuant to Section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6–8000) prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. In addition, 5 CFR part 1315.8 of the Prompt Payment rule on "Rebates" requires that this rate be used in determining when agencies should pay purchase card invoices when the card issuer offers a rebate. Notice is hereby given that the applicable rate is 5 percent for calendar year 2002.

DATES: The rate will be in effect for the period beginning on January 1, 2002 and ending on December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Risk Management Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW, Washington, DC 20227 (Telephone: 202) 874–6650).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Pub. L. 95–147, 91 Stat. 1227. Computed each year by averaging investment rates for the 12-month period ending, every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on a moving basis, changes by 2 per centum. The rate is effect for the calendar year 2002 reflects the average investment rates for the 12-month period that ended September 30, 2001.

Dated: October 16, 2001.

Bettsy H. Lane,

Assistant Cammissianer, Federal Finance.

[FR Doc. 01–26926 Filed 10–24–01; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 66, No. 207
Thursday, October 25, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

Office of Communications

Cancellation of an Optional Form by the Office of Personnel Management (OPM)

Correction

In notice document 01–26342 appearing on page 53223 in the issue of Friday, October 19, 2001, make the following correction:

On page 53223, in the first column, in the **SUMMARY:** section, in the second line, "of" should read "OF".

[FR Doc. C1–26342 Filed 10–24–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

45 CFR CH. V

Commission's Structures, Functions, Rules of Procedure, and Responsibilities

Correction

In rule document 01–24399 beginning on page 49844 in the issue of Monday, October 1, 2001, make the following correction:

On page 49857, in the second column, in the fourth complete paragraph, beginning in the seventh line"§ 506.18 Entitlement of survivors to award in case of death of prisoner of war" should have appeard as a section heading:

§506:18 Entitlement of survivors to award in case of death of prisoner of war. [Corrected]

[FR Doc. C1–24399 Filed 10–24–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Admnistration

21 CFR Part 1310

[DEA Number 198F1]

RIN 1117–AA57

Control of Red Phosphorus, White Phosphorus and Hypophosphorous Acid (and its salts) as List i Chemicals

Correction

In rule document 01–26013 beginning on page 52670 in the issue of Wednesday, October 17, 2001, make the following correction:

§ 1310.04 [Corrected]

On page 52675, in the first column, in §1310.04, paragraph (1) should be corrected to read as follows:" * * *".

[FR Doc. C1–26013 Filed 10–24–01; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 15

RIN 3150–AG80

Debt Collection Procedures

Correction

In proposed rule document 01–25000 beginning on page 50860 in the issue of Friday, October 5, 2001, make the following correction:

§ 15.21 [Corrected]

On page 50864, in the third column, under §15.21, in paragraph (ii), in the last line, "designed" should read,"designated".

[FR Doc. C1–25000 Filed 10–24–01; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44888; File No. SR–NYSE–2001–38]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing and Trading Ordinary Shares of Deutsche Bank on the Exchange

September 28, 2001.

Correction

In notice document 01–25385 beginning on page 51713 in the issue of Wednesday, October 10, 2001, make the following correction:

On page 51715, in the first column, under

III. Solicitation of Comments

heading, beginning in the second to the last line of that section, "[insert date 21 days from date of publication]" should read, "October 31, 2001".

[FR Doc. C1–25385 Filed 10–24–01; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44867; File No. SR–NASD–2001–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending NASD Code of Procedure Rule 9216 and NASD Code of Procedure Rule 9270 To Substitute the Office of Disciplinary Affairs for the Office of General Counsel for Review of Proposed Acceptance, Waivers and Consents, Proposed Minor Rule Violation Letters, and Offers of Settlement

September 27, 2001.

Correction

In notice document 01–24808 beginning on page 50699 in the issue of Thursday, October 4, 2001, make the following corrections:

(1) On page 50700, in the first column, in the sixth line from the bottom, "Subcommittee of the [General Counsel]" should read "Subcommittee or the [General Counsel]".

(2)On the same page, in the second column, under the

II. Self-Regulatory Organization's Statement of the Purpose of, and Statuatory Basis for, the Proposed Rule Change

heading, in the first paragraph, in the second line "Regulations" should read "Regulation".

[FR Doc. C1–24808 Filed 10–24–01; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44921; File No. SR–Phlx–00–70]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc. Relating to TheStreet.com Internet Index

October 11, 2001.

Correction

In notice document 01–26085 beginning on page 52823 in the issue of Wednesday, October 17, 2001, make the following correction:

On page 52823, in the second column, the date line should be as set forth above.

[FR Doc. C1–26085 Filed 10–24–01; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44391; File No. SR–NASD–2001–72]

Self Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Nasdaq National Market Execution System Fees Charged to Non-Members

Correction

In notice document 01–26401 beginning on page 53276 in the issue of Friday, October 19, 2001, make the following correction:

On page 53276, in the second column, the Release No., File No., and subject title should be as set forth above.

[FR Doc. C1–26401 Filed 10–24–01; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM175; Special Conditions No. 25–01–01–SC]

Special Conditions: Boeing Model 777-200 Series Airplanes; Overhead Crew Rest Compartment

Correction

In rule document 01–12106 beginning on page 26971 in the issue of Tuesday, May 15, 2001, make the following correction:

On page 26873 in the second column, under

The Special Conditions

heading, in paragraph 1(a)(3), "permitted" should read, "prohibited".

[FR Doc. C1–12106 Filed 10–24–01; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
October 25, 2001

Part II

Department of Agriculture

7 CFR Part 1000, et al.
Milk in the Northeast and Other Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO–14–A69, et al.: DA–00–03]

Milk in the Northeast and Other 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.

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A69
1005	Appalachian	AO–388–A11
1006	Florida	AO–356–A34
1007	Southeast	AO–366–A40
1030	Upper Midwest	AO–361–A34
1032	Central	AO–313–A43
1033	Mideast	AO–166–A67
1124	Pacific Northwest	AO–368–A27
1126	Southwest	AO–231–A65
1131	Arizona-Las Vegas	AO–271–A35
1135	Western	AO–380–A17

SUMMARY: This decision recommends changes to Federal milk orders based on the record of a hearing held May 8–12, 2000, to consider proposals submitted by the industry to change the pricing formulas included in the final rule for the consolidation and reform of Federal milk orders and on comments filed in response to a tentative final decision issued November 29, 2000. The proceeding was undertaken in response to a Congressional mandate included in the Consolidated Appropriations Act, 2000, to reconsider the Class III and Class IV pricing formulas. The material issues on the record of the hearing relate to the elements of the Class III and Class IV pricing formulas, including: commodity prices, manufacturing (make) allowances, factors related to product yield, role of producer costs of production, and the issue of whether to omit a recommended decision. After issuance of the tentative final decision, approval of the proposed order amendments by producers, and issuance of an interim final rule, some of the provisions of the interim final rule were enjoined by the U.S. District Court for the District of Columbia. This decision considers comments filed in response to the tentative final decision and recommends changes that are consistent with the Court's ruling. Changes from the tentative final decision would increase the dry whey make allowance and remove a snubber used in the other solids component price calculation, revise the Class III butterfat and protein component price formulas consistent with the Court's ruling, eliminate the pooling of butterfat values in paying producers in component pricing orders, and change the classification of several high-fat products from Class IV back to Class III.

DATES: Comments should be submitted on or before November 26, 2001.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, Room 1081, South Building, U.S. Department of Agriculture, Washington, DC 20250. Reference should be made to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address *connie.brenner@usda.gov*.

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 12866.

These proposed amendments have been reviewed under Executive Order 12988, Civil Justice Reform. The amendments are not intended to have a retroactive effect. If adopted, the proposed amendments will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Analysis

This decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 115 Stat. 1501).

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this regulatory flexibility analysis. When preparing such analysis an agency shall address: the reasons, objectives, and legal basis for the anticipated proposed rule; the kind and number of small entities which would be affected; the projected recordkeeping, reporting, and other requirements; and federal rules which may duplicate, overlap, or conflict with the proposed rule. Finally, any significant alternatives to the proposal should be addressed. This regulatory flexibility analysis considers these points and the impact of this proposed regulation on small entities. The legal basis for this action is discussed in the preceding section.

The RFA 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 businesses. For the purpose of the RFA, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if

the local plant has fewer than 500 employees.

USDA has identified as small businesses approximately 66,327 of the 71,716 dairy producers (farmers) that have their milk pooled under a Federal order. Thus, small businesses constitute approximately 92.5 percent of the dairy farmers in the United States. On the processing side, there are approximately 1,200 plants associated with Federal orders, and of these plants, approximately 720 qualify as "small businesses," constituting about 60 percent of the total.

During January 2000, there were approximately 240 fully regulated handlers (of which 186 were small businesses), 43 partially regulated handlers (of which 28 were small businesses), and 71 producer-handlers of which all were considered small businesses for the purpose of this regulatory flexibility analysis, submitting reports under the Federal milk marketing order program. This volume of milk pooled under Federal orders represents 72 percent of all milk marketed in the U.S. and 74 percent of the milk of bottling quality (Grade A) sold in the country. Forty-four distributing plants were exempt from Federal order regulation on the basis of their small volume of distribution.

Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 3.965 billion pounds in January 2000—38.8 percent of total Federal order producer deliveries. More than 200 million Americans reside in Federal order marketing areas—approximately 77 percent of the total U.S. population.

In order to accomplish the goal of imposing no additional regulatory burdens on the industry, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In light of this review, it was determined that these proposed amendments would have little or no impact on reporting, recordkeeping, or other compliance requirements because these would remain identical to the current Federal order program. No new forms have been proposed, and no additional reporting would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed rulemaking does not duplicate, overlap or conflict with any existing Federal rules.

To ensure that small businesses are not unduly or disproportionately burdened based on these proposed amendments, consideration was given to mitigating negative impacts.

A comment filed by the managing partner of a large dairy farm argued that dairy producers selling less than 326,000 pounds of milk per month may comprise the majority of dairy farms, but not the majority of milk sold. The comment further stated that it is not appropriate to identify one sector and imply that they are most in need of protection and preservation.

The production guideline of 326,000 pounds per month in identifying small dairy farms is an attempt to relate a measure of size for which data is available (pounds of production per farm) with the criteria specified by the Small Business Administration (revenue from sales), for which data is not readily available to USDA on an individual farm basis. The Regulatory Flexibility Analysis does not represent an attempt to create special privileges for farms defined as small, but to examine the regulations to assure that they do not create a disproportionate burden or competitive disadvantage for such farms.

One of the principal issues considered at the hearing was the source of price data that should be used to generate prices for milk components and, thereby, prices to be paid to producers. The options considered were the National Agricultural Statistics Service (NASS) surveys of selling prices of manufactured dairy products, Chicago Mercantile Exchange (CME) prices, and producer costs of production. The decision selects the NASS-reported prices as the most appropriate for use in determining product prices because of the considerably larger volume of product represented in those price series than in the CME price data. Producer cost of production was not included in the calculation of prices because assuring dairy farmers that their costs of production will be covered addresses only the milk supply side of the market and ignores factors underlying demand or changes in demand for milk and milk products.

Various proposals to reduce or increase the levels of the manufacturing (make) allowances of butter, nonfat dry milk, cheddar cheese and dry whey were considered. This decision adjusts these make allowances from the levels adopted under Federal order reform on the basis of data and testimony contained in the hearing record. Most of the adjustments are minimal. Primarily, manufacturing cost surveys done by USDA's Rural Cooperative Business Service (RBCS) and the California Department of Food and Agriculture (CDFA) were used to determine the most appropriate levels of make allowance for the products used in calculating Federal order class prices.

The only other actual collection of manufacturing cost data for cheddar cheese and dry whey that was cited in the hearing record was a survey of cheddar cheese and dry whey manufacturing costs arranged for by the National Cheese Institute (NCI). This survey was conducted by persons unfamiliar with the dairy industry among cheese processors who did not testify about the data that they submitted for the survey, and entered into the hearing record by a witness who had no firsthand knowledge of the data included. As a result, the NCI survey should be relied upon to a lesser degree than the two studies used to determine the cheddar cheese make allowance. In the case of the RBCS study, the person who gathered the data testified about its collection and what it represented. In the case of the CDFA-collected data, a manual detailing the method by which the data was collected and presented was made available, and several witnesses familiar with the survey testified about it.

In addition, one nonfat dry milk manufacturer testified to costs of manufacture that exceeded those of the two studies by a significant amount, mostly in the areas of return on investment and marketing costs. The data did not include any information about the pounds of product manufactured and could not have been weighted with the data from the two other studies.

Several proposals to change the factor reflecting the yield of nonfat dry milk from nonfat solids in milk would have increased the nonfat solids price and the Class IV skim price, but ignored the need to reflect the generally lower price and higher manufacturing cost of buttermilk powder that also must be considered in calculating the Class IV nonfat solids price. Testimony and data in the record was used to determine a

factor more representative of nonfat dry milk yield and the effect of buttermilk powder price and cost. The alternatives to the formula adopted either did not include consideration of the price, cost, and volume of buttermilk powder relative to those of nonfat dry milk, or gave those factors too great an influence.

Proposals were made to reduce the butter and cheese product prices used in calculating the butterfat price and the Class III component prices. The record of this proceeding continues to support the use of the product prices adopted in the final rule in the Federal milk order reform process as representing accurately the values of these products. In the case of adjusting the Grade AA butter price to reflect the value of Grade A butter, the record fails to reveal any source of information for obtaining current prices for Grade A butter. In the case of proposals to remove the 3-cent adjustment between the barrel and 40-pound block cheese prices, there was no testimony about the actual difference in cost between the two types of packaging that overcame testimony that 3 cents is the actual cost difference, or any data that indicates that the customary price difference is not at least 3 cents.

Proposals to reconsider the class price relationships in the orders were considered, although a proposal to use a weighted average of the Class III and Class IV prices as a Class I price mover was not noticed for hearing in this proceeding. The hearing record supports the continued relationships between the Class IV and Class II prices and between the higher of the manufacturing class prices and the Class I price.

A proposal that the Class II differential be changed to negate any changes in the Class IV price formula that would affect the current price relationship between nonfat dry milk and Class II failed to consider that the Class II-Class IV price difference adopted in Federal order reform is based on the difference in the value of milk used to make dry milk and the value of milk used to make Class II products.

Proposals that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices did not address the rationale for the current Class I price differentials above the manufacturing price levels for the purpose of obtaining an adequate supply of milk for fluid (drinking) use.

The changes to the Class III and Class IV price formulas included in this decision should have no special impact on small handler entities. All handlers manufacturing dairy products from milk classified as Class III or Class IV would remain subject to the same minimum prices regardless of the size of their operations. Such handlers would also be subject to the same minimum prices to be paid to producers. These features of minimum pricing are required by the Agricultural Marketing Agreement Act and should not raise barriers to the ability of small handlers to compete in the marketplace. It is similarly expected that small producers would not experience any particular disadvantage to larger producers as a result of any of the proposed amendments.

Interested parties are invited to comment on the probable regulatory and informational impact of the amended provisions of this decision on small businesses. Also, parties may suggest modifications of this decision for the purpose of tailoring the applicability of the provisions to small businesses.

An analysis was done on the effects of the alternatives selected, and is summarized below.

Analysis

In order to assess the impact of changes in Federal order milk pricing formulas, the Department conducted an economic analysis. While the primary purpose of this decision is to amend the product pricing formulas used to price milk regulated under Federal milk marketing orders and classified as either Class III or Class IV milk, these product price formulas also affect the prices of regulated milk classified as Class I and Class II.

The modifications in this decision are analyzed simultaneously as a change from the set of formulas implemented on January 1, 2000. This analysis focuses on impacts on milk marketed under all Federal milk marketing orders, and treats the Federal order system as a single entity for purposes of generating system-wide price and quantity changes. Order-specific changes in uniform blend prices and blend prices plus premiums are estimated as well. Milk marketed in California, milk marketed under other state regulations and unregulated milk are treated separately. The hard manufactured dairy product markets are national.

Comments Concerning Model Analysis

In response to the tentative final decision, several commenters raised issues regarding model analysis of the effects of changes in order provisions. Select Milk Producers, Inc., et al. (Select), expressed reservations about analysis of the Federal order system as a whole, without including analysis for each order. Select asserted that use of the Model as a national evaluation masks the damage of a low Class III price in some orders, such as the Western and the Upper Midwest where Class III utilization, pooled or not, is high. Select also contended that a national model ignores the fact that the impact of higher nonfat dry milk prices and corresponding increases in Class I and Class II prices may increase national average returns, but do not have such an effect in areas where Class III use is dominant. Select claimed that national analysis violates the Agricultural Marketing Agreement Act of 1937.

The dairy industry model is a national model that includes three separate marketing areas: the aggregated Federal Milk Order system, California, and aggregated all other markets. The aggregated Federal order system includes a minimum Class I differential that is an average over the 11 orders, as well as the Federal order minimum prices for Classes II, III, and IV. Changes in the Federal order system prices adopted in the tentative final decision were reported in Table 1 of the Economic Analysis available for that decision, both for milk at 3.5 percent butterfat and at average class test. Since Class I differentials are held constant in the analysis, any changes in Class I minimum prices must be caused by changes in Class III and Class IV prices. Blend prices are affected in relation to an order's class utilizations and the changes in the class prices.

Concerns that markets with high Class III utilizations would suffer sharp declines in producer income and milk marketings were considered and dismissed without further analysis because of the minuscule price changes resulting from the formula changes. The analysis of the tentative final decision indicates that the Federal order Class III price (at test) would have decreased by an average of $0.015 per hundredweight over the five-year period. Even if an order had a Class III utilization of 100 percent, such a small price change would result in no observable change in milk supplied. The estimated changes in all the class prices at test under the tentative final decision were so small that no single order blend price could have been increased or reduced by more than about 2 cents per hundredweight, or less than .2 percent. A change of this magnitude has to be considered "approximately zero" in an analysis of milk markets. [See Table 1 of the Economic Analysis for the Tentative Final Decision on Class III and Class IV Price Formulas].

Select also raised an issue over the use of the model, asserting that its use could represent post-hearing testimony that is not subject to cross-examination by hearing participants. Select argued

that changes in the model between any description of it in testimony at the hearing and analysis used in the decision would represent evidence not legitimately part of the record, and concluded that the Secretary should clearly identify any alterations in the model.

The model used to analyze the tentative final decision was modified and substantially improved between the preliminary economic analysis (a summary of which was published with the hearing notice in this proceeding) and the Economic Analysis for the Tentative Final Decision on Class III and Class IV Price Formulas. The original model accounted for milk on a butterfat basis. The improved model accounts for both nonfat solids and fat solids in milk and allocates the solids among the various milk and dairy products. The improved model's performance is much better, particularly with respect to simulating the effects of program changes on the manufactured dairy product markets which generate the prices used to drive the Federal milk order pricing system. Further improvements have been completed recently, including re-estimating the supply and demand relationships using data from 1980 forward. Previous estimates used data from 1970 forward. The economic analysis of this recommended decision uses the model as modified, with new supply and demand relationships documented in the complete Economic Analysis for the Recommended Decision on Class III and Class IV Price Formulas.

More to the point, however, is that Federal milk order decisions do not depend upon the model results. Proposals must have their own economic substantiation. Testimony and evidence relative to the issues considered in the proceeding must be submitted to support the need for changes in order provisions. Thus, the model is not the evidentiary record for the proposals in this decision. The function of the model is to evaluate the impacts of the proposed changes on the dairy industry generally, and particularly to assess if an adequate supply of milk will be forthcoming to meet the Class I needs of the order marketing areas. The preliminary economic analysis, published with the hearing notice, was performed with the intention of providing analysis that the industry might find useful. In the period between the hearing and the tentative final decision, the model was improved and an economic analysis was performed on the tentative decision and made public. The model-estimated results of implementing the tentative final decision changes were deemed to have no discernable effect on the quantity of milk supplied. Thus, it was concluded that Class I needs would continue to be met in all orders.

In comments filed in response to the tentative final decision, National Farmers Union (NFU) questioned the baseline assumption that the price support program would end on December 31, 2000. Subsequently, the support program was extended for another year, and NFU questioned whether the results of the analysis would have been different if the analysis had incorporated an extension of the support program.

The official USDA baseline considers policies and programs as given at the time of its development. The baseline provides AMS and other agencies with an official interagency forecast against which to conduct policy analysis. To have assumed continuation of the support price program would have required that a number of other assumptions be made, including the relationship of butter and nonfat dry milk support prices. Dairy Programs does not create its own baseline because it might direct debate toward the correctness of the baseline and away from the issues under consideration. With respect to the effect on the results, it is not thought that including an additional year of dairy price support would have much effect.

Scope of Analysis

Impacts are measured as changes from the model baseline as adapted from the USDA dairy baseline published in February 2001. This baseline used the Class III and IV pricing formulas implemented on January 1, 2000, as a result of Federal order reform. The USDA baseline is a national, annual projection of the supply-demand-price situation for milk and dairy products. Baseline assumptions are: (1) The price support program would end on December 31, 2001; (2) the Dairy Export Incentive Program would continue to be utilized; and (3) the Federal Milk Marketing Order Program would continue as reformed on January 1, 2000.

It was necessary to make the following simplifying assumptions in order to conduct the analysis. The Federal order share of U.S. milk marketings is about 71 percent. About 65 percent of all milk manufactured (Classes II, III, and IV) is marketed under Federal order regulation. Given the prominence of Federal order marketings in the U.S. milk manufacturing industry, prices paid for manufactured milk under Federal orders cannot get too far out of alignment with the value of milk for manufacturing in the rest of the United States. Similarly, the fluid prices in non-Federal order markets are largely reflective of Federal order minimum Class I prices.

California stands out as the state with the highest production and has its own market regulations. California milk marketings are estimated as a function of the California pool price. Non-California milk marketings are estimated as a function of an all-milk price that incorporates the Federal order pool price and over-order payment estimates. The Federal order share of those non-California marketings is estimated as a function of the Federal order blend price relative to the minimum prices of Class III and IV value of manufactured milk.

The decision's formula changes have an impact on Class I and Class II prices. Class II prices move in concert with changes in Class IV. The effects on Class I prices depend upon the effect of the formula changes on the Class III price relative to the Class IV price. Class I prices are based on the higher of the Class III or Class IV prices.

Demands for fluid milk and manufactured dairy products are functions of per capita consumption and population. Per capita consumption for the major milk and dairy products are estimated as functions of own prices, substitute prices, and income. Retail and wholesale margins are assumed unchanged from the baseline. The demands for fluid milk and soft manufactured products are satisfied by the eligible supply of milk. The milk supply for manufacturing hard products is the result of milk marketings minus the volumes demanded for fluid and soft manufactured products. The remaining volume is allocated to making cheese and making butter/nonfat dry milk according to returns to manufacturing in each class. Wholesale prices for cheese, butter, nonfat dry milk, and dry whey reflect supply and demand for these products. These prices underlie the Federal pricing system.

Summary of Results

The results of the changes to the Class III and Class IV formulas adopted under Federal order reform that are recommended in this decision are summarized using five-year, 2002–2006, average changes from the model baseline. The results presented for the Federal order system are in the context of the larger U.S. market. In particular, the Federal order price formulas use national manufactured dairy product prices.

The advanced Class I base price is the higher of the Class III or Class IV advance pricing factors. The Class I base price is the Class IV price in all years of the analytical period for the baseline, while Class III becomes the Class I base price in 2002 and 2006 under this decision. The Class I price, at the class average test of 2 percent butterfat, is slightly above the baseline in each year. This slight price increase results in small proportional reductions in the demand for skim milk and butterfat for Class I use. Milk generally shifts from Class I use to the production of butter, nonfat dry milk, and cheese in generally the same proportions as in the baseline. As a result, the wholesale prices of butter, nonfat dry milk and cheese each decrease slightly, which reduces the returns per hundredweight for U.S. milk for manufacturing.

Producers. Over the five-year period, the changes taken as a whole result in an increase of about $0.20 per hundredweight in the Federal order minimum blend price for milk at test. Including the effects of Class I premiums and the reduced returns from manufactured milk, the Federal order all-milk price is increased by $0.10 per hundredweight. Federal order marketings increase by an average 83 million pounds due to an increase in production in response to higher producer prices. Cash receipts increase by $136 million (0.8 percent) from baseline receipts of $17,194 million.

The distribution of the 2002–2006 annual average price changes across the 11 orders varies with the distribution of Class III and Class IV utilizations. Estimates of annual average price changes by order are provided in the economic analysis for this decision.

The five-year annual average U.S. all-milk price increases by $0.07 per hundredweight, and includes an average manufactured milk value decline of $0.05 per hundredweight. U.S. milk marketings increase by an average 65 million pounds annually, and cash receipts increase by $126 million (0.5 percent) from baseline receipts of $23,884 million.

Milk Manufacturers and Processors. Annual Class IV and Class II skim milk prices increase each year for an average of $0 08 per hundredweight (1.1 percent) for the 2002–2006 period. This increase results mainly from changing the conversion factor for nonfat dry milk to nonfat solids from 1.02 to 1.0. The Class I skim milk price increases by an average of $0.10 per hundredweight. Butterfat prices decline each year by an average of 1.05 cents per pound.

The Class IV price at test (about 6.82 percent butterfat) declines by an average of −$0.07 per hundredweight, mainly as the result of a slight reduction in the butterfat content of Class IV over 2002–2006. The Class II price at test is unchanged. The Class I price at test (about 2 percent butterfat) increases on average $0.07 per hundredweight (0.57 percent).

The annual average Class III price at test (3.82 percent butterfat) increases by about $0.38 per hundredweight during 2002–2006. From the 2002 and 2003 Class III price increase of $0.47 and $0.48 per hundredweight, respectively, the changes steadily decline, ending in an increase of $0.23 in 2006. The major change in the Class III price is the average protein price increase of $0.18 per pound, ranging from an increase of $0.22 in 2002 and 2003 and declining steadily to an increase of about $0.13 in 2006. The change in the Class III price results primarily from a combination of changes in the protein formula that reduces the impact of the butterfat price on the protein price. The major changes in the protein price formula are multiplying the butterfat price by 0.90, reflecting a 90 percent butterfat retention rate in the cheese, and replacing the 1.28 factor with 1.17.

Consumers. The expected $0.07 per hundredweight increase in the minimum Class I price for 2002–2006 results in an average $0.006 increase in the price per gallon of fluid milk for consumers. Annual consumer costs for fluid milk over 2002–2006 are estimated to increase on average by about $28 million in the Federal order system and by $26 million in the U.S.

The price of butter is estimated to decrease on average $0.008 per pound for the period. Cheese is estimated to decrease $0.005 per pound. Annual consumer expenditures over the five-year period are estimated to decrease by $10 million on butter, and by $16 million on American cheese.

A complete Economic Analysis for the Recommended Decision on Class III and Class IV Price Formulas is available upon request from Howard McDowell, Senior Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, Room 2753, South Building, U.S. Department of Agriculture, Washington, DC 20250, (202)720–7091, e-mail address *howard.mcdowell@usda.gov*.

Civil Rights Impact Statement

This decision is based on the record of a public hearing held May 8–12, 2000, in Alexandria, Virginia, in response to a mandate from Congress via the Consolidated Appropriations Act, 2000, that required the Secretary of Agriculture to conduct a formal rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The consolidated orders were implemented on January 1, 2000. A tentative final decision on the issues considered at the hearing was issued November 29, 2000 (65 FR 76832), and an interim final order (65 FR 82832) became effective January 1, 2001. A preliminary injunction enjoining portions of the interim final order was granted in the U.S. District Court for the District of Columbia on January 31, 2001.

Pursuant to Departmental Regulation (DR) 4300–4, a comprehensive Civil Rights Impact Analysis (CRIA) was conducted and published with the final decision on Federal milk order consolidation and reform. That CRIA included descriptions of (1) the purpose of performing a CRIA; (2) the civil rights policy of the U.S. Department of Agriculture; and (3) basics of the Federal milk marketing order program to provide background information. Also included in that CRIA was a detailed presentation of the characteristics of the dairy producer and general populations located within the former and current marketing areas.

The conclusion of that analysis disclosed no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability, who choose to deliver milk to handlers regulated under a Federal order will receive the minimum blend price. Federal orders provide the same assurance for all producers, without regard to sex, race, origin, or disability. The value of all milk delivered to handlers competing for sales within a defined marketing area is divided equally among all producers delivering milk to those handlers.

The issues addressed at the May 2000 hearing are issues that were addressed as part of Federal milk order consolidation and reform. Establishing representative make allowances in the formulas that price milk used in Class III and Class IV dairy products is an issue that affects the obligations of handlers of those products to the Federal milk order pool, and similarly the pool obligations of Class I and Class II handlers. The decision should result in no differential benefits in dividing the pool among all producers delivering milk to those regulated handlers. Therefore, USDA sees no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers.

Decisions on proposals to amend Federal milk marketing orders must be based on testimony and evidence presented on the record of the proceeding. The hearing notice in this proceeding invited interested persons to address any possible civil rights impact of the proposals being considered in testimony at the hearing. No such testimony was received.

Copies of the Civil Rights Impact Analysis done for the final decision on Federal milk order consolidation and reform can be obtained from AMS Dairy Programs at (202) 720–4392; any Milk Market Administrator office; or via the Internet at: *www.ams.usda.gov/dairy/*

Prior documents in this proceeding:

Notice of Hearing: Issued April 6, 2000; published April 14, 2000 (65 FR 20094).

Tentative Final Decision: Issued November 29. 2000; published December 7, 2000 (65 FR 76832).

Interim Final Rule: Issued December 21, 2000; published December 28, 2000 (65 FR 82832).

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 orders regulating the handling of milk in the Northeast and other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this tentative decision with the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Six 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 Hearing Notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. To the extent that this issue was raised, it is considered in the following findings and conclusions.

This recommended decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 115 Stat. 1501). The findings and conclusions set forth below are based on the record of a public hearing to consider proposals submitted by the industry to change the pricing formulas in the marketing agreements and the orders regulating the handling of milk in the Northeast and ten other marketing areas held in Alexandria, Virginia, on May 8–12, 2000. Notice of such hearing was issued on April 6, 2000 and published on April 14, 2000 (65 FR 20094).

In addition, this recommended decision is issued in response to comments received on the tentative final decision (issued November 29, 2000; 65 FR 76832) on the above hearing and is consistent with the injunction issued by the U.S. District Court for the District of Columbia on January 31, 2001.

Brief Summary of Changes to Class III and IV Formulas

As instructed by the legislation requiring this proceeding, the Class III and IV pricing formulas and all of the elements of the formulas were re-considered in developing the tentative final decision and this recommended decision. The changes made in the Class IV component formulas adopted in Federal order reform are minimal. The product prices used in the Class IV formulas (butterfat and nonfat solids) are unchanged. The make allowances for butter and nonfat dry milk are increased slightly, by .1 cents for butter and .3 cents for nonfat dry milk. The divisor used in the butterfat component formula is unchanged, while the 1.02 divisor used in the nonfat solids price formula to reflect the relative values and yields of buttermilk powder and nonfat dry milk is eliminated.

The Class III component price formulas follow the format of the formulas included in Federal order reform and made effective pursuant to the injunction granted by the Federal District Court for the District of Columbia. The formulas revert to using the same butterfat price calculated from the butter price as in Class IV, and a protein price formula that includes an adjustment to represent the differential value of butterfat used in cheese and butterfat used in butter. In the butterfat adjustment to the protein price, the amount of butterfat accounted for at its value in butter is reduced to the same amount as that accounted for at its value in cheese (90 percent), and the 1.28 multiplier is changed to 1.17. The dry whey price, for computing the other solids price, is unchanged. The whey powder make allowance is increased from the tentative final decision to recognize the somewhat greater cost of drying whey than of drying skim milk, and the snubber on the other solids price is removed.

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

1. Role of producer costs of production.
2. Commodity prices (CME vs. NASS).
3. Commodity and component price issues.
   a. General approaches on make allowances.
   b. Class IV butterfat and nonfat solids prices.
   c. Class III butterfat, protein, and other nonfat solids prices.
   d. Effects of changes to Class III and Class IV price formulas.
4. Class price relationships.
5. Class I price mover.
6. Miscellaneous and conforming changes.
   a. Advance Class I butterfat price.
   b. Classification.
   c. Distribution of butterfat value to producers.
   d. Inclusion of Class I other source butterfat in producer butterfat price computation.
7. Re-opening of hearing, issuance of a final decision, or issuance of a recommended decision.

Summary of Changes to the Interim Amendments

This recommended decision differs from the tentative final decision in several respects and includes summaries of comments submitted on each of the issues within the discussion of the issue. The key changes that would be made to the interim order amendments are as follows:

1. In Issue 3c, changes are made to the formulas for calculating the protein and other solids prices, and the Class III butterfat price would be the same as that calculated for Class IV on the basis of butter.

2. In Issue 3d, the changes made in the Class III component price formulas would result in different effects on Class III component, skim, and hundredweight prices.

3. In Issue 6b, the classification of frozen cream, plastic cream and anhydrous milkfat would be changed back to Class III.

4. In Issue 6c, butterfat values would be pooled for the purpose of calculating producer butterfat prices in the orders in which producers are not paid on a component basis. In orders under which producers are paid on a multiple component basis, however, the producer

butterfat price would be the same as that for butterfat used in Classes III and IV.

5. In Issue 6d, the butterfat in other source milk used in Class I is included in calculating the producer butterfat price in marketwide pools that do not use multiple component pricing, but would continue to be included in the producer price differential calculation in multiple component pricing pools.

6. Issue 7 is changed to explain the reasons for issuing a recommended decision at this point in this proceeding, instead of a final decision.

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. Role of Producer Costs of Production

Proposal 29 in the hearing notice proposed that producers' costs of production be incorporated into the Class III and Class IV pricing formulas. A number of dairy farmer witnesses testified that, just as manufacturing processors are assured that their costs of processing milk products will be covered, dairy farmers should also have some assurance that they will be able to continue to operate their dairy farms without losing money. Under the current system, according to the National Farmers Union (NFU) witness, incorporating a make allowance for processors but not for producers leaves dairy farmers to bear the entire burden of changes in supply and demand.

Support for using cost of production in the Class III and IV pricing formulas was reiterated in the comments received in response to the tentative final decision issued November 29, 2000. The National Farmers' Union comment expressed disappointment that no portion of the milk pricing formulas was based on producer cost of production. The American Raw Milk Producers Pricing Association suggested that the USDA ignored existing law as written in the 1937 Agricultural Agreement Act, section 608c(18). Two dairy farmers also mentioned their concern about the need to follow 608c(18). Another dairy farmer advocated a producer-influenced supply control/price control system.

As explained in both the proposed rule and final decision under Federal order reform and in the tentative final decision in this proceeding, assuring producers that their costs of production will be covered addresses only the milk supply side of the market and ignores factors underlying demand or changes in demand for milk and milk products. As noted by the Dairy Farmers of America (DFA) witness, although pricing proposals incorporating cost of production have been noticed and reviewed several times in the last decade without success, if a sound mechanical concept could be advanced that overcomes the objections relative to supply and demand, it should be considered.

The proposals by NFU and National Farmers Organization (NFO) that advocated adoption of make allowances that would be adjusted for changes in indexes reflecting dairy farmers' production costs are discussed under Issue 3a, General Approaches on Make Allowances.

In this recommended decision, consideration has again been given to cost of production proposals. As noted by the NFO witness, the current pricing system uses the interaction of supply and demand for milk products as an indirect method of meeting the pricing requirements of the Agricultural Marketing Agreement Act of 1937 (the Act) for milk. The record of this proceeding contains no new dairy farmer cost of production data that could be used to reflect both the supply and demand sides of the market for dairy products. There is no evidence in the record that either USDA's Economic Research Service or the CDFA costs of production have ever been used to price milk.

The Act stipulates that the price of feeds, the availability of feeds, and other economic conditions which affect market supply and demand for milk and its products be taken into account in the determination of milk prices. This requirement currently is fulfilled by the Class III and Class IV component price calculations. If conditions increase supply costs, the quantity of milk produced would be reduced due to lower profit margins. As the milk supply declines, plants buying manufacturing milk would pay a higher price to maintain an adequate supply of milk to meet their needs. As the resulting farm profit margins increase, so should the supply of milk. Likewise, the reverse would occur if economic conditions reduce supply costs. The price of feed is not directly included in the determination of the price for milk, but rather is one economic condition which may cause a situation in which the price of milk may increase or decrease. A change in feed prices may not necessarily result in a change in milk prices. For instance, if the price of feed increases but the demand for cheese declines, the milk price may not increase since milk plants would need less milk and therefore would not bid the price up in response to lower milk supplies. Also, other economic conditions could more than offset a change in feed prices and, thus, not necessitate a change in milk prices.

The pricing system continued in this decision will continue to account for changes in feed costs, feed supplies and other economic conditions, as explained above. The product price formulas adopted in this rule should reflect accurately the market values of the products made from producer milk used in manufacturing. As supply costs increase with a resulting decline in production, commodity prices would increase as a result of manufacturers attempting to secure enough milk to meet their needs. Such increases in commodity prices would mean higher prices for milk. The opposite would be true if supply costs were declining. Additionally, since Federal order prices are minimum prices, handlers may increase their pay prices in response to changing supply/demand conditions even when Federal order prices do not increase.

Additionally, the pricing formulas developed in this decision are applicable to handlers, since handlers are the regulated parties under Federal milk order regulation. The formulas are used to establish minimum prices for milk used in making particular dairy products, not for determining payments to dairy farmers.

2. Commodity Prices (CME vs. NASS)

As adopted in the interim final rule in this proceeding (published on December 28, 2000 (65 FR 82832)), commodity prices determined by surveys conducted by USDA's National Agricultural Statistics Service (NASS) continue to be used in the component price formulas that replaced the BFP. This decision recommends no changes in the source of product price data.

Several proposals (1, 5, 10 and 19) were considered during the current proceeding that recommended using prices reported by the Chicago Mercantile Exchange (CME) instead of the NASS surveys to determine commodity prices. Both the CME and the NASS surveys were supported by testimony at the hearing and in briefs. The CME is a cash market where speculators, producers, and processors can buy and sell products. It is a mechanism for establishing prices on which the dairy industry relies. Thus, a lot of contracts to buy and sell dairy products are based on CME prices. A USDA witness testified that he is unaware of any other indices used to price cheese in the U.S. According to several witnesses, cheese and butter processors generally base their contract sales on CME prices.

The NASS price survey gathers selling prices of cheddar cheese, Grade AA butter, nonfat dry milk, and dry whey from a number of manufacturers of these products nationwide. At the time the proposed rule on Federal order reform was published (January 30, 1998), the NASS survey included prices for cheddar cheese only. This survey had begun in March 1997. In September 1998, before the final decision was published in April 1999, NASS began surveys of Grade AA butter prices, dry whey prices, and nonfat dry milk prices. In developing these commodity surveys, input was obtained from the dairy industry on appropriate types of products, packaging, and package sizes to be included for the purpose of obtaining unbiased representative prices. A sale is considered to occur when a transaction is completed, the product is shipped out, or title transfer occurs. In addition, all prices are f.o.b. the processing plant/storage center, with the processor reporting total volume sold and total dollars received or price per pound. NASS Dairy Products Prices reports wholesale cheddar cheese prices for both 500-pound barrels and 40-pound blocks, USDA Grade AA butter, USDA Extra Grade or USPH Grade A non-fortified dry milk, and USDA Extra Grade edible non-hygroscopic dry whey. A more-detailed description of the surveys can be found in the final decision of April 2, 1999 (64 FR 16093).

The proponents of proposal 1, Western States Dairy Producers Trade Association, et al. (WSDPTA), a group of several trade associations and cooperatives, proposed that the NASS commodity prices for butter, cheese, and nonfat dry milk that currently are used for computing the Federal order component prices be replaced with prices determined by trading on the CME. Dry whey was not included in the proposal because there is no dry whey cash contract traded on the CME. A witness from WSDPTA did not oppose the collection and reporting of NASS data, but expressed the opinion that while it serves an important function as information, it should not be used to establish prices. The proponents presented several benefits of using the CME over the NASS survey for commodity prices.

Proponents explained that by using CME prices in the formulas, prices would be known immediately rather than a week later when the NASS prices are published, reflecting more quickly the supply-demand conditions for dairy products. The one-week delay is caused by the time necessary to collect data. A witness for National Farmers Organization noted that interested persons are able to check the CME value of products on a daily basis and use the reported prices as a factor in establishing what they will pay, or what they will be paid, for cheese.

A witness from WSDPTA went on to explain that buyers, sellers, and speculators trade the CME, trying to obtain a price in their favor, while the price actually is determined by supply and demand forces. He described the rules as fair and the results as transparent, with participants having a number of interests. The witness continued by noting that the CME price result is instant and results cannot be altered. In contrast, he stated, NASS prices are reported by sellers only, who are not disinterested parties. He argued that NASS respondents can modify their numbers or file an initial report after calculating the price impact of the latest reports.

The proponents also concluded that the urging by many hearing participants that the NASS price series include mandatory participation and be audited proves that the NASS series is not reliable enough to be used as a price-discovery method.

Finally, the witness from WSDPTA expressed the view that the NASS price series would feed on itself and result in price setting, not price discovery. He continued by noting that plants and their buyers will obtain prices one week and sell the commodity in the following week at a price derived in large part from the price obtained in the prior week. The witness compared the NASS survey to the CDFA survey of powder prices which, he claimed, results in a circular pricing system that is mathematically incapable of fully reflecting the top of the market price for powder because so little of the survey volume is priced off of the spot market. Proponents expressed the belief that this circularity causes prices to remain lower than they would without it and that prices would increase more slowly and decrease more rapidly than would prices on the CME, causing overall lower prices for dairy farmers.

In the comments filed on the tentative final decision, the proponents of changing from NASS to CME prices commented only that USDA should reconsider the use of NASS prices. A partner/manager of a dairy farm stated that there is little correlation between the NASS and wholesale prices, and questioned the accuracy of NASS survey numbers. He also stated that block and barrel cheese is traded only between manufacturers and that they therefore have an influence on setting the price, especially if the percentage of the product traded is very low. He argued that a fair price would reflect retail prices or at least true wholesale price, not the value of the last pound of product produced.

Opponents of changing from NASS to CME prices to compute component prices included International Dairy Foods Association (IDFA), Dairy Farmers of America (DFA), and National Milk Producers Federation (NMPF). Witnesses for these parties argued that the NASS survey includes pricing based on a significantly larger volume of product than does the CME. In the case of the nonfat dry milk market, the table of 1999 monthly Chicago Mercantile Exchange Cash Markets data from the 1999 Annual Dairy Market Statistics showed that there were no sales reported for either extra grade or Grade A in the year 1999.

According to a witness from IDFA, the volume of cheddar cheese in the NASS survey is equal to 26.4 percent of all cheddar cheese production in the U.S. for the period September 1998 through February 2000. During the same period, the CME volume of cheddar cheese traded represented only 1.7 percent of U.S. cheddar cheese production. The witness stated that for the same 18-month period, the NASS survey volumes represented 14.4 percent of all U.S. butter production while CME trading consisted of only 2.6 percent. He also noted that switching from the NASS survey data to the CME data would result in a change from a very broad to an extremely thin representation of actual product transactions.

Opponents to the proposal to use CME prices also pointed out that prices at the CME are Chicago or Midwest prices based on the delivery location specification of the contract. Therefore, they argued, the scope of the reported prices for cheese, butter, and nonfat dry milk are not national. A witness for Kraft noted that reliance on the CME alone would exclude the substantial and growing volume of cheese produced in the western United States (U.S.), particularly California. A witness for Northwest Dairy Association suggested that a transportation credit would need to be used with CME prices, at least in the West, to reduce the value of the CME to a more representative level. Opponents went on to explain that since the NASS survey contains data from plants located all over the United States, NASS prices represent a national scope of the prices of each of the particular commodities.

Several of the comments filed in response to the tentative final decision supported use of the NASS price series to determine product prices.

According to the testimony in the record and a number of the briefs, cheese and butter sellers and buyers look to the CME to identify the most current price levels. As a result, prices move in response to supply and demand conditions in the marketplace as reflected at the CME. Since the transaction prices of commodities are based off of the CME, it is difficult to see how the NASS survey can cause, or result in, circularity. The NASS prices reflect the CME prices with a short lag but are based on a much greater volume, enhancing the stability of the price series. Continued use of the NASS price survey appears to be the best method of obtaining reliable data about commodity prices.

As stated in the final decision on Federal order reform, NASS data traditionally have been collected via a survey with voluntary participation. The price information, like most NASS data, has not been audited. NASS, however, applies various statistical techniques and cross-checking with other sources to provide the most reliable information available. The issue of mandatory and audited NASS data was not within the scope of the rulemaking and could not be addressed on the basis of the hearing record. At the time of the hearing NASS was not authorized to conduct such activities, but legislation has since been passed that authorizes mandatory and verified price reporting.

3. Commodity and Component Price Issues

a. General Approaches on Make Allowances

Changes to the make allowances for each of the product formulas used in calculating component prices were proposed and discussed at length during this proceeding. Except in the case of dry whey, make allowances adopted in the component price formulas in this decision are calculated using a weighted average of the most recent CDFA study and the RBCS study. A marketing cost of $.0015 per pound is added to both the CDFA costs and the RBCS costs, and the CDFA value for return on investment is used to adjust the RBCS cost. This is generally the same approach used to determine the appropriate make allowances under Federal order reform, and results in values that differ little from the formulas adopted at that time.

For the calculation of the Class III "other nonfat solids" price, neither the CDFA nor RBCS studies included information on the cost of making dry whey. The tentative final decision determined that the make allowance for dry whey should remain the same as that for nonfat dry milk. However, the results of a survey done for this proceeding under the auspices of IDFA are being recommended in this decision for use in determining the make allowance for dry whey.

A number of the proposals considered in this proceeding would change the manufacturing, or make, allowances adopted for the pricing formulas under Federal order reform. There was considerable testimony on the appropriate factors to be considered in establishing make allowances, and several sources of data were cited as the most accurate to use for such a purpose.

Two surveys of product manufacturing costs that were averaged for use in calculating make allowances under Federal order reform were the California Department of Food and Agriculture (CDFA) study, which is done annually and includes nearly 100 percent of dairy products manufactured in California, and the Rural Business Cooperative Service (RBCS) study, which is conducted annually by USDA as an in-plant benchmark study for participating cooperative associations. These two surveys had both been updated since earlier versions had been used in determining the manufacturing allowances used in the component pricing formulas adopted under Federal order reform. In addition, the National Cheese Institute (NCI), an affiliate of IDFA, contracted with a third party to conduct a survey of the costs of manufacturing cheese and whey powder for use in this proceeding.

A witness for NMPF stated that make allowances should reflect the costs incurred by average plants manufacturing the particular dairy product used in the component/Class price formulas: butter, nonfat dry milk, cheese, and dry whey. The witness went on to explain that the procedure used by the Secretary for determining the make allowances under Federal order reform, using an average of the CDFA cost of production studies and the RBCS study, was sound and that the same procedure should be used as a result of this hearing, using the updated data from both surveys. In calculating an appropriate make allowance, the witness supported addition of a marketing cost of $.0015 per pound to both the CDFA costs and the RBCS costs, as under Federal order reform, and the CDFA value for return on investment used to adjust the RBCS costs under Federal order reform. The witness explained that both of these factors should be included as they are legitimate and necessary costs incurred in operating manufacturing plants.

The witness for IDFA supported inclusion of the CDFA cost studies in the computation of the make allowance; however, the witness stated that the appropriate procedure for computing the make allowance for cheese was to compute a weighted average of the CDFA cost studies and the NCI survey. The witness explained that the RBCS study does not include all the necessary costs that must be recovered in the make allowance, and that the NCI survey is needed to determine what the additional cost values should be. The costs that the IDFA witness pointed out—those which are not included in the RBCS survey but which are included in the NCI survey—are general plant administrative costs, such as the plant manager's salary and corporate overhead; return on investment or capital costs; and marketing costs.

The IDFA representative testified that the danger inherent in regulated prices is setting the manufacturing allowance at a level too low to assure that manufacturers will be able to recover their costs of manufacturing finished products and to have the money needed to invest in new plants. The witness pointed out that an inadequate make allowance would force manufacturers either to move to areas that do not have regulated pricing or go out of business. At the very least, the witness explained, the manufacturers would not invest in new plants and equipment, which in the long run would cause a decline in the productivity of the dairy industry. A number of briefs filed on the basis of the hearing transcript emphasized the importance of covering all handlers' costs of manufacturing, and not just average costs.

The IDFA witness explained that if make allowances are established at too low a level, proprietary plants are placed at a competitive disadvantage relative to cooperative-owned plants. The witness explained that since cooperatives do not have to pay their producers the minimum order price, as proprietary plants are required to do, cooperative plants can reduce the prices paid to member producers to make up the difference in cost.

The IDFA witness explained further that the problem with a make allowance established below the amount needed to cover plant costs occurs because the plant sells the finished product at the same price that is used in the formula for establishing the minimum price the plant must pay for the raw material (milk). The manufacturing allowances are the only place the plant has the opportunity to cover its costs, and those allowances are fixed in the formula that determines the raw material price.

The witness for IDFA asserted that there is very little risk in setting a make allowance too high. He explained that if the make allowance is established at a level above plant costs, the additional revenue stream will be corrected through market forces by requiring the plant operators to pay competitive over-order premiums to milk suppliers to obtain an adequate supply of milk.

A witness for WSDPTA explained that the most important part of determining a manufacturing allowance is to pick a method and stick with that method. The witness testified that the appropriate method is to use the results of the RBCS study with adjustments to include factors for marketing costs and for capital costs. The witness pointed out that use of the RBCS study is appropriate because the study is voluntary and represents the costs of making the particular commodities, and the plants are geographically widely dispersed. The WSDPTA witness stated that including the results of the CDFA study in the computation of the make allowance for pricing Federal order milk is inappropriate since there is no logical reason for considering the manufacturing costs of plants that do not procure any of the milk that would be priced using those costs.

Witnesses testifying on behalf of NFU and NFO both supported the concept of variable make allowances, in which changes in dairy farmer production cost indexes would be used to adjust handler make allowances. The NFU proposal would use an average national cost of production, presumably as published by USDA's Economic Research Service, and the NFO proposal would use the CDFA milk production cost index. The witnesses supported such an approach as a means of addressing the problem of manufacturers being insulated from changes in supply and demand by their fixed make allowances.

The NFU and NFO witnesses explained that a fixed make allowance, as contained in the current pricing system, does not vary with market conditions and creates a situation in which manufacturers will not respond to market signals since the manufacturers will receive a profit no matter what the supply and demand is for the finished products. The witnesses testified that as long as the make allowance allows manufacturers a sufficient return, the manufacturers will continue to produce the finished product even if there is limited demand for the product, thus resulting in a continued low price paid to producers for their milk. As a result, they argued, producers are left to bear the burden of changes in supply and demand. The NFO witness characterized a variable make allowance tied to the cost of producing milk as a market-oriented system.

The NFU witness described the California milk pricing system, in which manufacturers' production costs are covered through the make allowance, as an example of the problems encountered by producers with the use of product price formulas incorporating make allowances. He testified that California continues to produce a large quantity of lower-valued products because the pricing system makes the manufacturer immune to the supply of and demand for the products. The witness blamed the California make allowance system for the traditionally low milk prices in California that, he claimed, result in expansion of dairy herds to make up for reduced cash flow. The witness predicted that if the Federal order system follows the same pricing path, the same production patterns as witnessed in California would follow in the rest of the United States.

In comments filed in response to the tentative final decision, NFU stated that producers, as well as processors, will fail if they don't attain their costs of production. NFU also argued in its comments that under a variable make allowance processors can avoid reduced make allowances by increasing product prices.

The NFU comment overlooks the fact that the make allowances included in the component price formulas do not cover all of the costs of all processors, and probably allow for greater costs than are experienced by some processors. In this sense, the margins experienced by processors under product price formulas are variable between plants. Also, it is likely that processors share some of their margin with producers in the form of over order prices. The degree to which this sharing occurs certainly may vary with producers' cost/price situations, as perceived by processors. Although increased product prices would have the effect of increasing manufacturing margins, the ability of processors to increase prices while maintaining sales is limited by the fact that the marketplace in which they sell their products is competitive.

There would appear to be no logical or economic reason for changing make allowances for processing plants because of a change in the cost of producing milk. If milk is to clear the market, plants must be willing to accept it. Make allowances that decline as a result of increasing milk production costs would squeeze plant margins, and manufacturers will have to choose between not receiving milk, refusing to receive pooled milk, or paying less than order prices to cooperative associations for milk used in manufactured products. None of these outcomes would be in the best long-term interests of dairy farmers, processors, or consumers. Many dairy farmers, facing increased costs of production, would have to find alternative outlets for their milk. Decisions on the part of many processors to cease operating, use only nonpool milk, or buy milk below order prices likely would result in very disorderly conditions among dairy farmers looking for outlets for their milk.

Most hearing participants agreed that the make allowance should cover the cost of converting milk to a finished manufactured dairy product. However, several participants disagreed with the IDFA contention that there is very little risk in setting the make allowance too high. They argued that if the make allowance is set in excess of the cost to manufacture finished products, the additional revenue would be kept by the manufacturing plants as higher profits and not distributed to the producers supplying milk to the plant. They explained that in many parts of the country there is little if any competition for the dairy farmers' milk and therefore no incentive for a plant to pay above the minimum Federal order price. These plants, according to the witnesses, could be expected to keep the extra make allowance for themselves. Comments filed by Michigan Milk Producers Association continued to urge caution against logic that suggests a low risk of setting make allowances too high. The cooperative stated that not all of its 2,700 members might survive a market adjustment period if make allowances were set too high, even if theoretically greater premiums might be returned to producers.

Several witnesses opposed the idea of setting make allowances at levels that guarantee plants a profit, or at least a return on investment, when the dairy farmers supplying milk to the manufacturing plants have no similar assurances for covering the costs of producing milk. These witnesses pointed to the Agricultural Marketing Agreement Act of 1937, Sec. 608c(18), as justification for setting a lower make allowance for plants, resulting in higher milk prices that would come closer to covering dairy farmers' costs of producing milk. This point of view was reiterated in a half-dozen comments filed in response to the tentative final decision.

As supported by most of the hearing participants, the make allowances

incorporated in the component price formulas under the Federal milk orders should cover the costs of most of the processing plants that receive milk pooled under the orders. In part, this approach is necessary because pooled handlers must be able to compete with processors whose milk receipts are not priced in regulated markets. The principal reason for this approach, however, is to assure that the market is cleared of reserve milk supplies.

In comments on the tentative final decision, IDFA continued to argue that some legitimate manufacturing costs are excluded from the RBCS survey and attacked the data gathered as "inherently suspicious and unreliable." IDFA also stated that the survey is not taken seriously by some of its participants. Both IDFA and Leprino Foods Company argued in comments on the tentative final decision that adding factors for costs excluded in the RBCS study constitutes a less accurate result than if those costs were included in a comprehensive study. IDFA also commented that the need to allow for changes in cost factors that might occur over time (such as recent increases in energy costs) also supports the need for a make allowance that is too high rather than one that is too low.

Although the RBCS survey does not include such costs as general plant administrative costs, return on investment or capital costs, and marketing costs, it is a survey that has been done for sixteen years with the same fundamental methodology and with some continuity of participants. Because the survey is done for the benefit of the participating organizations (cooperatives) to help them identify their costs and compare them with those of their peer group, there is every reason to believe that the costs provided are as accurate as possible. In addition, the years of experience with the survey have enabled USDA to shape the questions to obtain more accurate results.

When the RBCS survey results are adjusted to include the factors that were mentioned above as not included by using the values for those factors from the CDFA survey, the two surveys' costs are comparable, especially considering that the RBCS survey represents manufacturing plants with a wide distribution around the U.S., while the CDFA survey includes only California plants. The CDFA survey is also done every year and is done according to a published procedure manual, with the costs being audited by personnel employed by the State for that purpose. Although no CDFA employee was available to respond to questions about the conduct of the survey, official notice was taken of the procedure manual and of California publications associated with manufacturing cost data. In addition, several witnesses who are deeply involved with the California dairy industry testified regarding the perceived reliability of the survey results.

The use of manufacturing plant data from California plants that do not procure any of the milk that would be priced using those costs should not cause concern. The costs of manufacturing dairy products may vary slightly by region, but adoption of representative make allowances in product price formulas should not fail to use a well-documented study that includes a large amount of audited data, such as the CDFA survey.

In contrast to the RBCS and CDFA surveys, the survey of cheese and whey powder manufacturing costs arranged for by NCI was developed solely for the purpose of establishing costs to be used in determining make allowances for this proceeding. The survey was conducted by persons unfamiliar with the dairy industry among cheese processors who would benefit from the adoption of overgenerous make allowances. No one who actually conducted the survey was made available to testify, and although the IDFA witness stated that survey participants would testify regarding their responses to the survey later in the hearing, none of the participating firms' witnesses would respond to questions about their firms' results.

Although less weight must be given the NCI survey than either the RBCS or the CDFA surveys for the reasons stated above, the NCI survey's resulting manufacturing costs for cheese are not considerably different from a weighted average of the RBCS and the CDFA surveys. In fact, although the IDFA hearing participants went to great lengths to discredit the RBCS study for use in identifying an appropriate level of manufacturing costs, the hearing record reflects that the NCI survey of cheese and dry whey manufacturing costs used the RBCS 1996 survey results to identify outliers (plus or minus 10 percent) in the study commissioned by NCI.

In comments filed on the tentative final decision, IDFA urged that USDA use the NCI and CDFA studies for use in determining make allowances for cheese and whey powder rather than using the RBCS and CDFA studies. The IDFA comments stated that the characterization of the RBCS study as neutral and not developed or commissioned for use in this proceeding was inaccurate, as cooperative associations attending the National Milk Producers Federation annual meeting were encouraged to participate in the survey so the results could be used in this proceeding. Since the RBCS study was developed and has continued for sixteen years for purposes other than establishing make allowances, and the methodology did not change from past years for the study used in the hearing, it is unlikely that it was designed for any purpose other than the one for which it was developed and has been used for that period. If the comment is intended to raise concerns that cooperative associations generally favor lower make allowances, it should be noted that only manufacturing cooperatives were surveyed. The record contains ample evidence that many manufacturing cooperatives desire make allowances just as generous as those favored by proprietary manufacturers.

A comment filed on behalf of the Association of Dairy Cooperatives in the Northeast (ADCNE), some of which are national in scope, argued that use of the NCI data would demean the importance of sworn first-hand testimony that is subject to cross-examination

As a result of the differences in conduct of the three surveys, manufacturing costs used to determine appropriate make allowances for cheddar cheese, butter, and nonfat dry milk in this proceeding are calculated primarily from a weighted average of the RBCS and CDFA surveys, with a check against the NCI survey cost of manufacturing cheddar cheese. Since the record lacks any other data regarding the cost of making whey powder, the NCI survey results are used for the make allowance in the other solids formula.

One proposal included in the hearing notice would have eliminated any marketing allowance from the make allowances, and a number of witnesses' testimony objected to the inclusion of return on investment. The American Farm Bureau witness questioned the need for a marketing allowance since producers already pay a 15-cent assessment for promotion and research. A brief filed by the proponent of eliminating the marketing allowance stated that the allowance appears to be an "adjustment" or a "hedge," since it is not defined in the final decision in the Federal order reform process.

There was general agreement among those testifying that a marketing allowance should be included in manufacturing costs, but no consensus about the appropriate number. Some of the costs covered by the marketing allowance include maintaining and staffing warehouses, supporting a

marketing and sales staff, and transporting product to market, as well as accounting costs associated with the sale of products. The NCI survey identified a marketing cost of $.0011 per pound of product, while the DFA witness stated that DFA's costs were approximately $.0018. The DFA witness testified that because the costs included in the activities designated as marketing generally fall within a common department under common management, it is appropriate to apply the same allowance to each product.

A witness for Northwest Dairy Association (NDA), a cooperative association in the Pacific Northwest, stated that NDA's marketing costs are $.0026 but identified costs associated with the aging of cheese as included in that number. Since the NASS survey price does not include cheese intended for aging, the marketing allowance certainly should not include costs of aging cheese. The Associated Milk Producers, Inc. (AMPI), witness used a $.0024 marketing allowance in the calculation of AMPI's proposed make allowance for nonfat dry milk. The witness for Agri-Mark, Inc., a large Northeast cooperative association with several processing plants, stated that Agri-Mark's estimates of marketing costs ranged from $.0025 to $.005 per pound.

The costs identified as those included in a marketing allowance are necessarily incurred in getting a product to market and are not related to the consumer education and advertising activities covered by the National Dairy Board assessment. Since the marketing cost determined by NCI is the only one of the estimates included in the hearing record that is supported by a survey, and it varies from the $.0015 rate included in Federal order reform by only 4 one-hundredths of a cent and applies only to cheese and dry whey, there seems to be no solid basis for making any change to the current marketing allowance.

Some producer witnesses objected to the inclusion of any allowance for return on investment in manufacturing allowances on the basis that dairy farmers are assured of no such return. The CDFA manufacturing cost surveys include allowances for depreciation, which is included in the non-labor processing costs; and for return on investment, which represents the opportunity cost of the processors' resources invested in the business. These costs are supported by audited data.

Both the marketing allowance and return on investment factors should be included in the manufacturing allowances provided in the component price formulas at the rates supported by the CDFA data. If processors are not provided enough of a manufacturing allowance to market the product they process, or to earn any return on investment, they will not continue to provide processing capacity for producers' milk. At the same time, the manufacturing allowances incorporated in the formulas will not provide enough of an allowance to assure that every processor, no matter how inefficient or high-cost, will earn a profit. Allowances set at such a level certainly could result in the situation warned of by producer groups in which processors manufacture greater volumes of product than the market demands because they are guaranteed a profit on all their production. As a result, the only way to market all of the product would be to reduce prices, with a profit to processors still locked in through the make allowance, which would result in decreasing prices paid to producers. In addition, manufacturers who are assured a profit on all of their output would have a lesser incentive to make a sufficient quantity of milk available for fluid use—a basic goal of the Federal milk order program.

One area addressed by several hearing participants in testimony and in briefs as appropriate to consider in establishing make allowances or yields was the loss of milk components during manufacturing processes.

Two cheese manufacturers, IDFA, and Land O'Lakes (LOL) continued to argue in their comments on the tentative final decision that make allowances should be increased, or yields reduced, to reflect shrinkage between farms and warehouses.

As stated in the tentative final decision, the orders have always provided an allowance for shrinkage and continue to do so, but inflating costs of production or reducing yield factors to reflect shrinkage would not properly reflect the value of producers' milk used in manufactured products. Processing costs determined by the surveys described above, which underlie the manufacturing costs incorporated in the pricing formulas, are expressed in cents per pound of end product manufactured, not in the cost per hundredweight of converting milk to manufactured products. The component pricing formulas are based on the content of those components in the finished products for which a manufacturing cost per pound has been established. Both the CDFA and RBCS cost surveys allocate all plant costs to actual end products, a process which should take shrinkage into account. Similarly, the yield factors in the formulas refer to the amount of finished product resulting from the processing of a given volume of input or to the amount of component present in the finished product. Both of these factors in the pricing formulas include consideration of shrinkage.

A comment filed by Lamers Dairy argued that using make allowances to calculate Class III and Class IV prices but not Class I and Class II prices constitutes unequal treatment. The comment disregards the fact that the make allowances in the Class III and Class IV price calculations are used to determine prices for milk used in those classes, and that the prices for milk used in Classes I and II are based on those milk prices. The Class I and II prices are determined for the purpose of valuing milk in uses that are alternatives to manufacturing uses. Once the Class III and IV prices have been established, the Class I and II prices can be calculated using differentials from the base prices.

The detailed explanation of each product's manufacturing allowance is included with the description of its primary component's pricing formula later in this decision.

b. Class IV Butterfat and Nonfat Solids Prices

Butterfat Price. This decision continues to use the NASS price for Grade AA butter for calculating the butterfat price to be used in Class IV and to change the manufacturing allowance in the butterfat price formula by 1/10 of a cent per pound of butter from the allowance used under Federal order reform. The .82 divisor in the price formula is unchanged. The make allowance change is the same as that included in the tentative final decision, and neither it nor the other factors were affected by the injunction. However, the injunction resulted in the same butterfat price formula being used to value both Class III butterfat and Class IV butterfat.

Several proposals were heard that would reduce butterfat prices, either by reducing the butter price used in the computation of the butterfat prices for all classes or by subtracting a fixed amount from the butterfat price computed for Class IV. Proposals also were made that would change the make allowance used in calculation of the butterfat prices. There were no proposals to change the butterfat divisor of .82, although one witness representing a western cooperative association suggested that it be reconsidered as he felt it did not include a shrinkage factor.

Product Price (Butter). Several witnesses for proprietary processor proponents of the proposal to deduct six cents from the butter price before

computing the butterfat price stated that historically the value of butterfat in the Federal milk orders has been based on the price of Grade A butter. The witnesses explained that an equivalent price determination had been issued in 1998 (when the CME discontinued trading Grade A butter) that nine cents would be subtracted from the Grade AA butter price for use in calculating Federal order butterfat prices. This equivalent price, according to the witnesses, was found to be "essential" to the continued operation of the Federal milk order program. Further, they argued that its adoption continued the policy of basing butterfat pricing under the Federal milk orders on a value below that of Grade AA butter.

The witnesses complained that under Federal order reform the butterfat value is determined by using the NASS Grade AA price of butter, which effectively increases the butterfat value under Federal milk orders. According to proponents' calculations, the increase does not amount to a full nine cents but is tempered by the use of the NASS Grade AA price, which has averaged approximately three cents below the CME Grade AA price, in the butterfat pricing formula. Therefore, they stated, the actual increase in the butter price used to calculate butterfat prices is approximately six cents. According to the witnesses, subtraction of six cents from the NASS butter price would return the relationship between the butterfat value under the orders and the selling price of butter to the relationship that existed prior to Federal order reform.

Several witnesses explained that when handlers must pay for butterfat on the basis of the Grade AA butter market they cannot then sell cream or finished products at a price that would allow them to recover their costs. They testified that cream is sold at a price that is termed a "multiple" of the butter price, and that the multiples used when the butterfat price was calculated from the Grade A butter price have not adjusted to the new pricing formula using Grade AA butter.

The IDFA witness pointed out that the IDFA proposal to subtract six cents from the NASS Grade AA butter price would apply not only to the butterfat formula for Class II, Class III, and Class IV but would apply to the advance butterfat formula used for computing the Class I butterfat price. The witness testified that by applying the same formula to all classes of butterfat the current relationship between the class prices would be maintained. The witness contended that there is no justification for changing the relationships between the class prices, particularly if the adjustment would widen the class price spreads or, in effect, increase the Class I and Class II differentials.

Witnesses for NMPF and several large cooperative associations testified in support of NMPF's proposal to reduce the calculated butterfat price by six cents, with the reduction applied to Class IV butterfat only. Under this proposal, the computation of the butterfat prices for other classes would not contain the six-cent adjustment. Several witnesses representing cooperative associations that process butter explained that butter manufacturers incur additional costs when procuring cream used for manufacturing butter as opposed to the cost of converting producer milk to butter. The witnesses explained that these additional costs include transportation, additional handling, and additional pasteurization. The witness for LOL testified that the additional costs amounted to 4.57 cents per pound of butterfat for transportation and .4 cents per pound for receiving, storing, and repasteurization. A witness for Agri-Mark stated that Agri-Mark's transportation costs are slightly less than LOL's, probably due to the proximity of the Agri-Mark plant to the sources of cream, but that the other additional costs are slightly higher than the LOL costs, at .5 cents per pound of butterfat.

The proponents of reducing the Class IV butterfat value also referred to the computation of the California Class 4a butterfat price, which involves a subtraction of 4.5 cents per pound from the CME Grade AA butter price to adjust for the costs of moving butter from the west coast to the Midwest.

Those parties who favored reducing the butter price before using the butterfat price formula to calculate any of the butterfat prices disagreed vehemently with the proposal to reduce only the Class IV butterfat price. They argued that such a reduction would distort the relationship between the Class II and Class IV prices, resulting in a greatly-increased price for Class II butterfat in relation to Class IV butterfat. Specifically, the projected increase in the Class II-Class IV butterfat price difference was cited as 6.7 cents per pound (from the current difference of .7 cents). These parties argued that butterfat values would most appropriately be reduced to the same degree in all classes.

The price to be used for butterfat in Class III and Class IV should be computed by subtracting a make allowance of .115 dollars per pound from the monthly average NASS Grade AA butter price and dividing the result by .82 since 1.2213 pounds of butter can be made from 1 pound of butterfat. The Class II butterfat price should continue to be the Class IV butterfat price plus .007 cents, while the Class I butterfat price will be the advance butterfat price plus the applicable Class I differential.

Contrary to the belief stated by some witnesses, the use of the Grade AA butter price for computing the butterfat price under Federal order reform was not an "oversight." Trading of Grade A butter on the CME was ended as of June 26, 1998 (not by USDA, as implied in one brief, but by the CME) because the volume of Grade A butter traded was not great enough to warrant maintaining a trading venue. One brief argued that the Grade A butter price represents a minimum price, and that there is no need for concern that there will not be an available market for Grade A and Grade B butter. However, with the end of trading in Grade A butter on the CME, there is no published (or any other known) source for obtaining a price for Grade A butter.

The use of the Grade AA butter price for establishing butterfat prices is appropriate since that is the only grade of butter that has significant enough trading volume to warrant a publicly-reported price. Grade AA butter prices are the only butter prices regularly available and represent the vast majority (about 95 percent) of the butter sold. Although the "multiples" of the butter price apparently had not adjusted to the use of the Grade AA price during the first 4 months of experience under the revised orders and probably should not be expected to adjust during the period in which this proceeding is under consideration, the marketplace should, in time, make the needed adjustments.

Various witnesses estimated that Grade A and Grade B butter combined make up 3–7 percent of the butter in the U.S. Although a witness noted that the Minnesota-Wisconsin (M-W) price for non-Grade A milk continued to be surveyed even after the percentage of milk eligible for the survey had fallen below a 5 percent level, it was widely recognized for some time that a pricing alternative to the M-W must be found because the M-W eventually would no longer provide a representative price for a large volume of unregulated milk. Similarly, with the decline of Grade A butter (and the unavailability of prices for that product), the only alternative available for determining price is Grade AA butter. A finding in the equivalent price determination that a Grade A butter price was "essential" to continued operation of the orders referred solely to the fact that the Grade

A price was specified in all of the orders at that time, not that the butterfat value under Federal milk orders could never be based on any other price.

Making an adjustment to a clearly valid price series to approximate a price series that has been discontinued for several years due to insufficient volume for trading is inappropriate. Comments to the tentative final decision from IDFA and Schreiber Foods continued to encourage the use of an estimate of the discontinued Grade A price series for the current formulas. Since it has been about four years since a publicly-traded price for Grade A butter has been available, it is impossible to determine what the current difference between these prices would be because there are no reports of the Grade A price available. The vast majority of butter made and sold in the U.S. is Grade AA, and that is the appropriate product to which to look for a value of butterfat used in butter.

The 3-cent average difference between the CME and NASS butter prices makes up ⅔ of the 4.5-cent adjustment made by CDFA in calculating the value of butterfat used in butter. An additional 6 cents deducted from the butterfat price calculated from the NASS price would much more than make up the remaining 1.5-cent difference. Also, the 4.5-cent CDFA adjustment is made for the purpose of reflecting the cost of moving butter from California to Chicago. The butterfat price calculated under the Federal order program is not intended to apply to only one state. The NASS price is a nationwide survey and likely includes a significant representation of California butter prices. If there are additional costs involved in making butter, they would more appropriately be included in the make allowance for butter.

Make Allowance (Butter). The make allowance factor in the butterfat price formula should be derived from a combination of the manufacturing costs determined by CDFA and by RBCS, as they were in the tentative final decision. The CDFA cost data is divided into two groups representing high cost and low cost butter plants, with the four plants in the high cost group manufacturing, on average, about the same average number of pounds of butter as the seven plants in the RBCS study. Use of the data for the CDFA high-cost group of butter plants is more appropriate than use of the weighted average cost for all of the California plants because it is more likely that the high-cost plants, like the plants in the RBCS survey, serve a predominately balancing function.

When the RBCS data is adjusted to reflect the same packaging cost, general and administrative costs, and return on investment as the CDFA data for the high cost group, and a marketing allowance of $0.0015 is added to both sets of data, the weighted average of the two data sets is $0.115. This butter manufacturing allowance is very close to the current allowance of $0.114 and should continue to provide a representative level of the costs of making butter in plants that serve a balancing function.

The increased costs of making butter, not including transportation, cited by the proponents of reducing the butterfat price are expected to be included in this manufacturing allowance, which exceeds the low cost group in the CDFA survey by 3 cents per pound. The only class of use for which adjustments for transportation have regularly been included under Federal order regulation is Class I. Assuring that the order provides an allowance for moving milk for use in manufactured products would interfere with provisions designed to assure an adequate supply of milk for fluid use.

Yield (Butter). Although one witness suggested that the divisor in the butter price formula that reflects the butterfat content of butter be reconsidered, he did not indicate any number more appropriate than the .82 divisor used in the current formula. There was no other testimony in the record questioning the butter content factor. In fact, the only data in the record applicable to the issue was a CDFA report on butter and powder yields at California plants in 1996 that was included in an exhibit. This report shows a 1.2213 weighted average butter yield (1 pound of butterfat results in 1.2213 pounds of butter), which corresponds to the use of the .82 divisor.

The record does not support adoption of a Class IV butterfat price that is not reflected directly in the Class II butterfat price. There was testimony from several witnesses that the current Class IV-Class II price relationship is rational and appropriate, and an adjustment to the Class IV butterfat price that is not reflected in the Class II butterfat price would disrupt the current relationship. In addition, it would seem reasonable that some of the extra costs claimed by butter manufacturers, such as transportation costs for supplemental cream supplies, butterfat standardization of outside cream sources, and additional pasteurization would be as applicable for Class II manufacturers of high-fat products using surplus cream as for butter makers. Accordingly, reduction of the Class IV butterfat price only is not considered appropriate.

Class IV Nonfat Solids Price. As in the tentative final decision, this recommended decision maintains the use of the NASS survey price reported for nonfat dry milk and increases the make allowance for nonfat dry milk from 13.7 cents to 14 cents per pound of nonfat dry milk. In addition, the tentative final decision change to eliminate the 1.02 divisor in the nonfat solids price formula to reflect the incorporation of dry buttermilk (with a lower product price and higher make allowance) is continued. This decision maintains the nonfat solids price formula continued under the injunction.

Six proposals to change some part of the nonfat solids price formula were considered at the hearing. Three of the proposals dealt with the manufacturing allowance for nonfat dry milk (NFDM), with two of the proposals advocating use of the RBCS survey results and one proposal supporting an increase in the make allowance. The other three proposals supported changes in the yield factor of the nonfat solids price formula that would reflect greater powder yield from a pound of nonfat solids. Two of the proposals to change yield factors included using CME NFDM prices instead of the NASS survey. As discussed earlier in this decision, the product prices used in the component pricing formulas should continue to be obtained from the NASS survey.

Product Price (Nonfat dry milk). No proposals were considered that would have changed the product price used in the nonfat solids price formula, and the record contains no basis for making any change in this formula factor.

Make Allowance (Nonfat dry milk). At the time the hearing notice was issued, the most recent RBCS data were not available, and those costs were not specified in the proposals. By the time the hearing was held, however, the RBCS data had been released and were included in the information introduced at the hearing. NMPF supported continued use of a weighted average of the CDFA and the RBCS manufacturing cost surveys, with inclusion of a marketing allowance and the CDFA factor for return on investment. NMPF proposed that the NFDM make allowance be $0.140 per pound.

South East Dairy Farmers Association also proposed that the RBCS survey be used to determine a make allowance for NFDM, but did not propose that a marketing allowance be included. The necessity of including a marketing allowance is discussed earlier in this decision.

Associated Milk Producers, Inc. (AMPI), proposed that the NFDM manufacturing allowance be increased

from $0.137 to $0.1563 per pound, a rate based on AMPI's cost of making NFDM at its own three plants in the upper Midwest over a 5-year period. The AMPI witness stated that in addition to a processing and packaging cost of $0.1254, the make allowance should include a marketing allowance of $0.0024 and return on investment of $0.026, for a total allowance of $0.1538 per pound, modified from the level proposed in the hearing notice. The witness testified that the three AMPI plants operate at approximately 80 percent of capacity.

No comments were filed that specifically addressed the adopted make allowance for use in the nonfat solids price.

On the basis of the data and testimony included in the hearing record, the manufacturing cost level that appears to be most appropriate for use in the pricing formula for nonfat solids is $0.14 per pound. This value is calculated by using a weighted average of the RBCS survey and the two less-cost California groups of plants, adding the CDFA General and Administrative costs and Return on Investment expenses for those two groups to the RBCS numbers, and adding a $0.0015 marketing allowance to both sets of data. The basis for using the two lower-cost groups of California plants are that the mid-cost group is of a similar average size as the group included in the RBCS survey, and that the lowest-cost California group has a very similar total cost to the mid-cost group. These three groups of plants (the RBCS plants and the two California groups) are similar enough in size and cost to consider as fairly representative, and should encompass those plants that perform a market balancing function. The highest-cost California group should not be included since its average cost is more than ten cents per pound of NFDM above the RBCS group or either of the other two California groups.

The AMPI cost numbers cannot be included in the weighted average since the number of pounds of NFDM associated with those costs is not available. When the AMPI marketing allowance and return on investment estimates are replaced with the more moderate numbers used in the make allowance calculation, the AMPI manufacturing costs do not differ much from the other two sources. This is true despite the wide discrepancy in the capacity utilization percentage estimates for the two data sets (80 percent for the AMPI plants versus less than 50 percent for the plants in the RBCS survey). Inclusion of the AMPI costs in the RBCS survey would have included a larger representation of NFDM manufactured outside California. However, the record indicates that a high percentage of the NFDM manufactured in the U.S. comes from California, and the proportion of cost data representing California in the manufacturing allowance is reasonable.

"Yield" (Nonfat solids). The elimination of the divisor of the nonfat solids price formula adopted in the tentative final decision and continued in effect after the injunction should be maintained.

A considerable portion of the testimony dealing with the nonfat solids pricing formula pertained to the 1.02 divisor. The divisor is not strictly a yield factor but is intended to reflect the amount of nonfat solids in NFDM, with an adjustment for the small amount of buttermilk powder that is made in conjunction with the manufacture of butter and NFDM. Testimony by a number of witnesses asserted that the product price minus the make allowance should be either multiplied by a number greater than 1 (such as 1.02) or divided by a number smaller than 1 (such as .99 or .975) to reflect the fact that more than 1 pound of NFDM can be expected to be manufactured from 1 pound of nonfat solids due to the moisture content of NFDM.

Many of the hearing participants supported the 1.02 divisor, adopted under Federal order reform, and expressed understanding of the approach of adjusting the "yield" of NFDM to compensate for the fact that some of the powdered product made from Class IV milk is buttermilk powder (BMP). Although 1.03 to 1.05 pounds of NFDM generally can be obtained per pound of nonfat solids, the formula also recognizes a lower value and higher manufacturing cost for BMP.

Several witnesses correctly assessed an alternate solution to the dilemma of calculating a component price from two commodities with different prices and different make allowances as one requiring addition of dry buttermilk as another component price in the Federal milk order pricing system. As described by at least one witness, such an undertaking would require adding dry buttermilk to the NASS price survey, determining a separate make allowance, and calculating a yield factor. This procedure would be a burdensome undertaking for very little benefit, since dry buttermilk represents only about 5 percent of the dry products resulting from the manufacture of butter and nonfat dry milk. The issue that remains is how best to reflect the value of nonfat solids used in both NFDM and BMP in the same component pricing formula.

The IDFA witness testified that for the 19-month period beginning with September 1998, the central states' dry buttermilk price had averaged $0.798 per pound, while the central states' "mostly" price for NFDM averaged $1.043. The LOL witness similarly testified that the 1999 Northeast "mostly" price for NFDM averaged $1.0389, while the BMP price was $0.7686 per pound. On the basis of these numbers, it would appear that the price of BMP is roughly 75% that of NFDM. However, comparison of BMP and NFDM prices for the years of 1996 through 1999 and into 2000 reflects a more complex relationship between these prices than the hearing testimony would indicate. The BMP price as a percentage of the nonfat dry milk price (using Western prices) was 100.9% in 1996, 94.5% in 1997, 88 percent in 1998, and 71% in 1999. During the first third of 2000, BMP prices generally averaged less than 70% of NFDM prices. As the year 2000 progressed, however, the percentage increased, being at levels up to 100% in late July and remaining above 85% for the second half of the year in all areas.

The witness representing Agri-Mark stated that Agri-Mark employees engaged in manufacturing operations had estimated that the costs of producing BMP range from 1 to 3 cents more per pound than those of producing NFDM. Given that the manufacturing costs estimated by the Agri-Mark witness for other products were somewhat higher than those supported by the bulk of the hearing record, it is reasonable to consider the extra cost of manufacturing BMP to be generally not more than 2 cents in excess of the cost of manufacturing NFDM. In addition, it is difficult to justify increasing the powder make allowance for all of the powdered product represented in the make allowance since the RBCS witness testified that manufacturing costs of BMP manufactured at the plants included in the RBCS survey are included in the powder costs reported by RBCS.

Testimony regarding actual yields of NFDM and BMP were provided by only one witness representing a manufacturing plant operator. The numbers provided, while not complete enough for an exact accounting of the ultimate disposition of the plant's receipts of producer milk, indicate strongly that the approximate loss of nonfat solids used in the manufacture of NFDM at the specific plant was 3 percent, with 16 percent lost in the manufacture of BMP, for a combined weighted average loss of more than 3.5 percent of nonfat solids. In comparison,

data published by the State of California showed a weighted average loss of solids not fat of 2.13 percent in the manufacture of butter and powdered products.

The California data indicate a weighted average powder yield of 1.0252 pounds of NFDM and BMP from 1 pound of nonfat solids. One witness discounted this data by observing that the "high" California yield was reported as 1.0406, which would represent a higher-than-allowable moisture content. This number may be influenced by the "high" reported BMP yield of .0749.

As noted above, the general impression conveyed by testimony in the hearing record, that BMP is worth considerably less than NFDM and that the cost of processing it is significantly greater than that of processing NFDM, is misleading. The average BMP price over the period 1996–July 2000 is approximately 87 percent of the NFDM price, and the cost of manufacturing BMP is, on the basis of the information available, no more than 2 or 3 cents in excess of the $0.14 recommended as the NFDM make allowance. These small adjustments to the product price and the make allowance used in the nonfat solids formula apply to little more than 5 percent of powder manufactured. It is apparent from the information contained in the record of this proceeding that the 1.02 factor, as a divisor, is excessive.

The following information from the hearing record was used to determine a multiplier or divisor for the total nonfat solids pricing formula that would result in a minimum price for nonfat solids while incorporating the data and testimony in the record about the manufacture of NFDM and BMP. To assure that the result represents a minimum price, the low or high areas of ranges of numbers related to the manufacture of these two products were used. The CDFA report on butter and powder yield in California plants in 1996 was used in making some of the calculations regarding this factor.

a. The price of BMP represents roughly 80 percent of the price of NFDM (80 percent is less than the average historical relationship of these prices over the past 5 years).

b. The cost of manufacturing BMP is not more than 2 cents greater than the make allowance for manufacturing NFDM.

c. Using a theoretical yield of 1.03 pounds of powder containing 3 percent moisture made from milk containing 8.62 percent nonfat solids would result in .054 pounds of BMP and .976 pounds of NFDM.

d. Adjusting the theoretical yield of 1.03 pounds to the minimal yield of 1.01 pounds (the "low" yield in the CDFA report) and prorating the BMP and NFDM to 1.01 pounds instead of to 1.03 pounds, the amount of BMP manufactured from a pound of nonfat solids used in butter/powder is approximately .053 pounds. When the NFDM yield is prorated, the resulting minimum yield is .957 pounds.

Using a NFDM price of $1.03 per pound, a make allowance of $0.14 cents per pound of NFDM, and a divisor of 1, the resulting calculation is: $1.03 − $0.14 = $0.89 per pound of nonfat solids. The same result is achieved through a more complicated calculation using both product prices and make allowances, as follows:

Buttermilk powder:		
($1.03 × .80) − $0.16 = $0.664; $0.664 × .053	=	$0.03519
+ Nonfat dry milk:		
$1.03 − $.014 = $0.89; $0.89 × .957	=	$0.85173
		$0.88692 (Rounded to $0.89)

On the basis of this analysis, no multiplier or divisor is necessary in this formula.

A number of comments were filed in response to this aspect of the tentative final decision, with some supporting the use of a divisor of "1," two comments suggesting that a divisor of 1.01 would be more appropriate (but one determining that such a change would not be possible on the record of this proceeding), and several insisting that the above analysis is flawed by use of incorrect or inappropriate data and that the divisor should be returned to the 1.02 level in effect before January 1, 2001.

The IDFA comments stated that, in the interest of establishing minimum pricing, no more than 70 percent of the NFDM value should be assumed for the BMP price and that 3 cents should be added to the BMP make allowance instead of 2. IDFA also indicated that the formula should include shrinkage. NDA and LOL criticized the use of the California yield data in determining the comparative yields of NFDM and BMP, both because some of the data reflected information that included powder with higher-than-allowable moisture and because no witnesses who had participated in the survey were present to testify about it. LOL criticized USDA's use of Western prices rather than the Northeast and Central prices quoted by witnesses who discussed the relative values of NFDM and BMP.

Comments filed by Agri-Mark protested elimination of the 1.02 divisor, arguing that USDA relied on a casual remark about the difference between the cost of manufacturing BMP and NFDM rather than on detailed cost information as in the other make allowances. Agri-Mark also stated that the role of Class IV in balancing surplus cream from Class I use increases the ratio of BMP to NFDM over that calculated from an assumption about uses of the nonfat solids in producer milk.

Criticism of use of the Western BMP and NFDM price series to analyze the relative values of BMP and NFDM in the tentative final decision did not consider the fact that the Western price (mostly) series is the only one with an uninterrupted data series for the five years considered. In addition, the percentage of the NFDM price represented by the BMP price for the Western region was lower during each of the years 1996–2000 than for the Central region; and very similar, with some years averaging higher and some lower, to the Northeast region. Criticism of the CDFA yield data ignores the fact that the yield factors used in the initial analysis for the tentative final decision adjusted the relative "weighted average" yields of BMP and NFDM to the "low" yield.

The hearing record contains enough information on the issue of the relative weights, values, and costs of manufacturing NFDM and BMP to support the conclusion reached in the tentative final decision about the appropriate divisor in the nonfat solids price formula. The .96 divisor considered in the proposed rule on Federal order reform represented the pounds of nonfat solids in NFDM rather than the yield of nonfat dry milk from nonfat solids. Use of the divisor of 1 adopted in the tentative final decision accounts for all of the nonfat solids used in Class IV and results in 3–4 cents less per pound of nonfat solids (over a NFDM price range of $.86–$1.10) than the value that would be calculated if the formula attributed all of the Class IV skim value to NFDM.

The Agri-Mark comment emphasized that the ratio of BMP to NFDM milk considered in the nonfat solids price calculation should be calculated on the basis of the butterfat content in Class IV because butterfat surplus to Class I use is used in butter. The Agri-Mark comment observed that the butterfat percentage of milk used in Class IV in the Northeast over a 3-month period averaged 5.67%.

Even if the national average of butterfat in Class IV (6.4%) is used to

determine the breakdown between nonfat solids used in BMP and nonfat solids used in NFDM, less than .8 pounds of nonfat solids out of the 8.4 contained in a hundredweight of Class IV milk at 6.4% butterfat should be attributed to use in BMP. In effect, the price of each of the 8.4 pounds would be reduced by 3–4 cents. Such a calculation results in 25.2–33.6 cents per hundredweight of milk containing 6.4% butterfat to cover the additional costs of making .8 pounds of BMP and the lower value of .8 pounds of BMP compared to the NFMP manufacturing cost and price. A 3-cent additional cost per pound of manufacturing .8 pounds of BMP would equal 2.4 cents, and a 25-percent reduction of the BMP value from that of NFDM would equal approximately 20 cents. These calculations would still leave 2.8–11.2 cents per hundredweight to cover any additional costs of making and selling BMP over those of NFDM.

It should be noted that the additional 3 cents per pound cost of making BMP is on the high end of the information in the hearing record, and that the 25% reduction in value of BMP compared to NFDM is on the low end. Over the past 5 years, only during the period cited by witnesses testifying about the relative values of BMP and NFDM and during the first 4 months of 2000 has the BMP price as a percentage of the NFDM price fallen below eighty percent. In addition, the preceding calculations assumed that all of the nonfat solids not used in NFDM were used in BMP, whereas some are used in whole milk powder, which has a higher value than either NFDM or BMP. Therefore, elimination of the 1.02 divisor is appropriate.

c. Class III Butterfat, Protein, and Other Nonfat Solids Prices

In a change from the orders promulgated under the Federal order reform process, the tentative final decision calculated a Class III butterfat price from the value of butterfat in cheese rather than using the butterfat price calculated from the value of butter for both Classes III and IV. The Class III butterfat price in the tentative final decision was calculated to represent the value of the component in the NASS cheddar cheese price, as was a revised protein price formula.

Before the interim final rule became effective on January 1, 2001, several petitions were filed requesting the Secretary to delay implementation because industry participants objected to the effects of the separate Class III butterfat price. Implementation could not be stayed because of the Congressional deadline on the rulemaking procedure, and partial implementation was not possible because the interim final rule had been approved by producers in its entirety. Before the separate Class III and Class IV butterfat prices could become effective, implementation of the separate butterfat prices was enjoined in the Federal District Court for the District of Columbia at the urging of organizations representing most of the interests in the dairy industry. The Court's order returned the price formulas for the Class III components to their earlier forms, with the new make allowances and cheese moisture adjustment incorporated.

By the end of the comment period, comments representing nearly 100 interested parties from most segments of the industry were received that objected to separating the Class III and Class IV butterfat prices and reducing the level of the protein price. The comments urged USDA to continue to calculate the Class III butterfat price on the basis of the value of butterfat in butter, and return to the Class III price formula formats in use before effectuation of the interim final rule.

Several reasons were given for rejecting the change to Class III component prices based on the contribution of butterfat and protein to cheese yield. Numerous commenters cited the negative effects of a marked increase in the cost of milk for use in high-fat cheeses and the incentive created for handlers to substitute lower-valued Class IV forms of butterfat for use in cheese-making. Others stressed the difficulties created by the decision in marketing cream. Several commenters argued that the shift in value from protein to butterfat caused by the decision did not make sense in light of the importance of protein in cheese-making, and that the reduced protein price would send incorrect economic signals to dairy farmers. One particular concern was the potential significant reduction in the Class I skim value if the Class III price at 3.5 percent butterfat became the mover for the Class I price.

Based on comments received, this decision recommends that the Class III butterfat price be the same as the Class IV butterfat price, calculated from the value of butterfat in butter. In addition, the portion of the protein price formula that adjusts the protein price to accommodate the differential value of butterfat in cheese, as opposed to butter, is incorporated in the formula. Technical corrections to the protein price formula are recommended that should make the protein price correlate somewhat more closely with the cheese price than has been the case with the earlier formula.

The tentative final decision made only one modification to the specifications of the cheese price, currently a weighted average of the prices of cheese sold in 40-pound blocks and 500-pound barrels (with a 3-cent addition to the barrel price). That change, to adjust the price of 500-pound barrels to 38 percent moisture instead of the 39 percent moisture price currently reported by NASS, is continued in this decision. Also as in the tentative final decision, this decision would reduce the make allowance for cheese from 17.02 to 16.5 cents per pound.

The other nonfat solids price would continue to be calculated by subtracting the make allowance from the NASS-reported price for dry whey and dividing by .968. However, the make allowance is increased from 13.7 cents (14 cents in the tentative final decision) to 15.9 cents per pound of dry whey.

Class III Product Price (Cheese). Several proposals included in the hearing notice would, if adopted, have changed the NASS cheese price used in the Class III pricing formulas. One proposal would limit the cheese prices included to 40-pound blocks reported by the CME, while another would add 640-pound blocks to the prices surveyed by NASS for inclusion in the cheddar cheese price. A third proposal would replace the current 3-cent price adjustment between 500-pound barrel prices and 40-pound block prices to a value that reflects the actual differential industry cost of making 40-pound blocks over 500-pound barrels. Still another proposal would adjust 40-pound block cheese prices for moisture, as 500-pound barrel prices are adjusted.

As discussed above in Issue 2, CME commodity prices should not be used as the basis for calculating component prices. Eliminating 500-pound barrels, which represent approximately two-thirds of the cheese represented in the NASS survey, from calculation of the market value of cheddar cheese would reduce greatly the degree to which the current product prices represent U.S. cheddar cheese prices. The record of this hearing provides no support for relying solely on prices for 40-pound blocks to identify a market price of cheddar cheese.

Several parties testified that the NASS weighted average cheese price should include the value of 640-pound block cheese in the cheese price computation. They contended that such inclusion would improve the reliability of the average cheese price by adding a substantial quantity of cheese to the price survey. Witnesses' estimates of the

percentage of U.S. cheddar cheese production represented by 640-pound blocks ranged from 20 to 27 percent. Witnesses testified that the increased volume would better reflect the true value of cheese and additionally would reduce the potential for price distorting manipulation by individual handlers.

In comments filed on the tentative final decision, IDFA stated that USDA had erred by excluding 640-pound blocks. IDFA reiterated the argument that 640-pound blocks represent as much as 27 percent of total cheddar cheese production. Furthermore, the comment noted that past data-collection problems are irrelevant because "all participation in NASS surveys regarding data used to calculate federal order minimum prices is now mandatory." IDFA concluded that the argument that 640-pound blocks should not be used due to their being made on a custom basis to customers' specifications is not valid because adjustments can be made, as they are for moisture in barrel cheese.

Opponents to inclusion of the 640's in the cheese price computation explained that the vast majority of 640's are made on a custom basis to customers' specifications and therefore are not sufficiently uniform to have a standard identity. One witness noted that much of the commerce in 640's is made on a long-term contractual basis and as such would rarely be reflective of changing market conditions.

ADCNE's comments on the tentative final decision reiterated USDA's position, stating that "the market in 640-pound blocks of cheddar cheese does not involve sufficient buyers and sellers in arms-length transactions to provide good data to establish the Class III price for producer milk in all federal milk orders."

As stated in the tentative final decision, standardized pricing cannot be developed without a standard identity for the product, which 640-pound blocks lack. In addition, there appears to be an insufficient volume of 640-pound block cheese transactions to warrant inclusion. At the beginning of the NASS survey, price data for 640-pound blocks was collected but was discontinued due to lack of volume and too few participants to allow disclosure of data. Even earlier (1995–96), the former National Cheese Exchange attempted to include trading in 640-pound blocks but discontinued doing so because of lack of interest. Testimony from witnesses representing organizations that manufacture cheese in 640-pound blocks, and who favored inclusion of such product in the NASS survey, stated that the 640-pound blocks manufactured by their organizations are used internally, making that cheese ineligible for inclusion. Therefore, even though price reporting is now mandatory, 640-pound blocks of cheese do not meet the criteria necessary for the prices of these products to be eligible for inclusion in the NASS survey.

Elimination or reduction to one cent of the three-cent adjustment that is added to the barrel price for computing the weighted average cheese price was advocated in testimony at the hearing, comments contained in post-hearing briefs, and comments responding to the tentative final decision. The witnesses argued that since the barrel cheese price is adjusted to 39 percent moisture and block cheese is approximately 38 percent moisture, at least 2 cents of the observed difference in price between 40-pound blocks and 500-pound barrels is due to moisture and has nothing to do with actual differences in costs. In fact, they argued that there is no difference in packaging costs between block and barrel cheese.

The witness for DFA, a cooperative that manufactures cheese packaged in both 40-pound blocks and 500-pound barrels, testified that three cents is an acceptable and reasonable spread between blocks and barrels and that there is no compelling reason to change the three-cent addition to the barrel price. The witness for LOL testified that the three cents is an appropriate difference between blocks and barrels and that adding three cents to the barrel price when computing the weighted cheese price is an appropriate adjustment. DFA and ADCNE argued, in a brief filed on behalf of both parties, that the record supports a conclusion that the 3-cent adjustment of the barrel price is attributable to volume utility and cost differences in packaging and handling.

The National Cheese Institute, which proposed reducing or eliminating the 3-cent adjustment, argued that the adjustment should include only the actual cost differences involved in manufacturing and packaging the two sizes of cheese. Although a number of witnesses representing cheese manufacturers testified in favor of reducing or eliminating the adjustment, including one whose employer makes both sizes of cheddar, none of them addressed the actual cost differences of packaging and manufacturing 40-pound blocks and 500-pound barrels. Instead, the only testimony that was offered involved attributing a 2-cent difference to the moisture-adjusted value of the two sizes of cheese packages. In comments responding to the tentative final decision, ADCNE argued that the 3-cent adjustment is representative of the historical difference in market value between barrel cheese and block cheese after adjustments for moisture.

If the difference between the block and barrel prices were due to the difference in moisture, the difference between the prices should widen as the cheese price increases since the moisture adjustment is based on the price and moisture of the cheese. An analysis of historical cheese prices indicates that the difference between the block cheese and barrel cheese prices does not change with changes in price level. In fact, three of the largest differences between the block and barrel prices occurred at approximately the 40-month NASS weighted average monthly prices.

In comments filed by Leprino Foods Company (Leprino) on the tentative final decision, Leprino argued that comparisons of the block and barrel cheese prices from May 1995 through December 1999 are not valid because of artificial market distortions. Leprino stated that valid relative price data is available only for calendar year 2000, during which the average spread is 1.54 cents. Leprino continued, in its comment, that the price spread between blocks and barrels does not move in lock-step because it is affected by many factors, and will continue to be driven by current market forces.

The record contains no basis for concluding that the actual cost of manufacturing and packaging the two sizes of cheese is not the historical 3-cent price spread. In fact, during the period September 1998 through June 2000 the difference between the block and barrel prices has been 4.4 cents per pound. The record of this proceeding supports maintaining the 3-cent addition to the barrel cheese price.

An expert witness, and several other witnesses, testified that the moisture content of the cheese used for determining the NASS cheese prices and the moisture content used in the Van Slyke cheese yield formula used for computing the "yield" coefficients in the protein formula should be the same. The witnesses explained that failure to align the formula and the moisture content represented by the cheese price survey would result in overstating or understating the formula coefficients.

The expert witness explained that the barrel cheese price is reported at 39 percent moisture after being adjusted from the actual moisture, while the block cheese price is reported at an unknown moisture level. The only testimony dealing with the actual moisture level of block cheese indicates that it averages about 38 percent.

The coefficients originally used for determining the Class III protein price and the Class III butterfat price and used in the formulas in this decision were derived from using the Van Slyke cheese yield formula at 38 percent moisture. Therefore, it is appropriate to use cheese prices that reflect cheese containing 38 percent moisture. The current practice of using the 40-pound block cheese price unadjusted for moisture and the 500-lb barrel price adjusted for moisture should be continued, but with the barrel price adjusted to 38 percent moisture instead of 39.

In several comments on the tentative final decision, commenters stated that the 38-percent moisture adjustment to the barrel price requires an adjustment to 1 cent and not 3 cents for the price spread between 500-pound barrels and 40-pound blocks. Other interested persons filed comments supporting both adjustments. DFA argued in its comment that eliminating either adjustment should result in use of only 40-pound block cheese prices.

The hearing record provides no basis for altering the composition of cheese prices surveyed for use in the Class III pricing formulas or for changing the calculation of the NASS weighted average cheese price, other than the moisture adjustment to 38 percent for 500-pound barrels.

Several witnesses testified that types of cheeses other than cheddar should be included in the NASS price survey as a more comprehensive basis for identifying a cheese price, although such a proposal was not included in the hearing notice. The cheddar cheese included in the NASS survey meets certain standard criteria that makes prices for the reported cheese sales comparable. If the survey included other descriptions of cheddar and other types of cheese, such as mozzarella, it would not be possible to consider the reported price as representative of the value of any particular product. Further, the manufacturing costs surveyed are, to a great extent, limited to the costs of processing cheddar cheese.

Class III Make Allowance (Cheese). Several proposals to adjust the manufacturing allowance for cheese were included in the hearing notice and considered at the hearing. The NMPF witness testified that the organization had determined that the most appropriate cheese make allowance would be a weighted average of the updated RBCS and CDFA surveys, with addition of a marketing allowance. Thus, the NMPF supported adoption of a cheese make allowance of $0.1536 per pound of cheese. Several witnesses representing cooperative associations supported the NMPF $0.1536 proposal but also would have included a cost factor for return on investment. One witness testified that the make allowance should be based on data from actual plant operations through the surveys conducted by RBCS and CDFA and testimony from individual plant operators; that it should include California data, as California plants represent a large proportion of cheese manufacture; and that it should be generous enough to assure adequate plant capacity for continued manufacture of cheese.

The witness representing NCI testified that the cheese make allowance should be no less that $0.1687, the weighted average of the NCI-sponsored and CDFA surveys with the addition of a marketing cost of $0.0011. He stated that such an allowance would represent the production of 24 cheese plants and 53% of U.S. cheese. Several cheese manufacturer representatives supported use of the NCI-supported make allowance, stressing the importance of adoption of an allowance that covers *all* of the costs of manufacturing cheese.

A witness representing Farmers Union and the American Farm Bureau witness both supported adoption of a make allowance of $0.1521, as a weighted average of RBCS and CDFA data; and a witness for National Farmers Organization supported a make allowance of $0.141 composed of the RBCS cost with the addition of a marketing allowance and return on investment.

Although ADCNE, in its comments on the tentative final decision, supported the use of California data as compiled and audited by a state agency, ADCNE disagreed with inclusion in the cheese make allowance of the CDFA "general and administrative expense" item, which added 1.9 cents per pound to the make allowance. ADCNE described this allowance as "generous, to say the least," as it represents $2–$3.5 million for the newest, largest, and most efficient cheese plants, and stated a preference for having some basis in testimony before building that sort of expense level into plant costs at the expense of minimum producer prices.

The general and administrative expense was one of the cost factors included in the CDFA weighted average cost study, but not in the RBCS study. Therefore, it must be added to the RBCS data to make the two cost studies comparable.

The make allowance used for computing the Class III protein and butterfat prices, $.165, was determined by combining the CDFA plant survey with the RBCS survey. As was pointed out by several witnesses at the hearing, several cost factors that are necessary to maintain the viability of processing plants are not represented in one or both of the RBCS and the CDFA studies. These cost factors include marketing costs, return on investment, and general and administrative expenses. A discussion of these expenses is included earlier in this decision. Neither the CDFA nor the RBCS survey included a marketing cost, so the $0.0015 marketing allowance was added to both studies. In addition, the CDFA return on investment cost of $0.0103 and the general and administrative expense of $0.0190, both of which were included in the CDFA weighted average cost, were added to the RBCS study, which included neither factor. The resulting adjusted costs for each survey are $0.1708 for CDFA and $0.15996 for RBCS. A weighted average of the two studies was computed using the respective adjusted make allowances and the pounds of cheese reported in each study—466,396,548 for the CDFA study and 633,142,812 for the RBCS study—to arrive at the Class III price make allowance of $0.165.

In a comment filed in response to the tentative final decision, NFU stated that the reduction in the cheese make allowance should have been greater than $.0052, but that the cooperative could support an increased make allowance if it were tied to producer cost of production and market price through implementation of a variable make allowance. The $.165 make allowance is based on actual costs discovered by two surveys, the conduct of which were open to review in the hearing record, and is very close to the results of another that was conducted in a somewhat less accessible manner. There is no basis in the record for adopting a lower make allowance and, as discussed earlier, no acceptable rationale for implementing variable make allowances.

Class III Butterfat Price. As discussed in the introductory portion of the Class III price section of this decision, above, the Class III butterfat price adopted in the tentative final decision was changed by a court injunction to be the same as the Class IV butterfat price. Based on evaluation of that decision and the comments received, this decision recommends that the butterfat prices for all classes of use be based on the value of butterfat in butter. The order will refer to both the Class III and Class IV butterfat prices as "the butterfat price," as it did previously.

The tentative final decision was based on the observation that market

distortions occur due to using the Class IV butterfat price calculated from the value of butterfat in butter to also represent the value of butterfat in cheese (Class III), and trying to incorporate the difference in value in the protein price. Analysis shows that there is very little relationship between the cheese price and either the current butterfat price or the current protein price.

As a result, instances have occurred when the protein price declines while, at the same time, the cheese price is increasing. This outcome is contrary to the concept of pricing components on the basis of the value of the products in which they are used. The same inverse price scenario has affected the butterfat price, with occurrences in which the Class III butterfat price increases because the butter price has increased while the cheese market has been declining.

Although reflection of the value of a manufactured product in the prices for the milk components that are instrumental in the yield of that product would require that the Class III protein and butterfat prices be tied more directly to their value in cheese than the result obtained from the Federal order reform price formulas, that outcome cannot be accomplished on the basis of this hearing record. However, any distortion between the Class III butterfat and protein prices and the cheese price should be ameliorated partially by the following changes recommended in the protein formula.

Protein price. The tentative final decision on the hearing record for this proceeding derived formulas for calculating a Class III butterfat price and a protein price that considered only the contribution of each of those components to cheese yield and resulted in a 100 percent correlation with the cheese market. Therefore, the individual factors in the portion of the earlier protein price formula that adjusted the contribution of protein to cheese yield to account for differences in value between butterfat used in cheese and in butter and accounted for much debate in the hearing record were not considered in any detail.

The protein price formula resulting from the tentative final decision took the following form:

(NASS weighted average cheese price—.165) × 1.405. This formula eliminated the following butterfat adjustment portion of the earlier protein price formula:

+ {[(NASS weighted average cheese price—.165) × 1.582]—[the butterfat price]} × 1.28

This butterfat adjustment portion of the formula represents the difference between the value of butterfat used in cheese and the value of butterfat used in butter. The butterfat adjustment portion became unnecessary when the Class III butterfat price was calculated from the value of butterfat in cheese in the tentative final decision.

Reconsideration of the protein formula in light of the determination that there should be only one butterfat price for Class III and Class IV results in the following recommended protein price formula:

[(NASS weighted average cheese price—.165) × 1.405] + {{[(NASS weighted average cheese price—.165} × 1.582]—[the butterfat price × .9]} × 1.17).

Leprino, in response to the tentative final decision, urged that the 1.405 factor used to reflect the yield effect of one pound of protein in milk be reduced to 1.367 because the 1.405 factor assumes that true protein contains more casein (83.3%) than is supported by testimony in the record (82.2—82.4%).

The hearing record contains much discussion of the derivation of the 1.32 cheese yield factor per pound of crude protein used to determine the 1.405 cheese yield factor per pound of true protein. Two explanations of the factor were advanced. The first involved assumption of 75 percent casein retention, 90 percent butterfat retention, and 38 percent moisture content in the cheese. Holding butterfat and moisture constant and changing the protein content by .1 results in a .1318 (rounded to .132) pound change in the cheese yield, or a one percent change in protein results in a 1.32 pound change in cheese yield. The second method assumes 78 percent casein retention, 90 percent butterfat retention, and a 38 percent moisture content in the cheese. In this second method the cheese yield is computed using a 3.2 percent protein and zero butterfat. The resulting cheese yield is divided by 3.2 to arrive at 1.316 pounds of cheese per pound of protein. The 1.316 was rounded to 1.32. Given these particular assumptions, both methods resulted in the same answer—1.32. A witness for National All Jersey testified that the second method is the appropriate procedure and was the one used to compute the 1.32 yield factor in past Federal order protein price decisions. However, if 78 percent is a more appropriate factor to use as the appropriate value for casein retention, then the first method yields a 1.37 yield factor. The 1.32 factor was used in the protein price formula in the Federal order reform proposed rule and in the five Upper Midwest markets beginning in January 1996 to compute the protein price prior to Federal order reform. The 1.32 yield factor generally has been accepted as an appropriate factor to use for computing a protein price.

When the final decision on Federal order reform was issued, the protein price computation was changed to compute the protein price on the basis of true protein rather than crude protein, which had been the basis for protein price computations in the past. As in determining the 1.32 factor, certain assumptions were made to arrive at the current 1.405 yield factor. The 1.405 factor was computed based on the assumption that milk testing 3.3 percent crude protein has an equivalent true protein test of 3.1 percent. The relationship between crude protein and true protein was based on the results of laboratory testing of producer milk for both crude and true protein. The resulting percentage change in protein is 106.4516 (3.3/3.1), which was then multiplied by 1.32 to arrive at 1.405. In addition, use of the 1.405 yield factor when pricing true protein results in a protein value equivalent to use of the 1.32 factor in pricing crude protein.

Regardless of which procedure is used, assumptions must be made with regard to the various factors used in the formulas. These assumptions directly affect the outcome of the factors used in the protein formula and the resulting protein price and value. Since use of the 1.405 factor results in an equivalent protein value to use of the 1.32—and there was no testimony or comments filed that the 1.32 factor was not appropriate—there is no reason to change the 1.405 cheese yield factor in this decision.

Leprino argued that the appropriate casein recovery should be 82.3 percent which, when using the second procedure above with a 2.99 true protein level, would result in a factor of 1.388. However, the majority (⅔) of the difference between 1.405 and the 1.367 factor advocated by Leprino accounts for shrinkage between the farm and the cheese vat. The issue of including shrinkage as an additional make allowance or yield factor in the calculation of component prices has been discussed earlier in this decision and determined to be inappropriate. Eliminating shrinkage from the 1.367 protein factor results in a factor close to the 1.405. In fact, using the second procedure above and a 82.95 casein recovery, which an expert witness testified is equivalent to the 78 percent casein recovery used for crude protein, and a true protein test of 3 percent, which is equivalent to the 3.2 percent

used in the second procedure, the protein factor would be 1.3997, not significantly less than the 1.405. Testimony from other parties stated that the 1.405 is appropriate and should be continued.

Based on the hearing record, comments filed in response to the hearing and tentative final decision, and the above analysis, there is no justification for reducing the 1.405 cheese yield factor.

Since all of the butterfat used in Class III is to be priced on the basis of its value in butter, an adjustment must be made to account for the difference in butterfat values between cheese and butter. The butterfat adjustment portion of the protein price formula is the method chosen for making that adjustment. The first part of the butterfat adjustment portion of the protein price formula calculates the value of butterfat in Cheddar cheese using the Van Slyke formula, assuming a 90 percent recovery of butterfat in the finished cheese. The resulting cheese yield factor attributable to butterfat is a multiplier of 1.582. Testimony in the hearing record and comments on the tentative final decision urged adoption of different multipliers in the butterfat adjustment portion of the protein price formula that represents the effects of butterfat on cheese yield. Suggestions to increase the butterfat recovery factor of 1.582 (to 1.6 or 1.617) were made by DFA; Select, Elite, et al.; and National All-Jersey, Inc. These commenters relied on hearing testimony that butterfat recovery in cheddar cheese generally ranges between 90 and 93 percent, although Kraft testified that their butterfat recovery is lower. The commenters favored use of a factor that reflected 91 or 92 percent fat recovery because that level of recovery is common. In a comment filed by Leprino, the cheese manufacturer urged that the 1.582 factor not be increased, as any increase would exacerbate the overvaluation of whey fat in the current formula and because the 90 percent recovery factor reflects results from many cheese vats installed prior to the late 1980's.

Even though many cheese makers may be able to achieve a higher fat retention in cheese, use of the 1.582 factor representing 90 percent fat recovery in cheese continues to be appropriate. As a result of the 90 percent level, butterfat in cheese is not overvalued, and those cheese makers who fail to recover more than 90 percent of the fat will not suffer a competitive disadvantage. The preponderance of the record indicates that most cheese manufacturers should be able to obtain a 90 percent butterfat recovery.

In testimony at the hearing and comments filed on the tentative final decision the issue was raised of whether the butterfat adjustment portion of the protein price formula in which the value of butterfat in butter is subtracted from the value of butterfat in cheese is based on equivalent amounts of butterfat. The 1.582 factor represents 90 percent recovery in cheese of one pound of butterfat used in its manufacture, while the butterfat price represents the value of one pound of butterfat used to make butter. Clearly, subtracting the value of a pound of butterfat in butter from the value of .9 pounds of butterfat in cheese reduces the actual value of butterfat used in cheese. Therefore, the value of butterfat used in butter should be reduced by 10 percent in this calculation.

Testimony at the hearing and analysis of the relationship between the current cheese, butterfat, and protein prices revealed that the current Class III pricing formulas cause inequities in producer payments based on the relationship between producers' butterfat and protein tests. The inequities were attributed to the use of the 1.28 factor used in the portion of the protein price formula that is designed to incorporate the butterfat value of milk used in cheese that is not already accounted for by the Class III and IV butterfat price. Such a factor is necessary to reflect the fact that there is more than one pound of butterfat in cheese for every pound of protein.

The record supports a conclusion that when the price of butter increases, the price paid for milk used in cheese and for milk delivered by producers will decline if the milk has a fat to protein ratio of less than 1.28, and decline at a more rapid rate than that at which the butter price increases. According to the record and numerous comments filed, most milk delivered by producers has a fat-to-protein ratio less than 1.28.

In a number of the comments filed in response to the tentative final decision, commenters argued that this factor should be reduced—to 1.22, 1.19, or 1.17—to better reflect the fat-to-protein ratio in producer milk. The factor, which originally appeared in a comment filed early in the Federal order reform process as 1.20, was calculated by dividing 1.582 by 1.32. When the change was made from crude protein to true protein, 1.20 was multiplied by 1.0645 to reflect that change, becoming 1.28. The recommended factor of 1.17 in the protein price formula represents a minimum value for the ratio of butterfat to true protein in producer milk. Its use assures that the value adjustment for butterfat in butter to butterfat in cheese included in the protein price formula accounts for the full amount of butterfat in producer milk.

The Alliance of Western Milk Producers argued in a comments filed in response to the tentative final decision that the Class III component price formulas adopted in that decision would lead to disorderly marketing and provide an incentive for processors to seek alternative sources of butterfat, resulting in negative effects on producer income. The Alliance favored a return to the Federal order reform Class III component price formulas, but suggested that a snubber to prevent the butterfat value adjustment to the protein price from becoming negative would mitigate the potential for undervaluing protein under the formula.

Although the protein formula recommended in this decision would still allow the butterfat value adjustment to have a negative effect on the protein price, use of the .9 multiplier in the butter portion of the butterfat value adjustment and reduction of the 1.28 multiplier to 1.17 should reduce the magnitude of that effect.

Class III—Other Nonfat Solids price (Dry Whey). This decision continues to calculate the price of the nonfat solids other than protein in milk used to make cheese by subtracting a manufacturing allowance from the NASS dry whey price and dividing the result by the content of these "other nonfat solids" in dry whey. No change is made or was proposed in the dry whey product price or divisor in the formula. The manufacturing allowance for dry whey is increased from the 14 cents per pound adopted in the tentative final decision to 15.9 cents per pound of dry whey to reflect a higher cost of drying whey than of drying nonfat dry milk. This decision is also changed from the tentative final decision to remove the snubber in the other solids formula that would prevent the other solids price from falling below zero.

The hearing included several proposals that would change the dry whey or other solids price formula by changing the make allowance. Although the hearing notice included a proposal to use the CME average dry whey price, the proponent withdrew support for the proposal when it became apparent that the CME has no cash exchange market for dry whey. The NASS survey that currently is being used to identify commodity prices has included price data on dry whey since September 1998. There were no proposals to change the 0.968 yield factor in the other solids price formula. The 0.968 factor reflects

the solids content of dry whey, given a 3.2 percent moisture content.

Make Allowance (Dry Whey). Since the most recent CDFA and RBCS cost surveys did not include costs for drying whey, there is no information from those two studies to use for computing the dry whey make allowance. A witness from NMPF suggested using the nonfat dry milk manufacturing cost allowance for dry whey since both products involve similar processing equipment and then adding $0.01 per pound to reflect the additional energy and higher equipment costs incurred in drying whey. Since the make allowance for nonfat dry milk adopted under the tentative final decision is $0.140, this procedure would result in a dry whey make allowance of $0.150.

DFA proposed a dry whey make allowance of $0.1478 per pound based on costs at its plant at Smithfield, Utah. The plant is a cheddar block plant running throughout the year that condenses and dries whey from the cheese manufactured in this Smithfield plant only. The DFA costs include both direct and indirect costs, and return on investment and marketing cost data.

A witness from WSDPTA testified that there is no reason to change the other solids price computation from the current formula, and that it is a necessary component of the cheese pricing formula. He noted that the use of dry whey as a commodity is correct and that the 0.968 factor in the pricing formula reflects 96.8 pounds of solids in 100 pounds of dry whey.

Most witnesses who testified about the cost of drying whey expressed the belief that drying whey costs more than drying nonfat dry milk. Two cooperative association witnesses testified that their organizations have determined that the returns from whey powder with the current make allowance would not cover the costs associated with building and operating whey powder plants.

IDFA presented the results of the survey, discussed earlier in this decision, contracted for by NCI. The IDFA witness testified that the survey showed a dry whey manufacturing cost of at least $0.1592. The IDFA witness testified that using the nonfat dry milk make allowance significantly understates the manufacturing cost of dry whey due to the relatively higher percentage of water in liquid whey compared to skim milk and the additional crystallization process required.

A witness representing Leprino testified on the differences in the manufacturing processes for dry whey and nonfat dry milk that result in higher costs to produce whey powder. The witness concluded that the cost of making dry whey is $0.02559 above the cost of drying nonfat dry milk.

The brief submitted by Leprino argued that the additional costs of processing whey powder over those of processing nonfat dry milk should include additional staffing, cleaning, and maintenance associated with the additional equipment for whey product.

A witness from Kraft agreed that the dry whey manufacturing costs are about 2.6 cents per pound greater than the nonfat dry milk manufacturing costs. Although Kraft described its Tulare plant as large and efficient, it also represents a recent capital investment, meaning that depreciation costs are likely higher than average.

Comments on the dry whey make allowance portion of the tentative final decision generally followed the lines of the testimony in the hearing record. WSDPTA favored maintaining the 14-cent make allowance adopted in the tentative final decision, and ADCNE/DFA supported not using the NCI survey on the manufacturing cost of dry whey. IDFA, Leprino, and Northwest Dairy Association advocated adoption of a dry whey make allowance of at least 15.92 cents per pound, the level determined in the NCI survey. These comments cited testimony in the record that the cost of drying whey is as much as 2.6 cents greater than that of drying skim milk, a calculation that would result in a make allowance of 16.6 cents. Kraft favored adding a value reflecting the reduced value of butterfat in whey to the whey make allowance and increasing the make allowance by at least 2 cents.

Since information regarding the costs of drying whey was not available from the sources used for determining the other make allowances in product price formulas, the tentative final decision determined that the dry whey make allowance should remain the same as that for nonfat dry milk. However, that determination should be changed to reflect testimony and other evidence in the hearing record that the cost of drying whey is greater than that of drying nonfat dry milk.

The other solids price will be computed by subtracting the make allowance of $0.159 from the NASS weighted average dry whey price and dividing the result by .968. The differential costs of manufacturing whey powder, from one source, over those of nonfat dry milk, from others, do not provide close enough agreement with the NCI-sponsored survey to use them with any confidence. Neither of the witnesses who testified that the extra costs of drying whey are 2.6 cents greater than the costs of drying nonfat dry milk testified about the total costs of either operation.

In lieu of other studies and direct evidence of the total cost of drying whey, the NCI-commissioned study results, rounded to the nearest 1/10 cent, should be used for determining the make allowance.

Snubber/Other Solids Price. The tentative final decision snubbed the other solids price at zero. Thus, if the NASS dry whey price minus the make allowance resulted in a negative number, the other solids price would become zero. Michigan Milk Producers Association supported the inclusion of such a "snubber" concept for the whey price in a brief, citing testimony in which the DFA witness referred to the difficulty of explaining to producers a negative component price. Snubbing the other solids price to zero would have prevented it from negatively affecting the value of other Class III components or having a negative impact on the producer price differential. Support was expressed for use of the snubber in two comments.

The snubber in the other solids price formula was opposed in comments filed by two parties. Leprino stated that sound policy should allow not only positive, but negative net revenues to be reflected in the milk price to prevent overvaluing milk. IDFA opposed the snubber on the grounds that it would prevent manufacturers of dry whey from covering all manufacturing costs if wholesale prices for dry whey failed to fully cover manufacturing costs. Both commenters suggested that if the component price were to become negative, the negative value could be pooled as part of the producer price differential, as inferred by the DFA witness.

The prices calculated for the components in Class III milk are intended to reflect the value of those components in the products from which the prices are calculated. Use of a snubber to limit the other nonfat solids price would be inconsistent with the purpose of a pricing formula to reflect a component value and would appear to be an arbitrary adjustment to the price formula. After a thorough review of the record, including briefs and the comments on the tentative final decision, USDA has determined that the snubber on the other solids price should be eliminated.

d. Effects of Changes to Class III and Class IV Price Formulas

The changes to the Class III and Class IV component price formulas discussed above would result not only in changes

to the respective component prices, but also to the resulting Class III and Class IV skim milk and hundredweight milk prices at 3.5 percent butterfat. The changes discussed in this portion of the decision are relative to the formulas resulting from Federal order reform. The calculations that follow, and those included in the model analysis of this recommended decision, show some increase in the level of the Class III price. USDA believes that the Class III pricing formulas incorporated in this decision are more technically correct than those adopted as a result of Federal order reform because they are based on more complete information derived through the formal rulemaking process.

It is important to note that these calculated class price differences, or the "static effect" of the recommended changes, are based on historical product price data and not on product prices that will occur in the future. The price differences calculated in this portion of the decision cannot be used to calculate or estimate changes in revenue that would have occurred or may occur in the future because changing intersections of supply and demand for each product result in different prices.

All of the comparisons that follow are calculated based on the NASS weighted average commodity prices from January 2000 through July 2001. NASS weighted average commodity prices for this time period were available, and no estimates of the relevant commodity prices need to be made. Although this time period is relatively short, a number of interesting price relationships occurred in the data series.

For instance, during this period the cheddar cheese (39 percent moisture) market ranged from a low of $1.0245 per pound during November 2000 to a high of $1.6434 per pound during July 2001. The November low was about 7.5 cents below the $1.10 per pound support price for 40-pound blocks of cheddar. During this same 19-month period the NASS weighted average nonfat dry milk price showed little movement until July 2001, ranging from a high of $1.0165 per pound during January 2001 to $0.9634 per pound during July 2001. The July 2001 decline was the result of a reduced support price. In fact, the nonfat dry milk price stayed within about one cent of support over the January 2000 through June 2001 period.

Unlike the cheese and nonfat dry milk market, the butter price did not trade anywhere near the butter support price of $0.65 per pound or the revised support price of $0.8548 per pound. The butter price traded in a range from a low of $0.8820 per pound during January 2000 to a high of $1.9263 per pound during June 2001. It is important to keep in mind that since all milk is priced on the basis of butterfat and skim or nonfat components under Federal orders, focusing on the calculated hundredweight prices at 3.5 percent butterfat that are announced for comparison purposes may result in misleading conclusions.

The formulas used for computing the Class IV prices are unchanged from those contained in the interim final decision, which currently are being used.

Changing the butterfat price make allowance from $0.114 to $0.115 results in a calculated average decline in the Class IV butterfat price of $0.0012 over the 19-month period studied. The two changes to the Class IV nonfat solids formula—increasing the make allowance from $0.137 to $0.140 and eliminating the 1.02 divisor—would result in a net increase of $0.0141 per pound in the Class IV nonfat solids price in the absence of any other changes. Since the Class II prices are to continue to be computed on the basis of the Class IV formulas plus the Class II differential of $0.70 per hundredweight, changes to the Class II prices will be the same as the changes to the Class IV prices. The calculated Class IV skim milk price would increase by an average of $0.127 per hundredweight. The calculated 3.5 percent Class IV milk price would increase by an average of $0.118 per hundredweight, reflecting the net difference between the increase in the skim milk price and the very small decline in the Class IV butterfat price.

As a result of the 38-percent moisture adjustment to barrel cheese prices, the NASS weighted average cheese price used for computing the Class III protein price would be calculated to be higher by $0.011 per pound over the 19-month period January 2000 through July 2001. Use of this cheese price increase in the recommended protein price formula results in an increase of 3.6 cents per pound of protein. The decrease in the make allowance from $0.1702 to $0.165 in the recommended protein price formula accounts for an increase of 1.7 cents per pound of protein. The two changed factors in the protein price formula (0.9 and 1.17), using data for the 19-month period, result in an increase in the calculated protein price averaging approximately 14.8 cents. The total increase in the protein price as a result of three changes to aspects of the Federal order reform protein price formula (moisture adjustment, make allowance, and formula changes) would be approximately 20.6 cents above the price that would have been computed based on the formula prior to 2001.

At the same time, the increase from $0.137 to $0.159 in the dry whey make allowance for calculating the other solids price results in a calculated decline in the other solids price of $0.0227 over the 19-month period. Elimination of the snubber on the other solids price would have made no difference during the period considered. The combination of the changes in both the protein price and the other solids price would have resulted in an average of about $0.50 per hundredweight increase in the Class III skim milk price over the 19-month period if cheese and dry whey prices were unchanged.

The changes in the protein price formula improve significantly the relationship between the cheese price and the protein price, from a correlation coefficient of 0.54, using the Federal order reform protein formula, to a correlation coefficient of .70 using the formula recommended in this decision. In addition to improving the relationship between the cheese price and the protein price, the recommended protein formula reduces the variability of the protein price and moderates the extremes that occurred under the Federal order reform protein formula, thereby giving producers a more consistent and positive protein price signal.

The calculation of the Class III price at 3.5 percent butterfat, based on the formulas contained in this decision, would have averaged about $0.48 per hundredweight above the 3.5 percent Class III price based on the Class III formulas implemented under Federal order reform.

In comments filed in response to the tentative final decision, IDFA and Leprino urged that in no case should the Class III price be enhanced relative to price levels under Federal order reform. Leprino reiterated arguments addressed earlier as to the importance of assuring that yield factors not be too high or make allowances too low for cheese plants to make enough profit to maintain their operations. IDFA focused on the negative long-term effects on producer prices, as described in USDA's analysis, of adopting enhanced Class III and Class IV prices. As described in detail above (in Issue 3c), the factors incorporated in the Class III component price calculations are based solidly on testimony and data in the hearing record.

The record provides ample basis for believing that the margins allowed for cheesemakers under these recommended price formulas should be entirely adequate for them to maintain

their operations. As observed at the hearing and in comments filed in response to the tentative final decision by the expert witness from Cornell, a break-even point would be where the value of cheese plus whey cream plus whey powder equals the value of the milk price plus the make allowances. According to the witness, under Federal order reform, and to a greater extent in the tentative final decision, the total value of these products exceeded the sum of the milk price and the make allowances.

The discussion at the hearing centered specifically on the make allowance used in the protein formula, with the implication that it represented the entire make allowance for cheese. Unlike the Class IV price formulas, where the make allowances used in the butterfat and nonfat solids price formulas can be attributed directly to butter and nonfat dry milk, the make allowances used for butterfat, protein, and other solids in the pricing formulas for Class III must be looked at in aggregate. All three components are involved in the cheesemaking process and have a significant effect on cheesemakers' costs and returns.

Gross margins (including make allowances) can be compared using both the cost of milk based on the Federal order reform Class III formulas, and the cost of milk based on the Class III formulas recommended in this decision. For this purpose, gross margins are defined as the difference between the sum of the selling price of cheese and dry whey based on monthly average NASS prices and whey butter, estimated at nine cents below the NASS AA butter price, and the cost of milk under the two sets of formulas. The gross margins therefore reflect the amount of money available to processors to procure, process, and market the end products of milk used in Class III: cheese, whey butter and dry whey.

Using Class III component tests from the Upper Midwest market to estimate product yields, the estimated gross margins would have averaged approximately $3.00 per hundredweight using the Federal order reform Class III formulas and $2.52 per hundredweight over the 19-month period of January 2000 through July 2001 if the recommended Class III formulas had been in effect. These gross margins are significantly different than the cheese make allowances of $0.1702 and $0.165 used in the formulas, which would be equivalent to approximately $1.70 and $1.65 per hundredweight of milk with a estimated yield of 10 pounds of cheese. Such a difference is expected since the make allowances for whey butter and dry whey are significantly lower than the cheese make allowance. Any residual value can be used by the handler to improve returns or increase producer pay prices. Also, the lower gross margins under the recommended formulas could lead to reduced over-order premiums to reflect increased milk costs and maintain current gross margins.

4. Class Price Relationships

The price relationships between classes established under the Federal order reform process should be maintained. One proposal heard in this proceeding would have reduced the Class IV butterfat price without affecting the computation of other butterfat or product prices. That proposal is addressed specifically in the section of this decision dealing with Class IV Butterfat price.

The current pricing system uses the same formulas for computing the advance component prices used to compute the Class I skim milk and butterfat prices and Class II skim milk price as are used to calculate the Class III and Class IV component prices. Several witnesses testified as to what the class price relationships should be if changes were made to any of the Class III or Class IV component price formulas. The witness for IDFA and several other parties stated that any changes to the Class III and Class IV formulas should also apply to the advance price formulas used for computing the Class I and Class II prices. The witness explained that failure to use the same formulas between the related classes of use would result in a direct impact on the Class I and Class II differentials which was clearly not the intent of Congress when Congress instructed the Secretary to conduct a rulemaking proceeding concerning the Class III and Class IV price formulas.

A witness for Hershey Foods pointed out that the Secretary went to great lengths to justify the 70-cent Class II differential above the Class IV price. In support of Proposal 31, the witness said that there is no justification or new evidence for changing the current price relationship that exists between the manufactured products (butter and nonfat dry milk) and the Class II price if the Class IV formulas were revised as suggested in several proposals. The witness stated that such changes in price relationships clearly were not the intent of Congress. A brief filed on behalf of IDFA in support of Proposal 31 stated that the correct price relationship between NFDM and Class II is 70 cents and that the record provides no basis for changing that relationship. Actually, as explained in the final decision on Federal order reform, 70 cents represents the correct price relationship between milk used to make dry milk powder and milk used in Class II, as nearly as can be determined from the information available.

A proposal (Proposal 30) by two parties that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices was supported in testimony by one of the parties, who argued that any increases in the Class I price mover should be balanced with reductions in Class I differentials. The witness stated that the proponents want to be sure that Class I prices are not further decoupled from Class III and Class IV pricing formulas, or that Class I prices are not artificially inflated.

Neither Proposal 30 nor Proposal 31 were adopted under the tentative final decision.

In comments on the tentative final decision filed by ADCNE and fully supported by DFA, consideration of Proposal 30 was opposed as being beyond the scope of the Congressional mandate and not fully debated at the hearing. ADCNE further opposed any modifications to Proposal 30, such as the Family Dairies' testimony supporting a weighted average Class I price mover, or to a similar proposal relative to the Class II price, that would change the basis for Class I and Class II prices or Class I and Class II differentials. ADCNE continued that there was no evidence presented at the hearing that would support the substantial revenue reductions to farmers throughout the Federal order system which Proposals 30 and 31 would cause. ADCNE urged that the conclusions of the tentative final decision to deny proposals 30 and 31 be affirmed.

Neither the price relationships established in the final decision between milk used in Class III or Class IV and milk used in Classes I and II should be changed. To the extent that there may be differences in the Class III or Class IV prices between the current prices and those adopted in this decision as a result of adjustments to the component pricing formulas, those changes should be reflected in the Class I and Class II prices. Any reevaluation of the formulas used to price the components used in manufactured products should be carried through to the class prices that are based on those component prices. A change in the computation of the nonfat solids price, for instance, is intended to better reflect

the value of those solids in dry milk products. If the new nonfat solids price formula results in an increase in the Class IV price, the record provides no basis for changing the difference in the value of the milk used in those solids between Class IV and Class II use. Similarly, the availability of milk for use in Class I is related to the higher of the alternative manufacturing values for that milk. The current relationships should be maintained.

5. Class I Price Mover

A proposal that was not included in the hearing notice was made at the hearing by a Family Dairies, USA, witness on behalf of that cooperative and the Midwest Dairy Coalition, which represents 13 additional organizations representing dairy farmers. The proposal would change the Class I price mover from the higher of the Class III and Class IV prices to a weighted average of the two. The witness for Family Dairies testified that the results of the current regulation are disturbing and unanticipated with the unexpected strength of the Class IV price relative to Class III.

In testimony at the hearing, the Family Dairies representative complained that 10 percent of production under Federal orders (milk used to make nonfat dry milk) has been driving the Class I price that applies to 40% of the milk. As a result, he testified, milk production for fluid purposes is encouraged in markets with high Class I differentials and relatively high Class I use at a time when marketing conditions (an oversupply of milk) should have the opposite effect. As fluid-oriented markets are receiving increased prices relative to markets in which cheese is the dominant use, he complained, inequities in blend prices between markets are increasing.

A group representing upper Midwest producer interests filed a brief describing the recent movement of milk from the Upper Midwest pool onto the Central and Mideast marketwide pools as disorderly marketing caused by increases of Class I prices in these higher-Class I use markets.

An argument stated in another brief stated that since the 1960's the dairy industry has used a Class I mover tied to a market-clearing price represented by a weighted average of milk used in butter, cheese, and powder.

In several briefs it was argued that the Regulatory Impact Analysis (RIA) published with the final decision on Federal order reform stated that the price formulas adopted therein were expected to generate a sufficient quantity of milk, and that both the adoption of Class I pricing option IA and use of the higher of the Class III and IV prices as the price mover have worked to enhance Class I price levels.

A brief filed by a group representing fluid milk handlers suggested that USDA should give careful consideration to the proposal to use a weighted average of the Class III and Class IV prices to move Class I prices.

Based on analysis of the hearing record and briefs filed by interested persons, the tentative final decision continued use of the higher of the advance Class III or Class IV prices as the mover for Class I prices.

In comments on the tentative final decision, the Midwest Dairy Coalition repeated its position that the existing mover should be changed to a weighted average of the advanced Class III and advanced Class IV prices, with the weight based on the portion of manufacturing milk used for Class III and Class IV during the prior year. The Coalition stated that using the higher of Class III or Class IV prices could result in setting a minimum fluid milk price that is actually above the market clearing price for milk, especially if the higher of the Class III and IV prices were not representative of manufacturing markets. The Coalition also expressed concern that the tentative final decision adopted, as an unnoticed and unsupported change, the higher of the advanced Class III or Class IV milk prices at 3.5 percent butterfat as the new Class I mover instead of using the skim value.

In comments, NMPF noted that significant fluctuation that could occur in the Class I skim milk price mover due to using the higher of the advanced Class III or Class IV prices at 3.5 percent butterfat. Several parties noted that use of the advanced price at 3.5 percent butterfat could cause the Class III price to be the Class I price mover, even with a very low Class III skim milk price, causing significant month-to-month changes in the Class I skim milk price.

Michigan Milk Producers Association (MMPA) filed comments, stating that using a weighted average to set the Class I mover would severely impact fluid users' ability to attract sufficient quantities of milk when there were large differences between Class III and Class IV prices. MMPA and NMPF supported the continued use of the higher of the Class III or Class IV prices as the Class I mover.

ADCNE's comments, fully supported by DFA, expressed opposition to the Family Dairies' proposal for a weighted average Class I price mover or any other proposal that would change the basis for Class I and Class II prices or Class I and Class II differentials. ADCNE argued that there was no evidence presented at the hearing that would support the substantial revenue reductions to farmers throughout the Federal order system which would result from adoption of the weighted average Class I price mover. ADCNE urged that the conclusions of the tentative final decision to continue to use the higher of the advanced Class III and IV prices as the basis for calculating the Class I price mover be affirmed.

The shift in the pooling of milk from the upper Midwest to higher-valued markets complained of in one upper Midwest brief has been a long-sought outcome on the part of upper Midwest producer groups. It is difficult to understand why it is now seen as a manifestation of disorderly marketing.

Those briefs that cited the sufficient level of milk production projected under the RIA for Federal order reform appeared to base their arguments in opposition to use of the "higher of" Class I price mover on that projection. It should be noted that Congressional action relative to Class I prices following issuance of the final decision on Federal order reform applied only to the Class I pricing surface. Use of the higher of the Class III and IV prices as the Class I price mover was included in Federal order reform and in the accompanying RIA.

The Upper Midwest Coalition's concern that the tentative final decision adopted the higher of the advanced Class III or Class IV milk prices at 3.5 percent butterfat instead of using the skim value as the new Class I mover, and the NMPF criticism that doing so would result in significant fluctuations in the Class I skim price is now moot because of the return to the use of one butterfat price. Use of the same butterfat price for the Class III and Class IV prices will result in the "higher of" the two being determined by the relative skim milk prices. Therefore, fluctuations in the Class I skim milk price projected under the tentative final decision should be reduced as a result of this decision.

The price referred to in the brief expressing preference for the historical use of a weighted average of prices paid for milk used in butter, cheese, and powder was, at first, the Minnesota-Wisconsin price series (the M–W). The M–W, and later the M–W adjusted by a weighted average of current product prices for manufactured products, was specific to the upper Midwest area and included very little NFDM, since that area manufactures a higher percentage of cheese, relative to NFDM, than the rest of the U.S. The current pricing

system is much more representative of national supply and demand for manufactured dairy products than either of the versions of the former Class I mover.

As explained in the final decision on Federal order reform, the higher of the Class III or Class IV prices are used to move the Class I price to assure that fluid plants will be better able to attract milk away from manufacturing uses. Use of the weighted average of the two prices when there is a significant difference between them would provide no assurance that milk would be available as needed for fluid uses and would be more likely to result in Class price inversions (where the Class I price falls below one or more of the manufacturing class prices). In addition, use of a weighted average Class I price mover would increase the occurrence of the blend price falling below the Class III or IV price in markets with low Class I utilization.

Aside from the fact that the proposal to use a weighted average of the Class III and Class IV prices as the Class I mover was not noticed for consideration in this proceeding, it should be rejected on the basis of its lack of merit.

6. Miscellaneous and Conforming Changes

a. Advanced Class I Butterfat Price

Because of the change made between the interim final rule and this recommended decision—to use only one butterfat price for butterfat used in both Class III and Class IV—a conforming change made in the interim final rule to the procedure for calculating the Class I butterfat and hundredweight prices is unnecessary. The advanced butterfat price used for pricing Class I butterfat would continue to be the advanced butterfat price calculated for both classes.

b. Classification

The classification of anhydrous milkfat, butteroil, and plastic cream was changed in the tentative final decision from Class III to Class IV as a conforming change required by the adoption of separate butterfat prices for the two classes. The hearing notice contained no proposal to change the classification of these products, and there was no testimony in the record of the proceeding supporting their re-classification. Therefore, with the elimination of the separate Class III butterfat price, the sole basis for the change in classification is also eliminated. As noted in the tentative final decision, a difference between the classification of these products, which have a very high butterfat content, and butter should not cause any market dislocation in a pricing plan where butterfat used in Class III products has the same value as butterfat used in Class IV products. One commenter opposed changing the classification of these products.

In a comment filed in response to the tentative final decision, Hershey Foods urged that the Federal orders adopt a 2-class pricing system. Such a suggestion is entirely outside the scope of the current proceeding.

c. Distribution of Butterfat Value to Producers

There were several responses to the issue of whether the butterfat price paid to producers should be the result of pooling butterfat prices from the different classes or continue to reflect the value of butterfat in Class III. A witness from Northwest Dairy Association testified that being able to line up the Class III price to plants with the component value calculation for producers is helpful, especially with regard to forward pricing. In a brief filed on behalf of DFA and ADCNE, the co-op groups supported continued use of the Class III butterfat price as the producer butterfat price. According to the brief, changes in direct pricing to the producer are not prudent at this time, and any change between the Class III and Class IV butterfat price should be settled through the producer price differential mechanism in the market order pools. The brief continued that the producer price differential is a blending of various debits and credits in the pooling process and the additional equalizing of any butterfat pricing adjustments through this procedure currently makes the most sense.

In a post-hearing brief, National All-Jersey (NAJ) urged that USDA retain the current practice of using Class III milk component values to price producer component values. NAJ noted that this scenario makes it easier to use accepted hedging tools, such as Class III futures contracts, and helps simplify pricing for producers. NAJ further stated that the current procedure maintains the same producer butterfat price in all Federal orders with multiple component pricing (MCP).

Seventy-nine dairy organizations supported payment to producers on the basis of the milk components priced in Class III, including the Class III butterfat price instead of a pooled butterfat price, plus the producer price differential in a comment filed in response to the tentative final decision. The commenters argue that payment to producers on the basis of Class III components facilitates the use of risk management tools by producers and avoids wider fluctuations in Class I and producer fat, skim, and component values.

One of the principal reasons given in the tentative final decision for changing the pooling provisions of the MCP orders was that potential large differences between the Class III and Class IV/II butterfat prices would be likely to result in significant distortions in the effect of those differences on the producer price differential. In addition, the decision observed that it is possible that pool calculations in some markets would result in a negative producer price differential if the producer butterfat price is not changed to represent a blend of the values of butterfat in the four classes of use.

This reversal of the decision to calculate separate Class III and Class IV butterfat prices invalidates the principal reason for pooling butterfat under the MCP orders.

Therefore, producer payments under the MCP orders will continue to be made on the basis of the prices for milk components used in Class III rather than pooling the butterfat values of the four classes. The four orders that do not have component pricing will continue to pool the class use butterfat values and return a weighted average butterfat price to producers. As a result of this change between the tentative final decision and this recommended decision, some inconsistency between the producer butterfat prices under MCP and non-MCP orders will remain. It is not expected that this inconsistency will result in disorderly marketing.

d. Inclusion of Class I Other Source Butterfat in Producer Butterfat Price Computation

In the process of promulgating the tentative final decision, it was determined that the value associated with the occasional classification of other source milk as Class I should be included in pooling the class butterfat values to determine butterfat prices to producers. For the orders under which butterfat is pooled, this change was made in the interim final rule, and should continue, so that the value of all of the butterfat in the pool will be reflected in the producer butterfat price.

In the component pricing orders, the changes made in the interim final rule to include the Class I other source butterfat value in the butterfat pool should be reversed. Although the District Court's injunction had the effect of reversing these changes and the Federal order reform language has continued in effect, the order language

in the Code of Federal Regulations reflects the provisions adopted in the interim final rule. The proposed order language amendments accompanying this decision will reflect the language that is currently in effect in the MCP orders, reversing the changes that were made to include Class I other source butterfat in the butterfat pool.

7. Re-opening of Hearing, Issuance of a Final Decision, or Issuance of a Recommended Decision

The statute requiring that this proceeding be held to reconsider the Class III and Class IV pricing formulas also required that a final decision be published by December 1, 2000, with any amendments to the orders to be effective January 1, 2001.

The hearing record reflected unanimity among those addressing the issue that the industry should be afforded the opportunity to comment on a decision before its content results in a final rule. Consequently, a tentative final decision was issued, affording interested persons an opportunity to comment, even though the amendments adopted in the decision were to become effective January 1, 2001. Subsequently, an injunction was issued to prevent some of the provisions adopted in the interim final rule from becoming effective.

One option for dealing with the injunction would be to reopen the hearing for the purpose of considering additional testimony on the issue of pricing the components of milk used in cheese in such a way that the component prices track the cheese price more closely than they have done under the Federal order reform pricing formulas, or would continue to do under the formulas recommended in this decision.

Several interested parties commented in opposition to any reopening of the proceeding with regard to the Class III butterfat and protein price formulas. The only commenter that favored revisiting any of the issues involved stated that some way of reflecting increased energy costs to make allowances should be explored. The commenter seemed to refer to conducting a new proceeding rather than reopening the current proceeding. Given the present lack of interest in pursuing development of Class III component prices that are more closely correlated with cheese prices, reopening this proceeding should not be considered.

Two commenters on the Tentative Final Decision urged that USDA act quickly to conclude this proceeding. The most rapid conclusion to this proceeding would be through issuance of a Final Decision, followed by a determination of producer approval and issuance of a Final Rule for the orders approved. However, significant changes were made to the Tentative Final Decision by the District Court order and this decision. Interested parties should have an additional opportunity to comment on those changes as well as other changes from the tentative final decision that are included in this decision. Therefore, USDA is issuing this Recommended Decision, which will allow comments (a 30-day comment period is provided) on the changes to be filed and considered before issuing a Final Decision, which producers will be asked to approve.

Rulings on Proposed Findings and Conclusions

Briefs, proposed findings and conclusions, and comments on the tentative final decision were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, comments filed, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid interim marketing agreements and orders;

(a) The interim marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas, and the minimum prices specified in the interim marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Northeast and other marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 are proposed to be amended as follows:

1. The authority citation for 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 continues to read as follows:

Authority: 7 U.S.C. 601–674, 7253, Pub. L. 106–113, 115 Stat. 1501.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

1. Section 1000.40 is amended by adding paragraph (c)(1)(ii) and revising paragraph (d)(1)(i) to read as follows:

§ 1000.40 Classes of Utilization.

* * * * *

(c) * * *

(1) * * *

(ii) Plastic cream, anhydrous milkfat, and butteroil; and

* * * * *

(d) * * *

(1) * * *

(i) Butter; and

* * * * *

2. Section 1000.50 is amended by revising the last sentence of the introductory text and paragraphs (a), (b), (c), (g), (h), (j), (l), (n), (o), (p)(1), and (q)(3); and removing paragraph (q)(4) to read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight, rounded to the nearest cent, shall be .965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section.

(c) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

* * * * *

(g) *Class II butterfat price.* The Class II butterfat price per pound shall be the butterfat price plus $.007.

(h) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be .965 times the Class III skim milk price plus 3.5 times the butterfat price.

* * * * *

(j) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be .965 times the Class IV skim milk price plus 3.5 times the butterfat price.

* * * * *

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month less 11.5 cents, with the result divided by .82.

* * * * *

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) and (ii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month; and

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month plus 3 cents;

(2) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.582; and

(ii) Subtract .9 times the butterfat price computed pursuant to paragraph (l) of this section from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

(iii) Multiply the amount computed pursuant to paragraph (n)(3)(ii) of this section by 1.17.

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 15.9 cents, with the result divided by 0.968.

(p) * * *

(1) Multiply .0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 5th decimal place;

* * * * *

(q) * * *

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 11.5 cents from this average, and dividing the result by 0.82.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

1. In § 1001.60 paragraphs (c)(3), (d)(2), and (h) are revised to read as follows:

§ 1001.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by 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.

* * * * *

2. Section 1001.61 is revised to read as follows:

§ 1001.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1001.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1001.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1001.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the

producer price differential for the month.

3. In § 1001.62 paragraphs (e) and (g) are revised to read as follows:

§ 1001.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

4. Section 1001.71 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1001.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1001.60(h) by the producer price differential as adjusted pursuant to § 1001.75 for the location of the plant from which received.

5. Section 1001.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(vi) to read as follows:

§ 1001.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received by the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(vi) Multiply the pounds of butterfat in Class III and Class IV milk by the butterfat price for the month;

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

1. In § 1030.60 paragraphs (c)(3), (d)(2), and (i) are revised to read as follows:

§ 1030.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by 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.

* * * * *

2. Section 1030.61 is revised to read as follows:

§ 1030.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1030.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1030.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1030.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1030.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer butterfat price differential.

4. Section 1030.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1030.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(i) by the producer price differential as adjusted pursuant to § 1030.75 for the location of the plant from which received.

5. Section 1030.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

PART 1032—MILK IN THE CENTRAL MARKETING AREA

1. In § 1032.60 paragraphs (c)(3), (d)(2), and (i) are revised to read as follows:

§ 1032.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by 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.

* * * * *

2. Section 1032.61 is revised to read as follows:

§ 1032.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1032.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1032.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1032.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1032.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1032.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1032.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1032.71 is amended by revising paragraphs (b)(2) and (4) to read as follows:

§ 1032.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1032.60(i) by the producer price differential as adjusted pursuant to § 1032.75 for the location of the plant from which received.

5. Section 1032.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1032.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

1. In § 1033.60 paragraphs (c)(3), (d)(2), and (i) are revised to read as follows:

§ 1033.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by 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.

* * * * *

2. Section 1033.61 is revised to read as follows:

§ 1033.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1033.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1033.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1033.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1033.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1033.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1033.71 is amended by revising paragraphs (b)(2) and (4) to read as follows:

§ 1033.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices, respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1033.60(i) by the producer price differential as adjusted pursuant to § 1033.75 for the location of the plant from which received.

5. Section 1033.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1033.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. In § 1124.60 paragraphs (c)(3), (d)(2), and (h) are revised to read as follows:

§ 1124.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by 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.

* * * * *

2. Section 1124.61 is revised to read as follows:

§ 1124.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1124.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1124.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1124.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1124.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1124.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1124.71 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1124.60(h) by the producer price differential as adjusted pursuant to § 1124.75 for the location of the plant from which received.

5. Section 1124.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

1. In § 1126.60 paragraphs (c)(3), (d)(2), and (i) are revised to read as follows:

§ 1126.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by 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.

* * * * *

2. Section 1126.61 is revised to read as follows:

§ 1126.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1126.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1126.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1126.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1126.71 is amended by revising paragraphs (b)(2) and (4) to read as follows:

§ 1126.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential as adjusted pursuant to § 1126.75 for the location of the plant from which received.

5. Section 1126.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1126.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

PART 1135—MILK IN THE WESTERN MARKETING AREA

1. In § 1135.60 paragraphs (c)(3), (d)(2) and (h) are revised to read as follows:

§ 1135.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by 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.

* * * * *

2. Section 1135.61 is revised to read as follows:

§ 1135.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1135.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1135.60 for all handlers required to file reports prescribed in § 1135.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1135.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1135.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1135.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1135.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1135.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

* * * * *

4. Section 1135.71 is amended by revising paragraph (b)(2) and removing and reserving paragraph (b)(3) to read as follows:

§ 1135.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) [Reserved]

* * * * *

5. Section 1135.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1135.73 Payments to producers and to cooperative associations.

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

Dated: October 19, 2001.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

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H.J. Res. 69/P.L. 107–53

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